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NINTH ANNUAL REPORT

OF THE

NATIONAL LABOR RELATIONS BOARD

For the Fiscal Year Ended

June 30, 1944

NINTH ANNUAL REPORT OF THE NATIONAL LABOR RELATIONS BOARD

FOR THE FISCAL YEAR ENDED JUNE 30

1944

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NATIONAL LABOR RELATIONS BOARD

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CLAUDE B. CALKIN, *Chief Clerk*

LETTER OF TRANSMITTAL

NATIONAL LABOR RELATIONS BOARD,
Washington, D. C., February 7, 1945.

SIR:

As provided in Section 3 (c) of the National Labor Relations Act (49 Stat. 449), I submit herewith the Ninth Annual Report of the National Labor Relations Board for the year ended June 30, 1944, and, under separate cover, lists containing the names, salaries, fiscal statement, and duties of all employees and officers in the employ or under the supervision of the Board, together with lists of cases in which hearings were held and decisions were rendered by the Board during the fiscal year.

H. A. MILLIS, *Chairman.*

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

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I

THE NATIONAL LABOR RELATIONS BOARD IN WARTIME

FOR labor relations as for all other basic aspects of our national life, war was the dominant force in the past year. The Board's contribution to our national economy during this period was the continued administration of its statutory functions under the National Labor Relations Act to eliminate unfair labor practices which impede the acceptance of sound collective bargaining and to promptly determine disputes as to the choice of bargaining agents by employees. In addition to discharging these duties, the Board continued to conduct strike polls under the War Labor Disputes Act, and to administer that amendment to the Communications Act of 1934 which protects the rights of employees affected by the merger of Telegraph carriers.

With wartime employment at a new high, American workers have speeded output of vital materials, have worked long hours to smash production quotas and have earned the respect of management and the general public for their efforts. The full exertion of this manpower was not always made under the most ideal conditions; along with demands of a wartime society, economic and industrial tensions naturally developed. This abnormal demand on the energies and forbearance of both industry and labor has underscored the work of the Board in easing friction in labor relations which might flare into serious interruptions of production; for, every unsettled question of majority representation or every allegation of unfair labor practice constitutes a potential impairment of production and morale which demands immediate attention.

The Board's overwhelming preoccupation with cases involving vital war operations continues to be demonstrated by the frequency with which the Board's services are invoked in certain industries.

During the last fiscal year more than half of the cases filed with the Board originated in 8 major industries engaged in producing war equipment and supplies—iron and steel, which includes the production of ordnance, machinery, aircraft, chemicals, textiles, food, and electrical equipment. In terms of the number of employees involved, more than 50 percent was concentrated in only 4 industries. Aircraft alone had 399 election cases, as compared with 330 in 1943, and 121 in 1942; approximately 237,000 employees voted in elections conducted in the aircraft industry, representing an increase of 300 percent over the votes cast in that industry in 1942.

As in preceding years, cases were received from all 48 States, Alaska, Hawaii, and Puerto Rico. Unfair labor practice cases declined in number in all but 16 States; representation cases increased in number in 35 States. While the bulk of new cases filed with the Board continued to come from the Middle Atlantic and East North Central States, a decline in both unfair labor practice and representation cases occurred in these areas, An unusually large increase in the number of election cases, reflecting organizational activities,

occurred throughout the South. Texas showed a gain of 86 percent over the preceding year in the number of representation cases filed, Tennessee an increase of 85 percent, and North Carolina 102 percent.

During the past year, 9,176 cases of both types were filed. Representation cases totaled 6,603, constituting 72 percent of all cases received and outnumbering the unfair labor practice cases for the third successive year. The number of representation cases was the largest filed in any single year of the Board's history, comprising an increase of 3,150 percent over the number received in the first year of the Board's operation. On the other hand, fewer unfair labor practice cases were filed than in 7 preceding years.

The preponderance of representation cases, for the time being, is an indication of the current acceptance of the Act by employers and a change in the character of the Board's work which reflects the war economy. Expansion of war industries, for example, naturally meant the increasing determination, by resort to the Board's election processes, of new representatives for collective bargaining. Also, the state of the labor market, characterized by shortage of manpower and less unemployment, made less likely the resort to unfair labor practices, such as discriminatory discharges.

The unprecedented number of elections and pay-roll checks conducted in the past year, 4,712, brought to 19,031 the total number conducted in 9 years and to 5,220,983 the total number of votes cast. While the number of elections and pay-roll checks conducted in 1944 reflected an increase of 14 percent over the preceding year, the number of Board ordered elections increased 30 percent in 1944 over 1943. The number of formal hearings in representation cases conducted in 1944 rose 25 percent over the number in the preceding year. Thus, parties to representation cases are seeking to exhaust the full procedures of the Board rather than avail themselves of the informal settlement procedures so readily sought in the past in a large proportion of cases, even though representation proceedings are investigatory and not adversary in nature.

The number of elections involving only 1 union, 3,645, comprised 77 percent of all elections held. Affiliates of the A. F. of L. and C. I. O. opposed each other in only 575 elections, or 12 percent of the total polls conducted. Independent unions participated, either alone or opposing another labor organization on the ballot, in 969 elections, or 21 percent of the total elections held. Valid votes were cast by 1,072,594 workers, 81 percent of those eligible to participate in the choice of their bargaining representatives. A union was chosen as representative for collective bargining in all but 15.5 percent of the elections.

For several years the Board has followed the practice of holding elections in an increasing number of cases in order to ascertain the desires of the employees as to representation by unions. While the device is now commonly accepted, it is not required by statute, which expressly provides that the Board "may take a secret ballot of employees, or utilize any other suitable method" to ascertain the exclusive representative. However, the Board's experience has shown that the secret ballot is, generally speaking, the most acceptable method of resolving the question in contested cases. A necessary condition to the continued use of this practice is that the atmosphere of a collective bargaining election be free of any coercive tactics or undue influence

directed at the employees, whether attributable to the employer, a contesting union, or any other source, because the Board is deeply concerned that employees shall be protected in their statutory right to select representatives of their own free choice.

A regrettable tendency to make collective bargaining elections the occasion for the exertion of pressure on employees, by both management and labor organizations, by means of propaganda campaigns, subtle threats, and other devices, has been observed in recent months. In some cases these manifestations have reached such proportions that they have required the Board to take the unusual step of protecting the integrity of its selection machinery by resort to the courts. The Board was successful in the one instance in which this procedure was adopted and obtained an order from the Circuit Court of Appeals enjoining the employer from "in any manner interfering with the conduct of the election * * * or the Board's agents conducting the election, by issuing instructions to employees * * * contrary to instructions issued by the Board's agents" as well as from "interfering with its employees in their selection of bargaining representatives at said election by statements, either oral or written, by using methods having the effect of requiring employees to vote or not to vote, and by aiding and abetting in the circulation and distribution of election campaign material, or otherwise participating in any campaign with respect to the election." The Board is desirious of continuing to utilize the election method to determine bargaining representatives and to that end will use its powers to the fullest extent in order to insure that elections conducted by it result in the uncoerced and free choice of the employees.

A total of 2,687 unfair labor practice cases were closed during the year; 84.7 percent of them, approximately the same proportion as in 1943, were handled informally, without recourse to formal hearings and written findings. The remedies in the cases closed by settlement or by compliance with Intermediate Report, Board order, or court decree, were varied. A total of 2,972 workers were reinstated to remedy discriminatory discharges, while 350 in addition were reinstated after strikes caused by unfair labor practices. Back pay amounting to $1,916,173 was paid to a total of 3,734 workers who had been the victims of discriminatory practices. Company-dominated unions were disestablished in 101 cases. Collective bargaining negotiations was ordered in 136 cases. The posting of notices was required in 736 cases.

Court litigation for enforcement or review of the Board's orders during 1944 continued the successful record of earlier years, and was the most successful in the Board's history. Five Board orders reached the Supreme Court, and each one was enforced in full. The Circuit Courts of Appeals reviewed 88 Board orders and enforced 74, or 84 percent, in full, enforced with modifications 8, or 9 percent of them, and set aside the remaining 6, or 7 percent, of the Board's orders.

The Board has continued its policy of cooperating fully with other Federal agencies and has extended the liaison procedures which it has established since the declaration of war. Every effort has been made to give priority to important cases which might interfere with war production and constant relationships have been maintained with the Army, Navy, War Production Board, War Shipping Administration, National War Labor Board, and the Conciliation Service of the

Department of Labor, for the purpose of exchanging information and coordinating all efforts for the maintenance of industrial peace. In keeping with this desire to act with speed, the Board has during the past year renewed and improved its methods for conducting elections involving maritime workers. After consultation and cooperation with the War Shipping Administration and the Post Office Department, the Board has been able to expedite its procedures for balloting seamen by making use of the mail service for members of the crews of the merchant marine.

A nontechnical presentation of the various procedures, informal and formal, utilized by the Board in its case handling is given in Chapter II. A statistical analysis of the cases filed, handled, and elections conducted during 1943 is presented in Chapter III. The major outlines of the principles established by the Board in its decisions in representation and unfair labor practice cases are given in Chapters IV and V. The issues of major importance in the application of the Act as decided by the courts in 1944 are presented in Chapter VI. The results of studies which reviewed and evaluated the Board's practices and policies are summarized in Chapter VII. A discussion of the first year's experience of the Board in its administration of certain sections of the War Labor Disputes Act and the Telegraph Merger Act is presented in Chapter VIII.

THE LIMITATION ON THE APPROPRIATION

In its last Annual Report the Board described the operation of a limitation which Congress, by means of an amendment to the Labor-Federal Security Appropriations Act of 1944, imposed on the use of the Board's fund for the fiscal year 1944. The legislative history of this limitation showed that the purpose of its original sponsors was to prevent the Board from proceeding to issue a Decision and Order in the *Kaiser Shipbuilding* cases. These cases involved complaints based on charges that the respondent corporations had discriminatorily discharged certain employees pursuant to closed-shop contracts which were alleged to be illegal. It soon became clear, however, that the limitation, as written and as interpreted by the Comptroller General, extended far beyond the *Kaiser* cases and the kind of situation presented in them; indeed, as the Board stated in the Eighth Annual Report, the limiting language of the amendment to the Appropriations Act operated in many cases as effectively as would have a substantive amendment to the National Labor Relations Act to preclude the Board from enforcing the provisions and principles of the Labor Relations Act. Thus, the limitation prohibited the Board from taking steps to remedy discriminatory discharges pursuant to illegal closed-shop contracts or from preventing other unfair labor practices stemming from any agreement which had been in existence for 3 months or more without a charge being filed, regardless of whether or not the agreement was illegal because it was made with a company-dominated union, a minority union, or for any other reason.

In order to carry out the congressional mandate, the Board has instituted a regularized procedure for determining the applicability of the limitation, and has exercised care not to proceed on any case covered by the limitation. Whenever doubt has arisen as to the effect of the limitation upon a particular kind of case, the Board has

submitted the question to the Comptroller General, the public official charged with the responsibility of determining issues pertaining to the expenditure of public funds. On three occasions during 1944, the Board obtained opinions from the Comptroller General on important questions relating to the applicability of the limitation.[1]

The Board's appraisal, as set forth in the last Annual Report, of the widespread impact of the limitation upon the enforcement of the National Labor Relations Act has been borne out by its experience during the last fiscal year. In that year the Board was precluded by the limitation from proceeding on approximately 95 cases in which otherwise operative charges were filed. No less than 46 of these cases involved allegedly company-dominated unions against which the Board was prevented from proceeding because of the existence of an agreement and the failure to file a charge within the 3 months' period. In 49 of these cases, the charge alleged illegal company assistance to labor organizations within the meaning of Section 8 (1) of the National Labor Relations Act. Fifty-two of these cases, including, of course, some in which allegedly company-dominated unions were also present, concerned discharges which were asserted to be discriminatory under Section 8 (3) of the National Labor Relations Act. And, in 13 cases it was charged that the employer had unlawfully refused to bargain collectively with a majority union, giving as his reason an agreement with an allegedly company-dominated or minority union.

The 1945 Limitation

The 1944 limitation expired by its terms on June 30, 1944. On July 1, 1944, however, a new limitation went into operation. This limitation reads as follows:[2]

> No part of the funds appropriated in this title shall be used in any way in connection with a complaint case arising over an agreement, or a renewal thereof, between management and labor which has been in existence for three months or longer without complaint being filed by an employee or employees of such plant: *Provided*, That, hereafter, notice of such agreement, or renewal thereof shall have been posted in the plant affected for said period of three months, said notice containing information as to the location at an accessible place of such agreement where said agreement shall be open for inspection by any interested person: *Provided further*, That these limitations shall not apply to agreements with labor organizations formed in violation of section 158, paragraph 2, title 29, United States Code [Sec. 8 (2) of the N. L. R. A.]

While in general the 1945 limitation reads like the 1944 limitation, it differs from the old amendment in three important respects: (1) Whereas the previous limitation applied to company-dominated union cases, the present limitation leaves the Board free to proceed in all such cases; (2) under the 1945 amendment, in contrast to the 1944 limitation, the renewal of an agreement, even though by virtue of the operation of an automatic renewal clause, starts anew the running of the 3-month period during which a charge attacking the agreement may be filed; and (3) while under the old amendment a charge filed by any individual or labor organization would suffice, a charge will not

[1] B-35803, dated July 29, 1943. B-37051, dated October 21, 1943. B-40648, dated April 20, 1944.

[2] The old limitation read as follows:

"No part of the funds appropriated in this title shall be used in any way in connection with a complaint case arising over an agreement between management and labor which has been in existence for three months or longer without complaint being filed. *Provided*, That hereafter, notice of such agreement shall have been posted in the plant affected for said period of three months, said notice containing information as to the location at an accessible place of such agreement where said agreement shall be open for inspection by any interested persons."

prevent the operation of the present limitation unless it is filed by "an employee or employees" of the plant covered by the agreement in question.

It may be seen that the first two changes minimize to some extent the effect of limitation upon the Board's operations. Since many of the cases in which the Board was precluded from proceeding last year involved allegedly company-dominated unions, the elimination of these cases from the coverage of the limitation will permit the Board, unhampered by financial restrictions, to bring the remedial processes of the Act to bear upon all company-dominated unions, the maintenance of which has long been recognized as "a ready and effective means of obstructing self-organization of employees and their choice of their own representatives for the purpose of collective bargaining."[3]

The modification relating to renewal agreements, while not as far reaching, also represents a relaxation of the previous limitation. It has the effect of presenting to employees an opportunity to attack the validity of agreements which have been automatically renewed from year to year, provided that the charge is filed within 3 months after the renewal date. Under the old limitation, as construed by the Comptroller General, a number of cases arose in which the Board was prohibited from proceeding because of the fact that, while the Board had on hand a charge filed within 3 months after the renewal date, it had no charge filed within 3 months after the date of the *original* agreement. And the latter was the controlling date under the 1944 limitation.[4]

In contrast to the two changes discussed above, the requirement that a charge must be filed "by any employee or employees" is restrictive language. It means that the normal practice under the National Labor Relations Act of filing charges through labor organizations, acting as representatives of employees, will no longer serve to stop the operation of the limitation. Moreover, it means that some cases in which the Board could otherwise proceed, or even had already issued a complaint, may now have to be dismissed because the charge was not filed by the proper party. And, this would appear to be true even if for purposes of the 1944 limitation, under which it may have been filed, the charge was filed in timely fashion and was otherwise adequate at that time to prevent the operation of the amendment.

Although the present limitation is somewhat narrower in scope than the 1945 amendment, it will nevertheless afford a cloak for a variety of unlawful conduct which would otherwise be subject to the remedial processes of the Act. For example, it will hamper the Board in seeking to protect employees discharged pursuant to closed-shop contracts even though such contracts are illegal; and it will afford a measure of protection from the provisions of the Act for employers and labor organizations who enter into collusive closed-shop contracts with unions who do not represent a majority of the employees covered by such contracts. It is, of course, too early in the day to evaluate the full impact of the present Amendment upon the administration of the National Labor Relations Act. As of October 13, 1944, however, questions had been raised under the limitation as to the right of the Board to proceed in no less than 47 cases. Moreover, eight of these cases have already been closed, either by dismissal or withdrawal, because of the amendment.

[3] See *N. L. R. B.* v. *Pennsylvania Greyhound Lines*, 303 U. S. 261, at 266.
[4] See decision of Comptroller General, B-40648, dated April 20, 1944.

II

PROCEDURES IN CASE HANDLING

UNDER the National Labor Relations Act the Board's powers are limited to the investigation and certification of facts relating to the representation of employees, and to the adjudication of controversies involving employers charged with the commission of unfair labor practices. The Act provides for no penalties, no fines, and no jail sentences, except for intentional interference with an agent of the Board in the performance of his official duties. In administering the statute, since 1935, the Board has handled more than 67,000 cases, involving several million employees. The resultant experience has shaped a set of procedures which are both in accord with the requirements of law and, at the same time, are administered to effectuate the policies of the law with speed and insight as to the specific situation to be handled. These procedures are reviewed below; the following discussion is not designed to duplicate the provisions of the Board's Rules and Regulations, but rather to supplement them briefly by showing how the Board operates not only in its formal proceedings but also in the handling of cases in the informal stages.

Basically, the procedural steps followed by the Board are set forth by statute and have not undergone any change. For example, an employer charged with unfair labor practices is given full opportunity to present his side of the case in an open hearing and with court review of all questions of constitutional rights, of the interpretation of the law by the Board, of the fairness of the Board's procedure, and of the substantiality of the evidence supporting the Board's factual findings. The basic structure of the procedures adhered to by the Board today is the same as that which was given full approval by the United States Supreme Court in the first of the five opinions which upheld the constitutionality of the Act. There the Court said:

> These provisions, as we construe them, do not offend against the constitutional requirements governing the creation and action of administrative bodies * * *. The Act establishes standards to which the Board must conform. There must be complaint, notice and hearing. 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.[1]

Operating as it does in a field of dynamic relationships, the Board faces a constant challenge to maintain its procedures apace with the demands placed upon it. Consequently, the Board has devised and augmented certain administrative[2] and informal procedures which are

[1] *N. L. R. B.* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1.
[2] See Eighth Annual Report, pp. 12–14.

designed to facilitate the resolution of questions as to union majority status and the prevention and remedy of unfair labor practices. For example, the Board's administrative procedures, in effect, operate as a sifting process: securing the withdrawal and dismissal of cases without merit before the initiation of formal proceedings, and the adjustment of those cases with merit by the parties and in accord with the policies of the Act. Thus, of 34,879 charges of unfair labor practices filed with the Board since 1935, only 2,462, or 7 percent, have gone as far as formal Board decision.

Furthermore, the Board encourages resort to its so-called "consent" arrangements. Under these procedures the parties themselves agree on the manner of disposition of cases, fully meeting the requirements of the law, and utilize the Board's personnel and machinery to do so. Thus, of the 31,222 petitions for investigation and certification of representatives handled by the Board since its inception, 16,592, or 53 percent, were based on the full agreement of all parties, thereby dispensing with any formal hearings and determinations by the Board.

The Board endorses and stresses the use of such informal procedures for the achievement of results consistent with national policy. They save parties and the Government the expense of formal hearings. They lead to the speedy resolution of questions of employee representation which impede or obstruct the course of collective bargaining. They hasten the removal and correction of practices which are contrary to law. Above all, the Board's experience has been that collective bargaining relations between employer and employees in a particular plant are more likely to develop if the charges of unfair labor practices are disposed of in an informal manner freely accepted by them, without recourse to formal procedures.[3] The use of such informal procedures has been characterized as "the life-blood of the administrative process."[4]

REPRESENTATION CASES

Initiation of Representation Case

The investigation of the question as to whether a union represents a majority of an appropriate grouping of employees is initiated by the filing of a petition by any person or labor organization acting on behalf of employees, or by an employer when two or more labor organizations claim to represent the same group of employees. The petition, which must be notarized, is filed with the Regional Director for the area in which the proposed bargaining unit exists.[5] The petition states, in substance, that the employer has refused to recognize the union as the exclusive collective bargaining agency for the employees which the union claims it represents and that such refusal raises a question concerning representation which affects commerce within the meaning of the Act. The blank petition form, which is supplied by the Regional Director upon request, provides for a description of the alleged appropriate bargaining unit, the approximate number of employees involved, the number of employees who have designated the petitioner as their bargaining agent, and the names of

[3] See pp. 68-70 for statistical data comparing the extent of collective bargaining after informal adjustment and formal disposition of unfair labor practice cases.

[4] Final Report of the Attorney General's Committee on Administrative Procedure, Senate doc. No. 8 (77th Cong., 1st session, 1941) p. 35.

[5] See Appendix, pp. 95-96, for a listing of the locations, territories, and directing personnel of the Board's Regional Offices.

other labor organizations which also claim to represent the same employees.

Investigation

Upon receipt of the petition in the Regional Office, it is filed, docketed, and assigned to a member of its staff, a Field Examiner, for investigation. The Field Examiner conducts an investigation to ascertain (1) whether the company's operations affect commerce within the meaning of the Act, (2) the appropriateness of the unit of employees for the purposes of collective bargaining, and (3) whether a question of representation exists. The evidence of representation submitted by the petitioning labor organization, usually in the form of cards signed by individual employees authorizing representation by the union, is checked to determine the number or proportion of employees who desire to be represented by that labor organization. The examiner attempts to ascertain from the petitioner, the employer, and any other labor organization which may be involved, whether or not the grouping or unit of employees described in the petition constitutes an appropriate bargaining unit.

The petitioner may, on its own initiative, request the withdrawal of the petition if the above investigation clearly discloses that no question of representation exists because, among other possible reasons, the unit sought is clearly not appropriate, or the petitioning union's showing of representation among the employees is insufficient to warrant an election, or a written contract held by another labor organization precludes further proceeding. For the same or similar reasons, the Regional Director may request the petitioner to withdraw its petition. If the petitioner refuses to withdraw, the Regional Director may then dismiss the petition. The petitioner may appeal from the Regional Director's dismissal by filing such request with the Board in Washington.

Adjustment Before Formal Action

The Board has devised, and makes available to the parties, several types of procedures through which representation disputes can be resolved without recourse to formal proceedings. These informal arrangements are commonly known as consent cross-check, consent election, stipulated cross-check, and stipulated election.

Consent Cross-Check

In the procedure providing for a consent cross-check, the parties agree that the Field Examiner or Regional Director may determine whether or not the union represents a majority by checking the number of signed union cards against the names on the pay roll furnished by the employer. Also, the parties agree with respect to the description of the unit of employees involved and the pay-roll date to be used in determining eligibility for voting. The last step in the processing of the case occurs when the Field Examiner or Regional Director reports the results of the cross-check to the parties.

Consent Election

The consent election, which is the most frequently used method of informal adjustment, is similar to the consent cross-check except for the substitution of election procedure for comparison of written

records. The terms of the agreement providing for consent election are set forth in a form that has long been standardized by the Board for use in the Regional Offices. Under these terms the parties agree with respect to the appropriate unit, the pay roll to be used as the basis of eligibility, and the place, date, and hours of election. A Field Examiner arranges the details incident to the mechanics and conduct of the election. For example, he usually arranges preelection conferences in which the parties check the list of voters and attempt to resolve any questions of eligibility. Also, prior to the date of election, official notices of election are posted conspicuously in the plant. These notices reproduce a sample ballot and outline such election details as location of polls, time of voting, and eligibility rules.

The actual polling is always conducted and supervised by Board agents. They may have an equal number of representatives of each party to assist them and to observe the election process. As to the mechanics of the election, a ballot is given to each eligible voter by the Board's agent in the presence of the authorized observers who check the eligibility list and guard the ballot box. The ballots are marked in the secrecy of a voting booth. The authorized observers have the privilege of challenging for reasonable cause employees who apply for ballots.

Customarily the Board agents, in the presence and with the assistance of the authorized observers, count and tabulate the ballots immediately after the closing of the polls. A complete tally of the ballots is served upon the parties upon the conclusion of the counting.

If challenged ballots are sufficient in number to affect the results of the count, the Regional Director conducts an investigation which may involve the holding of a hearing. Thereafter, he rules on the challenges. If objections to the conduct of the election are filed within 5 days of the issuance of the tally, the Regional Director likewise conducts an investigation and rules upon their validity. If, after investigation, the objections are found to have merit, the Regional Director may void the election results and conduct a new election.

The agreement for a consent election provides that the rulings of the Regional Director on all questions relating to the election (e. g., eligibility and the validity of challenges and objections) are final and binding. Also, the agreement provides automatically for the conduct of a run-off election, in accord with the provisions of the Board's Rules and Regulations, if two or more labor organizations appear on the ballot and no one choice receives a majority of the valid votes cast.

Stipulated Cross-Check

The stipulated cross-check differs from the consent cross-check only in that the parties agree that the Board in Washington shall finally dispose of the case either by a formal certification in the event a union wins, or by a formal dismissal if no union is successful.

Stipulated Election

Likewise, the stipulated election provides that the agreed-upon election shall be the basis of a formal decision by the Board instead of an informal report by the Regional Director. By the same token, the stipulated election procedure designates the Board, rather than the Regional Director, to make final determination of questions raised concerning the election.

Of the 31,222 representation cases handled in the first 9 fiscal years of the Board's operation, 21,912 or 70.2 percent, were closed in the above informal stages. Approximately 13,870 were adjusted by procedures agreed upon by the parties: 2,493, or 8 percent, by consent cross-check; 10,546, or 33.8 percent, by consent election; and 831, or 2.7 percent, by stipulated cross-check and election. The rest, 8,042, or 25.7 percent, were either withdrawn or dismissed without formal action.

Formal Procedures

If, as a result of the investigation, it appears to the Regional Director that a question concerning representation exists and efforts to arrange an informal adjustment fail, he institutes formal proceedings by issuing a Notice of Hearing. This notice, accompanied by a copy of the petition, is served upon the petitioning union, the employer and upon any other labor organizations known to the Regional Director to be claiming members among the employees involved.

The hearing, usually open to the public, is held before a Trial Examiner designated by the Chief Trial Examiner in Washington. The hearing does not involve a complaint and is essentially part of an investigation in which the primary interest of the agents of the Board is to insure that the record contains as full a statement of the pertinent facts as necessary to determination of the case by the Board. The parties are afforded full opportunity to present their respective positions and to produce the significant facts in support of their contentions. The parties in most cases stipulate a substantial part of the relevant facts.

Board Decision

Upon the conclusion of the hearing the record is forwarded to the Board in Washington. Parties may file briefs with the Board within 7 days after the close of hearing and may also request to be heard orally by the Board. After review of the entire record the Board issues its decision, either dismissing the petition (e. g., because, among other reasons, the unit sought is inappropriate for the purposes of collective bargaining) or directing that an election be held. In the latter event the election is conducted under the supervision of the Regional Director using the consent election procedure described above.

Post-Election Procedures [6]

Following the election the Regional Director serves the parties with a tally of the ballots. If no objections to the conduct of the election are raised, the Regional Director submits a formal report to the Board. Thereupon, the Board certifies the majority-designated union or, if no representative has been chosen, dismisses the petition.

Any of the parties within 5 days of receipt of the tally, may file with the Regional Director objections to the conduct of the election. The Regional Director investigates these objections—and the following procedure likewise applies in cases in which the number of challenged ballots is sufficient to affect the results of the election—and submits a report and recommendations to the Board, copies of which

[6] The same post-election procedure is followed when the parties enter into an agreement providing for a stipulated consent election.

are served upon the parties. Within 5 days of receipt of the report, any party may file exceptions to such report with the Board in Washington. If it appears to the Board that the exceptions do not raise substantial and material issues, the Board renders a decision based upon the results of the election. If, however, the Board finds that the exceptions raise material issues, it may act on the basis of the record already before it or may direct that a hearing on the objections and exceptions be conducted before a Trial Examiner. In the light of the record made at the hearing the Board will then issue its decision, either dismissing the petition or certifying representatives or taking such other action as seems necessary.

Within 10 days of the election, if the election results in a lack of majority for any one choice, any of the contestants entitled to participate in a run-off election may ask the Regional Director to conduct such an election. Without further order of the Board, the Regional Director, in the absence of objections to the original election, will conduct the run-off, the determination as to which and how many of the choices appearing on the original ballot are to appear on the run-off ballot being based upon numerical standards to be applied in such cases, as set forth in the Board's Rules and Regulations.

Of the 31,222 representation cases handled by the end of its ninth fiscal year, the Board processed 6,844, or 21.9 percent, through the above formal stages.

UNFAIR LABOR PRACTICE CASES

Initiation of Unfair Labor Practice Case

The investigation of an alleged violation of the rights of employees guaranteed by the Act is initiated by the filing of a charge by any person or labor organization. The charge, which must be in writing and sworn to, is filed with the Regional Director for the Region in which the alleged unfair labor practice has occurred or is occurring. A blank form for making a charge is supplied by the Regional Director upon request. The charge contains the name and address of the employer against whom the charge is made, and a statement of the facts constituting the alleged unfair labor practices.

Investigation

When the charge is received in the Regional Office it is filed, docketed, and assigned a case number. The Regional Director requests the person or labor organization filing the charge to submit evidence in its support. Also, the employer is given immediate and written notification of the nature of the charge filed. This consists usually of a verbatim quotation of the allegations in the charge and the name of the person or labor organization making the charge. The employer is asked to submit a written statement of his position in respect to the allegations.

The case is then assigned to a Field Examiner for investigation, who interviews representatives of all parties and those persons who have knowledge as to the charges. After full investigation, the case may be disposed of through informal methods such as withdrawal, dismissal, and settlement; or, the case may necessitate formal methods of disposition. Some of the informal methods of handling unfair labor practice cases will be discussed first.

Withdrawal

If investigation reveals that there has been no violation of the Act or the evidence is insufficient to substantiate the charge, the Regional Director recommends withdrawal of the charge by the person or labor organization which filed the charge. The complainant may also, on its own initiative, request withdrawal. In either event, the employer is notified immediately of the withdrawal of the charge.

Dismissal

If the complainant refuses to withdraw the charge as recommended, the Regional Director may refuse to issue a formal complaint, thereby, in effect, dismissing the charge. The Regional Director thereupon informs the parties of his action, and the complainant of his right of appeal, usually within 10 days, to the Board in Washington. After a full review of the case, the Board may sustain the dismissal or may direct the Regional Director to take further action.

Settlement

If the investigation reveals that the charge has merit, effort is made to secure a settlement agreement which is both acceptable to the parties and effectuates the policies of the Act. The Regional Director provides Board-prepared forms for such settlement agreement as well as printed notices for posting by the employer. These agreements, which are subject to the approval of the Regional Director, provide for the withdrawal of the charge by the complainant at such time as the employer has complied with the terms of the agreement. Proof of compliance is obtained by the Regional Director before the case is closed. If the employer fails to perform his obligations under the informal agreement, the Regional Director may proceed to issue a formal complaint.

By the end of its ninth fiscal year 34,879 charges of unfair labor practices were filed with the Board, of which 30,573, or 87.7 percent, were handled and disposed of by the above informal means. Approximately 10,588, or 30.4 percent, of the charges were withdrawn; 5,330, or 15.3 percent, were dismissed; and 14,375, or 41.2 percent, resulted in settlement agreements.

Complaint

If efforts to settle the case are unsuccessful, the Regional Director, taking formal action for the first time in the proceeding, issues a complaint and a Notice of Hearing. The complaint, which is served on all parties, sets forth the facts upon which the Board bases its jurisdiction and the facts relating to the alleged unfair labor practices.

The company may file an answer to the complaint, within 10 days of its receipt, setting forth a statement of its defense.

Settlement After Issuance of Complaint

Even though formal proceedings have been started, the parties have full opportunity, at every stage, to settle the case in compliance with the law. Thus, after the complaint has been issued and a hearing scheduled or during the course of the hearing, the parties may enter into a settlement.

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Under this settlement stipulation, the parties agree to forego the right of hearing and that the Board may issue an order requiring the employer to take such affirmative action as will remedy the allegations of unfair labor practices. Usually, the settlement stipulation contains the employer's consent to the Board's application for the entry of a decree by the appropriate Circuit Court of Appeals enforcing the Board's order.

All settlement stipulations are subject to the approval of the Board in Washington. In the event the company fails to comply with the terms of a settlement stipulation, upon which a Board order and court decree are based, the Board may petition that court to adjudge the company in contempt. If the company refuses to comply with the terms of a stipulation settlement providing solely for the entry of a Board order, the Board may petition the court for enforcement of its order.

Hearing

The hearing is usually open to the public and conducted in the Region where the charge originated. A Trial Examiner, designated by the Chief Trial Examiner and sent in from Washington, presides over the hearing. The Government's case is conducted by an attorney attached to the Board's Regional Office, who has the responsibility of presenting the evidence in support of the complaint. Counsel for the Board, all parties to the proceeding, and the Trial Examiner have the power to call, examine and cross-examine witnesses, and to introduce evidence into the record. The attendance and testimony of witnesses and the production of evidence material to any matter under investigation may be compelled by subpoena.

Intermediate Report

At the conclusion of the hearing the Trial Examiner prepares an Intermediate Report making findings of fact and recommendations as to what action should be taken in the case. The Trial Examiner may recommend dismissal of the complaint or sustain the complaint, in whole or in part, and recommend that the employer take certain action to remedy the effects of the unfair labor practices.

The Intermediate Report is filed with the Board in Washington, and copies are served on each of the parties. The parties may comply with the recommendations of the Trial Examiner, and thus normally conclude the entire proceeding at this point. Or, the parties may file exceptions to the Intermediate Report with the Board and may also request permission to appear and argue orally before the Board in Washington.

Board's Decision and Order

If any party takes exceptions to the Intermediate Report, or the Trial Examiner finds a violation of the law and the employer is unwilling to remedy it, the entire record comes before the Board for decision. The Board's Decision and Order may adopt, modify, or reject the findings and recommendations of the Trial Examiner. The Decision and Order contains findings of fact and an order either dismissing the complaint, in whole or in part, or requiring the employer to cease and desist from its unfair labor practices and to take affirmative action to effectuate the policies of the Act.

Compliance with Board's Decision and Order

Shortly after the Board's Decision and Order is issued, the Director of the Regional Office in which the charge was filed, communicates with the employer for the purpose of obtaining compliance. Conferences, at which the parties to the proceeding are present, may be held to arrange the details necessary for compliance with the terms of the order.

The Regional Director, after investigation, submits to the Board a report on compliance when compliance is obtained. This report must meet the approval of the Board before the case may be closed. However, the Board's order directing the employer to cease and desist from engaging in unfair labor practices is a continuing order; therefore, the closing of a case on compliance is conditioned upon the continued observance of that order. Subsequent violation of the order may become the basis of further proceedings.

Court Action

The Decision and Order of the Board is not self-enforceable. If the employer does not comply with the Board's order it is necessary for the Board to petition the appropriate Circuit Court of Appeals for enforcement. The employer may likewise petition the Circuit Court to review and set aside the Board's order. Following the Circuit Court's decree, either the Government or the employer may petition the Supreme Court for review.

Compliance with Court's Decree

When a Board order stands enforced by a court decree, the Board has the responsibility of obtaining compliance with that decree. Investigation is made of the company's efforts to comply. Where the Board finds failure of the company to live up to the terms of the court's decree, the Board may petition the court to hold the company in contempt of court. The court may order immediate remedial action and impose sanctions.

Of the 34,879 unfair labor practice cases filed with the Board by the end of its ninth fiscal year, 3,097, or 8.8 percent, were processed through one or more of the above formal stages. Approximately 490, or 1.4 percent, were disposed of by settlement after formal complaint and before issuance of Intermediate Report; 170, or 0.5 percent by compliance with Intermediate Report; 695, or 2.0 percent, by compliance with Board Decision and Order; and 1,153 unfair labor practice cases, or 3.3 percent, were closed by compliance with court decree.

Approximately 357, or 1 percent, of the unfair labor practice cases which went beyond issuance of complaint were dismissed: 49, or 0.1 percent, by Trial Examiner's Intermediate Report; 216, or 0.6 percent, by Board Decision and Order; and 40, or 0.1 percent, were dismissed by court order.

III

A STATISTICAL ANALYSIS OF CASES HANDLED DURING 1944

CASES FILED DURING 1944

THE ninth year of National Labor Relations Board activity brought to 67,494 the total number of cases filed since the Board began its administration of the National Labor Relations Act in 1935. During the past year, 9,176 cases, including both charges of unfair labor practices and petitions for certification of bargaining representatives, were filed. Representation cases totaled 6,603, the largest number filed in any single year of the Board's history, and for the third successive year, outnumbered unfair labor practice cases. This latter type of case numbered 2,573, or 28 percent of all cases received during the year. Representation cases constituted 72 percent of all cases received, and represented an increase of 7.5 percent over the number filed in the previous year.

Table 1.—Cases filed during the fiscal years 1936–44, by type

Fiscal year	Number of cases			Percent of total	
	All cases	Unfair labor practice cases	Representation cases	Unfair labor practice cases	Representation cases
1936–44	67,494	34,879	32,615	51.7	48.3
1936	1,068	865	203	81.0	19.0
1937	4,068	2,895	1,173	71.2	28.8
1938	10,430	6,807	3,623	65.3	34.7
1939	6,904	4,618	2,286	66.9	33.1
1940	6,177	3,934	2,243	63.7	36.3
1941	9,151	4,817	4,334	52.6	47.4
1942	10,977	4,967	6,010	45.2	54.8
1943	9,543	3,403	6,140	35.7	64.3
1944	9,176	2,573	6,603	28.0	72.0

Geographical Distribution of New Cases [1]

While the bulk of the new cases filed with the Board continued to be concentrated in the Middle Atlantic and East North Central States, the increasing organization of workers throughout the South from the eastern seaboard to the Pacific coast was reflected in a rising flow of new cases, particularly those involving a question of representation. Fourteen States from Virginia south and west to California, registered an increase of 466 in the number of new representation cases filed in the fiscal year 1944 compared with 1943.

In the State of Texas, alone, 117 more petitions for certification of bargaining representatives were filed in 1944 than in the preceding year, an increase of 86 percent. Notable, also, were Tennessee with a gain of 71 cases or 84.5 percent, and North Carolina with a gain of 49 cases or 102.1 percent.

[1] See table 4 in Appendix, pp. 79–80.

The major industries involved in the new cases filed in the Southeastern areas were chemicals, textiles, iron and steel, and shipbuilding. Petroleum, chemicals, and aircraft predominated in the southwest.

A decline in both unfair labor practice and representation cases occurred in the three Middle Atlantic States of New York, New Jersey, and Pennsylvania. The industrial States of Illinois and Michigan experienced a similar lag.

Other variations occurred from last year to this in scattered States. Massachusetts experienced a decided shift from unfair labor practice to representation cases. There was a substantial gain in representation cases filed in Missouri. Conversely, representation cases were fewer in the Pacific Northwest during 1944 than in 1943.

Industrial Distribution of New Cases [2]

Over half of the cases brought before the Board in 1944 originated in eight major industries [3] engaged in producing war equipment and essential supplies. Heading the list, as in previous years, was the iron and steel industry which includes the production of ordnance, with a total of 1,190 cases or 13 percent of all cases filed during the year.

In each of the 39 major industrial categories,[4] the number of representation cases filed in 1944 exceeded the number of unfair labor practice cases. Fifteen industries had an unusually high proportion of representation cases, ranging from 75 to 88 percent of the total number of cases filed in each industrial group. Heading this group was petroleum products, with representation cases accounting for 87.8 percent of the total number filed, utilities (heat, light, power, etc.), 85.7 percent, and chemicals, 83.5 percent. The industries having the highest proportion of unfair labor practice cases, were highway freight transportation (45.2 percent) and apparel (43.2 percent).

The overall decline in cases filed during the fiscal year 1944 was, in large part, accounted for by a decline in cases originating in the iron and steel, machinery, and shipbuilding industries. In contrast, several industries showed substantial increases in the number of cases filed. Some of these industries were aircraft, transportation and communication, petroleum products, and the manufacture of food.

Identity of the Complainant or Petitioner [5]

Over 80 percent of the cases received in 1944 were filed by unions affiliated with either the A. F. of L. or the C. I. O. Unions not affiliated with either of the two above organizations filed 14.8 percent of the cases, a higher proportion than in preceding years. Each of the three union groups filed about the same proportion of unfair labor practice and representation cases.

Employers filed 60 representation petitions during the year, compared with an annual average of 69 for the past 5 years.

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[2] See table 5 in Appendix, p. 81.

[3] Iron and steel, machinery, food, aircraft, chemicals, shipbuilding, textiles, and electrical machinery, in the order given.

[4] The industrial classification used is that prepared by The Technical Committee on Industrial Classification, Division of Statistical Standards, U. S. Bureau of the Budget.

[5] See table 1 in Appendix, p. 78.

Types of Charges Filed [6]

Over 68 percent of all the charges of unfair labor practices filed with the Board during the year alleged discrimination with respect to hire or tenure of employment under Section 8 (3) of the Act. The proportion of cases containing this allegation has increased steadily for the past 3 years; in 1943 the allegation appeared in 66.3 percent and in 1942 it appeared in 64.9 percent of the cases filed. There was a corresponding decline in the number of charges alleging refusal to bargain under Section 8 (5) of the Act and in the number of charges alleging company domination of a union under Section 8 (2) of the Act. The number of cases alleging solely the general charge of interference, restraint, and coercion under Section 8 (1) increased proportionately, from 10.2 percent in 1942 to 12.5 percent in 1943, and 14.7 percent in 1944.

CASES CLOSED DURING 1944

The Board kept pace with the continuing high case load of 1944 by closing out 9,194 or 77.9 percent of all cases on its docket during the year. There was variation, however, in the proportion of the two different types of cases closed, a higher percentage of representation cases [7] being disposed of than unfair labor practice cases; [8] 82.4 percent compared with 69 percent. Even with this greater emphasis on the disposition of representation cases, the number closed fell short of the number of new petitions received during the year.

Since the Board was established in 1935, it has been successful in handling the bulk of the cases brought before it without the use of formal procedures, i. e., without the necessity for issuance of a complaint, conducting a hearing, the filing of briefs, the issuing of Decisions and Orders, and without subsequent litigation in the Courts. In previous years, the proportion of cases handled informally by the Board's Regional Offices was very high. During the past 2 years, however, there has been a definite trend, particularly noticeable in the handling of representation cases, towards the increased use of the formal procedures provided for in the National Labor Relations Act and in the Board's Rules and Regulations.

The table below traces the gradual shift from informal to formal methods which has in the past year resulted in 33.1 percent of the representation cases being closed only after formal action had been taken.

Table 2.—Cases closed before and after formal proceedings, 1936–44

Fiscal year	All cases		Unfair labor practice cases		Representation cases	
	Before formal action	After formal action	Before formal action	After formal action	Before formal action	After formal action
1936–44	82.7	17.3	90.5	9.5	74.2	25.8
1936	84.1	15.9	83.5	16.5	88.2	11.8
1937	92.7	7.3	94.7	5.3	86.9	13.1
1938	90.9	9.1	96.4	3.6	80.9	19.1
1939	84.2	15.8	90.6	9.4	72.7	27.3
1940	82.9	17.1	88.6	11.4	73.1	26.9
1941	84.7	15.3	90.3	9.7	77.7	22.3
1942	84.2	15.8	91.9	8.1	77.6	22.4
1943	77.8	22.2	85.8	14.2	72.4	27.6
1944	72.1	27.9	84.7	15.3	66.9	33.1

[6] See table 3 in Appendix, p. 79. [7] See table 8 in Appendix, p. 83. [8] See table 7 in Appendix, p. 82.

FORMAL ACTIONS TAKEN BY THE BOARD [9]

Representation Cases

The increased volume of formal actions in representation cases is evidenced by the unusually high number of hearings conducted. In 1944, 1,534 hearings were held in representation cases alone, the highest number for any comparable period during the Board's entire history, and an increase of 25.7 percent over the year 1943. Not only was there an absolute increase in the number of hearings held in 1944 over the year before, but the proportion of representation cases going to hearing also increased.

Similarly, the number of representation decisions issued by the Board during the past year was higher than in any previous year. The great majority of the 1,645 decisions directed that an election be held.

Unfair Labor Practice Cases

As the intake of new unfair labor practice charges declined, the number of complaints issued also fell off. The 279 complaints issued by the Board in 1944 represented a decrease of 30 percent from the number issued in 1943. Hearings were held in 219 cases, as compared with 305 in the preceding year. The Board issued 211 decisions in unfair labor practice cases. Of this number, 72, or 34.1 percent, were based on a stipulation entered into by all parties to the proceeding, providing for the entry of a Board order and court decree.

ELECTIONS AND PAY-ROLL CHECKS CONDUCTED TO DETERMINE BARGAINING REPRESENTATIVES

Number and Extent of Participation

A significant contribution towards harmonious industrial relations at a time when uninterrupted production was imperative, were the 4,712 elections and pay-roll checks held by the Board to ascertain in an orderly way who were the chosen bargaining representatives of over 1,300,000 employees. Throughout the nation, during every working day of the year, an average of 15 elections and pay-roll checks were conducted, and an average of 3,416 workers expressed their choice for or against a union. The unusually high number of elections and pay-roll checks held in 1944 brought to 19,031 the total number conducted in 9 years and to 5,220,983 the total number of votes cast.

The number of elections held in small units accounted for a greater proportion of the elections held in 1944 than in the previous year. Less than 50 workers were eligible to vote in 39.9 percent of the elections held in 1944, compared with a percentage of 33.6 percent in 1943. Eighty-nine percent of all elections conducted during the past year involved units of less than 500 workers.

The intense interest of employees in these elections was manifested in the high proportion of workers who went to the polls to cast a ballot. The total valid vote amounted to 81.1 percent of the total number of workers eligible to vote, a far greater percentage of participation than is common in political elections.

[9] See table 10 in Appendix, p. 84.

Predominance of One-Union Elections

As in previous years, the number of elections in which 1 union appeared on the ballot accounted for the great majority of all elections held. Only 1 union was involved in 3,645 or 77.3 percent of the 4,712 elections and pay-roll checks conducted. Two-union elections, numbering 1,017, amounted to 21.6 percent of the total. In only 50 elections, or 1.1 percent, did 3 or more unions participate. Workers participated just as actively in those elections where only one union was involved as in those in which more than one union was competing for bargaining rights. In all of the single union elections 81.5 percent of the eligible employees cast valid ballots.

On the average, fewer workers were involved in the 1-union elections than in the 2 or more union elections. One-union elections averaged 200 eligible voters in each election; 2-union elections averaged over 500 eligibles and 3-union elections averaged about 1,200 eligibles.

Table 3.—Elections and pay-roll checks conducted in 1944, by the number of unions participating

Number of unions participating	Elections and pay-roll checks		Eligible voters		
	Number	Percent of total	Number	Percent of total	Percent casting valid votes
1 union	3,645	77.3	738,304	55.9	81.5
2 unions	1,017	21.6	524,033	39.6	80.6
3 or more unions	50	1.1	59,888	4.5	81.3

Types of Elections

The elections and pay-roll checks conducted by the Board followed three different types of procedures, referred to as consent, stipulated, and ordered, as described in the preceding chapter. The parties to representation cases elected to use the consent procedure in 2,902 or 61.6 percent of the total number of elections and pay-roll checks held in 1944. Ordered elections constituted the next largest group, account-

Table 4.—Types of elections and pay-roll checks conducted

Type of election or pay-roll check	Elections and pay-roll checks		Eligible voters		Valid votes	
	Number	Percent of total	Number	Percent of total	Number	Percent of total
Total	4,712	100.0	1,322,225	100.0	1,072,594	100.0
Consent	2,902	61.6	529,228	40.0	431,050	40.2
Elections	2,434	51.7	490,537	37.1	404,719	37.7
Pay-roll checks	468	9.9	38,691	2.9	26,331	2.5
Stipulated	301	6.4	85,907	6.5	70,592	6.6
Elections	268	5.7	82,512	6.2	68,358	6.4
Pay-roll checks	33	.7	3,395	.3	2,234	.2
Ordered elections	1,509	32.0	707,090	53.5	570,952	53.2

ing for 1,509 or 32 percent of the total number of elections held. The stipulated election procedure was used less frequently than the other types of procedures. During the past year 301 elections and pay-roll checks or only 6.4 percent of the total were conducted under this procedure.

Although, in 1944, the number of informal consent elections exceeded the two other types of elections combined, the proportion of consent elections has been steadily declining while the proportion of ordered elections has increased. For example, in 1942, consent elections constituted 72.4 percent of the total; in 1943, 66.3 percent; and in 1944, 61.6 percent. In the same years, ordered elections comprised 21.3 percent, 28 percent, and 32 percent of the total elections held. Stipulated elections maintained about the same proportion from year to year.

While over 60 percent of the elections and pay-roll checks were handled by the informal consent procedure, this type of election accounted for only 40.2 percent of the total number of valid votes cast. Ordered elections which were fewer in number, accounted for 53.2 percent of the vote, while stipulated elections accounted for 6.6 percent.

Predominant Industries in Which Elections Were Conducted [10]

More than half of the elections and pay-roll checks conducted in 1944 were held in only 7 different industrial groups. The votes were even more highly concentrated, over 50 percent being cast in 4 industries. In terms of the number of elections, the iron and steel industry predominated with a total of 678 or 14.4 percent of all elections held. However, in terms of the number of voters, the aircraft industry led with 237,005 valid votes, or 22.1 percent of the total number. During the war period the number of employees voting in elections in the aircraft industry has climbed rapidly from 59,096 in 1942 to 157,973 in 1943 and 237,005 in 1944. The other industries leading in the number of elections held were electrical and nonelectrical machinery, chemical products, food, and shipbuilding. Altogether, the manufacturing industries accounted for 80.9 percent of all elections held and 89.5 percent of the total valid vote. The predominant nonmanufacturing industry was the public utility group engaged in the production and distribution of heat, light, power, water, and sanitary services with 162 elections and pay-roll checks and over 25,000 votes.

Results of Elections in the Different Industries

In several industries, affiliates of the C. I. O. won over 50 percent of the elections and pay-roll checks conducted. These industries included tobacco, furniture, rubber, leather, iron and steel, electrical machinery, automotive equipment, and metal mining. Affiliates of the A. F. of L. won over 50 percent of the elections in the paper, highway passenger and highway freight industries. Compared with the previous year, unaffiliated unions [11] showed a gain in several industries in the proportion of elections won. The highest percentage of elections won by unaffiliated unions in any industry was 55.3 percent in coal mining. Communications was next with 40 percent of the elections being won by unaffiliated unions. Other industries in which

[10] See table 13 in Appendix, pp. 88–89.
[11] Includes all unions not affiliated with either the A. F. of L. or the C. I. O.

unaffiliated unions showed substantial success, winning from 20 to 30 percent of the elections in the industry, were paper, chemicals, construction, and public utilities. Relatively high proportions (from 20 to 30 percent) of elections resulted in no union being selected in textiles, apparel, coal mining, petroleum, nonmetallic mining, wholesale and retail trade, transportation, and the service trades.

Extent of Union Success in Elections

Unions were successful in 3,983 or 84.5 percent of all elections and pay-roll checks conducted in 1944; a total of 828,583 or 77.2 percent of the valid votes were cast for a union. The percentage of elections lost by unions as well as the percentage of votes cast against unions was higher in the single-union elections than in the 2- and 3- union elections. Where the choice was between 2 or more unions, only 5.1 percent of the elections resulted in no union being selected, and only 7.4 percent of the votes were cast against unions. Where the choice was for or against a single union, 18.5 percent of the elections were lost, and 34.8 percent of the votes were cast against the union.

The union originally filing the petition for investigation and certification of representatives won over 75 percent of the elections and pay-roll checks conducted, and received 56.7 percent of the total valid vote.[12] The different union groups had about the same degree of success in the elections for which they petitioned.

Compared with the previous year the proportion of votes cast for the petitioning union declined from 63.8 percent in 1943 to 56.7 percent in 1944.

Success of Different Union Groups [13]

Affiliates of the C. I. O. participated in 2,594 or 55 percent of all elections and pay-roll checks conducted during the year. American Federation of Labor unions participated in 2,197 elections, or 46.6 percent of the total number. Other unions, not affiliated with either of the above organizations, took part in 969 elections, or 20.6 percent of the total.

Table 5.—Results of elections and pay-roll checks conducted during 1944, by union affiliation

Union affiliation	Elections in which union participated			Election won by union		Valid votes cast for union	
	Number	Number of eligible voters	Number of valid votes cast	Number	Percent of elections in which union participated	Number	Percent of total votes in elections in which union participated
A. F. of L.	2,197	535,157	427,557	1,500	68.3	199,989	46.8
C. I. O.	2,594	961,301	789,138	1,890	72.9	445,528	56.5
Unaffiliated	969	440,318	351,402	593	61.2	183,066	52.

Unions affiliated with the C. I. O. had the greatest degree of success, as is shown by the proportion of elections which they won and the percentage of votes cast for them. They won 72.9 percent of the elections in which they participated, compared with 68.3 percent for American Federation of Labor unions and 61.2 percent for unaffiliated unions.

[12] See table 12 in Appendix, pp. 86–87.

[13] See table 11 in Appendix, p. 85.

IV

THE NATIONAL LABOR RELATIONS ACT IN PRACTICE: REPRESENTATION CASES

DURING the fiscal year ending June 30, 1944, the Board decided a greater number of contested representation cases than in any prior year, a tendency indicating the increasing importance of such cases and the practice of employers and labor organizations to resort to the processes of the Board to determine the collective bargaining representatives of employees. In contra-distinction to complaint cases, which are initiated by the filing of a charge alleging that an employer has engaged in unfair labor practices, representation cases are instituted by the filing of a petition requesting that the Board designate the appropriate bargaining unit and the exclusive representative of the employees in that unit. If it appears to the Board that there is a dispute or question as to whether any union represents a majority of an appropriate grouping of employees, an issue is raised for the Board's determination which is commonly called a "question concerning representation." The Board then proceeds in accordance with Section 9 of the Act[1] to ascertain the appropriate unit and to determine whether any union represents a majority in that unit. If a union is found to represent a majority, the Board certifies that union as the exclusive bargaining agent of all the employees within the unit.

THE QUESTION CONCERNING REPRESENTATION

An employer's refusal to accede to a union's demand for recognition as the exclusive bargaining representative of his employees gives rise to a question concerning representation. His refusal to accord such recognition sometimes results from a doubt regarding the appropriateness of the unit sought by the union or its majority status. In some instances he desires that the Board formally determine whether a question concerning representation exists and also fix the appropriate unit. On occasion an employer declines to recognize a union because rival claims to representation have been made upon him. A failure to demand recognition prior to the hearing which is held in representation cases is not fatal to the petitioning union if it appears at the hearing that the employer, in fact, refuses to recognize the union as the representative of the employees concerned.[2]

Before processing a petition filed by a labor organization the Board customarily requires a petitioner to submit proof in the form of membership or authorization cards, or some other documentary evidence, that it represents a substantial number of employees. This requirement is imposed for the purpose of avoiding the dissipation of

[1] Section 9 of the Act provides that the representative selected for the purposes of collective bargaining by a majority of the employees in a unit appropriate for such purposes, is the exclusive representative of all the employees in such unit. The Act also requires the Board to decide in each case whether the appropriate unit is "the employer unit, craft unit, plant unit, or subdivision thereof."

[2] *Matter of Houston Blow Pipe and Sheet Metal Works*, 53 N. L. R. B. 184.

time and effort by ascertaining in advance whether there is a likelihood that the union will be selected by the employees. It has been made quite clear by the Board that the report of its agent embodying the results of his investigation of the proof of substantial representation is not subject to direct or collateral attack at the hearing, since the requirement is but an administrative expedient adopted to enable the Board to determine for itself whether or not further proceedings are warranted.[3] If the employer is operating under an existing closed-shop or similar type of contract the Board considers as substantial a smaller showing by the petitioner than it otherwise requires.[4] Likewise, where a petitioning union was the charging party in a prior complaint case in which the Board found that the employer had engaged in unfair labor practices and such practices remain unremedied at the time of the hearing in the representation case, a smaller showing than is usually required will be accepted by the Board as substantial.[5]

While the Board is somewhat disinclined to proceed to a determination of a bargaining representative in the face of a jurisdictional dispute between two or more unions affiliated with the same parent organization, it does so where a union not involved in that dispute is a party to the representation case,[6] or where the disputants have failed to submit to their parent organization for settlement a controversy of long standing.[7] Recently, the Board, without comment, denied a motion to dismiss a petition made by a union on the ground that it was involved in a jurisdictional dispute with a sister union which was the only other labor organization in the case.[8]

In the last Annual Report the Board treated the issues raised in several cases as a result of rapidly expanding employment occasioned by the wartime economy.[9] The Board, in the *Aluminum Company* case, 52 N. L. R. B. 1040, announced the policy that it would proceed to determine the appropriate unit and ascertain the exclusive representative even though less than half of the anticipated full complement of employees were then engaged. It held, however, that a new petition would be entertained within less than the usual 1-year period following any certification, but after 6 months, if it were then shown that the appropriate unit had expanded to more than twice the number of employees eligible to vote in the directed election. Undoubtedly when reconversion begins and employers now engaged in producing war material with large staffs of employees return to normal peacetime operations with reduced personnel, difficult problems will arise in the representation field. Thus far the Board has not had occasion to decide any cases directly presenting such issues, although a contracting unit was involved in the *M. P. Moller, Inc.*, case, 56 N. L. R. B. 16, decided comparatively recently. There a corporation engaged in peacetime in manufacturing organs had converted its plant to the manufacture of airplane parts, having increased its complement of employees from approximately 150 to more than 1,000.

[3] See *Matter of Buffalo Arms Corporation*, 57 N. L. R. B. 1560.
[4] *Matter of Gibbs Gas Engine Company*, 55 N. L. R. B. 492.
[5] *Matter of Humble Oil & Refining Company*, 53 N. L. R. B. 116.
[6] *Matter of Buffalo Tank Corporation*, 56 N. L. R. B. 829; *Matter of The Glenn L. Martin-Nebraska Company*, 54 N. L. R. B. 424.
[7] *Matter of B. F. Gilmour Co., Inc.*, 55 N. L. R. B. 767 (petition filed by employer). See p. 44 of the Eighth Annual Report for other jurisdictional dispute cases where the Board proceeds to a determination of representatives.
[8] *Matter of Sherman White Company*, 58 N. L. R. B., No. 193. See also *Matter of Moraine Products Div., General Motors Corp.*, 56 N. L. R. B. 1887 (petition filed by employer).
[9] See Eighth Annual Report, pp. 44 and 45.

At the time of the hearing most of its war contracts had been canceled and it appeared likely that it would reconvert its plant to the manufacture of organs, thus necessitating a reduction of its staff which had dwindled to 590 employees, to between 125 and 150. An intervening union urged that the Board withhold the direction of an election to determine a bargaining representative until the possibility of reconversion had materialized or had been eliminated. The Board found that the employer's plans were indefinite, and in directing an election observed:

> When it is demonstrated that the [employer's] personnel has been cut to its pre-war size by reconversion from war to peacetime production, and that this, together with other appropriate circumstances, warrants a redetermination of representatives or of the appropriate bargaining unit, a new petition for the investigation and certification of a collective bargaining representative may be filed with the Board.

THE EFFECT OF EXISTING CONTRACTS OR PRIOR DETERMINATIONS

Section 1 of the Act, entitled "Findings and Policy," contains two concepts—the encouragement of collective bargaining and the full freedom of employees to select representatives of their own choosing. Frequently, a contract entered into between an employer and a union or a prior determination of a bargaining agent is raised as a bar to a representation case on the premise that the representative status of the contracting or certified union should remain undisturbed. When this occurs the two concepts embodied in Section 1 may be thrown into conflict; the stability and continuation of the collective bargaining relationship may conflict with the freedom of employees to select and change their representatives. In such situations the Board weighs the clashing interests in the balance and decides, in accordance with the doctrines developed in a long line of cases, whether to dismiss the petition or to proceed to a current determination of a representative.

Where substantially less than a year has elapsed since a prior determination or the execution of a contract, the Board generally will dismiss the petition.[10] During the term of the contract, provided it is for a reasonable period, the Board will not entertain a petition.[11] Although a contract term of 1 year is ordinarily recognized as reasonable, where the evidence establishes that it is the custom in the employer's industry to enter into contracts of longer duration, a contract for the customary period will preclude a present determination of a representative.[12] An agreement renewed for a further term by the operation of an automatic renewal clause is given the same effect as an agreement newly made.[13]

The Board proceeds to a determination of representatives in the typical situation where a petitioning union has apprised the employer of its rival claim to representation before the operative date of the automatic renewal clause contained in an existing agreement or the

[10] *Matter of Aluminum Company of America, Newark Works*, 57 N. L. R. B. 913 (involving a prior determination); *Matter of Bohn Aluminum and Brass Corporation, etc.*, 57 N. L. R. B. 1684 (involving a prior determination); see Eighth Annual Report, p. 46, with respect to contracts.

[11] See Eighth Annual Report, p. 46.

[12] See *Matter of Chicago Curled Hair Co., et al.*, 56 N. L. R.B. 1674.

[13] *Matter of Marvel-Schebler Division, Borg-Warner Corporation*, 56 N. L. R. B. 105; *Matter of New York Central Iron Works*, 56 N. L. R. B. 812 (stating, *inter alia*, that "where evidence is adduced to indicate that 4-months' notice clauses are not customarily included in contracts in the industry in question [the Board] will hold that the absence of such custom limits the authority of the contracting union").

effective date of a newly executed contract.[14] A contract containing an automatic renewal clause is not a bar where one of the contracting parties has forestalled the operation of the clause by giving the requisite timely notice.[15] In addition to the contracting parties, the employees themselves can stay the operation of an automatic renewal clause and thereby terminate the contract by evincing, prior to the effective date of the clause, an intent to choose a new bargaining representative.[16] In *Matter of Dossin's Food Products*, 56 N. L. R. B. 739, in July 1943, during the term of a closed-shop contract having an automatic renewal clause, a meeting was held, attended by a majority of the employees as well as representatives of the contracting union. At the meeting it was voted unanimously to withdraw from the contracting union and to affiliate with the petitioning union. The employer later received knowledge of this shift in allegiance. Thereafter, on January 28, 1944, prior to the operative date of the automatic renewal clause, two employees brought to the employer's office petitions, bearing signatures of less than a majority of the employees, requesting it to terminate the contract and to cease deducting from wages monthly dues payable to the contracting union. Accompanying the petitions was a letter which the two employees requested the employer to send to the contracting union in order to terminate the contract. At the time the petitions and the letter were presented the employer was informed by these employees that the petitions were attributable to affiliation with the petitioning union. It was not until after the effective date of the renewal clause that the petitioning union apprised the employer of its claim to representation and initiated the representation case. Upon this state of facts a majority of the Board, Mr. Reilly dissenting, refused to find that the contract precluded a current determination of a representative, stating:

> We believe the inference to be drawn from the foregoing events to be plain: that the [employer] was apprised by knowledge of the vote taken in July 1943, and by the petitions, the letter, and the statements made by the employee delegates who presented them on January 28, 1944, that a claimed majority of its employees desired to terminate the [contracting union's] representative status and to designate the [petitioning union] as their bargaining agent. Had a claim to majority representation been made by the [petitioning union] on January 28, supported by a representation showing of considerably less than a majority, such a claim, particularly in view of the closed-shop provision of the contract, clearly would have been sufficient to render the renewal clause of the contract ineffective as a bar. We perceive no reason for reaching a different result where a claimed majority of the employees on their own behalf place the employer on notice, prior to the renewal date, of their desire to discharge the contracting union and select a new representative, where that representative promptly thereafter initiates proceedings before the Board.[17]

An agreement is not deemed to preclude an election if it is not reduced to writing and signed by the employer and the contracting

[14] *Matter of Craddock-Terry Shoe Corp.*, 55 N. L. R. B. 1406 (contract containing automatic renewal clause); *Matter of Kimberly-Clark Corporation*, 55 N. L. R. B. 521 (claim to representation made after execution, but before effective date of contract). If after a claim to representation has been made a petition is dismissed, the claim cannot be relied upon to prevent a contract from barring a determination of a representative in a new case instituted by the filing of a second petition. *Matter of Dolese & Shepard Company, et al.*, 57 N. L. R. B. 1598. The filing of a petition prior to the effective date of an automatic renewal clause in a contract is sufficient to render the contract inoperative as a bar. *Matter of Portland Lumber Mills*, 56 N. L. R. B. 1336.

[15] *Matter of American Woolen Company (Webster Mills)*, 57 N. L. R. B. 647; *Matter of Purepac Corporation, et al.*, 55 N. L. R. B. 1386.

[16] *Matter of The Van Iderstine Company*, 55 N. L. R. B. 1339.

[17] Pointing out in his dissenting opinion that the petitions were signed by a minority of the employees, Mr. Reilly took the view that

> * * * evidence of dissatisfaction with a contracting union, unless a majority of the employees serve notice upon an employer that they no longer desire their present bargaining representative to continue, has never been deemed a revocation of the authority of the bargaining agent.

union,[18] accords recognition to the contracting union as the representative of its members only,[19] does not provide for substantive terms concerning conditions of employment,[20] or covers an inappropriate unit.[21] Similarly, where there is a substantial, unresolved doubt as to the identity of a certified or contracting union, the Board will not dismiss the petition.[22] Nor will a contract with a union which is defunct or whose continued existence is in doubt be regarded as foreclosing a new determination of representatives.[23]

In the situation where a contract is executed prior to the commencement of operations and the employment of personnel at the plant involved in a representation case, the contract will not be permitted to postpone a present determination of a bargaining representative.[24] Also, where, subsequent to the execution of a contract purporting to embrace employees of a plant, the plant's complement of workers has doubled or it has been removed to another city, the petition will be entertained.[25]

As has been indicated in the course of the foregoing discussion, the Board must weigh the concepts of the encouragement of collective bargaining and the full freedom of employees to select representatives of their own choosing, in determining whether the time is appropriate for permitting employees to change their bargaining representative, if that is their desire. After a reasonable time has elapsed, the Board will proceed to a determination of a bargaining representative upon petition filed by a rival union despite the presence of a contract or an outstanding certification.[26] Thus, if a contract is for a term longer than a year and there is no practice in the industry of contracting for such a period, and has been in effect for more than 1 year, it will not be held to be a bar to a current determination of a representative.[27] And where the contracting parties execute their agreement prior to the expiration date of an earlier contract between them, thereby apparently precluding the employees from seeking a change in their bargaining representative at the end of the earlier contract, the agreement will not deter the Board from proceeding to a present determination of a representative.[28]

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[18] See *Matter of Rheem Manufacturing Company*, 56 N. L. R. B. 159; *Matter of Ball Brothers Company*, 54 N. L. R. B. 1512; *Matter of South Texas Cotton Oil Company*, 54 N. L. R. B. 416.

[19] *Matter of Ball Brothers Company*, 54 N. L. R. B. 1512; see *Matter of B. F. Hirsch, Inc.*, 57 N. L. R. B., No. 10.

[20] *Matter of Standard Oil Company of Indiana*, 56 N. L. R. B. 1101 (merely providing for exclusive recognition and a grievance procedure); *Matter of Corn Products Refining Company*, 52 N. L. R. B. 1324 (merely providing for exclusive recognition and maintenance of membership).

[21] *Matter of Dolese & Shepard Company*, 56 N. L. R. B. 532.

[22] See *Matter of Brightwater Paper Company*, 54 N. L. R. B. 1102; Eighth Annual Report, p. 47.

[23] *Matter of Vulcan Corporation*, 58 N. L. R. B., No. 152 (defunct union); see Eighth Annual Report, p. 47, in relation to doubtful continued existence of contracting union.

[24] *Matter of Ball Brothers Company*, 54 N. L. R. B. 1512.

[25] See Eighth Annual Report, pp. 47 and 48.

[26] As noted before, a reasonable time is usually considered as 1 year from the date of the certification, or as 1 year from the date of the contract, unless the contract has been automatically renewed prior to the petitioning union's claim to representation or it is the custom in the employer's industry to execute contracts for longer periods. However, where, following a Board election, but preceding certification, the employer and the union subsequently certified execute a contract for a 1-year term, the Board considers as reasonable the contract term rather than the period of 1 year from the date of the certification. *Matter of Trackson Company*, 56 N. L. R. B. 917.

[27] *Matter of Twentieth Century-Fox Film Corporation*, 56 N. L. R. B. 117 (unreasonable term); *Matter of Universal Pictures Company, Inc.*, 55 N. L. R. B. 52 (unreasonable term); *Matter of Standard Oil Company of California*, 58 N. L. R. B., No. 112 (indefinite term).

[28] See Eighth Annual Report, p. 49; *Matter of Michigan Light Alloys Corporation*, 58 N. L. R. B., No. 21 (holding that a contract prematurely made is no bar even though the contracting parties have acted innocently). In order to avoid having a premature agreement act as a bar, the petitioning union ordinarily must apprise the employer of its rival claim to representation before the expiration date of the earlier contract. But see *Matter of Erie Concrete & Steel Supply Co., etc.*, 55 N. L. R. B. 1124, in which the employer and the contracting union executed their premature agreement on the same day the petitioning union withdrew an earlier petition. Although the petitioning union apparently did not renew its claim to representation after the withdrawal and prior to the expiration date of the earlier contract, the Board found that the premature agreement did not constitute a bar. Compare the *Erie Concrete* case with the *Dolese & Shepard* case cited and discussed in footnote 14, *supra*.

In determining what is a reasonable time the Board considers the circumstances of the case rather than being guided by any abstract rule. Extraordinary circumstances may require that the usual yardstick of 1 year be changed.[29] Where a newly recognized or certified representative fails to achieve an initial collective bargaining agreement because of the necessity of securing the approval or decision of the National War Labor Board with respect to important terms of the agreement which are either agreed to by the parties or are a matter of dispute, the Board does not entertain a petition from a rival organization seeking to supplant the bargaining agent recently recognized or certified, even though absent the pendency of the matters before the National War Labor Board the circumstances are such as would normally induce the Board to process the petition. This principle was established in the *Allis-Chalmers* case, 50 N. L. R. B. 306,[30] and has been applied in several other cases. However, the Board will not refuse to determine a representative in every case in which there are proceedings before another governmental agency. If an intervening union in a representation case is not newly recognized or newly certified when proceedings involving it are instituted before another agency of the Government, the Board will proceed with the case.[31] The fact that an intervening union is concerned in such proceedings is insufficient to warrant a delay of a determination of a representative where it has had full opportunity to obtain substantial collective bargaining benefits for the employees whom it represents.[32] Furthermore, other cogent reasons may persuade the Board to proceed to a present determination of a representative in spite of proceedings before another governmental agency affecting an intervening union.[33]

METHOD OF DETERMINING CHOICE OF A REPRESENTATIVE

Although the Act does not require the Board to conduct an election in each case to determine representatives, almost invariably the Board resorts to an election by secret ballot as the means of ascertaining which union, if any, the employees desire to designate as their collective bargaining representative. It is the Board's opinion that an election is the most satisfactory means of resolving representation questions.[34]

In ordering an election the Board customarily provides that it be held as early as possible but not later than 30 days from the date of the Direction of Election. Ordinarily the Board will not proceed to an election if there are alleged unfair labor practices or previously found, unremedied unfair labor practices, unless the charging union agrees not to raise such practices as objections to the conduct or results of the election. In the absence of a strike or some other special circumstance the Board generally directs that all those employed during the pay-roll period immediately preceding the date of the

[29] See, for example, the *Aluminum Company* case, 52 N. L. R. B. 1040, and the *Moller* case, 56 N. L. R. B. 16, both discussed above. Also see the *Mine Safety* case, 55 N. L. R. B. 1190, discussed *infra*.

[30] The *Allis-Chalmers* case is discussed at pp. 47 and 48 of the Eighth Annual Report. For cases in which the *Allis-Chalmers* principle was considered applicable, see *Matter of Aluminum Company of America, Vancouver, Washington*, 58 N. L. R. B., No. 5; *Matter of Aluminum Company of America, Vancouver, Washington*, 53 N. L. R. B. 593; *Matter of Kennecott Copper Corporation*, 51 N. L. R. B. 1141.

[31] *Matter of Foster-Grant Co., Inc.*, 54 N. L. R. B. 802; *Matter of MacClatchie Manufacturing Company*, 53 N. L. R. B. 1268; *Matter of Fort Dodge Creamery Company*, 53 N. L. R. B. 928.

[32] *Matter of Great Lakes Carbon Corporation*, 57 N. L. R. B., No. 23.

[33] See, for example, *Matter of Columbia Protektosite Co., Inc.*, 52 N. L. R. B. 595.

[34] In certain very exceptional cases the Board has, with the consent of the parties and upon clear documentary proof of majority certified a union without conducting an election. See *Matter of Aluminum Company of America, Chicago Works*, 56 N. L. R. B. 216.

Direction of Election shall be eligible to vote. Employees who were ill, on vacation, or temporarily laid off during the eligibility period are allowed to participate in the election.

In December 1941, in the case of *Matter of Wilson & Co., Inc.*, 37 N. L. R. B. 944, because of administrative difficulties and attendant delays the Board discontinued the practice of permitting mail balloting by employees in the armed forces of the United States.[35] During recent months, in the case of *Matter of Mine Safety Appliances Co., etc.*, 55 N. L. R. B. 1190, the Board was asked to alter the policy which it had adopted in the *Wilson* case and to revert to the practice of allowing employees in the armed forces to vote by mail. In answer to this request, stating that it was not unmindful of the fact that employees in the armed forces retain their status as employees, the Board held:

> The decision in the *Wilson* case was made shortly after the beginning of the war and was based largely upon our experience with mail balloting of employees in training camps in this country acquired prior to that time. It is readily apparent that the administrative obstacles to mail balloting which then obtained have been multiplied by the greater number of employees in the armed forces at the present time and by the transfer of many of them overseas. Consequently, we feel impelled to adhere to our present policy of permitting only those employees on military leave who present themselves in person at the polls to vote. Our inability to poll all the employees on military leave, however, will not necessarily operate to give permanent status to a bargaining representative chosen in their absence. Unlike selections made in a political election which are operative for a fixed term, the certification of an exclusive bargaining representative does not preclude a reexamination as to the desires of employees. When it is demonstrated that servicemen have returned to their employment in sufficient numbers so that they comprise a substantial percentage of the employees in an appropriate unit in which we have certified a collective bargaining representative, a new petition for the investigation and certification of a bargaining agent may be filed with the Board. In this manner employees in the armed forces who were unable to cast a vote will be afforded an opportunity to affirm or change the bargaining agent selected in their absence.

Employees who voluntarily terminated their employment or were discharged subsequent to the eligibility period and who were not rehired or reinstated prior to the date of the election are not entitled to cast a ballot. However, if a charge has been filed alleging that the discharges were in violation of the Act, the discharged employees are permitted to cast ballots which are impounded and not tabulated unless they can affect the outcome of the election; in the event the ballots can affect the election results, the question of eligibility is determined by the disposition of the unfair labor practice charge.[36] If after the eligibility period and before the date of the election employees were permanently transferred into or out of the voting group or unit established by the Board, they are not eligible to vote.[37] Regardless of whether or not a strike was caused by unfair labor practices, if the labor dispute is still current strikers are eligible to vote. In the case of a strike not caused by unfair labor practices workers hired to replace strikers are entitled to cast ballots.[38] Replacement employees engaged subsequent to a rejection of the strikers' unconditional application for reinstatement, made when positions were available, are not eligible to vote, whereas replacement employees hired prior to such rejection are eligible to participate in the election.[39]

[35] See also Seventh Annual Report, p. 57.
[36] *Matter of Ardlee Service, Inc.*, 52 N. L. R. B. 1509.
[37] *Matter of Basic Magnesium, Incorporated*, 56 N. L. R. B. 412; *Matter of Manganese Ore Company, et al.*, 54 N. L. R. B. 1192.
[38] See Seventh Annual Report, p. 57.
[39] See Eighth Annual Report, p. 50.

Regular part-time employees who devote a substantial portion of their time to working for the employer are eligible voters even though they may be employed full time elsewhere.[40]

An intervening union must disclose an interest in the proceeding in order to be granted a place on the ballot. Although it need not evidence as substantial a showing of representation as the petitioning union, an intervening union must have made some showing at the hearing in order to satisfy this requirement.[41] However, generally, a recent contractual relationship between an intervening union and the employer is evidence of interest sufficient to entitle the union to compete in the election.

A union previously found by the Board to have been company dominated is not accorded the status of a contestant in an election, since, in order to insure the employees full freedom to select a representative of their own choosing, the Board will place upon the ballot only bona fide unions. It is the Board's established practice, upon notice to all parties, to receive evidence at the hearing in a representation case to determine whether or not a union is a successor to a labor organization which the Board previously ordered disestablished; if found in the representation case to be a successor, the union is denied a place on the ballot and its petition, if any, is dismissed.[42] In the recent case of *Matter of Baltimore Transit Company, et al.*, 59 N. L. R. B No. 35, an alleged successor to a labor organization whose disestablishment had been directed by order of the Board and by court decree enforcing the Board's order contended that the Board was without power to proceed in this fashion in a representation case. It asserted that the Board was compelled either to take evidence of successorship in a complaint case alleging the commission of unfair labor practices within the meaning of Section 8 (2) of the Act or to adduce such evidence in a contempt proceeding claiming a violation of the court decree enforcing the Board's order of disestablishment. The Board rejected this contention, holding:

> In the ordinary representation proceeding, the issues are normally limited to those concerning jurisdiction, whether a question of representation has arisen, and the appropriate bargaining unit or units. The Board certainly is under no statutory duty under Section 9 to consider other issues. Accordingly, in administering the Act, the Board has found it to be convenient and practicable, for the most part, rigidly to exclude any proffered evidence of unfair labor practices in a representation proceeding, thereby leaving to the aggrieved parties the right to file charges under Section 10. This division of the Board's functions has proved invaluable in expediting the handling of representation cases.
>
> This recognition of the dual functions bestowed upon the Board by the Act does not mean, however, that the respective subject matter of proceedings under Section 10 and proceedings under Section 9 must be segregated into mutually exclusive compartments for administering the Act. * * *
>
> The full freedom to choose bargaining representatives which the procedure set forth in Section 9 of the Act is intended to insure would be limited drastically were the Board powerless to determine which unions shall appear on the ballot in elections directed thereunder and thus be available for choice by employees. The absence of such power might well result in the defeat of one of the prime objectives of the Act, the promotion of peaceful relations between employees and employers to the end that interferences with the free flow of commerce may be lessened thereby. * * *
>
> It would appear to be the position of the [alleged successor] that the Board is powerless in a representation proceeding to deny any union a place on the ballot on the ground that it is a successor to an organization previously ordered disestablished unless a finding of such successorship is first made in a complaint proceeding.

[40] *Matter of The National Machinery Company*, 56 N. L. R. B. 481; *Matter of United Gas Pipe Line Company*, 56 N. L. R. B. 669; *Matter of Armour & Company of Delaware*, 51 N. L. R. B. 28.

[41] *Matter of Elgin National Watch Company*, 56 N. L. R. B. 30.

[42] *Matter of Dade Drydock Corporation*, 58 N. L. R. B., No. 165; *Matter of Phillips Petroleum Company*, 52 N. L. R. B. 632; see Eighth Annual Report, p. 51; Sixth Annual Report, p. 60.

Solely from the standpoint of effectuating the purposes of the Act, we consider such a concept of the dual functions bestowed upon the Board to be clearly erroneous. If such an interpretation of the Act were valid, it is entirely conceivable that, in a given situation, a representation proceeding would be postponed indefinitely. Thus, for example, a complaint proceeding might result in the disestablishment of one union, only to have its successors spring up and intervene in the representation proceeding. To keep the successor off the ballot, another complaint proceeding would have to be instituted to disestablish it. Thereafter, a second successor might spring up and intervene in the representation proceeding, and so on *ad infinitum*. Meanwhile, the employees concerned would be denied the opportunity to choose a collective bargaining representative which the Act guarantees, with resultant friction between management and employees, and among groups of employees. The very purposes of the Act would be thwarted thereby. To avert such a vicious cycle, the [alleged successor] suggests that the Board should institute contempt proceedings, and there try the issue of successorship. It is true that contempt proceedings may be lodged against an employer where the Board's order of disestablishment has been enforced by court decree, and a successor organization has come into existence. But there may be situations in which the employer has engaged in no overt acts of a contemptuous character and yet the successor organization may clearly appear to the employees to be tainted as was its predecessor. However, the existence of facts which may arguably be said to be such as to warrant contempt proceedings does not mean that all activity with respect to a representation proceeding must be stayed, pending the determination by the courts that an employer is or is not in contempt. Nowhere in the Act is there any indication that the Board is compelled to resort first to action under Section 10, or proceedings ancillary thereto, in order effectively to perform its functions under Section 9 of the Act. The argument that, because alternative courses of action are available the Board is precluded from the procedure followed herein, is particularly not persuasive where a legitimate organization is claiming to represent a majority of the Company's employees in an appropriate unit, and when the prompt resolution of its claim may serve to resolve the entire controversy and preclude the necessity for further protracted proceedings.

Also, a union has been excluded from the ballot and its petition, if any, dismissed where it was admitted that supervisory employees comprised a majority of its membership, controlling its policies and playing a prominent part in its affairs,[43] had sponsored its membership drive,[44] or had conceived and organized it.[45]

Nor will the Board accord a place on the ballot to an organization which does not purport to represent employees in matters of collective bargaining, but merely seeks the defeat of a union requesting certification.[46] A space is provided on the ballot in an original election for voting against the competing union or unions.

The Board's Rules and Regulations provide for a run-off election, upon proper request by a party entitled to appear on the run-off ballot, where no objections are filed and the results of an original election in which more than one union competed were inconclusive because no choice received a majority of the valid votes cast.[47] Only one run-off election is permitted, the Board agent who conducted the original election having authority to proceed without further order of the Board if the conditions for a run-off election are satisfied. In general terms, the Rules and Regulations provide that if two unions competed in the original election, the run-off ballot is to afford the employees an opportunity to select one of the two highest choices in that election, unless "neither" was the second choice. In such case

[43] *Matter of Rochester and Pittsburgh Coal Company*, 56 N. L. R. B. 1760 (Chairman Millis, in a separate opinion, concurred on the basis of his dissent in *Matter of The Maryland Drydock Company*, 49 N. L. R. B. 733).

[44] *Matter of Toledo Stamping & Manufacturing Company*, 55 N. L. R. B. 865.

[45] *Matter of Douglas Aircraft Company, Inc.*, 53 N. L. R. B. 486.

[46] *Matter of Automatic Instrument Company*, 54 N. L. R. B. 472; *Matter of R. J. Reynolds Tobacco Company*, 52 N. L. R. B. 1311; see *Matter of Tabardrey Manufacturing Company*, 51 N. L. R. B. 246.

[47] National Labor Relations Board Rules and Regulations—Series 3, as amended, Article III, Section 11.

the two unions are to appear on the run-off ballot, except where the union which received a smaller vote than "neither" polled less than 20 percent of the valid votes cast in the original election.

The Board endeavors to conduct elections under conditions which permit employees freely and independently to select representatives of their own choosing. If objections to the conduct or results of an election are filed and evidence is presented indicating that the employees were interfered with in the free choice of a collective bargaining agent, a hearing on the objections is customarily held, although the Board has, in conformity with its Rules and Regulations, set aside an election where the facts reported by the Regional Director were not controverted.[48] Evidence is adduced at the hearing and the record thus made affords the Board a basis for determining whether or not to void the election. An election will be vacated by the Board where the employer threatened employees with economic reprisals in the event of a union victory,[49] or accorded one union privileges to which it was not entitled, at the same time denying them to its competitor, and otherwise pursued an unneutral policy tending to aid it in its election campaign.[50] Among other situations, the Board will invalidate the election when a union engaged in physical coercion of employees or prohibited electioneering.[51] In setting aside an election the Board generally states that it will direct another at such time as the Regional Director advises it that a new election appropriately may be conducted. When an original or run-off election is vacated and the Board later orders a new election, it will provide that the employees be granted the same choices which appeared on the ballot in the voided election.[52] In the case of *Matter of Botany Worsted Mills*, 56 N. L. R. B. 370, the Board found that the measures taken by its agent on the eve of balloting to dispel the effects of interference already accomplished and thus to insure a free election were reasonable and hence did not constitute a valid objection to the election. There, a Regional Director issued a release to the press one day before an election in which only one union appeared on the ballot charging the employer with specified recent acts of interference, and stating that the employer thereby sought "to influence votes to be cast in what should be a free election" and violated a court decree enforcing a Board order against it. The union won the election. Thereafter, the employer filed objections to the conduct of the election averring that the Regional Director's statement to the press was improper and was calculated to influence a vote favorable to the union. Upon the record made at the hearing which ensued from the objections, the Board found that the employer had in fact engaged in the conduct ascribed to him by the Regional Director, which the Board stated was illegally designed to cause the defeat of the union at the polls. In the light of this finding the Board concluded that the Regional Director's rather unusual action was a reasonable attempt to counteract the effects of the employer's misconduct and to assure a free election. It accordingly refused to set aside the election.

Only the valid votes cast in an election, in conformity with the rule prevailing in political elections, are counted in determining whether

[48] See *Matter of Continental Oil Company*, 58 N. L. R. B., No. 33; National Labor Relations Board Rules and Regulations—Series 3, as amended, Article III, Section 10.

[49] *Matter of Electrical Utilities Company*, 57 N. L. R. B. 399; *Matter of Carnegie Natural Gas Company*, 56 N. L. R. B. 1226.

[50] *Matter of Joshua Hendy Iron Works, etc.*, 53 N. L. R. B. 1411.

[51] See Eighth Annual Report, p. 52.

[52] See *Matter of Continental Oil Company*, 58 N. L. R. B., No. 33 and No. 69.

a majority has been cast for any contestant on the ballot.[53] Therefore, the Board will certify a union despite the fact that it has not received a majority of the total number of eligible votes if it has obtained a majority of the valid votes cast. This practice is subject to the qualification that a representative number of eligible voters must have participated in the election. Even though less than a majority of the eligible voters participated, where a substantial number cast ballots and all eligibles were granted adequate opportunity to vote, the Board will certify the union receiving a majority of the valid votes cast.[54] An exception to this rule is made where but one of two eligibles voted and his ballot was in favor of the union; the Board will not certify in this situation on the ground that the balloting did not result in a representative vote.[55]

Through its Regional Directors the Board also conducts consent elections on terms agreed upon by the employer and the unions concerned. Consent election agreements either provide for Board certification or for a Regional Director's report of the results to the parties.

THE UNIT APPROPRIATE FOR THE PURPOSES OF COLLECTIVE BARGAINING

Before it can certify a representative the Board must ascertain which employees comprise an appropriate unit for collective bargaining purposes.[56] Under the act, the employer, craft, or plant unit, or subdivision thereof, is appropriate. Since a group of employers in certain circumstances may constitute a single "employer" within the purview of the Act, some or all the employees of the group may be deemed an appropriate unit. An appropriate unit also may be composed of employees of one plant, several plants, or all the plants of one employer. Similarly, employees of one or more crafts or departments of a plant may form an appropriate unit.

Among the more important factors considered by the Board in arriving at a unit determination are the following: The history, extent and type of organization of employees; the history of their collective bargaining; the history, extent and type of organization of employees in other plants of the same employer, or other employers in the same industry; the skill, wages, work, and working conditions of the employees; the desires of the employees; the eligibility of the employees for membership in the union or unions involved; and the relationship between the unit or units proposed and the employer's organization, management, and operation.

If all parties to a representation case agree upon the scope and composition of the unit, or a requested unit meets with no objection, the Board generally finds the agreed or requested unit to be appropriate. Nevertheless, certain objective standards, some of which have been mentioned above, must be satisfied, otherwise the Board will not accept as appropriate the agreed or requested unit. But the fact that there is no dispute usually is indicative of the propriety of the unit. When there is no basic unit question and the sole union involved seeks a plant unit, the issues, if any, raised, ordinarily concern the inclusion or exclusion of small fringe groups of employees.

[53] *Matter of Elite Laundry Company of Washington, D. C., Inc.*, 55 N. L. R. B. 226.
[54] See Eighth Annual Report, p. 52.
[55] *Matter of Gold and Baker*, 54 N. L. R. B. 869.
[56] It also is incumbent upon the Board to determine the appropriate unit as a prerequisite to finding a refusal to bargain within the meaning of Section 8 (5) of the Act.

A recognizable craft unit will be established by the Board, in the absence of a history of collective bargaining on a more comprehensive basis, if there is no competing union seeking a unit embracing, among others, the employees comprising the craft.

A more serious problem is presented where overlapping units are desired by rival unions. In such situations the Board accords great weight to the relative homogeneity of the units sought and the bargaining history in the plant or industry. Unless counterbalanced by other elements, bargaining history is often a controlling factor. However, it is not determinative if it did not result in a collective bargaining agreement [57] or if it otherwise failed to attain stability of labor relations because there was a members-only contract [58] or an agreement containing no fixed term or substantive provisions.[59]

Where the considerations favoring a craft unit and those favoring a more comprehensive unit are of substantially equal weight, the Board generally directs a self-determination election in order to ascertain the desires of the employees with respect to the union by which they wish to be represented, and consequently the type of unit in which they prefer to bargain. Thereafter, the Board makes its finding of the appropriate unit upon the entire record, including the desires of the employees as reflected by the election results.

Generally, purely clerical employees or professionally trained technicians are not merged with production and maintenance employees when there is opposition to such consolidation. In these circumstances, separate units of clericals and technicians usually are established. A unit solely composed of supervisory employees almost always is not found to be appropriate.[60] Furthermore, it is the Board's established practice, with rare exception, to exclude supervisory employees from a unit of nonsupervisory employees.

During recent months, the Board has had occasion to treat with multiple-employer units and to enlarge upon principles previously enunciated in such cases. In the past, among others, there were certain specified prerequisites to the establishment of a unit of pooled employees of a number of independent, competing employers. These were—the existence of an association of employers, or some other agent, which exercised employer functions, and which had authority from the employers to engage in collective bargaining on their behalf and to bind them to collective bargaining agreements with unions.

In the case of *Matter of Rayonier Incorporated, Grays Harbor Division,* 52 N. L. R. B. 1269, the Board dismissed a petition alleging as appropriate a unit of employees of one employer member of an association. With other parties to the representation case the employer contended that the employees of all association members constituted the appropriate unit. Accepting the employer's contention, the Board found that the unit sought by the petitioning union was inappropriate, despite the association's lack of authority to bind its members to collective bargaining agreements. It considered as determinative the facts that the members of the association had "established a practice of joint action in regard to labor relations by negotiation with an effective employee organization, and [had] by their customary adherence to the uniform labor agreements resulting therefrom,

[57] *Matter of Taylor Forge & Pipe Works,* 51 N. L. R. B. 48.
[58] *Matter of Elgin National Watch Company,* 53 N. L. R. B. 855.
[59] *Matter of Corn Products Refining Company,* 52 N. L. R. B. 1324.
[60] See Eighth Annual Report, pp. 55 and 56, for a discussion of the majority and dissenting opinions in the case of *Matter of The Maryland Drydock Company,* 49 N. L. R. B. 733. This case dealt with the problem of units of supervisory employees.

demonstrated their desire to be bound by group rather than by individual action." The Board also was of the opinion that, in the circumstances, it was unnecessary to decide whether or not the association had received by delegation from its members "the essential employer functions required for the successful maintenance of common bargaining relations."

In a subsequent case, *Matter of George F. Carleton & Company, Inc., et al.*, 54 N. L. R. B. 222, a petitioning union filed 10 petitions for separate units, each to be comprised of the employees of 1 employer. All 10 employers were engaged in similar businesses in the same locale. Seven, together with 4 other employers in the same business and vicinity who were not parties to the representation case, were members of an association. It appeared that, for almost 25 years, the association and its predecessors had dealt for their members in negotiating contracts and in other matters pertaining to collective bargaining, and that almost all nonmembers in the same industry and locality whose employees were organized had followed the lead of these organizations. All the employer parties to the representation case but one, a nonmember of the association, asserted that a multiple-employer unit was appropriate. Agreeing with the petitioning union, the remaining employer party contended that its employees constituted a separate appropriate unit. The Board concluded that the employees of all members of the association formed the nucleus for a multiple-employer unit. Since almost all nonmembers had acted in concert with the association and its predecessors by following their lead, and inasmuch as 2 nonmembers involved in the case manifested a present willingness to continue that relationship by taking the position that a multiple-employer unit was appropriate, the Board also concluded that the employees of these 2 nonmembers, the employees of all nonmembers similarly situated, and the employees of all members comprised an appropriate unit. Consequently, it dismissed 9 of the petitions. However, as to the nonmember contending that its employees constituted a separate unit, the Board determined that it had disclosed an intention to pursue an individualistic course and found its employees to constitute an appropriate unit.

Following the *Carleton* case came the case of *Matter of Dolese & Shepard Company*, 56 N. L. R. B. 532. There, three employer parties to the representation case and another employer in the same industry and locale had acted in unison over a long period of time with respect to their labor relations. The three employer parties asserted that a multiple-employer unit of employees of all four employers was appropriate, whereas the petitioning union contended that the employees of each employer party constituted a separate appropriate unit. Persuaded that the four employers, "without combining themselves into a formal association, conducted negotiations * * * covering their respective production and maintenance employees upon a joint basis," the Board held that their pooled employees "could more properly be represented in a single multiple-employer unit." Accordingly, it dismissed the petitions affecting the employees of the three employer parties.

During the past fiscal year the Board decided slightly more than 1,300 contested representation cases. With the exception of those described above, virtually none of them presented any novel issues, and therefore were disposed of in conformity with previously established precedents that have been described in prior Annual Reports.

V

THE NATIONAL LABOR RELATIONS ACT IN PRACTICE: UNFAIR LABOR PRACTICE CASES

SECTION 7 of the National Labor Relations Act guarantees to employees the right to organize, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for their mutual aid and protection. Five types of employer conduct are defined in Section 8 as unfair labor practices. Thus, it is an unfair labor practice for an employer to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7; to dominate or interfere with the formation or administration of any labor organization or to contribute financial or other support to it; to encourage or discourage membership in any labor organization by discriminating in regard to hire, tenure, terms, or conditions of employment, except that it is not unlawful for closed-shop or similar type of contracts to be executed under certain conditions; to discriminate against an employee because he has filed charges or given testimony under the Act; and to refuse to bargain collectively with the representatives duly designated by a majority of the employees in an appropriate unit.

In the following general discussion there is presented a brief treatment of the more significant developments and trends in the unfair labor practice cases which the Board decided during the fiscal year 1944.[1]

INTERFERING WITH, RESTRAINING, OR COERCING EMPLOYEES IN THE EXERCISE OF THE RIGHTS GUARANTEED BY THE ACT

As in previous years, the conduct to which employers resorted to thwart the self-organizational activities of their employees ran the whole gamut of interference, restraint, and coercion within the meaning of Section 8 (1) of the Act. Such conduct ranged in character from outright threats of economic reprisals, consisting of discharge, closing or moving the plant, imposition of a blacklist, lowered earnings, and less favorable working conditions, to the more subtle forms of intimidation and coercion, such as taking a poll of the employees to determine their preference for a union, questioning employees with respect to their union affiliation or as to how they intended to vote in a pending Board election to determine their choice of a bargaining representative, requiring employees to disclose their union affiliation on application blanks, reducing the work week immediately after the union wins a Board election, and disparaging the labor organization which is attempting to organize the employees while at the same time belittling and ridiculing the advantages to be gained from collective bargaining. In addition, a few more novel methods of discouraging

[1] Some important and interesting cases decided in the new fiscal year are also included. For specific decisions and details of established fundamental principles, see the individual volumes of the Board's Decisions and Orders and previous Annual Reports

union activities were employed. Thus one employer permitted a mock funeral to be conducted at the plant during working hours for the purpose of ridiculing the union which had lost an election;[2] and still another employer ordered his employees to work overtime to prevent them from attending a previously scheduled union meeting.[3]

The Act may be violated even though the coercive statements are made to nonemployees.[4] And an employer, who advises only his supervisory staff of his neutral position with respect to the employees' self-organizational rights, is nevertheless liable for antiunion and coercive statements of supervisory employees made in violation of such neutrality policy.[5] But where an employer has adequately brought home to his employees the company's neutral position in organizational matters and it appears that everything reasonably possible has been done to enforce this neutrality, the Board has held that the employer is not liable for the antiunion and coercive statements of supervisory employees made in violation of his neutrality policy.[6] The rationale for this holding is that, under the above-described circumstances, the employees have no just cause to believe that the supervisory employees are acting for and on behalf of management.

As in previous years, the Board has had to consider whether certain statements of an employer were privileged under the constitutional guarantee of freedom of speech or whether such statements constituted interference, restraint, or coercion within the meaning of the Act. During the past fiscal year such statements appeared most frequently in the form of a letter or speech, addressed to the employees on the eve of a Board election to determine the employees' choice of a bargaining representative, in which the employer generally discussed the pending election, the union on the ballot, and the past employer-employee relationship. Such utterances are not privileged if they contain statements which are intrinsically coercive. Thus, while an employer may encourage his employees to vote, he violates the Act if he goes further and makes statements calculated to coerce the employees in the way in which they should vote.[7] In passing upon the legality of the employer's conduct the Board considers not only the contents of the letter and speech, but also the context in which they are uttered. Statements which are unobjectionable *per se* may acquire a coercive stature when considered in the context of a course of antiunion conduct. Thus the Board held violative of the Act a letter which, on its face, was not improper but when viewed in the light of the employer's course of conduct, constituted a veiled warning that existing employee benefits would be jeopardized if the union won the election.[8] Similarly, the Board found improper a letter and speech which, considered in the light of the employer's other antiunion conduct, carried at least an intimation that by voting for the union, the

[2] *Matter of American Laundry Machine Co.*, 57 N. L. R. B. 25.

[3] *Matter of National Container Corporation*, 57 N. L. R. B. 565.

[4] See *Matter of Rosenblatt's Friendly Mountain Line*, 56 N. L. R. B. 769, where in a conversation with a union officer and organizer the employer threatened to "blackball" union organizers.

[5] See, e. g., *Matter of North American Refractories Company*, 52 N. L. R. R. 1049; *Matter of Fairmont Creamery Company d/b/a Concordia Creamery Co.*, 51 N. L. R. B. 651, enf'd 14 L. R. R. 826 (C. C. A. 10), decided July 29, 1944.

[6] *Matter of Houston Shipbuilding Corporation*, 56 N. L. R. B. 1684. The employer, however, is held liable if, under the same circumstances, the supervisory employees actually discriminate in hire, tenure, terms, or conditions of employment.

[7] *Matter of Martin Food Products, Inc.*, 52 N. L. R. B. 1131.

[8] *Matter of Peter J. Schweitzer, Inc.*, 54 N. L. R. B. 813, enf'd in this respect, 14 L. R. R. 629 (App. D. C.), decided July 10, 1944.

employees would risk incurring the displeasure of the employer and inviting him to unfavorable action against them.[9] There have been other cases in which the Board has considered such a letter and speech as an integral part of a course of conduct or campaign which, in its totality, amounted to coercion within the meaning of the Act.[10]

In a number of cases the Board has been faced with the problem of defining and delimiting the extent to which an employer may curtail or prohibit union activity on company time or property. The Board has approached this problem by evaluating and balancing the employer's right to regulate the use of his time and property as against the conflicting right of the employees to exercise the right of self-organization, and decided upon the facts in each case which right should be paramount. In *Matter of Peyton Packing Company*, 49 N. L. R. B. 828,[11] decided near the end of the fiscal year 1943, the Board evolved the general policy that working time is for work and time outside working hours is an employee's time to be used by him as he wishes without unreasonable restraint, although the employee is on company property; that a rule prohibiting union solicitation by employees during working hours must be presumed to be valid in the absence of evidence that it was adopted for a discriminatory purpose; and that a rule prohibiting such solicitation by employees on their own time, although on company property, must be presumed to be an unreasonable impediment to self-organization and violative of the Act in the absence of evidence that special circumstances make the rule necessary to maintain production or discipline.

The rules enunciated in the *Peyton Packing* case have been interpreted and developed in subsequent decisions. Thus, while the employer may properly prohibit union activities during working time, it is unlawful for him to curtail the employee's right to wear customary union insignia while at work.[12] The Board has held a rule invalid to the extent that it prohibits union solicitation, conversation, or other union activity on company premises outside of working hours.[13] But restrictions imposed upon the movements of employees between departments and union employees' congregating and speech-making in the plant at any time were held not unreasonable in view of evidence showing, among other things, a substantial increase in visiting and congregating among the employees during the organizational drive and a background of labor disputes which included sit-down strikes and a break-down of discipline.[14] Similarly, it is lawful for an employer, acting in the interests of plant cleanliness, to prohibit the distribution of union literature at any time within his plant, where production is being carried on.[15] In this situation, the Board concluded that an employer's legitimate interest in maintaining plant cleanliness is not outweighed by the employees' interest in engaging in the prohibited activities. However, a rule prohibiting the distribution of

[9] *Matter of American Laundry Machinery Company*, 57 N. L. R. B. 25.

[10] See, e. g., *Matter of Big Lake Oil Company*, 56 N. L. R. B. 684; *Matter of Mississippi Valley Structural Steel Company*, 56 N. L. R. B. 485; *Matter of Van Raalte Company, Inc.*, 55 N. L. R. B. 146.

[11] Noted in the Board's Eighth Annual Report, p. 29; enf'd in part, 142 F. (2d) 1009 (C. C. A. 5), cert. den. October 9, 1944.

[12] *Matter of Republic Aviation Corp.*, 51 N. L. R. B. 1186, enf'd 142 F. (2d) 193 (C. C. A. 2). The Board has not opposed the Company's petition to the Supreme Court for a writ of certiorari, which was granted October 9, 1944. Also *Matter of National Container Corp.*, 57 N. L. R. B. 565.

[13] *Matter of Republic Aviation Corp., supra*, fn. 12; *Matter of Fairmont Creamery Company d/b/a Concordia Creamery Company*, 51 N. L. R. B. 651, enf'd 144 F. (2d) 128 (C. C. A. 10), decided July 29, 1944; *Matter of Simmons Company*, 54 N. L. R. B. 130; *Matter of Johnson-Stephens Shinkle Shoe Co.*, 54 N. L. R. B. 189; *Matter of North American Aviation Co.*, 56 N. L. R. B., 959.

[14] *Matter of Johnson-Stephens Shinkle Shoe Co.*, 54 N. L. R. B. 189.

[15] *Matter of the Goodyear Aircraft Corporation*, 57 N. L. R. B. 502.

union literature on company premises at any time may be improper under certain circumstances. Thus, in *Matter of LeTourneau Company of Georgia*, 54 N. L. R. B. 1253, the no-distribution rule applied to a company-owned parking lot situated between the plant and the public highway but a considerable distance back from the highway. Employees leaving the plant entered automobiles and busses parked on the lot without ever setting foot on the highway, and rode to their homes scattered over a wide area. Under the circumstances, the distribution to the employees of union literature, an essential avenue of communication, was rendered virtually impossible. The Board concluded, upon all the facts in the case, that the application of the rule to the distribution of union literature on the company's parking lot constituted such a serious impairment to the freedom of communication essential to the exercise of the right to self-organization as to render the rule invalid to that extent.[16] In *Matter of North American Aviation*, 56 N. L. R. B. 959, where the statutory representative agreed in a collective bargaining contract not to engage in union solicitation at the plant under certain circumstances, the Board, without passing upon the validity of such a prohibition in the absence of a contractual provision of this type, decided that during the life of the contract the employer could properly enforce the terms of such a provision.

DOMINATING OR INTERFERING WITH THE FORMATION OR ADMINISTRATION OF A LABOR ORGANIZATION OR CONTRIBUTING FINANCIAL OR OTHER SUPPORT THERETO

Section 8 (2) of the Act makes it unlawful for an employer to dominate or interfere with the formation or administration of, or to contribute support to, any organization 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.

Antiquated employee-representation plans and newer company-dominated unions, whether formed to frustrate current union organization or to provide machinery for the adjustment of employee grievances in the absence of union organization, were among those found to fall within the ban of this section. As in previous years, the Board was at times called upon to decide, on the facts of each case, whether the effect of the employer's domination and support of an earlier organization was effectively dissipated prior to the formation of an alleged successor organization, so that employees who joined the successor or designated it as their bargaining representative were able to exercise a free choice.[17] The considerations which motivated the Board in finding violations of this section during the fiscal year are similar to those which have been set forth in previous Annual Reports.[18]

During the past fiscal year, the Board has again had occasion to

[16] The Board's decision has since been set aside by the Circuit Court of Appeals for the Fifth Circuit in *LeTourneau Company of Georgia* v. *N. L. R. B.*, 143 F. (2d) 67, and the Board has petitioned the United States Supreme Court for a writ of certiorari, which was granted November 6, 1944.

[17] In *Matter of Thompson Products, Inc.*, 57 N. L. R. B. 925, decided shortly after the close of this fiscal year, the Board found that the employer's posting of disestablishment notices with respect to a company-dominated labor organization, prior to the formation of its alleged successor, did not cure the effect of the employer's prior illegal conduct in view of his continued opposition to outside unions and assistance to inside unions.

[18] See, for example, Third Annual Report, pp. 108–126; Fourth Annual Report, pp. 69–73; Fifth Annual Report, pp. 49–53; Sixth Annual Report, pp. 51–54.

decide several cases involving the question of interference by an employer of a labor organization, the extent or degree of the interference falling short of domination or support within the meaning of Section 8 (2) of the Act. In this type of case, as distinguished from the usual case of domination or support of a labor organization, in which the illegal organization is ordered disestablished, the Board has simply held that such assistance by an employer constitutes interference, restraint, and coercion within the meaning of Section 8 (1) of the Act. The Board's order in such cases does not require disestablishment of the organization but merely directs the employer to withdraw and withhold recognition of the assisted organization until and unless it is certified as the collective representative by the Board.[19]

Under the Act, however, the employer's assistance, domination, or support is banned only in connection with an organization of employees 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 other terms or conditions of employment. In at least four cases decided during the last fiscal year, the Board had before it the question of whether an employer's support and domination of what was allegedly a labor organization constituted an unfair labor practice. In *Matter of J. W. Greer Company*, 52 N. L. R. B. 1341, the Board rejected the employer's contention that a "Win the War Committee" was solely a labor-management committee patterned after a plan suggested by the War Production Board, and held that the committee was a labor organization within the meaning of the Act since it had functioned in substantial part as such. *Matter of Tampa Electric Co.*, 56 N. L. R. B. 1270, presented the Board with a somewhat similar problem with respect to a benefit association primarily engaged in welfare and insurance activities among the Company's employees. However, it appeared that the employer had bargained with the association on isolated occasions with respect to terms and conditions of employment. The Board held the benefit association to be a labor organization within the meaning of the Act and enjoined the employer from dealing with the association insofar as it acted as a labor organization. On the other hand, in a case in which a committee of employees appointed by the employer to review with it any decision affecting any employee, investigated the work record of an employee and then became inactive, the Board found the evidence insufficient to warrant a finding that the committee was a labor organization.[20] *Matter of The American National Bank of St. Paul*, 52 N. L. R. B. 905, presented a problem with respect to an employees' club which had existed and functioned for years as a social organization and had never functioned as an employees' grievance committee. The Board held that the club was not a labor organization, notwithstanding a suggestion made by the club's president that it was capable of presenting employee grievances.

ENCOURAGING OR DISCOURAGING MEMBERSHIP IN A LABOR ORGANIZATION BY DISCRIMINATION

Under Section 8 (3) of the Act, it is an unfair labor practice to encourage or discourage membership in any labor organization by

[19] See, for example, *Matter of Elastic Stop Nut Corporation*, 51 N. L. R. B. 694, enf'd 142 F. (2d) 371 (C. C. A. 8), cert. den. October 9, 1944; *Matter of Shenandoah-Dives Mining Co.*, 56 N. L. R. B. 715.

[20] *Matter of Rodgers Hydraulic, Inc.*, 51 N. L. R. B. 417.

discriminating in regard to hire or tenure of employment or any term or condition of employment, except in the case of a closed-shop or similar type of contract which meets the conditions prescribed in that Section. The Board, following its practice in the past, has been careful to administer this Section so as not to interfere with the normal exercise by an employer of his right to select, discharge, lay off, transfer, promote, or demote his employees for any reasons other than those proscribed by the Act.

The usual type of case arising under Section 8 (3) during the past fiscal year involved discrimination in the treatment of an employee because of his membership or activities in an existing labor organization. However, Section 8 (3) was held by the Board to have been no less violated when the discrimination was for engaging in concerted activities unconnected with such an existing organization, since employees who act in concert for their mutual aid and protection thereby constitute themselves a labor organization within the meaning of the Act.[21] The Board also held that it is not necessary that the victim of the discrimination be the one whose union membership or concerted activities induced the discriminatory treatment. Thus, the discharge of an employee because of the union membership or activities of his relative was held violative of the Act.[22] In finding discrimination under Section 8 (3), the Board, as in the past, has drawn no distinction between cases of actual discharge by the employer, and situations where the employee is constructively discharged by being discriminatorily transferred to work which he is unable, and therefore refuses, to perform.[23] During the past fiscal year, the Board has again had occasion to invalidate discharges due to violations of various types of company rules prohibiting legitimate union activity on company premises, such as solicitation on behalf of a labor organization on company property but on the employees' own time,[24] and the wearing of stewards buttons at the employer's plant.[25]

While the typical case under Section 8 (3) concerns discrimination because of the employee's affiliation with a union, there have been situations where an individual's continued employment is conditioned upon his joining a specific union. The imposition of such a condition, in the absence of a closed-shop contract which fulfills the requirements set forth in Section 8 (3), has been held to be tantamount to a discharge and violative of the Act.[26] The existence of a valid closed-shop contract, however, does not excuse an employer's discrimination against an employee because of his concerted activities on the theory that such discrimination cannot discourage membership in the union which is party to such a contract, since "Any conduct which is directed against concerted or union activity intrinsically and necessarily discourages membership in a labor organization and * * * participation in the concerted activities guaranteed employees under Section 7 of the Act." [27] Nor is a discharge any the less discriminatory and

[21] *Matter of Ever Ready Label Corp.*, 54 N. L. R. B. 551. See also *Matter of Hymie Schwartz d/b/a Lion Brand Manufacturing Company*, 55 N. L. R. B. 798; and *Matter of Worthington Creamery and Produce Co.*, 52 N. L. R. B. 121.

[22] *Matter of Birdsboro Steel Foundry and Machine Co.*, 54 N. L. R. B. 1274; *Matter of Texas Textile Mills*, 58 N. L. R. B., No. 71.

[23] *Matter of Walter Walker*, 51 N. L. R. B. 753, enf'd May 1, 1944, by the Second Circuit Court of Appeals upon motion for summary enforcement. See also *Matter of Texas Textile Mills, supra.*

[24] *Matter of Republic Aviation Corp.*, 51 N. L. R. B. 1186, enf'd 142 F. (2d) 193 (C. C. A. 2), cert. granted October 9, 1944.

[25] *Matter of National Container Corp.*, 57 N. L. R. B. 565; *Matter of Republic Aviation Corp., supra* fn. 24.

[26] *Matter of W. S. Watkins and W. W. Watkins*, 53 N. L. R. B. 235.

[27] *Matter of Pinaud, Inc.*, 51 N. L. R. B. 235.

violative of Section 8 (3) where it was requested by fellow employees who objected to the retention of the dischargees, in part because of their opposition to the dischargees' union activities.[28]

During the past fiscal year, the Board, following well-established principles, has found violations of Section 8 (3) in the discriminatory treatment of employees solely because of their participation in a strike. Such discrimination has taken various forms. Where the evidence disclosed, among other things, a past practice of giving preference in hiring to former employees, the Board found discrimination in the employer's failure, when vacancies occurred some time after the termination of an economic strike, to rehire the strikers who had previously made application for reemployment.[29] In another case, the discrimination took the form of the employer's willingness to reinstate only a selected number of a group of economic strikers and his refusal to reemploy the entire group of strikers whose positions had not been filled.[30] Questions of discrimination also arise in connection with discharges of employees who refuse to act as strikebreakers. In one such case,[31] decided during the past fiscal year, a majority of the Board held that the employer had the right to compel an employee, who refused to perform the work of other employees who were engaged in an economic strike, to leave the employer's premises. Chairman Millis, dissenting, took the view that the employer's conduct was coercive in that it deprived the employee of her right to remain neutral and therefore constituted a discriminatory discharge. All Board members agreed that since the employee in question was in the position of a striker, the employer violated the Act in failing to reemploy her when the strikers sought reinstatement upon the termination of the strike, in the absence of any showing that her position was filled.

Under the Act, a strike is a protected form of concerted activity even though it is ill-advised and is unauthorized by the union of which the strikers are members.[32] However, as in the past, the Board has denied the protection of the Act to strikers who engage in flagrantly unlawful conduct, such as the seizure and retention of the employer's property, during the course of their strike. The Board has recently held that in the latter type of case, the employer must establish that the strikers did *in fact* engage in the unlawful conduct for which they were alleged to have been discharged or denied reinstatement, and that a mistaken, though honest, belief that they had participated in such activity does not deprive the employees of relief under the Act.[33]

According to the majority view expressed in *Matter of The American News Company, Inc.*, 55 N. L. R. B. 1302, the protection of the Act may, under certain circumstances, also be denied to employees because of the illegality of the purpose of the strike. In that case, the employer discharged and subsequently refused to reinstate certain individuals who were on strike, on the ground that the strike in which they participated was admittedly designed to compel the employer to grant the

[28] *Matter of Edinburg Citrus Association*, 57 N. L. R. B. 1145.
[29] *Matter of American Bread Co.*, 51 N. L. R. B. 1302.
[30] *Matter of Draper Corp.*, 52 N. L. R. B. 1477, set aside on different grounds by the Fourth Circuit Court of Appeals on October 5, 1944. In that case, the strikers who had been offered reemployment refused to return to work because of the employer's failure to reemploy all the strikers. Board Member Reilly disagreed with the majority holding to the extent that it awarded back pay to the former group for the period following the offer of reemployment to them. See discussion under "Remedial Orders."
[31] *Matter of Pinaud, Inc., supra.* To like effect is *Matter of Gardner-Denver Co.*, 58 N. L. R. B., No. 15.
[32] *Matter of Draper Corp.*, supra, fn. 30.
[33] *Matter of Mid-Continent Petroleum Corporation, and Cosden Pipe Line Co.*, 54 N. L. R. B. 912.

strikers a wage increase without prior approval of the National War Labor Board, which action would have subjected the employer to criminal penalties under the terms of the Wage Stabilization Act. While recognizing that Congress probably did not intend to invest the Board "with any broad discretion to determine * * * the proper objectives of concerted activity," the majority was of the opinion that Congress at the same time could hardly have intended for the Board to give any protection under the Act to a strike "knowingly prosecuted to compel an acknowledged violation of an act of the Congress itself," such as the Wage Stabilization Act. The majority thereupon concluded that, in view of its purpose, the strike was not the type of concerted activity protected under the Act, and accordingly dismissed the complaint which alleged the foregoing action of the employer as violative of Section 8 (1) and (3). Chairman Millis, dissenting, took the position that Congress, as part of its general design to eliminate the "discredited legality-of-object test" from the Federal law of labor relations, intended to extend the protection of the Act to employees who engage in concerted activity, whatever its purpose. He was, accordingly, of the view that the afore-mentioned action of the employer constituted an unfair labor practice within the meaning of Section 8 (1) and (3), and that those strikers who had not been replaced when they sought to return to work should be reinstated. However, the Chairman was of the further opinion that, in view of the unconscionable nature of the strike, the Board, in the exercise of its broad discretion under Section 10 (c) in fashioning the remedy, should deny the strikers back pay.

In *Matter of Indiana Desk Company*, 58 N. L. R. B., No. 10, the majority of the Board make it clear that its holding in the *American News* case was not to be applied to a situation where the strike is merely the outgrowth of "a wage dispute provoked by the [employer's] unwillingness to agree to the employees' request for wage increases" and not of "an unlawful demand that agreed wage increases be put into effect prior to approval by the War Labor Board." In the former situation, the majority concluded, the strike is not for an "illegal purpose." The Board pointed out that the Wage Stabilization Act, except insofar as it made wage agreements subject to War Labor Board approval, did not remove matters concerning wages from the ambit of collective bargaining, and that employees who implement "normal and legitimate collective bargaining with respect to negotiation of wage increases with strike action" are engaged in "a type of activity falling within the protection of Section 7 of the Act."

As a result of the decision by a majority of the Board in *Matter of The Maryland Drydock Company*, 49 N. L. R. B. 733,[34] that supervisory employees in mass production industries may not utilize the processes and sanctions of Sections 9 (c) and 8 (5) of the Act for the purpose of having themselves constituted an appropriate bargaining unit and compelling an employer to bargain collectively with them, the Board, during the past fiscal year, was faced with the question of whether such supervisory employees are also to be denied the protection of Section 8 (3) of the Act when they are discriminated against because of their membership and activities in a labor organization composed exclusively of supervisory personnel. In *Matter of Soss Manufacturing*

[34] See also *Matter of Boeing Aircraft Company*, 51 N. L. R. B. 67; *Matter of The Murray Corporation of America*, 51 N. L. R. B. 94; *Matter of General Motors Corporation*, 51 N. L. R. B. 457.

Company, 56 N. L. R. B. 348, the Board answered this in the negative.[35] While recognizing "the right of an employer to protect his neutrality by requiring his supervisory employees to refrain from unneutral activities which impinge upon the rights of their subordinates," the Board pointed out that activity of supervisory employees in an organization whose membership is confined to supervisors "cannot normally have any impact upon the rights of ordinary employees, nor can it normally affect an employer's position of neutrality." Pointing out that its holding in the *Maryland Drydock* case was based on certain considerations of policy which were wholly inapplicable to the question before them in the *Soss* case, the majority concluded that since an employer "may still elect with legal immunity voluntarily to bargain with a labor organization composed of supervisors, provided that such bargaining does not also have the effect of interfering with the protected rights of other employees," supervisory personnel should not be interfered with by the employer in the exercise of their right to self-organization.

Following the general principle enunciated in the *Soss* case, the Board recently held that an employer violated Section 8 (3) of the Act by the discharge of a supervisory employee, who refused to join a union favored by his superior, and thereby assist the superior in violating the Act.[36]

DISCRIMINATION FOR FILING CHARGES OR TESTIFYING UNDER THE ACT

As in the past fiscal years, cases under Section 8 (4) of the Act, which makes it an unfair labor practice for an employer to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under the Act, continue to form a small part of the Board's work. In two of the few cases which arose under this Section during the fiscal year 1944, the Board held that it was an unfair labor practice for an employer to discharge or refuse to reinstate an employee for having given testimony in a prior Board proceeding against the same employer.[37] In another case in which the employer conditioned reinstatement of striking employees upon withdrawal of pending unfair labor practice charges against the employer, the Board held the employer's conduct to be discriminatory and violative of the Act because the imposition of the condition involved abandonment of the protection to which employees were entitled under the Act.[38]

REFUSING TO BARGAIN COLLECTIVELY

Section 8 (5) of the Act makes it an unfair labor practice for an employer to refuse to bargain collectively with the representatives designated or selected by a majority of the employees in an appropriate collective bargaining unit.

Some cases decided by the Board under this Section raised questions concerning the union's majority representation in the appropriate unit. For example, where an election is held to determine

[35] Chairman Millis, in a separate opinion, concurred in the result, but, in view of his dissenting opinion in the *Maryland Drydock* case, did nor concur entirely in the rationale of the decision.

[36] *Matter of Houston Shipbuilding Corporation*, 56 N. L. R. B. 1684.

[37] *Matter of Reliance Mfg. Co.*, 56 N. L. R. B. 1083; *Matter of The Owatonna Tool Company*, 56 N. L. R. B. 1427.

[38] *Matter of St. Marys Sewer Pipe Company*, 54 N. L. R. B. 1226.

the employees' choice of a bargaining representative, the Board has continued to hold that, so long as a substantial proportion of the eligible voters participate, the results are to be determined by the expressed wishes of a majority of those voting, even though they represent less than a majority in the total of eligible voters.[39] This judicially approved view is based upon the well-established democratic principle prevailing in political elections that the failure of eligible voters to participate in the election is construed as an assent to the choice of the majority who exercise their franchise. In determining the eligibility of voters, the Board is sometimes called upon to decide whether certain workers are employees within the meaning of the Act.[40] Very frequently an employer and a union, with the approval of a Regional Director of the Board, enter into a consent election agreement which provides, among other things, for the final and binding determination of the Regional Director on all questions arising out of the conduct of the election, including questions of eligibility of voters. Where the union's claim of majority is based upon the results of such an election, the Board will not disturb the Regional Director's rulings unless they appear to be arbitrary or capricious or unsupported by substantial evidence.[41] In other cases issues arise in connection with the appropriate unit. Sometimes the appropriateness of a bargaining unit is established upon the basis of the extent of the union's organization.[42] In such cases an employer may not properly refuse to bargain with a representative certified by the Board merely because of subsequent changes in the extent of organization.[43]

After the Board has determined that a union represents a majority of the employees in an appropriate unit, it must then decide whether the employer's conduct constitutes a refusal to bargain. It is unlawful for an employer to recognize or deal with any other representative than the one duly designated by the employees. Thus, where a union represents a majority of the employees in the appropriate unit, the employer refuses to bargain in violation of the Act when he grants a check-off of dues to a minority union or accords to a minority union the right to present and negotiate the adjustment of grievances for its members.[44] More frequently the problem of whether there has been a refusal to bargain poses the issue of whether the employer, in his dealings with and treatment of the employees' bargaining representative, has endeavored in good faith to reach an understanding on wages, hours, and other conditions of employment. Among the various ways in which an employer has demonstrated his bad faith in the cases decided during the past fiscal year are by shifting his position on the issue of a consent election agreement, by thwarting the union's efforts to hold conferences promptly and without loss of pay to the employees, by categorically rejecting the union's demands without offering counterproposals or any justifications for his positions, by a unilateral grant of wage increases after refusing to negotiate increases with the union, and by ignoring the union's requests for negotiations regarding disputed matters. In all such cases the

[39] *Matter of The Standard Lime and Stone Company*, 57 N. L. R. B. 227.

[40] See, for example, *Matter of O. U. Hoffman*, 55 N. L. R. B. 683, holding that a worker who was the son of a partner is an individual employed by his parent and hence not an employee within the meaning of Section 2 (3) of the Act.

[41] *Matter of Aetna Fire Brick Company*, 56 N. L. R. B. 849.

[42] For other factors considered by the Board in unit determinations, see the chapter on representation cases in this and previous Annual Reports.

[43] *Matter of Prudential Insurance Company of America*, 56 N. L. R. B. 1847 and 1859.

[44] *Matter of Hughes Tool Company*, 56 N. L. R. B. 981.

Board has held that the employer has refused to bargain collectively in violation of the Act.[45]

The duty to bargain collectively is not excused by a doubt as to the union's majority representation not advanced in good faith,[46] by a *bona fide* doubt as to the Board's jurisdiction over the employer's operations,[46] by the fact that the employees have gone on strike,[46] or by a clause in an existing contract in which the union had agreed not to represent the employees on whose behalf it was now seeking to bargain.[47] Nor does the duty to bargain collectively cease with the execution of a collective agreement. The employer is under a further duty to negotiate concerning the modification, interpretation, and administration of the existing agreement.[48] Thus, in *Matter of George E. Carroll et al.*, 56 N. L. R. B. 935, the Board held that the employer had refused to bargain in violation of the Act by repudiating a closed-shop provision of an existing collective agreement without notifying the union or submitting the matter to negotiation, and by ignoring the union's request to submit the controversy to arbitration pursuant to an arbitration clause contained in the agreement. The Board pointed out that the employer's conduct constituted a unilateral change in a contractual term which was a proper subject for collective bargaining, and that in failing to answer the union's request for submitting the controversy to arbitration, a recognized reasonable method for settling disputes, the employer demonstrated his insistence upon reserving his right to act unilaterally. The Board, however, went on to state that:

> In viewing the case in this light, we do not embark upon a course of policing and enforcing trade agreements. If, after a full exchange of views and a sincere effort to compose differences, the parties to a trade agreement are left at an impasse concerning its interpretation, application or modification, the matter is outside our hands. If such a dispute involves questions of interpretation or application, it presumably can be solved by the courts, under the applicable principles of the law of contracts. But, particularly in the light of Section 10 (a) of the Act, the execution of a trade agreement does not necessarily remove our jurisdiction, even when the questions thereafter raised concern solely its interpretation and application. By signing a trade agreement an employer does not purchase immunity from the requirements of good faith and honest negotiation which are basic to Section 8 (5) of the Act. It is inevitable that, in the enforcement of the public right to have the channels of interstate commerce freed from obstructions resulting from unfair labor practices, private rights may incidentally be protected or enforced.

In two other cases,[49] the Board held that Section 8 (5) of the Act is violated when an employer refuses to afford the exclusive bargaining representative the opportunity to negotiate concerning the disposition of grievances of individual or groups of employees. This problem involves a reconciliation of the employer's obligation under the Act to bargain exclusively with the majority representative and the employees' rights under the proviso to Section 9 (a) of the Act to present grievances individually or in a group to their employer. In *Matter of Hughes Tool Company*, 56 N. L. R. B. 981, the Board

[45] See, e.g., *Matter of Concordia Ice Company, Inc.*, 51 N. L. R. B. 1068, enf'd 143 F. (2d) 656 (C. C. A. 10); *Matter of The E. Biglow Company*, 52 N. L. R. B. 999, enf'd 14 L. R. R. 577, (C. C. A. 6), decided June 5, 1944; *Matter of Ideal Leather Novelty Co.*, 54 N. L. R. B. 761.

[46] See, e. g., *Matter of Concordia Ice Company, Inc., supra*, fn. 45; cf. *Matter of Green Colonial Furnace Company*, 52 N. L. R. B. 161.

[47] *Matter of Federal Motor Truck Company*, 54 N. L. R. B. 984; *Matter of Briggs Manufacturing Company*, 58 N. L. R. B., No. 14. The majority of the Board held that such a clause is invalid because it is in derogation of the public policy enunciated in the Act. Board Member Reilly dissented in each case on the ground that the principle of estoppel is applicable to the union which had executed the contract.

[48] See, e. g., *Matter of Ideal Leather Novelty Co. Inc.*, 54 N. L. R. B. 761; *Matter of George E. Carroll et al.*, 56 N. L. R. B. 935; *Matter of Hughes Tool Company*, 56 N. L. R. B. 981.

[49] *Matter of Hughes Tool Company*, 56 N. L. R. B. 981; *Matter of U. S. Automatic Corporation*, 57 N. L. R. B. 124.

spelled out with considerable particularity the respective rights and obligations of the employer, the employees, and the union. Thus, the Board stated:

> We interpret the proviso to Section 9 (a) of the Act to mean that individual employees and groups of employees are permitted "to present grievances to their employer" by appearing in behalf of themselves—although not through any labor organization other than the exclusive representative—at every stage of the grievance procedure, but that the exclusive representative is entitled to be present and negotiate at each such stage concerning the disposition to be made of the grievance. If, at any level of the established grievance procedure, there is an agreement between the employer, the exclusive representative, and the individual or group, disposition of the grievance is thereby achieved. Failing agreement of all three parties, any dissatisfied party may carry the grievance through subsequent machinery until the established grievance procedure is exhausted.
>
> The individual employee or group of employees cannot present grievances under any procedure except that provided in the contract, where there exists a collective agreement. At each step in the grievance procedure, where the contract provides for presentation by a union representative, as does the Union's contract in this case above the foreman level, the individual employee or group of employees has the right to present his or its grievance in person, with the union representative being present to negotiate with the employer representative concerning the disposition to be made of the grievance. Where there has been no grievance machinery provided by agreement between the employer and the statutory representative, the employer must bargain in good faith with the representative respecting the procedure to be followed. Only where the exclusive representative refuses to attend meetings, as prescribed in the grievance procedures established, for the purpose of negotiating in regard to the disposition of grievances presented by individuals or groups of employees, or otherwise refuses to participate in the disposition of such grievances, may the employer meet with the individuals or groups of employees alone and adjust the grievances. And any adjustment so effectuated must be consistent in its substantive aspects with the terms of any agreement which the employer may have made with the exclusive representative. Where the steps provided in the contract have been exhausted and after good faith negotiations, the employer and the exclusive representative reach an impasse concerning the disposition of any grievance for which the contract does not provide arbitration or other solution, the employer is free to dispose of the grievance, provided, of course, that any such adjustment of the grievance is consistent in its substantive aspects with the terms of any outstanding contract between the employer and the exclusive representative.

In a case of first impression the Board had for consideration the validity of an employer's defense to a refusal to bargain based upon the failure of the union's business agent to obtain a license to act as a union representative, as required by a State statute.[50] The Board rejected the employer's defense as being without merit. Pointing out that nothing in the language of the Act or its legislative history warrants the belief that Congress intended the Act, which is national in scope, to be subjected to the varied and perhaps conflicting provisions of State enactments, the Board concluded that a local statute, which would have the effect of abridging the rights guaranteed in the Act, must yield before the paramount authority of Congress expressed in the Act.

REMEDIAL ORDERS

Whenever the Board finds that an employer has engaged in any unfair labor practices, it is empowered under Section 10 (c) of the Act to issue an order requiring him "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 the Act."

[50] *Matter of Eppinger & Russell Company*, 56 N. L. R. B. 1259; *cf. Matter of Tampa Electric Co.*, 56 N. L. R. B. 1270.

The Board's cease and desist orders are usually phrased in the language of those Sections of the Act which have been violated. Where the circumstances make it desirable, the Board's order requires the employer to cease and desist from the specific act in which he has engaged, such as espionage, surveillance of union meetings, or giving effect to an unlawful contract. In order to conform its general cease and desist order based on a violation of Section 8 (1) with those based on violations of other Sections of the Act, the Board during the new fiscal year has included in its order, wherever feasible, the name of the labor organization which was the object of the employer's unfair labor practice.[51]

Orders directing employers to take affirmative action are adapted to the situation which calls for redress and are designed to effectuate the policies of the Act. These normally take the form of a disestablishment order in the case of a union found to have been employer-dominated and supported, a reinstatement order with reimbursement for loss of pay in the case of a discriminatorily discharged or laid-off employee, an order to bargain upon request of the union involved, in the case of a refusal to bargain, and in all cases a posting of notices advising the employees that the employer will not engage in the conduct from which it is ordered to cease and desist and will take the affirmative action set forth in the order.

Variations of, and additions to, these affirmative orders are frequently necessary to meet the facts of the particular case. Thus, in *Matter of J. W. Greer Company*, 52 N. L. R. B. 1341, the employer was found to have violated Section 8 (2) with respect to a "Win The War Committee" patterned after a plan for a labor-management committee suggested by the War Production Board. The Board's disestablishment order, however, prohibited the committee from functioning only as a labor organization and not from functioning as a labor-management committee within the meaning of the War Production Board's program. In *Matter of Clinchfield Coal Corp.*, 51 N. L. R. B. 539, the employer had executed a closed-shop contract with the dominated union. In addition to the usual disestablishment order the Board in that case also directed the employer to reimburse the employees for dues and assessments checked off from their wages upon behalf of that organization.[52] Where the employer's conduct with respect to a labor organization falls short of a violation of Section 8 (2) but nevertheless constitutes interference, restraint, or coercion within the meaning of Section 8 (1), the employer is merely directed to withdraw or withhold recognition of the affected organization as the collective bargaining representative of the employees until and unless it is certified as such representative by the Board.[53]

Reinstatement is not always granted to a discriminatorily discharged employee. For example, the Board has withheld this remedy where the employee does not desire his job,[54] or where the employee has a serious record of absenteeism.[55] In *Matter of Salmon and Cowin, Inc.*, 57 N. L. R. B. 845, the Board ordered unconditional reinstatement to a discriminatorily discharged employee who had a hernia, but made it clear that if, upon reinstatement, it appeared that the hernia

[51] See *Matter of W. E. Lipshutz*, 56 N. L. R. B. 1749.
[52] The Board's order was set aside on different grounds by the Fourth Circuit Court of Appeals on October 3, 1944.
[53] See cases cited in fn. 21, *supra*.
[54] See, e. g., *Matter of Stewart Warner Corp.*, 55 N. L. R. B. 593.
[55] *Matter of T. A. O'Donnell*, 55 N. L. R. B. 828.

rendered the employee unfit for work, his employment could be terminated provided such termination was not induced by discriminatory motives.

The back-pay order is patterned to the circumstances of each case in terms of an applicable formula. For example, where the discriminatorily discharged employee worked on a piece-work basis, the back-pay order was grounded on the basis of his average daily earnings during the 4-week period immediately preceding the date of the discrimination.[56] In computing the back pay due to discriminatorily discharged bus girls, the Board did not include the average tips received by the girls from the waiters because there was no showing that such custom was universally followed in the employer's place of business.[57] An adequate offer of reinstatement will, of course, toll the running of back pay in all cases.[58] However, an offer to reinstate only a selected number of a group of economic strikers who apply for their jobs which are still vacant, is not adequate to toll the back pay of those strikers who refuse the offer because of the employer's unwillingness to reinstate the entire group.[59] Such an offer, the Board held, is discriminatory because it deprives each striker of the security of the collective association which the Act protects. Following its general policy enunciated during the fiscal year 1943,[60] the Board has continued to deny reimbursement for losses wilfully incurred by a discriminatorily discharged employee. However, in *Matter of Laredo Daily Times*, 58 N. L. R. B., No. 89, decided during the new fiscal year, the Board expressed the view that, "absent special circumstances, a dischargee should be allowed a reasonable period following his dismissal during which he should not be required to seek other employment which, if offered and accepted, would result in unnecessary dislocation if he decided to avail himself of a later offer of reinstatement by his former employer." In that case the Board held that 12 days was not an unreasonable period for this purpose.

Bargaining orders have been issued in practically all cases in which the employer has violated Section 8 (5) of the Act. Where, however, the employer has ceased operations, the bargaining order is conditioned upon the eventuality that the employer has resumed or does in the future resume operations.[61]

Where the circumstances of the case make the usual general notices, which the employer is ordered to post in the plant, inadequate to effectuate the policies of the Act, the Board may direct the employer to send such notices in writing to each of his employees. Such orders have been issued particularly in those cases where the unfair labor practice has been accomplished in part by means of written notices or statements by the employer to his employees individually, or by the employer's bargaining with his employees individually.[62] In

[56] *Matter of Clinchfield Coal Corp.*, 51 N. L. R. B. 539, enf'd in this respect by the Fourth Circuit Court of Appeals on October 3, 1944.

[57] *Matter of T. A. O'Donnell*, 55 N. L. R. B. 828.

[58] *Matter of Texas Textile Mills*, 58 N. L. R. B., No. 71.

[59] *Matter of Draper Corp.*, 52 N. L. R. B. 1477, set aside on different grounds by the Fourth Circuit Court of Appeals on October 5, 1944. Board Member Reilly dissented in this respect, chiefly on the ground that the policies of the Act would most appropriately be effectuated by encouraging employees to resort to the administrative process for redress.

[60] See *Matter of The Ohio Public Service Company*, 52 N. L. R. B. 725 (noted in the Eighth Annual Report at p. 41), enf'd by the Sixth Circuit Court of Appeals on July 17, 1944.

[61] See, e. g., *Matter of Fine Art Novelty Corp.*, 54 N. L. R. B. 480; *Matter of George E. Carroll et al.*, 56 N. L. R. B. 935.

[62] *Matter of Peter J. Schweitzer, Inc.*, 54 N. L. R. B. 813, enf'd 14 L. R. R. 629 (App. D. C.), decided July 10, 1944; *Matter of American Laundry Machinery Co.*, 57 N. L. R. B. 25; *Matter of Cameron Can Machinery Co.*, 57 N. L. R. B. 1768; *Matter of U. S. Automatic Corporation*, 57 N. L. R. B. 124.

Matter of Reliance Manufacturing Co., 56 N. L. R. B. 1083, the Board considered it necessary to order the employer, in addition to posting the general notice, to instruct all its employees that anti-union demonstrations will not be permitted in the plant at any time and to take effective action to enforce its instructions.

At times the Board is confronted with a situation where the employer has committed unfair labor practices from which it is clear that he is predisposed to commit other unfair labor practices. In these cases, the Board has sought to prevent such further violations of the Act either by an appropriate precautionary order or by a caveat in its decision. Thus, in *Matter of Rodgers Hydraulic, Inc.*, 51 N. L. R. B. 417, an employee committee, which had not functioned as a labor organization, had been established by an employer who had engaged in unfair labor practices. The Board ordered the employer not to recognize the committee in the event that it should begin to function as a labor organization. In a later case involving a similar situation with respect to a social club, the Board merely stated in its decision that disestablishment would be appropriate if the club should attempt to function in the future as a labor organization.[63] Similarly, in dismissing the allegation of a complaint alleging a violation of Section 8 (2) the Board, in view of its findings in a prior proceeding involving the same employer, included in its decision a caveat against recognizing or bargaining with any union unless and until it is certified by the Board.[64] Furthermore, where the employer had discriminated against a group of economic strikers upon the termination of the strike, the Board ordered the reinstatement, upon timely application, of the strikers who had entered the armed forces during the strike and against whom no discrimination was found.[65]

The mere fact that an employer may have complied with the recommended order of the Trial Examiner will not deter the Board from issuing a remedial order containing the same provisions if it appears that the issuance of such an order is necessary to effectuate the policies of the Act.[66] However, the nature of the remedial order may be determined by the failure of the parties to file exceptions to the Trial Examiner's recommendations, for in such cases the Board will adopt the recommended order even though in its view a different order might be more appropriate.[67] Since remedial orders are directed only against employers, the Board is sometimes confronted with the problem of determining whether the person who has engaged in the conduct, defined in the Act as an unfair labor practice, is an employer within the meaning of Section 2 (2) of the Act. Among those found by the Board to have acted in the interests of an employer so as to constitute them also as employers within the meaning of the Act, are a State Chamber of Commerce, and a secretary-manager of an association of farmers, as well as such association itself.[68] But an attorney who merely sponsored and assisted an organization banned by Section 8 (2), without acting on behalf of the Company, was held by the Board not to be an employer within the meaning of the Act.[69]

[63] *Matter of The American National Bank of St. Paul*, 52 N. L. R. B. 905.
[64] *Matter of Ford Motor Company*, 55 N. L. R. B. 897.
[65] *Matter of Indiana Desk Co.*, 56 N. L. R. B. 76.
[66] *Matter of Angelica Jacket Company and Monte Mfg. Co.*, 57 N. L. R. B. 451; *Matter of Eppinger & Russell*, 56 N. L. R. B. 1259.
[67] *Matter of Ford Motor Company*, 57 N. L. R. B. 1814; cf. *Matter of Henry Whiting*, 52 N. L. R. B. 1147.
[68] *Matter of American Pearl Button Company*, 52 N. L. R. B. 1113; *Matter of Holtville Ice and Cold Storage Co.*, 51 N. L. R. B. 596.
[69] *Matter of Thompson Products, Inc.*, 57 N. L. R. B. 925.

VI

LITIGATION

PROCEEDINGS in the United States Circuit Courts of Appeals for the enforcement or review of Board orders issued upon findings of unfair labor practices have continued to form the largest part of the Board's litigation. A very small proportion of the Circuit Courts of Appeals decisions has been reviewed by the Supreme Court. The past year has, as before, witnessed the institution of contempt proceedings by the Board for noncompliance with court decrees enforcing the Board's orders. Although there was a marked decline in the number of injunction actions brought by employers to restrain the Board and its agents from exercising the powers entrusted to them by the Act, a substantial number of suits of this character was initiated by labor organizations. A slight part of the Board's litigation was, as in the past, devoted to miscellaneous causes involving the administration of the Act.

There has been a progressive rise in the number and percentage of cases in which the Board has been successful in obtaining full enforcement of its orders. For example, during the fiscal year 1944 the Circuit Courts of Appeals reviewed 88 Board orders and enforced 74, or 84 percent, of them in full. This compares with full enforcement of 60 orders, or 62 percent, in the preceding year, and full enforcement of 53 orders, or 60 percent, for the fiscal year ended June 1942. The results of litigation involving enforcement or review of Board orders by the Supreme Court and the Circuit Courts of Appeals during the past fiscal year, and in the entire period since its inception, are summarized in the following table.

Table 6.—Results of litigation for enforcement or review of Board orders, July 1, 1943, to June 30, 1944, and July 5, 1935, to June 30, 1944

Results	July 1, 1943, to June 30, 1944		July 5, 1935, to June 30, 1944	
	Number	Percent	Number	Percent
Cases decided by U. S. Circuit Court of Appeals	88	100.0	528	100.0
Board orders enforced in full	74	84.1	305	57.8
Board orders enforced with modification	8	9.1	150	28.4
Board orders set aside	6	6.8	67	12.7
Remanded to Board	0	0.0	6	1.1
Cases decided by U. S. Supreme Court	5	100.0	46	100.0
Board orders enforced in full	5	100.0	35	76.1
Board orders enforced with modification	0	0.0	8	17.4
Board orders set aside	0	0.0	2	4.3
Remanded to Board	0	0.0	1	2.2

The proceedings for enforcement or review of the Board's orders, instituted in the Circuit Courts of Appeals, have, for the most part,

been concerned with the questions of whether the Board's findings of unfair labor practices are supported by substantial evidence and whether the Board's order represents a valid exercise of its powers to direct such affirmative action as will effectuate the policies of the Act. The standards of judicial review of Board findings have been repeatedly enunciated by the Supreme Court.[1] Applying these standards, the Circuit Courts of Appeals have, in most instances, permitted the Board's findings of unfair labor practices to stand, if adequately supported by the evidence in the case. In making this determination, they have accepted the Board's resolution of conflicting evidence and its inferences from the facts as final, if reasonably warranted, thereby properly refraining from a reexamination of the facts and according due consideration to the Board's expert knowledge and specialized experience in evaluating the evidence. Upon a review of the propriety of Board orders, the Courts have, similarly, in most instances, adhered to the pronouncements of the Supreme Court that the formulation of an appropriate remedy in each case is one for the broad discretion and informed judgment of the Board and that, if the Board's order is reasonably related to the unfair labor practices found and is otherwise within the scope of the Board's powers under the Act, it must not be overturned.[2] The Courts have also, in other types of actions involving the administration of the Act, been exclusively guided by the provisions and objectives of the statute. By recognizing and honoring the wide scope of the Board's powers, the Courts have cooperated with the Board in effectuating the public policy enunciated in the Act, a function which the Supreme Court has declared must be jointly exercised. They have at the same time pioneered with the Board in developing important principles in the law of labor relations.

While, during the 9 years of the Act's existence, many issues arising under it have by now found settled and uniform judicial disposition, new and hitherto unexplored questions have continued to emerge from the broad statutory outline of the Board's authority and from the vast and ever-changing economic scene in which the Act and the Board operate. The review of the Board's findings, orders, and functions in these areas has been of especial significance in the administration of the Act and in the simultaneous growth of the law of labor relations, as well as in the development of administrative-law principles. We shall, therefore, consider the important issues thus decided by the Courts.

THE SUPREME COURT

Of controlling effect in the interpretation and administration of the Act are the decisions of the Supreme Court. In the past year, the Supreme Court disposed of five cases involving the Act and the Board. Three of these were directly concerned with the collective bargaining mandate of Section 8 (5) of the Act. Their holdings have brought about a clearer and more definitive understanding of the collective bargaining concept as it affects both employee and employer and have served to reaffirm the extent of the Board's powers to promote the practice and procedure of collective bargaining. The two remaining

[1] The cases in which the Supreme Court has laid down the standards of review of Board findings are referred to in *Medo Photo Supply Corp.* v. *N. L. R. B.*, 64 S. Ct. 30.

[2] Among the cases in which the Supreme Court has enunciated this rule are: *International Ass'n of Machinists* v. *N. L. R. B.*, 311 U. S. 72, 82; *Phelps Dodge Corp.* v. *N. L. R. B.*, 313 U. S. 177, 194; *N. L. R. B.* v. *Falk Corp.*, 308 U. S. 453, 461; *N. L. R. B.* v. *Link-Belt Co.*, 311 U. S. 584, 600.

cases dealt with the question of the area in which the benefits and obligations of the Act may validly be held to apply. They established the important principles that the classes of persons to whom the guarantees of the Act are properly available may be as broad as the reaches of its policies permit and that the classes of employing enterprise to which the obligations of the Act extend are coterminous with the types of commercial activity subject to regulation under the Federal commerce power. The significance of these cases will appear from the following summary of the issues, the decision, and the *rationale* of each:

J. I. Case Co. v. *N. L. R. B.*, 321 U. S. 322, decided February 28, 1944. The Court had before it the question of whether the collective bargaining mandate of the statute permitted the Board to find that the existence of individual agreements, lawfully entered into between an employer and his individual employees, does not constitute a valid defense to the employer's refusal to bargain with the duly designated representative of those individual employees as to terms and conditions covered by such agreements. In upholding the Board's finding that the individual agreements can not operate to excuse the refusal to bargain, the Court interpreted as follows the meaning and purport of the exclusive representation principle of collective bargaining and its effect upon individual negotiations and agreements: Bargaining through a duly designated representative and the collective agreement which it contemplates are the means provided by Congress for eliminating the threat to industrial peace presented by individual differences in working conditions normally arising from individual bargaining. To effectuate the policies of the Act by making the benefits of collective bargaining available without discrimination to all employees in the unit, thereby removing the disparate advantages of individual dealing, the collective bargaining procedure must displace the process of individual negotiation and the collective agreement, reflecting the strength and bargaining power and serving the welfare of the group, must necessarily supersede whatever terms may have been arrived at through individual dealing. As soon, therefore, as a collective bargaining agent is designated by a majority of the employees in a unit, individual agreements may not, regardless of the legality of their origin, be relied upon to nullify the principles of majority rule and collective bargaining by delaying the initiation of the bargaining procedure for any employees in the unit, or by excluding the individual contracting parties from the unit, or by limiting or conditioning the terms of the agreement.

The Court went on to explain that this principle does not preclude the making of individual contracts as to matters outside the scope of the collective bargaining process, if no unfair labor practice is otherwise thereby committed.

Medo Photo Supply Corp. v. *N. L. R. B.*, 64 S. Ct. 830, decided April 10, 1944. Here, the Court had before it the question, closely allied to that decided in *J. I. Case*, of whether the Board had properly found that an employer had unlawfully refused to bargain with the duly designated representative of the employees in an appropriate unit by acquiescing in the request of a majority of the individual employees in the unit that he deal with them as individuals as to matters appropriately the subject of collective bargaining at a time when the bargaining agent's authority was not revoked by a majority in the unit. In sustaining the Board's finding, the Court emphasized

the principle that the collective bargaining benefits conferred by the Act can be realized only by exclusive dealing between the employer and the duly designated bargaining representative of his employees; and that, in accordance with its pronouncements in *J. I. Case*, once such a representative has been chosen and until its designation has been effectively and lawfully revoked, the employer must refrain from negotiating with individual employees in the unit and must confine his dealings to their representative, even to the extent of resisting, as he should have done here, the overtures of a majority of the employees in the unit that he deal with them instead of their collective agent. The Court also affirmed the Board's finding that the granting of the conditions requested by the individual employees with the knowledge that this would lead them to renounce their bargaining agent constituted an unlawful inducement by the employer for the unseating of the bargaining agent and the relinquishment by the employees of their basic rights under the Act.

Franks Bros. Co. v. *N. L. R. B.*, 64 S. Ct. 817, decided April 10, 1944. The point here at issue was whether, upon a finding that the employer had unlawfully refused to bargain with the duly designated representative of the employees in an appropriate unit, the Board could properly order him to bargain with that representative even though it had, after the original refusal to bargain and during the interval between the filing of charges and the issuance of the Board's complaint, lost its majority standing by personnel replacements incidental to the normal operations of the employer's business. The Court upheld the order as a reasonable exercise of the Board's discretion to determine how the effects of unremedied unfair labor practices shall be dissipated. It pointed out that the reasonableness of such a remedy lies in the recognition that a bargaining relationship, once rightfully established, must be permitted to exist and function for a reasonable period in which it can be given a fair chance to succeed and that otherwise the policies of the Act to promote collective bargaining would be frustrated and the recalcitrant employer would be permitted to profit from his own wrongdoing if he were allowed to inquire into the continued majority status of the bargaining representative after his unlawful refusal to bargain.

N. L. R. B. v. *Hearst Publications*, 64 S. Ct. 851, decided April 24, 1944. The issue presented by this case was whether the Board's finding that certain classes of persons are "employees" within the meaning of the Act and, therefore, entitled to the benefits of collective bargaining, should, like fact determinations, be permitted to stand on review if supported by substantial evidence. The Supreme Court, reversing the Circuit Court, sustained the Board's finding as grounded upon adequate supporting evidence; stated that the statute invested the Board, and not the courts, with the power to determine in the first instance whether an employer-employee relationship for purposes of the Act exists in each case; enunciated the rule that the Board, in making such determination is not bound by common-law concepts of master and servant but is rather to be guided by its own expert judgment as to whether the evidence in the case shows that the nature of the economic relationship involved is one in which the evils intended to be eliminated by the statute are present and can properly be removed by the protection of the statute; and declared that such a

determination must be permitted to stand on review if it has warrant in the record and a reasonable basis in law.

Polish National Alliance v. *N. L. R. B.*, 14 L. R. R. 454, decided June 5, 1944. Two novel questions involving the area of applicability of the Act were here presented: (1) Whether the activitis of an insurance business affect commerce within the meaning of the Act; and (2) whether the cultural and fraternal purposes of the enterprise withdraw it from the ambit of the Act. The Court held that neither the nature of the business nor the objectives to which it is devoted may operate to deprive the Board of jurisdiction over the enterprise if the basic test of whether its activities otherwise affect commerce is met. In so holding, the Court also enunciated the basic proposition that the Act exercises the full Federal commerce power, extending to activities in commerce as well as to those affecting commerce, and that, if the Board's finding that the unfair labor practices of an employer tend to burden and obstruct commerce is supported by substantial evidence, as it was held to be in this case, the Board's jurisdiction is established on review.

THE CIRCUIT COURTS OF APPEALS

Principles Established or Reaffirmed on Enforcement or Review of Board Orders Under Section 10 of the Act

1. *Classes of business enterprise whose unfair labor practices the Board may properly find tend to burden and obstruct commerce.*

a. An urban intrastate transportation company carrying daily between their homes and places of work a substantial percentage of the persons employed in manufacturing enterprises engaged in interstate commerce and transporting interstate travelers to and from the terminal stations of interstate carriers. *N. L. R. B.* v. *Baltimore Transit Co.*, 140 F. (2d) 51 (C. C. A. 4), cert. denied 64 S. Ct. 848.

In sustaining the Board's jurisdiction over the transportation company, the Court stated that the test of the Act's applicability is not restricted to whether the enterprise is itself engaged in interstate commerce but extends to whether its operations, and hence any labor disputes with its employees, tend to affect that commerce. It held that the test was here met by evidence showing that the city's far-flung interstate operations are so closely dependent on the company's facilities that a strike among the employees of the company would have a paralyzing effect upon the flow of interstate commerce through the city.

b. A "contract shop" engaged in processing garments for a local manufacturer, who receives raw materials from outside the State and ships a percentage of the garments processed to out-of-State points. *N. L. R. B.* v. *Van Deusen Dress Mfg. Co.*, 138 F. (2d) 893 (C. C. A. 2).

The Court sustained the Board's jurisdiction over the "contract shop" on the ground that (1) the work of the processor, although in itself intrastate in character, is an inseparable part of the interstate activities of the manufacturer and (2) the interstate operations of the manufacturer are so closely dependent on the activities of the processor that a labor dispute at the processor's plant would disrupt the interstate commerce of the manufacturer.

2. *Classes of persons whom the Board may properly find to have committed unfair labor practices as employers.*

a. The wife of a leading foreman who was herself not employed by the company but cooperated with it in the perpetration of unfair labor practices against the company's employees. *N. L. R. B.* v. *Taylor-Colquitt Co.*, 140 F. (2d) 92 (C. C. A. 4).

The Board based its finding that this individual was an employer and so responsible for the commission of unfair labor practices upon the fact that the company had ratified and approved her conduct. That finding was thereafter sustained by the Court on the broader ground that she had aided the employer in contravening the Act and was therefore responsible for her unfair labor practices as an employer within the statutory provision defining the term to include any person "acting in the interest of an employer."

b. The lessor, debtor, and close associate of an immediate employer who cooperated with that employer in committing unfair labor practices against his employees. *N. L. R. B.* v. *Northwestern Mutual Fire Ass'n*, 142 F. (2d) 866 (C. C. A. 9), cert. denied October 9, 1944.

The Court sustained the Board's finding that this individual, because of his relationship to the immediate employer and his assistance in the commission of the unfair labor practices, had acted "in the interest of an employer" and was, consequently, for purposes of the statute, himself an employer, whom the Board could properly have found to have violated the Act together with the immediate employer and against whom it could validly issue an order.

c. The holding-company parent of an operating subsidiary which directs and controls the labor relations policies enforced by the subsidiary against its employees. *N. L. R. B.* v. *Standard Oil Co. and Standard Oil Co. of New Jersey*, 138 F. (2d) 885 (C. C. A. 2).

The Court, without reference in its opinion, in fact upheld the Board's findings that the parent, which exercised clear and open control of the labor relations of the subsidiary, was responsible as an employer together with the subsidiary for the unfair labor practices committed against the employees of the subsidiary. In sustaining as valid the Board's order against the parent as well as the subsidiary, the Board's power to remove the effects of the unfair labor practices by prohibiting their formulation at the source as well as their ultimate execution was approved.

d. The person for whom another performs services under a contract and in the course thereof utilizes a staff of workers, where the first person exercises a degree of control over the work. *N. L. R. B.* v. *Long Lake Lumber Co.*, 138 F. (2d) 363 (C. C. A. 9).

The Court upheld the Board's finding that the principal, because of its dominion over the contractor's operations and its control of the staff of workers hired by the contractor, in the performance of those operations, was jointly liable as an employer, together with the contractor, for the unfair labor practices committed against these workers. The Court further held that additional support for the Board's conclusion that the principal was an employer is to be found in that portion of the Act which defines an employer as "any person acting in the interest of an employer, directly or indirectly."

3. *Classes of persons whom the Board may properly find to be entitled to the benefits of the Act.*

The Court upheld the Board's finding that employees engaged in the post-harvesting process of preparing potatoes for movement to commercial markets are not "agricultural laborers" within the mean-

ing of the exclusionary language of Section 2 (3) of the Act and that they are, consequently, entitled to the benefits of the Act. The test for determining that employees are not "agricultural laborers" but are among those classes of persons within the protection of the Act was again stated by this Court to derive from the purposes of the Act, not from agricultural custom or from other statutes. That test, the Court reaffirmed, is met by a showing that the employees do not work at farming but specialize in the processing of farm products for trade or shipment after they have been reaped or gathered. *N. L. R. B.* v. *Idaho Potato Growers, Inc.*, 14 L. R. R. 698 (C. C. A. 9), certiorari denied, November 6, 1944.

4. *Circumstances under which the Board may properly find that the policies of the Act are paramount to the employer's rules governing the use of property.*

This line of cases involves the validity of a plant rule prohibiting, in general terms, or with specific reference to union activity, solicitation or circularization, on the employer's property but on the employees' own time. A problem before the Courts on review of these cases is to determine whether there is support for the Board's finding that the rule was promulgated or enforced for discriminatory reasons rather than, as contended by the employer, for the efficient operation of the plant or business. The Courts have uniformly sustained the Board's finding that the promulgation or enforcement of such rule constitutes an illegal intrusion upon the organizational rights of the employees and that the imposition of penalties for noncompliance with the rule constitutes discrimination for union activity, if they believe that there is substantial evidence for the Board's conclusion that the rule was instituted, or relied upon, or enforced for the purpose of interfering with union activity and not for the efficient operation of the plant or business. *N. L. R. B.* v. *Peyton Packing Co.*, 142 F. (2d) 1009 (C. C. A. 5); *Carter Carburetor Corp.* v. *N. L. R. B.*, 140 F. (2d) 714 (C. C. A. 8); *N. L. R. B.* v. *Denver Tent & Awning Co.*, 138 F. (2d) 410.

Where, however, the Board's finding of illegality under the Act has not been based on evidence of an antiunion motive but upon a determination from the evidence that the organizational rights of the employees are paramount to the right of the employer to promulgate rules applicable to his property, the Courts have thus far, in the two cases of this kind, differed in their understanding of the authority conferred by the Act. In *Republic Aviation Corp.* v. *N. L. R. B.*, 142 F. (2d) 193, the Court of Appeals for the Second Circuit, in sustaining the Board's finding and order, outlined as follows its approach to the question and the applicable rule of judicial review: The basic issue is that of the reasonableness of the employer's conduct in promulgating and enforcing the rule; its disposition, like that of similar questions in other fields, requires a determination as to which of the conflicting interests involved shall have priority. Here, the conflict arises as between the possible benefits to the employer and the prejudice to the employees' rights under the Act. It is the function of the Board to award priority between these two interests on the basis of the facts found by it as to the relative benefits and injuries, evaluated in the light of its expert judgment. On review, unless it appears from the facts that there is no reasonable warrant for the Board's priority finding, the Court will not disturb the Board's award. In *LeTourneau*

Co. of Georgia v. *N. L. R. B.*, 143 F. (2d) 67, the Court of Appeals for the Fifth Circuit, in setting aside the Board's order, held that the Board is not empowered under the statute to find that a rule prohibiting generally the distribution of literature on the company's property, including union literature, constitutes unlawful interference with the organizational activities of the employees in the absence of a showing that this rule was promulgated, interpreted, or enforced for the purpose of preventing and curtailing union activity.[3]

Closely related to the question presented in the last two cases is that of the Board's power to find that the refusal of a shipowner to permit agents of the employees' bargaining representative to board the vessel for the purpose of conferring with union members, negotiating grievances, collecting dues, distributing union literature to members, and engaging in other conduct for their benefit constitutes unlawful curtailment of the right to bargain collectively. The Board's finding that the refusal of access for these purposes constitutes unlawful interference with the right of the employees to bargain collectively was upheld in *N. L. R. B.* v. *Richfield Oil Corp.*, 143 F. (2d) 860 (C. C. A. 9). The Court indicated that the reasonableness of the Board's determination that such access is a necessary and inherent incident of the right to bargain collectively appeared from the evidence as to the circumstances under which maritime employees live and work and from the failure of the employer to show any greater prejudice from the access of union representatives than from that of other types of outsiders not excluded from the vessels.

5. *Circumstances under which the Board may properly find that the policies of the Act are paramount to the employer's right of freedom of speech.*

N. L. R. B. v. *M. E. Blatt Co.*, 143 F. (2d) 268 (C. C. A. 3). In sustaining the Board's finding that certain statements made by an employer to his employees were coercive and, consequently, unlawfully inconsistent with the employer's duty to refrain from interfering with, restraining, or coercing his employees in the rights guaranteed to them by the Act, the Court reiterated the pronouncement of some of its earlier decisions that the "First Amendment does not guarantee him who speaks immunity from the legal consequences of his verbal actions." Clarifying this principle, the Court held that the Board may properly find that an employer who utters statements which, standing alone, or, in their context, tend to restrain the employees in the exercise of their rights under the Act is not protected by the free speech guarantees of the Constitution from the sanctions of the Act. To a similar effect are the holdings in: *N. L. R. B.* v. *Crown Can Co.*, 138 F. (2d) 263 (C. C. A. 8); *N. L. R. B.* v. *Glenn L. Martin-Nebraska Co.*, 141 F. (2d) 371 (C. C. A. 8); *Elastic Stop Nut Corp.* v. *N. L. R. B.*, 142 F. (2d) 371 (C. C. A. 8); *N. L. R. B.* v. *Lettie Lee, Inc.*, 140 F. (2d) 243 (C. C. A. 9).

Relevant to a consideration of this subject is the discussion of the following cases at page 66 of the Eighth Annual Report *N. L. R. B.* v. *William Davies Co.*, 135 F. (2d) 179 (C. C. A. 7), cert. denied, 320 U. S. 770; *N. L. R. B.* v. *Trojan Powder Co.*, 135 F. (2d) 337 (C. C. A. 3), cert. denied, 320 U. S. 768; *N. L. R. B.* v. *American Tube Bending Co.*, 134 F. (2d) 993 (C. C. A. 2), cert. denied, 320 U. S. 768.

[3] The conflict engendered by these two cases on whether such a rule may properly be prohibited under the Act will probably be decided by the Supreme Court this year, as petitions for certiorari have been granted in both cases.

6. *Kinds of affirmative action the Board may properly require upon a finding of unfair labor practices.*

a. The Board's power to require an employer, upon a finding that he unlawfully assisted or dominated a labor organization, to reimburse his employees for the amounts checked off from their wages as dues payments to such a labor organization was sustained as a valid exercise of the Board's discretion to order such affirmative relief as will effectuate the policies of the Act in *N. L. R. B.* v. *Cassoff*, 139 F. (2d) 397 (C. C. A. 2), and in *N. L. R. B.* v. *Baltimore Transit Co.*, 140 F. (2d) 51 (C. C. A. 4), cert. denied, 64 S. Ct. 848. The Court, in each of these cases, relied on a similar holding of the Supreme Court in *N. L. R. B.* v. *Virginia Electric & Power Co.*, 319 U. S. 533, where the check-off was made under a closed-shop agreement with a company-dominated labor organization. The Court of Appeals for the Second Circuit, in the *Cassoff* case, sustained the Board's order even though the organization was found to be company assisted in violation of Section 8 (1) of the Act rather than company dominated in contravention of Section 8 (2). Similarly, the Court of Appeals for the Fourth Circuit, in the *Baltimore Transit* case, where the union was company dominated but had no closed-shop agreement, held that the reasoning of the Supreme Court does not turn on whether the payments were made under a closed-shop agreement but rather on the finding that they were exacted in support of the employer's unfair labor practices and represent a loss incurred by the employees in consequence of those unfair labor practices.

b. The Board's power to order an employer to reopen a department, found to have been shut down temporarily for antiunion reasons, and to reinstate the employees discharged pursuant to this discriminatory conduct was upheld as an appropriate and valid exercise of its discretion to order such affirmative relief as will effectuate the policies of the Act in *N. L. R. B.* v. *Cape County Milling Co.*, 140 F. (2d) 543 (C. C. A. 8). Distinguishing this situation from one in which the shut-down is permanent, the Court stated that, as the Board had properly found the employer's conduct to constitute no more than a lock-out, the order did not raise the issue of the Board's power to direct the resumption of business operations finally and fully abandoned.

Principles of Administrative Law

The Courts have recognized that the Board, as an instrumentality fashioned by Congress to administer a public policy in a specialized field, must, under the terms of the statute and as an administrative agency, be permitted to operate with autonomy in certain limited areas. In addition, the Courts have relied on the Board's judgment in the field of labor relations and have declared it to be essential in reviewing Board findings of fact and orders that important weight be accorded that judgment. These rules of administrative law and review will be considered:

1. *The Courts will not interfere with the progress of Board proceedings or depart from the procedures of the Act.*

Elliott et al. v. *American Mfg. Co.*, 138 F. (2d) 678 (C. C. A. 5). Holding that the Court below had improperly rendered a declaratory judgment that an employer may, under certain circumstances, validly refuse access and information to agents of the Board investigating

charges of unfair labor practices, the Circuit Court of Appeals declared that the courts should not interfere prematurely in the proceedings of administrative agencies, or, without good reason, depart from statutory procedures. It pointed out that the Act provided an appropriate method, available to the employer, for testing the Board's subpoena powers.

Inland Container Corp. v. *N. L. R. B.*, 137 F. (2d) 642 (C. C. A. 6). Holding that the Act empowers the Courts to entertain a motion to adduce additional evidence only in unfair labor practice cases, the Court denied an employer's request for leave to adduce such evidence in a representation proceeding under Section 9 of the Act.

2. *The Courts will not prescribe the form or style of Board decisions.*

N. L. R. B. v. *Jasper Chair Co.*, 138 F. (2d) 756 (C. C. A. 7), cert. denied 64 S. Ct. 618. The Court, in passing upon the Board's practice of issuing "short-form" decisions (in which the Board expressly adopts as its own those findings and conclusions of the Trial Examiner with which it is in agreement), held that, as long as due process requirements are satisfied and the Board makes the findings of fact and issues an order in each case, the form and style in which its findings and order are to be couched are exclusively for the Board's determination.

3. *The Courts will not hold the Board to barren formalities or mere repetition in fact-finding statements.* *N. L. R. B.* v. *Regal Knitwear Co.*, 140 F. (2d) 746 (C. C. A. 2), cert. granted on another point October 9, 1944.

In sustaining as valid the Board's order requiring the reinstatement of an employee who had found substantially equivalent employment, the Court stated that the Board's failure to explain in its decision the reasons for the affirmative relief ordered did not conflict with the Supreme Court's direction in *N. L. R. B.* v. *Phelps Dodge Corp.*, 313 U. S. 177, that the Board make explicit findings in that case as to the considerations underlying its order of reinstatement despite the receipt of substantially equivalent employment. Refusing to remand the case to the Board for the making of such findings in this instance, the Court declared that, as the Board had fully set out its reasons in an earlier case, it must be assumed that they apply in all similar cases and that to require the Board to explain its action anew in each decision would be to hold it to mere formality and repetition.

4. *The Courts will not limit the Board's powers to enforce the policies of the Act by applying the doctrine of estoppel or res judicata to its administrative determinations.*

a. The Board's earlier determination not to proceed against an employer for jurisdictional reasons does not bar the subsequent institution of unfair labor practice proceedings against that employer, for mistaken action or inaction of an administrative agency cannot operate to deprive the public of the benefits of the statute conferred by Congress and administered by the agency. The principle of *res judicata* does not apply to the administrative determinations of such an agency. *N. L. R. B.* v. *Baltimore Transit Co.*, 140 F. (2d) 51 (C. C. A. 4), cert. denied 64 S. Ct. 848. It should be noted that the earlier determination of the Board related merely to a question of whether or not to initiate a proceeding and was not a determination on the merits.

b. The Board is not prevented by a settlement agreement from inquiring into the conduct engaged in by the employer prior to the agreement and from making findings of unfair labor practices and issuing an appropriate order on that antecedent conduct, for the Board cannot be estopped by its earlier administrative action from performing its statutory duty to prevent the commission of unfair labor practices. It is for the Board alone to determine, however, in the exercise of its discretion, to what extent its unfair labor practice findings should be influenced by settlement agreements. *N. L. R. B.* v. *Phillips Gas & Oil Co.*, 141 F. (2d) 304 (C. C. A. 3).

c. The Board is not precluded by a consent agreement providing for the participation of a labor organization in an election, or by a certification of the organization as bargaining representative, from subsequently finding that organization to be company dominated and ordering its disestablishment, particularly where employer interference continues after the agreement, election, or certification. In *Wallace Corp.* v. *N. L. R. B.*, 141 F. (2d) 87 (C. C. A. 4), enforced by the Supreme Court, 15 L. R. R. 505, December 18, 1944, the Court of Appeals for the Fourth Circuit declared that, although settlements approved by the Board should ordinarily be observed and administrative orders should not be lightly disregarded, these are guides for the exercise of discretion by the Board, not limitations upon its power to prevent unfair labor practices by considering conduct antecedent to the agreement and certification. The Court of Appeals for the Tenth Circuit, in *Utah Copper Co.* v. *N. L. R. B.*, 139 F. (2d) 788, cert. denied 64 S. Ct. 946, in sustaining a finding of company domination on conduct both antecedent and subsequent to a consent-election agreement and certification, pointed out that Section 9 of the Act, under which the Board has adopted the consent-election procedure, is separate and distinct from Section 10, under which the Board is empowered to prevent the commission of unfair labor practices. The same principle was applied in *N. L. R. B.* v. *Locomotive Finished Material Co.*, 142 F. (2d) 802 (C. C. A. 10). It should be noted that the Board does ordinarily, as a matter of administrative discretion, hold parties to their agreements.

5. *The Courts will not interfere with the methods adopted by the Board for ascertaining the bargaining representative in an appropriate unit.*

In *N. L. R. B.* v. *Capitol Greyhound Lines*, 140 F. (2d) 754 (C. C. A. 6), cert. den. 64 S. Ct. 1285, the Court sustained as proper the Board's action in according finality to the rulings of its Regional Director on the conduct and results of a consent election upon a finding by the Board that such rulings were neither arbitrary nor capricious. Enforcing the Board's order directing the employer to bargain with the representative designated by the Regional Director, the Court stated that the Board has exclusive authority under the Act to select suitable methods for ascertaining the bargaining representative in an appropriate unit and that the Court will not set itself up as a judge of those methods.

6. *The Courts will honor a Board certification as conclusive evidence of a bargaining agent's authority for a reasonable period.*

In holding that the Board may properly rely upon a certification of a bargaining agent (made in one case after a Board directed elec-

tion and in another by a Regional Director pursuant to a consent election agreement) as evidence of a bargaining agent's authority to bargain with the employer for a reasonable period even in the face of attempts by the employees to revoke the agent's authority, the Courts have recognized that Board certifications, the most reliable means of ascertaining the employees' wishes, must have some measure of permanence if the statutory purpose of stability in bargaining relations is to be achieved. *Appalachian Electric Power Co.* v. *N. L. R. B.*, 140 F. (2d) 217 (C. C. A. 4), where the attempted revocation was made within 2 months of the Board's certification; *N. L. R. B.* v. *Century Oxford Mfg. Corp.*, 140 F. (2d) 541 (C. C. A. 2), cert. denied October 9, 1944, where the attempted revocation was made within 6 weeks of the Board's certification. In the latter case, the Court stated that the determination of the effective period of a certification "is a matter primarily, perhaps finally, for the Board."

7. *The Courts will not recognize a limitation upon the Board's expenditures as a restriction upon their enforcement powers.*

This principle was announced in each of three proceedings brought by the Board for the enforcement of its order disestablishing a labor organization found to be company dominated and nullifying a collective agreement between the employer and the organization. *N. L. R. B.* v. *Elvine Knitting Mills*, 138 F. (2d) 643 (C. C. A. 2); *N. L. R. B.* v. *Baltimore Transit Co.*, 140 F. (2d) 51 (C. C. A. 4), cert. denied 321 U. S. 795; *N. L. R. B.* v. *Thompson Products, Inc.*, 141 F. (2d) 794 (C. C. A. 9). In each, the employer contended that the Board was barred from instituting the proceeding by a limitation upon its appropriation for the past fiscal year prohibiting the use of its funds "in connection with a complaint case arising over an agreement between management and labor which has been in existence for 3 months or longer without complaint being filed." The Courts, in rejecting this contention, held that the Appropriations Act, regulating the Board's expenditure of moneys, cannot be construed to operate as a substantive amendment of the powers of the Courts under the statute to review Board orders.

8. *Areas in which the Courts have accepted the Board's expert judgment as controlling.*

a. Appraisal of the relative benefits to the employer and the prejudice to the rights of the employees under the Act of a rule prohibiting solicitation on company property. *Republic Aviation*, discussed supra, p. 57.

The Court of Appeals for the Second Circuit acknowledged that the Board's specialized judgment in such a matter is to be accepted unless arbitrary.

b. Appraisal of the impression likely to be made on employees concerning their employer's attitude toward the union whose stewards are permitted to wear union buttons in the plant before the union attains majority status. *Republic Aviation.*

The Court, in upholding as valid the Board's finding that the refusal to permit the wearing of steward's buttons constituted interference with legitimate union activity, declared that the determination of whether the permitting of such a display would lead the employees to believe that the employer favored and recognized the union as majority representative is "preeminently one for those versed in trade-union lore" and not for the Court.

c. Appraisal of the duration of the effect of employer domination upon employees. *N. L. R. B.* v. *Standard Oil Co., et al.*, 138 F. (2d) 885 (C. C. A. 2).

In sustaining the Board's finding that a labor organization did not represent the free choice of the employees because it inherited the infirmities of its outlawed predecessor, the Court declared that the Board's special acquaintance with labor relations renders it more competent than the Courts to make this judgment and that, indeed, as an expert administrative tribunal in a specialized field which has become the subject of wide study and extensive literature, the Board enjoys an advantage "which no bench of judges hope to rival."

Cases in Which the Board's Order Was Denied Enforcement in Whole or in Part

During the past fiscal year the Circuit Courts of Appeals set aside the Board's order in six cases and denied enforcement of a portion of the Board's order in eight cases. Of the first group, three cases turned on the general question of the substantiality of the evidence relied upon by the Board in support of its findings of unfair labor practices. *Boeing Airplane Co.* v. *N. L. R. B.*, 140 F. (2d) 423 (C. C. A. 10); *N. L. R. B.* v. *Clinton Woolen Mfg. Co.*, 141 F. (2d) 753 (C. C. A. 6); *N. L. R. B.* v. *The Brown-Brockmeyer Co.*, 143 F. (2d) 538 (C. C. A. 6). In a fourth case, involving the validity of the Board's finding of a refusal to bargain, the Court held that the Board's conclusion that the union commanded the requisite majority in the appropriate unit was incorrect as a matter of law on a showing that some of the employees, sufficient in number to affect the majority, had not of their own free will authorized the union to represent them. *N. L. R. B.* v. *Dadourian Export Corp.*, 138 F. (2d) 891 (C. C. A. 2). In *N. L. R. B.* v. *Bradford Machine Tool Co.*, 138 F. (2d) 246 (C. C. A. 6), the Court refused to sustain as proper the Board's finding that the employer had illegally participated in the selection of his employees' bargaining representative by granting exclusive recognition to that representative and according it certain contract terms on bargaining authorizations which depended for their finality on the granting of such contract terms to the representative. The sixth case, *Le Tourneau Co. of Georgia* v. *N. L. R. B.*, is discussed at page 57 *supra*.

Of the eight cases in which the Board's order was denied enforcement in part or was modified in part, two turned on the general question of the substantiality of the evidence to support some of the Board's findings of unfair labor practices. *N. L. R. B.* v. *Register Publishing Co.*, 141 F. (2d) 594 (C. C. A. 7); *N. L. R. B.* v. *Duncan Foundry & Machine Works*, 142 F. (2d) 594 (C. C. A. 7). In four cases, the Court sustained the Board's findings of unfair labor practices but for various stated reasons modified in slight degree the Board's order on those findings. *Berkshire Knitting Mills* v. *N. L. R. B.*, 139 F. (2d) 134 (C. C. A. 3); *N. L. R. B.* v. *American Creosoting Co.*, 139 F. (2d) 193 (C. C. A. 6); *Consolidated Aircraft Corp.* v. *N. L. R. B.*, 141 F. (2d) 785 (C. C. A. 9); *Richfield Oil Corp.* v. *N. L. R. B.*, 143 F. (2d) 860 (C. C. A. 9). In *Western Cartridge Company* v. *N. L. R. B.*, 139 F. (2d) 855, petition for rehearing denied, 139 F. (2d) 860 (C. C. A. 7), the Court denied enforcement of that part of the Board's order requiring the reinstatement with back pay of discharged strikers, who, although union members, had engaged in concerted activity as a separate group rather than as union adherents. The Court held that, under these circumstances, the Board could not properly find that the discharges constituted a violation of Section 8 (3) of the Act, as no dis-

couragement of membership in the union was shown and the Board had failed specifically to find that the discharges were made to discourage membership in the separate organization represented by the strikers. The Court refused to sustain these portions of the order as an appropriate remedy under Section 8 (1) of the Act on the ground that the Board had not found that the discharges directly violated Section 8 (1). In *N. L. R. B.* v. *Waples-Platter Co.*, 140 F. (2d) 228 (C. C. A. 5), although the Court refused to enforce the back-pay provision of the Board's order on the ground that the evidence was insufficient to support the Board's finding that the employer had in effect discriminatorily discharged certain employees by transferring them to jobs which they refused to accept, it nevertheless affirmed as valid the Board's order of reinstatement on the ground that it was warranted by evidence showing antiunion conduct by the employer against these employees.

Contempt Proceedings

The Circuit Courts of Appeals, in determining whether there has been compliance with their decrees sustaining Board orders on findings of unfair labor practices, have examined the employer's conduct in the light of the Board's determination of the illegality of such conduct in unfair labor practice cases and have also exercised their own independent judgment in the matter. Three cases will demonstrate the different approaches in contempt proceedings:

Great Southern Trucking Co. v. *N. L. R. R.*, 139 F. (2d) 984 (C. C. A. 4) cert. denied 64 S. Ct. 944. The Court, in adjudging the employer corporation and its president in contempt of its decree enforcing the Board's bargaining order, held that the obligation to bargain was not dissolved by reason of the union's loss of membership occasioned by a substantial turn-over in the employer's working force. Announcing the same principle in enforcing its decree as did the Supreme Court in sustaining the Board's order in the *Franks* case (*supra*, p. 54), the Court here stated that, until the employer remedies his prior unfair labor practices by bargaining in good faith with the union, it can not be said that the union's loss of majority is not related to the employer's earlier unlawful refusal to bargain.

N. L. R. B. v. *Edward G. Budd Mfg. Co.*, 142 F. (2d) 922 (C. C. A. 3). Here, the Court refused to hold in contempt of its noninterference decree an employer who, simultaneously with his posting of a notice giving assurance of nonintrusion upon the employees' rights under the Act, sent each employee a letter praising the accomplishments of a company-dominated union ordered disestablished and expressing a preference for the formation of a new unaffiliated labor organization. The Board and the employer framed the issue in conformity with the Supreme Court's holding in the *Virginia Electric* case (*supra*, p. 54) and presented the contempt case to the Court on the question of whether the letter, viewed against the background of the unfair labor practices found by the Board, constituted a violation of the Court's decree. The Court held that, in contempt proceedings, it was free to regard the letter in isolation and that, so viewed, that communication was protected by the free speech guarantees of the Constitution and did not violate the decree.

N. L. R. B. v. *Reliance Manufacturing Co.*, 143 F. (2d) 761 (C. C. A. 7). The Court here held that the employer corporation and those in

charge of its management had interfered with an employee election for the determination of representatives by publishing in local newspapers the company's sales slogan, "Rely on Reliance," by permitting its supervisors to display that slogan in the plant, by polling the employees on their voting intention, and by general remarks against the union. Rejecting the contention that the publication of the slogan was a privileged exercise of the right of free speech, the Court held that, viewed in the light of the surrounding circumstances, it was an exhortation to the employees to vote against the union and as such contravened the mandate of the decree prohibiting interference, restraint, or coercion in the exercise of the rights guaranteed by the statute. The Court ordered the corporation and its officers to purge themselves of the contempt by appropriate notices to be posted in the plant, distributed to the individual employees, read over the public address system in the plant, and published in the same newspapers in which the advertising slogan had appeared.

Compliance (Post-Decree) Litigation Other Than Contempt

In addition to contempt proceedings, the Circuit Courts of Appeals during the past year have acted in proceedings brought after and involving decrees enforcing Board orders.

In *N. L. R. B.* v. *Empire Worsted Mills, Inc.* (C. C. A. 2), the Board, after decree,[4] pursuant to remand by the Court, held a hearing and made a formal determination of the amounts due under the back-pay provision. Thereafter, on motion of the Board, the Court amended the provision of the decree awarding back pay by incorporating in it the amounts found to be due under the Board's computation. This procedure followed the doctrine previously laid down by the Second Circuit in *N. L. R. B.* v. *New York Merchandise Co.*, 134 F. (2d) 949, in which the Court said that the findings of the Board as to the amounts due are made by it "as a Board and not as a surrogate of the Court," and if supported by evidence, are as conclusive upon the Court as findings of the Board in an original proceeding.

In the *Empire Worsted* case, the Court in confirming the back-pay award established the following principles:

1. *Deduction for periods in which employees were incapacitated due to childbirth.*

During the back-pay period certain of the claimants bore children. The employer claimed that back pay should be disallowed for the entire period of discrimination beginning with the period 3 months before childbirth. Instead, the Board suspended back pay only for a 6-month period, beginning 3 months before and ending 3 months after childbirth. The Court upheld the Board, stating, "it lay upon the respondent to prove any deduction beyond a fair minimum such as the Board has found."

2. *Additional time spent in housework as "earnings."*

The employer claimed a deduction from back pay to the extent of the reasonable value of the services performed by married women claimants as housewives during the period of idleness caused by discrimination. The Court upheld the Board in refusing to grant the claimed reduction, stating that "these employees who did their own

[4] Reported in 129 F. (2d) 668.

housework while idle, cannot be said to have made 'earnings' by so doing."

Eagle-Picher Mining & Smelting Co. v. *N. L. R. B.*, 141 F. (2d) 843 (C. C. A. 8), involved the extent of the right of the Board to reconsider the adequacy of its remedy after enforcement by a Court decree. There, the Board, after decree,[5] petitioned the Court to remand the case to the Board for the purpose of considering the advisability of a different back-pay remedy. In support of the petition, it was argued that the back-pay remedy in force was a highly special one which had been devised in the mistaken belief that employment was unavailable for all the employees found to have been discriminated against, but that the remedy as applied to the actual situation appeared to deprive the claimants of recompense for a large portion of their estimated losses occasioned by the discrimination. The charging union, which represented the claimants, also asked that the case be remanded to the Board, and, as an additional reason, pointed out that the formula contained a verbal error which seriously distorted the back-pay remedy when applied to the actual employment situation. However, the Court refused to remand the case, stating that it was not convinced that the Board formulated the back-pay remedy upon the basis of a mistaken belief as to the number of jobs available for employees or that the remedy in question, in spite of its fractional award of back pay, resulted in an unfair administration of the Act.[6]

[5] Reported in 119 F. (2d) 903.
[6] The Supreme Court granted certiorari on October 23, 1944.

VII

STUDIES OF THE RESULTS OF BOARD ACTIVITIES

DURING the past year the Board continued its program of operations analysis. This program was designed to enable the Board to review and evaluate its policies and practices in the light of experience. In general, the analysis sought to ascertain the extent to which the purposes of the Act were effectuated and the frequency with which collective bargaining relationships were established subsequent to the processing of election and unfair labor practice cases by the Board. A brief report is here given of the major results of these statistical studies of experience.

RESULTS OF UNFAIR LABOR PRACTICE CASES

Study of unfair labor practice cases leads to the conclusion that the Board ultimately obtains substantial compliance with its orders in the great majority of cases. A few are set aside by the courts. In rare instances circumstances make the question of compliance of no practical consequence or impossible of achievement. Less than 100 percent compliance is sometimes approved when the policies of the Act are effectuated by such action. Available evidence indicates, however, that in all but a small number of cases substantial compliance with the orders of the Board is ultimately obtained.

The success of the Board in handling unfair labor practice cases is to be judged also by the extent to which collective bargaining follows compliance with the Act. It is not implied that the Board can claim sole credit for the establishment of collective bargaining following compliance with the Act. Board action is only one of many factors determinative of the result. (For example, the type of union activity and the state of the labor market are important.) Nevertheless, where differences are found in the extent of collective bargaining after various types of cases, or between companies involved in N. L. R. B. cases and others, the conclusion is warranted that the results are in part, at least, due to Board action.

Collective bargaining has been found in effect in two-thirds or more of the unfair labor practice cases studied, after compliance was achieved. Even where courts have enforced orders to bargain despite claims that unions have lost their majorities, stable bargaining relationships have been established in a very large number of cases. The cases adjusted by informal methods (i. e. without formal hearings and written findings) show a somewhat greater success in the extent of later collective bargaining than do those which go through formal procedures of Board and court action. Larger plants involved are covered by contracts to a greater degree than are the small plants. The union which filed the original charge is the one that obtains the contract in all but a small number of cases.

It is significant that in those situations where there have been unfair labor practices and compliance with the Act has been achieved through Board procedures, the coverage by collective bargaining contracts is more extensive than otherwise. Nearly 75 percent of the employees involved in these cases are included under collective bargaining relationships. The U. S. Bureau of Labor Statistics [1] estimates the coverage of collective bargaining agreements in January 1944 as almost 45 percent of all workers in private industry, and 60 percent of the wage earners in manufacturing. The Board cases include nonmanufacturing and white-collar employees as well as those in manufacturing. A significantly greater coverage by collective bargaining relationships than the general average for manufacturing, nevertheless, is indicated for situations in which unfair labor practices have been remedied through Board action.

Another indication of the degree to which the policies of the statute are effectuated by Board action in unfair labor practice cases is the absence of subsequent valid charges of such practices. Later charges of unfair labor practices, which were upheld by the Board, occurred in a very small number of cases, not over 10 percent for any group of cases studied. Cases which went through formal procedures, however, showed somewhat fewer later violations.

ADJUSTMENT OF UNFAIR LABOR PRACTICE CASES

The Board normally disposes of a substantial number of cases through informal adjustment; that is, the parties settle the issues so as to meet the requirements of the Act without the institution of formal proceedings. This method of adjusting cases compares favorably, as regards its success in effectuating the policies of the Act, with cases which invoke formal procedures. Judged by the extent of later collective bargaining, the informal cases are slightly more successful.

These conclusions are based on a study of 800 unfair labor practice cases closed by informal adjustment and 141 cases closed upon compliance after formal action in 6 of the Board's Regional Offices during the calendar years 1941 and 1942. These cases cover a great variety of industries, unions, types of community, and geographic areas ranging from New England to the Middle West, Southwest, and California. The 800 adjusted cases constitute 18.6 percent of approximately 4,300 cases closed by informal adjustment in the 2-year period. The 141 formal cases comprise 21.7 percent of the national total of 650 cases closed on compliance with Intermediate Report, Board order, or court decree.

Collective bargaining, as shown by either signed contracts or negotiations in process, was in effect in about two-thirds of the cases by the fall of 1943. As shown in table 7, for the 800 adjusted cases the percentage is 67.0 and for 141 formal cases 60.0. The formal cases tended to be the more complex and difficult ones. Also, in a larger proportion of them, unions were required to undergo further representation proceedings before the Board in order to achieve recognition. Both these factors, no doubt, help explain the greater extent of collective bargaining following informal adjustment of cases.

As between the informally adjusted cases and the formal cases,

[1] Monthly Labor Review, April 1944, p. 697.

Table 7.—Extent of collective bargaining in 1943 following unfair labor practice cases closed by informal adjustment or on compliance after formal action, during 1941 and 1942, in 6 Regions

Basis on which case closed	Number of cases	All cases with collective bargaining information available					Company out of business	Information not available
		Total	Collective bargaining in effect		No collective bargaining			
			Number	Percent	Number	Percent		
Adjusted	800	772	517	67.0	255	33.0	10	18
Compliance after formal action	141	135	81	60.0	54	40.0	5	1
Board order [1]	66	65	35	53.8	30	46.2	0	1
Consent decree	50	47	30	63.8	17	36.2	3	0
Court order	25	23	16	69.6	7	30.4	2	0
Total [2]	936	902	597	66.2	305	33.8	15	19

[1] Includes 16 with Intermediate Report only.
[2] Five units had both formal and adjusted cases during this period. The duplications are eliminated in the totals.

the latter show a higher percentage of collective bargaining in 1943 for cases involving a company-dominated union. A contractual relationship was in effect by 1943 in 36, or 81.8 percent, of 44 formal cases, as compared with 42, or 67.7 percent, of 62 adjusted cases. For cases involving all other types of violation of the Act, however, the percentage with bargaining relations in effect in 1943 was larger for the informally adjusted cases than for those which had gone through formal procedures.

Informally adjusted cases show a history of slightly more later charges of unfair labor practices, and substantially more of such later charges of violations which have been upheld, than do the formal cases. Later charges of violation of the Act were filed, as shown in table 8, in 19.1 percent of the informally adjusted cases and in 17.0

Table 8.—Number and disposition of later charges[1] following unfair labor practice cases closed on informal adjustment or compliance after formal action during 1941 and 1942, in 6 Regions

Basis on which case closed	Total cases	Number with later charges		Number with later charges upheld or pending		Number and disposition of later charges				
		Number	Percent of total	Number	Percent of total	Total cases	Withdrawn or dismissed	Adjusted	Board order	Pending
Adjusted	800	153	19.1	80	10.0	209	120	76	7	6
Compliance after formal action	141	24	17.0	6	4.3	40	31	5	0	4
Board order [2]	66	11	16.7	2	3.0	19	15	0	0	4
Consent decree	50	9	18.0	2	4.0	11	9	2	0	0
Court order	25	4	16.0	2	8.0	10	7	3	0	0
Total	[3] 936	175	18.7	84	9.0	245	148	80	7	10

[1] Includes all filed through November 1943, and their disposition as of February 1944.
[2] Includes 16 with Intermediate Report only.
[3] Five units had both formal and adjusted cases during this period. The duplications are eliminated in the totals.

percent of the formal cases. Such charges were either upheld or still pending in 4.3 percent of the formal cases and in 10 percent of the informal cases. This 10-percent recurrence of unfair labor practices after the first adjustment is, on the whole, evidence of success in the informal adjustment of cases, particularly in view of the finding of the existence of contractual relationships in two-thirds of the adjusted cases.

The collective bargaining relationship in effect in 1943 in the majority of cases involved the union which filed the charges of unfair labor practices. In the 722 informally adjusted cases on which information was available, the charging union held the contract in 466 cases (60.4 percent), some other union in 51 (6.6 percent), and no collective bargaining was in effect in 255 cases (33 percent). In 135 formal cases, the charging union had a contractual relationship in 67, nearly one-half, and another union in 14, or 10.4 percent, while no such relationship was in effect in 54 cases, or 40 percent.

ENFORCEMENT OF ORDERS TO BARGAIN DESPITE CLAIMS OF UNION LOSS OF MAJORITY

Enforcement of collective bargaining orders has been resisted in many cases on the ground that the union, which prior to the unfair labor practices had been the majority representative, no longer represented a majority of employees. A study of the results of court orders to employers to bargain with unions, despite such claims, indicates that stable bargaining relationships are established in the great majority of cases.

The study covers all 46 known cases in which the loss of majority issue was raised as a defense against enforcement and in which there was an opportunity to bargain before January 1, 1944.

Contracts resulted from the bargaining that followed court decrees in 39 of the 46 cases, while the bargaining situation was still inconclusive as to 2 cases. In 5, negotiations failed to culminate in agreement. The substantial number of these contracts that were renewed beyond their initial term evidences the vitality of the relationships that were established. Of 26 contracts which completed their original terms, 21 were renewed; 2 four times, 1 three times, 7 twice, 11 once, while 5 expired without renewal. Two of those renewed expired at the end of their second term. Thirty-one contracts were still in effect in January 1944 and betokened relationships that lasted for periods ranging from a few months to over 5 years for 1 contract.

The length of time consumed in securing a final court decree does not appear to have any significant effect upon the success of unions in obtaining and holding contracts after the decree. Thus, in the three cases in which 4 years or more elapsed between the filing of the original charge and final court review, bargaining resulted in contracts which have been renewed once and were still in effect at the time of the research.

The strong impetus given to the promotion of legitimate collective bargaining by the elimination of company-dominated unions is shown by the success of unions in securing and obtaining contracts in cases in which the order to bargain is combined with a direction to dises-

tablish a dominated organization. In all 14 cases in this category, contracts resulted which were still in effect in January 1944. Of the 14 original contracts, 4 had not yet expired and the remainder had been renewed from 1 to 4 times. Cases in which violations of other sections of the Act were combined with Section 8 (5) violations do not present any such clear-cut relationship.

Those cases in which contracts were signed after court enforcement of the Board's order to bargain are relatively free of later charges of unfair labor practices. Only four cases were involved in such later charges and in no case was further formal action required.

VIII

SPECIAL STATUTORY FUNCTIONS VESTED IN THE BOARD, WAR LABOR DISPUTES ACT AND TELEGRAPH MERGER ACT

IN THE last Annual Report the Board discussed two new statutory functions which Congress has designated the Board to perform. These are (1) the conduct of strike ballots pursuant to Section 8 of the War Labor Disputes Act,[1] and (2) the administration of the labor-protection provisions embodied in Section 222 (f) of the Telegraph Merger Act.[2] On the date of preparation of the Eighth Annual Report the Board had just embarked upon the administration of each of these statutes and, consequently, had done little more than establish the necessary procedures, promulgate the basic regulations, and hew out the general principles governing the application of their provisions. These procedures, regulations, and governing principles have since been tested by more than a year of day-to-day operation, and, in general, have demonstrated themselves to be sound. Some modifications both in procedure and guiding principles have of course been made as a result of experience. But, in the main, the basic procedures and general principles which were established at the outset, and which are described in the last Annual Report,[3] are still followed. With more than a year of experience in administering the statutory provisions back of it, however, the Board is now in a position to analyze and in some measure appraise the operation of these statutory provisions.

WAR LABOR DISPUTES ACT

The Board's sole function under the War Labor Disputes Act is to conduct strike ballots and certify the results to the President. The statute was passed on June 25, 1943, and, consequently, was in operation throughout the entire fiscal year 1944. During that year, dispute notices were filed in 1,089 cases.[4] In 75 of these cases the employees involved were found to be engaged in enterprises which were not covered by the statute; and in 40 cases the notices did not become effective because they did not otherwise meet the statutory requirements. Thus, 974 valid and effective dispute notices were filed during the fiscal year. Fifty-four of these were pending at the close of the year, leaving a total of 920 cases in which the Board took some or all of the steps necessary for the conduct of strike ballots. Strike votes were actually taken by agents of the Board in 232 cases involving 381 separate voting units. And, in 323 of these units, the majority of the employees to whom the dispute was applicable cast their votes in favor of a strike. Only 34 units showed majorities voting

[1] 57 Stat. 163 (1943).
[2] 57 Stat. 5 (1943).
[3] See Chapter IX, Eighth Annual Report.
[4] See tables 1 and 2 in Appendix, p. 92.

against a strike, there being 12 elections in which no votes were cast and 2 others resulting in a tie vote.

The Board has noted with interest a report appearing in the September issue of the Monthly Labor Review as to the number of actual strikes occurring in cases in which strike ballots were conducted by this agency pursuant to the War Labor Disputes Act.[5] This report states that over the entire first year of operation of the War Labor Disputes Act, during which time strike votes were conducted in 232 cases and a majority voted to strike in 203 cases, only 64 strikes took place following the strike ballots conducted by this Board. It also points out that these strikes amounted to only 1.4 percent of all strikes which occurred during that period.

An analysis of the major issues giving rise to the disputes in the 232 cases in which ballots were conducted last year reveals that a large proportion of the strike notices were filed for the purpose of attempting to influence by threat of strike the action of governmental agencies in cases pending before them, or were filed for the purpose of expressing an objection to action already taken by such governmental agencies. Typical of this group of cases is one in which a union files a strike notice in protest against the alleged delay of governmental agencies in passing upon the union's demand for a wage increase; or a case in which a union files a strike notice in protest against the action of such governmental agencies in denying its demand for such wage increase. These cases accounted for 85, or 36.6 percent, of all cases in which strike ballots were conducted last year, and involved slightly more than one-half of all valid strike votes cast.

A second large group of cases involved disputes between labor unions and employers concerning substantive terms of employment. This type of dispute was present in 97 cases, or 41. 8 percent of all cases. Also relating to disputes between unions and employers were the cases involving union organization issues, such as demands for union shops or closed shops and maintenance-of-membership. These issues were responsible for 29 strike elections, or 12.5 percent, of all cases in which strike votes were conducted. All other issues accounted for 21 strike votes, or 9.1 percent of the total.

The type of issues involved in the cases which have gone to a vote tends to indicate that labor organizations are making use of the strike ballot machinery of the War Labor Disputes Act to dramatize and focus public attention on their demands and to marshal employee support for the union's position. The character of the disputes also point to the conclusion that unions are seeking to make use of the strike ballot to bring pressure in the form of a strike threat to bear upon the governmental agencies dealing with labor disputes, either in the hope of obtaining more favorable decisions or more rapid ones. A small number of strike notices have been filed with respect to action taken by the National Labor Relations Board.[6] A typical case was one in which a union filed a strike notice in protest against a decision of the Board dismissing the union's petition for a representation election on the ground that it was untimely. The strike referendum resulted in a majority vote in favor of an interruption of work, and thereupon the union requested reconsideration of the representation

[5] See Monthly Labor Review Vol. 59, No. 3, at p. 572, September 1944.
[6] Action taken by this agency was directly involved in only 10 cases during the entire year.

case, contending that the majority vote in favor of a strike established the majority status of the union. Thus, in this case, and the same is true of others, the union sought to utilize the strike vote to achieve a result which had already been denied it under the normal processes of the National Labor Relations Act. In this and other cases, however, this tactic has not been successful. The Board pointed out in a written decision[7] that the conduct of strike ballots under the War Labor Disputes Act is entirely independent of the representation proceedings conducted pursuant to Section 9 (c) of the National Labor Relations Act; and that the Board, as an agency of the Federal Government, will not allow itself to be influenced in any way in the conduct of its proceedings by any pressure brought to bear on it through strikes or threats of strike.

TELEGRAPH MERGER ACT

As is set forth in the Eighth Annual Report.[8] the Board's function under the Telegraph Merger Act [9] is to enforce the labor-protection provisions of Section 222 (f). In general, this section of the statute was designed to see to it that employees of merged telegraph carriers shall not suffer with respect to their compensation and character and conditions of employment as a consequence of such merger. Thus, employees of merged carriers, subject to the conditions and limitations set forth in the statute, are granted the right to continued employment for a specified period without reduction in compensation and in a job not inconsistent with their past training and experience in the telegraph industry; the right to severance pay in the event of lawful lay-off or discharge and the right to preference in rehiring in case of such lawful lay-off or discharge; the right to certain pension, health, disability, and death benefits; the right to restoration of employment after discharge from the armed services; and other similar protection.

The statute provides [10] that, for the purpose of enforcing these rights, the remedies provided by the National Labor Relations Act shall be applicable and that the Board and the Courts shall have jurisdiction to enforce such rights in the same manner as in the case of enforcement of the provisions of the National Labor Relations Act. In order to carry out this mandate, the Board has established a procedure [11] for the enforcement of the provisions of this statute which incorporates in the main the procedures followed in unfair labor practice cases arising under the National Labor Relations Act. While the experience has been limited, a year of operation under the statute indicates that these familiar and time-tested procedures are well-suited for the protection of the rights guaranteed by Section 222 (f).

Thus far, however, little resort to formal proceedings to enforce the provisions of Section 222 (f) has been necessary. The merger of Western Union and Postal Telegraph pursuant to the statute was approved by the Federal Communications Commission on September 28, 1943, and was effected on October 7, 1943. Since that time the fusion of the labor forces of the two companies has been in process. But the problems which have arisen have brought about the filing of

[7] 52 N. L. R. B. 100.
[8] Ch. IX, p. 80.
[9] See Communications Act of 1934 as amended. 57 Stat. 5 (1943).
[10] Sec. 222 (f) (9).
[11] See Rules and Regulations, Article 10.

charges under Section 222 (f) in only a few cases. The Board has encouraged the informal disposition of issues arising under the statute; and, for the most part, questions which have arisen have been satisfactorily disposed of through mutual action on the part of the company and the labor organization representing the employees involved. In the relatively few cases in which charges of violations of Section 222 (f) have been filed, the Board has sought to bring about a settlement which is consistent with the Congressional policies. An outstanding example of the successful cooperation of all parties in this respect is a case growing out of the proposed termination of a death-benefit plan covering certain former employees of the Postal Telegraph Company. In that case it was charged that the proposed termination of the plan by the Western Union Company was in violation of Section 222 (f). The case was closed, however, when the company voluntarily agreed to continue the plan and in addition to open up its benefits to a large number of other employees not previously covered by any comparable plan.

As of November 1, 1944, charges under Section 222 (f) had been filed in 18 cases. A complaint was issued in one case, and in another, the Board authorized the issuance of a complaint. Seven cases had been disposed of by withdrawal or dismissal, and 9 cases were still pending.

APPENDIX A

STATISTICAL TABLES

The following tables present the fully detailed statistical record of National Labor Relations Act cases received during the fiscal year, cases closed, cases pending at the end of the year, and elections and pay-roll checks conducted during the year, together with their results.

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Table 1.—Number of cases received, closed, and pending during the fiscal year 1944, by identification of complainant or petitioner

	Number of cases					Total number of workers involved
	Total [1]	Identification of complainant or petitioner				
		A.F. of L. Affiliates	C. I. O. Affiliates	Unaffiliated unions	Individuals or employers	
	All cases					
Cases pending July 1, 1943	2,620	942	1,189	391	98	(2)
Cases received July 1943–June 1944	9,176	3,465	4,023	1,354	336	(2)
Cases on docket July 1943–June 1944	11,796	4,407	5,212	1,745	434	(2)
Cases closed July 1943–June 1944	9,194	3,457	4,059	1,358	322	(2)
Cases pending June 30, 1944	2,602	950	1,153	387	112	(2)
	Unfair labor practice cases					
Cases pending July 1, 1943	1,323	449	644	137	93	2,856,064
Cases received July 1943–June 1944	2,573	870	1,098	330	276	4,379,592
Cases on docket July 1943–June 1944	3,896	1,319	1,742	467	369	7,235,656
Cases closed July 1943–June 1944	2,687	909	1,177	327	275	4,928,404
Cases pending June 30, 1944	1,209	410	565	140	94	2,307,252
	Representation cases					
Cases pending July 1, 1943	1,297	493	545	254	5	626,532
Cases received July 1943–June 1944	6,603	2,595	2,925	1,024	60	2,171,394
Cases on docket July 1943–June 1944	7,900	3,088	3,470	1,278	65	2,797,926
Cases closed July 1943–June 1944	6,507	2,548	2,882	1,031	47	2,113,475
Cases pending June 30, 1944	1,393	540	588	247	18	684,451

[1] Cases filed jointly by unions of different affiliation are counted only once under "total" but are duplicated in the tabulations by identification of complainant or petitioner.

[2] "Workers" are not included for "all cases" since the definition of "workers" differs for the two types of Board cases. In unfair labor practice cases "workers involved" are the number employed in the establishment in which the case arises. For representation cases, the definition is the number of workers in the "unit" for which the petition is filed or the number in the unit found appropriate by the Board.

Table 2.—Distribution of cases and workers involved in cases received during the fiscal year 1944, by month

Month	Cases received						
	Number			Percent of total		Workers involved [1]	
	All cases	Unfair labor practice cases	Representation cases	Unfair labor practice cases	Representation cases	Unfair labor practice cases	Representation cases
Total	9,176	2,573	6,603	28.0	72.0	4,379,592	2,171,394
July	816	249	567	30.5	69.5	578,318	214,672
August	812	231	581	28.4	71.6	394,421	312,376
September	823	234	589	28.4	71.6	485,320	231,025
October	766	199	567	26.0	74.0	296,816	168,709
November	708	200	508	28.2	71.8	224,897	160,713
December	687	194	493	28.2	71.8	312,594	141,890
January	699	185	514	26.5	73.5	395,205	133,548
February	776	222	554	28.6	71.4	268,849	135,312
March	799	252	547	31.5	68.5	381,323	183,007
April	700	222	478	31.7	68.3	526,016	148,078
May	767	170	597	22.2	77.8	316,718	176,501
June	823	215	608	26.1	73.9	199,115	165,563

[1] In unfair labor practice cases "workers involved" are the number employed in the establishment where the case arises; in representation cases "workers involved" are the number in the "unit" for which the petition is filed or the number in the "unit" found appropriate by the Board.

Table 3.—Types of unfair labor practices alleged in charges received during the fiscal year 1944 [1]

Unfair labor practices alleged	Number of cases showing specific allegations	Percent of total
SUBSECTIONS OF SECTION 8 OF THE ACT		
Total	2,573	100.0
8 (1)	377	14.7
8 (1) (2)	94	3.7
8 (1) (3)	1,531	59.5
8 (1) (4)	11	.4
8 (1) (5)	316	12.3
8 (1) (2) (3)	62	2.4
8 (1) (2) (5)	13	.5
8 (1) (3) (4)	29	1.1
8 (1) (3) (5)	119	4.6
8 (1) (4) (5)	1	(2)
8 (1) (2) (3) (4)	4	.2
8 (1) (2) (3) (5)	14	.5
8 (1) (3) (4) (5)	2	.1
RECAPITULATION		
8 (1)	2,573	100.0
8 (2)	187	7.3
8 (3)	1,761	68.4
8 (4)	47	1.8
8 (5)	465	18.1

[1] For cases in which charges were amended after filing, the final or last amended charges are tabulated instead of original charges.
[2] Less than 0.1 percent.

Table 4.—Distribution of cases received during the fiscal year 1944 and percent increase or decrease compared with the fiscal year 1943, by State [1]

Division and State [2]	Number of cases received in 1944					Percent increase or decrease compared with 1943	
	All cases	Unfair labor practice cases		Representation cases		Unfair labor practice cases	Representation cases
		Number	Percent of total	Number	Percent of total		
New England	704	186	7.2	518	7.8	−22.8	+16.1
Maine	52	15	.6	37	.6	+25.0	+2.8
New Hampshire	31	6	.2	25	.4	−25.0	−19.4
Vermont	48	11	.4	37	.6	+83.3	+76.2
Massachusetts	394	103	4.0	291	4.3	−37.2	+22.3
Rhode Island	52	17	.7	35	.5	−10.5	−23.9
Connecticut	129	34	1.3	95	1.4	+6.3	+13.1
Middle Atlantic	1,985	555	21.6	1,430	21.7	−30.1	−1.2
New York	1,016	329	12.8	687	10.3	−19.4	−1.2
New Jersey	454	109	4.2	345	5.1	−42.6	−2.0
Pennsylvania	530	118	4.6	412	6.1	−40.1	−1.0
East North Central	2,406	681	26.5	1,725	26.1	−26.1	−6.6
Ohio	756	214	8.3	542	8.1	−28.9	+.9
Indiana	289	74	2.8	215	3.2	−35.1	+2.9
Illinois	708	195	7.6	513	7.7	−26.4	−7.6
Michigan	463	143	5.6	320	4.8	−18.8	−28.9
Wisconsin	205	56	2.2	149	2.2	−15.2	+38.0
West North Central	836	234	9.1	602	9.1	−18.5	+16.4
Minnesota	120	27	1.0	93	1.4	−54.2	−16.2
Iowa	150	43	1.7	107	1.6	+7.5	+27.4
Missouri	398	109	4.2	289	4.3	−14.8	+33.2
North Dakota	24	10	.4	14	.2	+150.0	+133.3
South Dakota	13	7	.3	6	.1	+75.0	.0
Nebraska	61	16	.6	45	.7	+33.3	+7.1
Kansas	85	22	.9	63	.9	−45.0	−7.4

[1] Cases arising in more than one State are tabulated under each State affected, but are included only once in the division subtotals.
[2] The States are grouped according to the method used by the Bureau of the Census, U. S. Department of Commerce.

Table 4.—Distribution of cases received during the fiscal year 1944 and percent increase or decrease compared with the fiscal year 1943, by State—Continued

Division and State	Number of cases received in 1944					Percent increase or decrease compared with 1943	
	All cases	Unfair labor practice cases		Representation cases		Unfair labor practice cases	Representation cases
		Number	Percent of total	Number	Percent of total		
South Atlantic	867	273	10.6	594	9.0	−28.0	+26.9
Delaware	36	9	.3	27	.4	+200.0	+200.0
Maryland	150	50	1.9	100	1.5	−12.3	+17.6
District of Columbia	39	13	.5	26	.4	−40.9	−18.8
Virginia	125	30	1.2	95	1.4	−46.4	+17.3
West Virginia	139	47	1.8	92	1.4	−17.5	+1.1
North Carolina	125	28	1.1	97	1.5	−30.0	+102.1
South Carolina	32	12	.5	20	.3	−57.1	+11.1
Georgia	121	53	2.1	68	1.0	−15.9	+51.1
Florida	120	31	1.2	89	1.3	−41.5	+34.8
East South Central	534	166	6.5	368	5.6	−5.7	+20.7
Kentucky	162	44	1.7	118	1.8	−35.3	−4.1
Tennessee	230	75	2.9	155	2.3	+5.6	+84.5
Alabama	135	39	1.6	96	1.4	+39.3	+35.2
Mississippi	24	8	.3	16	.2	−11.1	−44.8
West South Central	587	164	6.4	423	6.4	−7.3	+69.9
Arkansas	68	26	1.0	42	.6	+13.0	+23.5
Louisiana	89	24	1.0	65	1.0	−22.6	+44.4
Oklahoma	89	21	.8	68	1.0	+16.7	+65.9
Texas	346	93	3.6	253	3.8	−11.4	+86.0
Mountain	299	78	3.0	221	3.4	−4.9	+28.5
Montana	25	8	.3	17	.2	.0	+21.4
Idaho	56	16	.6	40	.6	−5.9	+37.9
Wyoming	7	1	(3)	6	.1	.0	+600.0
Colorado	91	31	1.2	60	.9	+3.3	+7.1
New Mexico	10	5	.2	5	.1	−16.7	−64.3
Arizona	67	8	.3	59	.9	−11.1	+78.8
Utah	22	7	.3	15	.2	+600.0	−6.3
Nevada	31	2	.1	29	.4	−80.0	+93.3
Pacific	886	204	7.9	682	10.3	−32.7	+.7
Washington	81	26	1.0	55	.8	−38.1	−43.3
Oregon	135	33	1.3	102	1.5	+26.9	−1.0
California	671	145	5.6	526	7.9	−38.3	+9.8
Outlying Areas	72	32	1.2	40	.6	−25.6	+207.7
Alaska	7	1	(3)	6	.1	−50.0	+500.0
Hawaii	28	10	.4	18	.3	+11.1	+500.0
Puerto Rico	37	21	.8	16	.2	−34.4	+77.8

[3] Less than 0.1 percent.

Table 5.—Distribution of cases received during the fiscal year 1944, by industry

Industrial group [1]	All cases		Unfair labor practice cases		Representation cases	
	Number	Percent of total	Number	Percent of total	Number	Percent of total
Total	9,176	100.0	2,573	100.0	6,603	100.0
Manufacturing	7,134	77.8	2,038	79.2	5,096	77.2
Food and kindred products	604	6.6	184	7.2	420	6.4
Tobacco manufactures	26	.3	10	.4	16	.2
Textile-mill products	368	4.0	120	4.7	248	3.8
Apparel and other finished products made from fabrics and similar materials	273	3.0	118	4.6	155	2.3
Lumber and timber basic products	280	3.0	74	2.9	206	3.1
Furniture and finished lumber products	227	2.5	85	3.3	142	2.1
Paper and allied products	198	2.2	45	1.7	153	2.3
Printing, publishing, and allied industries	186	2.0	46	1.8	140	2.1
Chemicals and allied products	436	4.7	72	2.8	364	5.5
Products of petroleum and coal	180	2.0	22	.9	158	2.4
Rubber products	80	.9	27	1.0	53	.8
Leather and leather products	167	1.8	60	2.3	107	1.6
Stone, clay, and glass products	182	2.0	37	1.4	145	2.2
Iron and steel and their products	1,190	13.0	314	12.2	876	13.3
Nonferrous metals and their products	283	3.1	78	3.0	205	3.1
Machinery (except electrical)	790	8.6	217	8.4	573	8.7
Electrical machinery	367	4.0	111	4.3	256	3.9
Transportation equipment	1,120	12.2	357	13.9	763	11.6
Aircraft and parts	598	6.5	199	7.7	399	6.1
Automotive	103	1.1	25	1.0	78	1.2
Ship and boat building and repairing	379	4.1	126	4.9	253	3.8
Other	40	.5	7	.3	33	.5
Miscellaneous manufacturing	177	1.9	61	2.4	116	1.8
Agriculture and forestry	20	.2	4	.2	16	.2
Mining	371	4.0	91	3.5	280	4.2
Metal mining	112	1.2	21	.8	91	1.4
Coal mining	118	1.3	42	1.6	76	1.1
Crude petroleum and natural gas production	45	.5	8	.3	37	.6
Nonmetallic mining and quarrying	96	1.0	20	.8	76	1.1
Construction	63	.7	20	.8	43	.7
Wholesale trade	311	3.4	83	3.2	228	3.5
Retail trade	159	1.7	50	2.0	109	1.7
Finance, insurance, and real estate	116	1.3	23	.9	93	1.4
Transportation, communication, and other public utilities	793	8.6	209	8.1	584	8.8
Highway passenger transportation	74	.8	26	1.0	48	.7
Highway freight transportation	104	1.1	47	1.8	57	.9
Water transportation	109	1.2	27	1.1	82	1.2
Warehousing and storage	63	.7	16	.6	47	.7
Other transportation	56	.6	11	.4	45	.7
Communication	128	1.4	45	1.8	83	1.2
Heat, light, power, water, and sanitary services	259	2.8	37	1.4	222	3.4
Services	209	2.3	55	2.1	154	2.3

[1] Source: Standard Industrial Classification. Division of Statistical Standards, U. S. Bureau of the Budget, Washington, 1941.

Table 6.—Regional distribution of cases received during the fiscal year 1944, compared with 1943

Regional Office	All cases			Unfair labor practice cases			Representation cases		
	Fiscal year 1944	Fiscal year 1943	Percent increase or decrease	Fiscal year 1944	Fiscal year 1943	Percent increase or decrease	Fiscal year 1944	Fiscal year 1943	Percent increase or decrease
Total	[1] 9,176	9,543	−3.8	[1] 2,573	3,403	−24.4	6,603	6,140	+7.5
Boston	653	618	+5.7	173	221	−21.7	480	397	+20.9
New York	1,140	1,370	−16.8	366	522	−29.9	774	848	−8.7
Buffalo	280	258	+8.5	71	64	+10.9	209	194	+7.7
Philadelphia	386	380	+1.6	76	123	−38.2	310	257	+20.6
Baltimore	449	435	+3.2	128	187	−31.6	321	248	+29.4
Pittsburgh	308	344	−10.5	71	113	−37.2	237	231	+2.6
Detroit	436	560	−22.1	137	162	−15.4	299	398	−24.9
Cleveland	542	553	−2.0	153	193	−20.7	389	360	+8.1
Cincinnati	512	580	−11.7	145	221	−34.4	367	359	+2.2
Atlanta	522	453	+15.2	190	219	−13.2	332	234	+41.9
Indianapolis	(2)	151	(2)	(2)	49	(2)	(2)	102	(2)
Milwaukee	(2)	148	(2)	(2)	52	(2)	(2)	96	(2)
Chicago	875	824	+6.2	243	264	−8.0	632	560	+12.9
St. Louis	442	453	−2.4	126	174	−27.6	316	279	+13.3
New Orleans	277	236	+17.4	77	85	−9.4	200	151	+32.5
Fort Worth	434	298	+45.6	117	125	−6.4	317	173	+83.2
Kansas City	383	276	+38.8	113	96	+17.7	270	180	+50.0
Minneapolis	389	349	+11.5	109	119	−8.4	280	230	+21.7
Seattle	292	325	−10.2	84	90	−6.7	208	235	−11.5
Los Angeles	322	250	+28.8	66	57	+15.8	256	193	+32.6
San Francisco	468	527	−11.2	96	195	−50.8	372	332	+12.0
Denver	(2)	103	(2)	(2)	31	(2)	(2)	72	(2)
Hawaii	28	11	+154.5	10	9	+11.1	18	2	+800.0
Puerto Rico	37	41	−9.8	21	32	−34.4	16	9	+77.8

[1] Includes 1 case filed directly with the Board in Washington.
[2] Regional Office abolished in April 1943.

Table 7.—Disposition of unfair labor practice cases closed during the fiscal year 1944, by stage and method

Stage and method	Number of cases	Percent of cases closed	Percent of cases on docket
Cases on docket during the year	3,896		100.0
Total number of cases closed	2,687	100.0	69.0
Before formal action, total	2,276	84.7	58.4
Adjusted	648	24.1	16.6
Withdrawn	1,159	43.1	29.7
Dismissed	467	17.4	12.0
Closed otherwise	2	.1	.1
After formal action, total	411	15.3	10.6
Before hearing	21	.8	.5
Adjusted	13	.5	.3
Withdrawn	8	.3	.2
Dismissed	0	.0	.0
After hearing	33	1.2	.9
Adjusted	5	.2	.2
Compliance with Intermediate Report	19	.7	.5
Withdrawn	0	.0	.0
Dismissed	8	.3	.2
Closed otherwise	1	(1)	(1)
After Board decision	117	4.4	3.0
Compliance	93	3.5	2.4
Dismissed	18	.7	.5
Closed otherwise	6	.2	.1
After court action	240	8.9	6.2
Compliance with consent decree	110	4.1	2.8
Compliance with court order	116	4.3	3.0
Dismissed	12	.4	.3
Closed otherwise	2	.1	.1

[1] Less than 0.1 percent.

Table 8.—Disposition of representation cases closed during the fiscal year 1944, by stage and method

Stage and method	Number of cases	Percent of cases closed	Percent of cases on docket
Cases on docket during the year	7,900		100.0
Total number of cases closed	6,507	100.0	82.4
Before formal action, total	4,353	66.9	55.1
Adjusted	2,980	45.8	37.7
Direct recognition	196	3.0	2.5
Recognition following election or pay-roll check	2,345	36.0	29.7
Union unsuccessful in election or pay-roll check	439	6.8	5.5
Withdrawn	899	13.8	11.4
Dismissed	474	7.3	6.0
After formal action, total	2,154	33.1	27.3
Before hearing	108	1.7	1.4
Adjusted	56	.9	.7
Direct recognition	6	.1	.1
Recognition following election or pay-roll check	43	.7	.5
Union unsuccessful in election or pay-roll check	7	.1	.1
Withdrawn	39	.6	.5
Dismissed	13	.2	.2
After hearing	117	1.8	1.5
Adjusted	68	1.0	.9
Direct recognition	1	(1)	(1)
Recognition following election or pay-roll check	59	.9	.8
Union unsuccessful in election or pay-roll check	8	.1	.1
Withdrawn	40	.6	.5
Dismissed	9	.2	.1
After Board decision	1,929	29.6	24.4
Certification	1,468	22.5	18.6
After stipulated election	263	4.0	3.4
After ordered election	1,202	18.5	15.2
Without election	3	(1)	(1)
Dismissed	425	6.5	5.4
After stipulated election	38	.6	.5
After ordered election	180	2.7	2.3
Without election	207	3.2	2.6
Withdrawn	32	.5	.4
Closed otherwise	4	.1	(1)

[1] Less than 0.1 percent.

Table 9.—Forms of remedy in unfair labor practice cases closed during the fiscal year 1944, by identification of complainant

	Total	Identification of complainant			
		A. F. of L. affiliates	C. I. O. affiliates	Unaffiliated unions	Individuals
	Cases				
Notice posted	736	268	353	83	32
Company union disestablished	101	50	43	6	2
Workers placed on preferential hiring list	70	19	39	7	5
Collective bargaining begun	136	72	45	19	0
	Workers				
Workers reinstated to remedy discriminatory discharge	2,972	949	1,540	406	77
Workers receiving back pay	3,734	891	2,357	355	131
Back-pay awards	$1,916,173	$315,130	$1,483,963	$46,720	$70,360
Strikers reinstated	350	350	0	0	0

Table 10.—Formal actions taken during the fiscal years 1944, 1943, and 1942

	All cases			Unfair labor practice cases			Representation cases		
	1944	1943	1942	1944	1943	1942	1944	1943	1942
Complaints issued	279	401	361	279	401	361			
Notice of Hearing issued	1,631	1,326	1,011				1,631	1,326	1,011
Hearings held [1]	1,753	1,525	1,186	219	305	256	1,534	1,220	930
Intermediate Reports or proposed findings issued	185	252	199	185	252	199			
Decisions issued [2]	1,856	1,754	1,257	211	401	285	1,645	1,353	972
Decisions and Orders	139	260	173	139	260	173			
Decisions and Consent Orders	72	141	112	72	141	112			
Elections directed	1,229	1,036	714				1,229	1,036	714
Certifications or dismissals after stipulated elections	291	236	207				291	236	207
Certification or dismissal on the record	125	81	51				125	81	51

[1] The 1942 and 1943 Annual Reports contained the number of cases going to hearing rather than the number of hearings held (frequently more than one case is consolidated and a single hearing held). The numbers given in this table refer to the actual number of hearings conducted.

[2] The numbers given do not include Decisions issued which were subsequently voided or any supplemental Decisions issued after the first Decision in a case.

Table 11.—Number of elections and pay-roll checks and number of votes cast for participating unions during the fiscal year 1944

Participating unions	Number of elections and pay-roll checks	Elections and pay-roll checks won						Eligible voters		Valid votes cast							
		By A. F. of L. affiliates		By C. I. O. affiliates		By unaffiliated unions		Number	Percent casting valid votes	Total	For A. F. of L. affiliates		For C. I. O. affiliates		For unaffiliated unions		Against unions
		Number	Percent	Number	Percent	Number	Percent				Number	Percent	Number	Percent	Number	Percent	
Total	4,712	1,500	31.8	1,890	40.1	593	12.6	1,322,225	81.1	1,072,594	199,989	18.6	445,528	41.5	183,066	17.1	244,011
A. F. of L. affiliates [1]	1,436	1,161	80.8					180,728	79.6	143,851	95,441	66.3					48,410
C. I. O. affiliates	1,756			1,455	82.9			453,527	84.3	382,319			242,446	63.4			139,873
Unaffiliated unions	460					360	78.3	104,369	72.5	75,639					54,635	72.2	21,004
A. F. of L. affiliates-C. I. O. affiliates [2]	551	237	43.0	280	50.8			247,652	78.7	195,022	76,999	39.5	107,034	54.9			10,989
A. F. of L. affiliates-unaffiliated unions [3]	186	95	51.1			80	43.0	59,750	84.5	50,475	23,443	46.4			23,436	46.4	3,596
C. I. O. affiliates-unaffiliated unions [4]	263			149	56.7	108	41.1	213,095	81.5	173,588			82,198	47.4	79,938	46.1	11,452
Unaffiliated-unaffiliated	36					36	100.0	16,077	83.9	13,491					13,169	97.6	322
A. F. of L.-C. I. O.-unaffiliated unions [5]	24	7	29.2	6	25.0	9	37.5	47,027	81.2	38,209	4,106	10.7	13,850	36.2	11,888	31.1	8,365

[1] Includes 7 elections in which 2 A. F. of L. unions were on the ballot.
[2] Includes 14 elections in which 2 A. F. of L. unions were on the ballot; 1 election in which 2 C. I. O. unions were on the ballot.
[3] Includes 4 elections in which 2 A. F. of L. unions were on the ballot; 3 elections in which 2 unaffiliated unions were on the ballot.
[4] Includes 4 elections in which 2 unaffiliated unions were on the ballot.
[5] Includes 1 election in which 2 C. I. O. unions were on the ballot.

Table 12.—Number of elections and pay-roll checks and number of votes cast for participating unions during the fiscal year 1944, by petitioner

Participating unions	Number of elections and pay-roll checks	Elections won by petitioner		Valid votes cast					Percent of total votes cast for petitioner
		Number	Percent	Total	For A. F. of L. affiliates	For C. I. O. affiliates	For unaffiliated unions	For no union	
Total	4,712	3,577	75.9	1,072,594	199,989	445,528	183,066	244,011	56.7
American Federation of Labor affiliate, petitioner	1,747	1,337	76.5	273,769	151,183	48,356	16,066	58,164	55.2
No other party on ballot	[1] 1,430	1,155	80.8	143,373	95,203			48,170	66.4
Congress of Industrial Organizations on ballot	[2] 193	106	54.9	92,747	39,854	46,499		6,394	43.0
Unaffiliated union on ballot	[3] 115	72	62.6	31,001	15,218		13,550	2,233	49.1
Congress of Industrial Organizations and unaffiliated union on ballot	[4] 9	4	44.4	6,648	908	1,857	2,516	1,367	13.7
Congress of Industrial Organizations affiliate, petitioner	2,328	1,791	76.9	623,398	38,868	371,087	60,865	152,578	59.5
No other party on ballot	1,749	1,451	83.0	373,037		237,033		136,004	63.5
American Federation of Labor on ballot	[5] 362	210	58.0	103,009	36,792	60,887		5,330	59.1
Unaffiliated union on ballot	[6] 203	126	62.1	120,467		63,742	52,284	4,441	52.9
American Federation of Labor and unaffiliated union on ballot	14	4	28.6	26,885	2,076	9,425	8,581	6,803	35.1
Unaffiliated union, petitioner	625	449	71.8	152,328	8,043	22,806	90,023	31,456	59.1
No other party on ballot	455	355	78.0	57,925			38,983	18,942	67.3
American Federation of Labor on ballot	[7] 71	44	62.0	20,491	7,914		10,524	2,053	51.4
Congress of Industrial Organizations on ballot	[8] 63	29	46.0	61,567		22,791	28,644	10,132	46.5
Other unaffiliated union on ballot	35	21	60.0	12,182			11,860	322	61.5
American Federation of Labor and Congress of Industrial Organizations on ballot	1	0	.0	163	129	15	12	7	7.4

Employer petitioner	12			23,099	1,895	3,279	16,112	1,813	
American Federation of Labor and Congress of Industrial Organizations on ballot	3			777	387	331		59	
American Federation of Labor and unaffiliated union on ballot	3			789	501		239	49	
Congress of Industrial Organizations and unaffiliated union on ballot	2			310		126	182	2	
American Federation of Labor alone	1			14	14			0	
Unaffiliated union alone	2			16,229			14,714	1,515	
American Federation of Labor, Congress of Industrial Organizations, unaffiliated	[9] 1			4,980	993	2,822	977	188	

[1] Includes 7 elections in which 2 American Federation of Labor unions were on ballot; 1 election in which petitioner was not on ballot.
[2] Includes 12 elections in which 2 American Federation of Labor unions were on ballot; 4 elections in which petitioner was not on ballot.
[3] Includes 2 elections in which 2 American Federation of Labor unions were on the ballot; 1 election in which 2 unaffiliated unions were on ballot; 2 elections in which petitioner was not on ballot.
[4] Includes 1 election in which petitioner was not on ballot.
[5] Includes 1 election in which 2 Congress of Industrial Organizations unions were on ballot; 2 elections in which 2 American Federation of Labor unions were on ballot; 4 elections in which petitioner was not on ballot.
[6] Includes 3 elections in which 2 unaffiliated unions were on ballot; 2 elections in which petitioner was not on ballot.
[7] Includes 2 elections in which 2 American Federation of Labor unions were on ballot; 2 elections in which 2 unaffiliated unions were on ballot; 1 election in which petitioner was not on ballot.
[8] Includes 2 elections in which 2 unaffiliated unions were on ballot; 7 elections in which petitioner was not on ballot.
[9] Includes 1 election in which 2 Congress of Industrial Organizations unions were on ballot.

Table 13.—Number of elections and pay-roll checks and number of valid votes cast during the fiscal year 1944, by industry

Industrial group [1]	Elections and pay-roll checks		Valid votes cast		Winner							
					A. F. of L. affiliates		C. I. O. affiliates		Unaffiliated unions		No union	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Total	4,712	100.0	1,072,594	100.0	1,500	31.8	1,890	40.1	593	12.6	729	15.5
Manufacturing	3,810	80.9	960,197	89.5	1,172	30.8	1,640	43.0	454	11.9	544	14.3
Food and kindred products	284	6.0	25,837	2.4	134	47.2	84	29.6	15	5.3	51	17.9
Tobacco manufactures	13	.3	15,269	1.4	3	23.1	9	69.2	0	.0	1	7.7
Textile-mill products	185	3.9	58,061	5.4	48	25.9	79	42.7	16	8.7	42	22.7
Apparel and other finished products made from fabrics and similar materials	101	2.1	17,179	1.6	30	29.7	39	38.6	7	6.9	25	24.8
Lumber and timber basic products	172	3.7	14,078	1.3	57	33.2	75	43.6	9	5.2	31	18.0
Furniture and finished lumber products	109	2.3	11,401	1.1	25	23.0	59	54.1	6	5.5	19	17.4
Paper and allied products	101	2.1	19,783	1.8	53	52.5	16	15.8	24	23.8	8	7.9
Printing, publishing, and allied industries	103	2.2	4,547	.4	50	48.5	17	16.5	17	16.5	19	18.5
Chemicals and allied products	311	6.6	68,362	6.4	108	34.7	107	34.4	67	21.6	29	9.3
Products of petroleum and coal	92	2.0	13,406	1.2	27	29.4	44	47.8	15	16.3	6	6.5
Rubber products	37	.8	8,432	.8	6	16.2	26	70.3	3	8.1	2	5.4
Leather and leather products	69	1.5	16,849	1.6	14	20.3	35	50.7	8	11.6	12	17.4
Stone, clay, and glass products	101	2.1	22,527	2.1	45	44.6	32	31.7	8	7.9	16	15.8
Iron and steel and their products	678	14.4	138,257	12.9	170	25.1	358	52.8	73	10.8	77	11.3
Nonferrous metals and their products	143	3.0	35,983	3.4	45	31.5	63	44.0	19	13.3	16	11.2
Machinery (except electrical)	446	9.5	81,459	7.6	103	23.1	208	46.6	63	14.2	72	16.1
Electrical machinery	195	4.1	44,970	4.2	43	22.0	100	51.3	29	14.9	23	11.8
Transportation equipment	591	12.6	344,075	32.1	187	31.6	248	42.0	74	12.5	82	13.9
Aircraft and parts	312	6.6	237,005	22.1	111	35.6	117	37.5	39	12.5	45	14.4
Automotive equipment and parts	64	1.4	13,059	1.2	9	14.1	40	62.5	8	12.5	7	10.9
Ship and boat building and repairing	194	4.1	87,452	8.2	61	31.4	83	42.8	23	11.9	27	13.9
Other	21	.5	6,559	.6	6	28.6	8	38.1	4	19.0	3	14.3
Miscellaneous manufacturing	79	1.7	19,722	1.8	24	30.4	41	51.9	1	1.3	13	16.4
Agriculture and forestry	2	.1	41	(3)	2	100.0	0	.0	0	.0	0	.0

Mining	219	4.6	21,084	2.0	64	29.2	70	32.0	40	18.3	45	20.5
Metal mining	83	1.8	12,029	1.1	31	37.4	43	51.8	4	4.8	5	6.0
Coal mining	47	1.0	3,794	.4	7	14.9	0	.0	26	55.3	14	29.8
Crude petroleum and natural gas production	31	.6	1,454	.1	8	25.8	14	45.2	0	.0	9	29.0
Nonmetallic mining and quarrying	58	1.2	3,807	.4	18	31.0	13	22.4	10	17.3	17	29.3
Construction	16	.3	2,075	.2	5	31.3	4	25.0	4	25.0	3	18.7
Wholesale trade	114	2.4	4,074	.4	34	29.8	39	34.2	6	5.3	35	30.7
Retail trade	68	1.4	12,062	1.1	23	33.8	20	29.4	2	3.0	23	33.8
Finance, insurance, and real estate	57	1.2	10,227	1.0	22	38.6	17	29.8	9	15.8	9	15.8
Transportation, communication, and other public utilities	356	7.6	56,935	5.3	148	41.6	80	22.5	73	20.5	55	15.4
Highway passenger transportation	24	.5	1,515	.1	15	62.5	2	8.3	2	8.3	5	20.9
Highway freight transportation	25	.5	944	.1	13	52.0	2	8.0	2	8.0	8	32.0
Water transportation	26	.6	3,670	.4	7	26.9	11	42.3	4	15.4	4	15.4
Warehousing and storage	35	.8	3,413	.3	11	31.4	15	42.9	4	11.4	5	14.3
Other transportation	29	.6	3,322	.3	4	13.8	15	51.7	2	6.9	8	27.6
Communication	55	1.2	18,675	1.7	24	43.6	4	7.3	22	40.0	5	9.1
Heat, light, power, water, and sanitary service	162	3.4	25,396	2.4	74	45.7	31	19.1	37	22.8	20	12.4
Services	70	1.5	5,899	.5	30	42.9	20	28.6	5	7.1	15	21.4

[1] Source: Standard Industrial Classification, Division of Statistical Standards, U. S. Bureau of the Budget, Washington, 1941.
[2] Less than 0.1 percent.

APPENDIX B

STATISTICAL TABLES

The following tables present the statistical record of War Labor Disputes Act cases received during the fiscal year, cases closed, cases pending at the end of the year, and polls conducted during the year.

Table 1.—War Labor Disputes Act cases received, closed, and pending during the fiscal year 1944, by identification of party filing notice

	Number of cases				
	Total	Identification of party filing			
		A. F. of L. affiliate	C. I. O. affiliate	Unaffiliated union	Individual
Cases received July 1943–June 1944 [1]	1,089	726	156	201	6
Cases closed July 1943–June 1944	1,035	683	150	196	6
Method of disposition:					
Poll conducted	232	172	26	34	0
Withdrawn	688	457	115	111	5
Closed otherwise [2]	115	54	9	51	1
Cases pending June 30, 1944	54	43	6	5	0

[1] In one case the strike notice was received in June 1943.
[2] Includes 75 cases in which the employees involved were engaged in enterprises which were not covered under the War Labor Disputes Act, and 40 cases in which the strike notice did not become effective because it did not meet other requirements of the act.

Table 2.—Results of polls conducted in War Labor Disputes Act cases during the fiscal year 1944, by identification of party filing notice

Identification of party filing [1]	Total [2] number of polls	Results of polls		Total number eligible to vote	Valid votes cast		
		Voted in favor of interruption of work	Voted against interruption of work		Total	Votes in favor of interruption of work	Votes against interruption to work
Total	381	323	[3] 58	129,661	98,224	69,978	28,246
A. F. of L. affiliate	311	263	[3] 48	61,244	47,417	36,562	10,855
C. I. O. affiliate	27	24	3	34,103	27,311	20,699	6,612
Unaffiliated union	43	36	7	34,314	23,496	12,717	10,779

[1] It should be noted that the votes cast in these polls do not necessarily come solely from members of the unions who filed the strike notice, but often include votes cast by employees in the unit voted who are members of other organizations or who are not members of any organization.
[2] Polls were conducted in 232 separate cases, but involving 381 separate voting units. Where the results of multiple plant or multiple unit polls have been certified to the President separately, they have been tabulated as separate polls.
[3] Includes 12 polls in which no votes were cast and 2 polls which resulted in a tie vote.

APPENDIX C

REGIONAL OFFICES

The following listing presents the directing personnel, locations, and territories of the Board's Regional Offices.

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REGIONAL OFFICES

First Region—Boston 8, Mass., Old South Building. Director, A. Howard Myers; attorney, Samuel G. Zack.

Maine; New Hampshire; Vermont; Massachusetts; Rhode Island; Connecticut, except for Fairfield County.

Second Region—New York 5, N. Y., 120 Wall Street. Director, Charles T. Douds; attorney, Alan F. Perl.

Fairfield County in Connecticut; Clinton, Essex, Warren, Washington, 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; Passaic, Bergen, Essex, Hudson, and Union Counties in New Jersey.

Third Region—Buffalo 2, N. Y., West Genesee Street, Genesee Building. Director, M. S. Ryder; attorney, Francis X. Helgesen.

New York State, except for those counties included in the Second Region.

Fourth Region—Philadelphia 7, Pa., 1500 Bankers Securities Building. Director, Fred. G. Krivonos; attorney, Geoffrey J. Cunniff.

New Jersey, except for Passaic, Bergen, Essex, Hudson, and Union Counties; New Castle County in Delaware; all of Pennsylvania lying east of the eastern borders of Potter, Clinton, Centre, Mifflin, Huntingdon, and Franklin Counties.

Fifth Region—Baltimore 2, Md., 601 American Building. Director, Ross M. Madden; attorney, Earle K. Shawe.

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.

Sixth Region—Pittsburgh 22, Pa., 2107 Clark Building. Director, Frank M. Kleiler; attorney, W. G. Stuart Sherman.

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.

Seventh Region—Detroit 26, Mich., 1332 National Bank Building. Director, Frank H. Bowen; attorney, Harold A. Cranefield.

Michigan, exclusive of Gogebic, Ontonagon, Houghton, Keweenaw, Baraga, Iron, Dickinson, Marquette, Menominee, Delta, Alger, Schoolcraft, Luce, Chippewa, and Mackinac Counties.

Eighth Region—Cleveland 13, Ohio, 713 Public Square Building. Director, Walter E. Taag; attorney, Thomas E. Shroyer.

Ohio, north of the southern borders of Darke, Miami, Champaign, Union, Delaware, Licking, Muskingum, Guernsey, and Belmont Counties.

Ninth Region—Cincinnati 2, Ohio, Ingalls Building, Fourth and Vine Streets. Director, Martin Wagner; attorney, Louis S. Penfield.

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.

Tenth Region—Atlanta 3, Ga., 10 Forsyth Street Building. Director Howard F. LeBaron; attorney, Paul S. Kuelthau.

South Carolina; Georgia; Florida, east of the eastern borders of Franklin, Liberty, and Jackson Counties; Alabama, north of the northern borders of Choctaw, Marengo, Dallas, Lowndes, Montgomery, Macon, and Russell Counties; Tennessee, east of the eastern borders of Hardin, Decatur, Benton, and Henry Counties.

Eleventh Region—Indianapolis 4, Ind., 108 East Washington Street Building. Director, C. Edward Knapp; attorney, William O. Murdock.
Indiana, except for Lake, Porter, LaPorte, St. Joseph, Elkhart, Lagrange, Noble, Steuben, and DeKalb Counties; Kentucky, west of the western borders of Hardin, Hart, Barren, and Monroe Counties.

Thirteenth Region—Chicago 3, Ill., Midland Building, Room 2200, 176 West Adams Street. Director, George J. Bott; attorney, Jack G. Evans.
Branch Office—Madison Building, Milwaukee, Wis.
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; Wisconsin, east of the western borders of Green, Dane, Dodge, Fondulac, Winnebago, Outagamie, and Brown Counties.

Fourteenth Region—St. Louis 1, Mo., International Building, Chestnut and Eighth Streets. Director, Wm. F. Guffey, Jr.; attorney, Helen F. Humphrey.
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.

Fifteenth Region—New Orleans 12, La., 820 Richards Building. Director, John F. LeBus; attorney, LeRoy Marceau.
Louisiana; Arkansas; Mississippi; Tennessee, west of the eastern borders of Hardin, Decatur, Benton, and Henry Counties; Alabama, south of the northern borders of Choctaw, Marengo, Dallas, Lowndes, Montgomery, Macon, and Russell Counties; Florida, west of the eastern borders of Franklin, Liberty, and Jackson Counties.

Sixteenth Region—Fort Worth 2, Texas, Federal Court Building. Director, Edwin A. Elliott; attorney, Elmer P. Davis.
Texas, Oklahoma, New Mexico.

Seventeenth Region—Kansas City 6, Mo., 903 Grand Avenue, Temple Building. Director, Hugh E. Sperry; attorney, Robert S. Fousek.
Branch Office—Colorado Building, Denver, Colo.
Missouri, west of the western borders of Scotland, Knox, Shelby, Monroe, Audrain, Callaway, Osage, Maries, Phelps, Dent, Shannon, and Oregon Counties; Kansas; Nebraska; Colorado; Wyoming.

Eighteenth Region—Minneapolis 4, Minn., Wesley Temple Building. Director, James M. Shields; attorney, Stephen M. Reynolds.
Minnesota; North Dakota; South Dakota; Iowa; Wisconsin, west of the western borders of Green, Dane, Dodge, Fondulac, Winnebago, Outagamie, and Brown Counties.

Nineteenth Region—Seattle 1, Wash., 806 Vance Building. Director, Thomas P. Graham, Jr.; attorney, Joseph D. Holmes.
Washington; Oregon; Montana; Idaho; Territory of Alaska.

Twentieth Region—San Francisco 3, Calif., 1095 Market Street. Director, Joseph E. Watson; attorney, John P. Jennings.
Nevada; Utah; California, north of the southern borders of Monterey, Kings, Tulare, and Inyo Counties.

Twenty-first Region—Los Angeles 14, Calif., 111 West Seventh Street. Director, Stewart Meacham; attorney, Maurice J. Nicoson.
Arizona; California, south of the southern borders of Monterey, Kings, Tulare, and Inyo Counties.

Twenty-third Region—Honolulu 2, T. H., 341 Federal Building. Director, Arnold L. Wills.
Territory of Hawaii.

Twenty-fourth Region—San Juan 22, P. R., Post Office Box 4507. Director, James R. Watson; attorney, Gilberto Ramirez.
Puerto Rico.

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