SEVENTEENTH ANNUAL REPORT OF THE NATIONAL LABOR RELATIONS BOARD

FOR THE FISCAL YEAR ENDED JUNE 30

1952

NATIONAL LABOR RELATIONS BOARD LIBRARY

SEVENTEENTH ANNUAL REPORT OF THE NATIONAL LABOR RELATIONS BOARD

FOR THE FISCAL YEAR ENDED JUNE 30

1952

UNITED STATES GOVERNMENT PRINTING OFFICE
WASHINGTON, D. C. • 1953

For sale by the Superintendent of Documents, U. S. Government Printing Office
Washington 25, D. C. - Price $1.00 (Paper Cover)

NATIONAL LABOR RELATIONS BOARD

Members of the Board

PAUL M. HERZOG, *Chairman*

JOHN M. HOUSTON
ABE MURDOCK
IVAR H. PETERSON [1]
PAUL L. STYLES

OGDEN W. FIELDS,[2] *Executive Secretary*
IDA KLAUS, *Solicitor*
WILLIAM R. RINGER, *Chief Trial Examiner*
ARTHUR H. LANG,[3] *Director, Division of Administration*
LOUIS G. SILVERBERG, *Director of Information*

Chief Legal Assistants to Board Members

PAUL S. KUELTHAU

MERVIN N. BACHMAN
ROBERT T. MCKINLEY
RAYMOND J. COMPTON
LOUIS LIBBIN

Office of the General Counsel

GEORGE J. BOTT, *General Counsel*
WILLIAM O. MURDOCK, *Associate General Counsel*
DAVID P. FINDLING, *Associate General Counsel*
ELLISON D SMITH, JR , *Associate General Counsel*

[1] Took office March 21, 1952, to serve the unexpired term of James J. Reynolds, Jr , resigned.
[2] Appointed Nov 1, 1952, to succeed Louis R Becker, resigned.
[3] Appointed May 19, 1952, to succeed Carroll K Shaw.

LETTER OF TRANSMITTAL

NATIONAL LABOR RELATIONS BOARD,
Washington, D. C., January 5, 1953.

SIR: As provided in section 3 (c) of the Labor Management Relations Act, 1947, I submit herewith the Seventeenth Annual Report of the National Labor Relations Board for the year ended June 30, 1952, and, under separate cover, lists containing the cases heard and decided by the Board during this fiscal year, the names, salaries, and duties of all employees and officers in the employ or under the supervision of the Board.

PAUL M. HERZOG, *Chairman.*

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

LIBRARY
NATIONAL LABOR RELATIONS BOARD
21,718

TABLE OF CONTENTS

Chapter	Page
I. Operations in Fiscal Year 1952	1
1. Case Activities of Five-Member Board	2
2. Activities of the General Counsel	3
a. Representation Cases	4
b. Unfair Labor Practice Cases	4
3. Division of Trial Examiners	5
4. Results of Representation Elections	5
5. Types of Unfair Labor Practices Charged	6
6. Non-Communist Affidavits	7
7. National Emergency Ballots	8
II. Jurisdiction of the Board	9
1. Application of Standards to Prior Cases	9
2. Lack of Complete Annual Data	10
3 Extent of Operations Considered	11
4. Instrumentalities or Channels of Commerce	12
a. Rule on Taxicabs Modified	12
5. Public Utilities and Transit Systems	13
6. Multistate Enterprises	13
7. Concerns Engaged Directly in Commerce	15
8. Concerns Serving Interstate Enterprises	16
9 Establishments Affecting National Defense	18
10. Jurisdiction of Certain Types of Enterprises	19
a. Nonprofit Enterprises	19
b. Insurance Companies	20
c. Labor Unions	20
11 Other Problems of Jurisdiction	21
III. The Filing Requirements	23
1. Application of Section 18 (1951 Amendment)	23
2. Union-Security Agreements by Noncomplying Unions	25
3. Fronting for Noncomplying Unions	25
4. Administrative Investigations of Compliance	26
IV. Representation and Union-Shop Cases	27
A. The Question of Representation	28
1. Showing of Employee Interest	28
a. Petitioner's Interest	29
b. Intervenor's Interest	30
2. Existence of a Question of Representation	31
a. Certification Proceedings	31
b. Decertification Proceedings	33
3. Qualification of Representative	34
a. Capacity for Representation	34
b. Equal Representation of Employees	36
B. The Contract Bar Rule	37
1. Effect of Invalid Union-Security Clauses	39
a. Failure to Provide a 30-Day Grace Period	39
b. Preferential Hiring Clauses	41
c. Membership Requirements	42
d. Deferred or Amended Clauses	43

CHAPTER Page
IV. Representation and Union-Shop Cases—Continued
B. The Contract Bar Rule—Continued
2. Coverage of Contract 44
a. New, Resumed, and Changed Operations 46
b. Members-Only Contracts 46
3. Schism or Change of Status of Bargaining Agent 47
4. Forestalling Contract Bar 48
a. Representation Claim—10-day Rule 49
b. Automatic Renewal—Timeliness of Petition 49
c. The 60-Day Notice Rule 50
5. Reopening of Contracts 50
6. Premature Extension 50
7. New Test of Long Term Contracts 51
8. Termination of Contract 51
C. Waiver 52
D. The Impact of Prior Determinations 53
1. Prior Certification 54
2. Prior Election 54
E. Unit of Employees Appropriate for Bargaining 55
1. Collective Bargaining History 58
2. Units of Craft Employees 60
3. Units of Integrated Industries 64
4. Employees' Wishes in Unit Determinations 65
5. Multiplant Units 68
6. Multiemployer Units 72
7. Employees in Separate Units 76
a. Plant Guards 76
b. Professional Employees 78
c. Clerical Employees 79
d. Technical Employees 80
e. Residual Units 81
8. Seasonal, Part-Time, and Probationary Employees 82
9. Excluded Employees 82
a. Supervisory Employees 83
b. Independent Contractors 86
c. Agricultural Laborers 89
d. Managerial and Confidential Employees 91
F. Conduct of Representation Elections 93
1. Eligibility to Vote 93
a. Part-Time, Temporary, and Probationary Employees 94
b. Laid-off Employees and Strikers 95
c. Employees Whose Status is in Doubt 96
2. Selection of Payroll for Eligibility 96
3. Timing of Elections 97
4. Standards of Election Conduct 98
a. Mechanics of the Election 99
b. Electioneering and Campaign Tactics 99
(1) Preelection Propaganda 100
(2) Discrimination in Rules on Solicitation of Employees 102
(3) Preelection Concessions 105
G. The Union-Shop Referendum 106
1. Contract Bar Rules Not Applicable 107

CHAPTER Page
V. Unfair Labor Practices 108
A. Unfair Labor Practices of Employers 109
1 Interference with Employees' Rights 109
a Questioning of Employees 110
(1) Exception to Rule Against Questioning 110
(2) Forms of Interrogation 111
b. Employer Surveillance of Union Activities 113
c. Rules Restricting Union Activities 114
(1) Discriminatory Enforcement 115
(2) Solicitation of Employees in Retail Stores 115
(3) Distribution of Union Literature 118
d. Discouraging Concerted Activities 119
(1) Economic Benefits 119
(2) Discrimination 119
(3) Threats of Retaliation 120
(4) Other Forms of Discouragement 121
e. Influencing Employee Elections 121
f. Efforts to Undermine Employees' Agent 122
g. Contracts as Interference 124
h. Employer's Freedom of Speech 125
i. Employer's Responsibility for Acts of Subordinates and Others 126
2. Employer Domination or Support of Employee Organization 127
a. Domination of a Labor Organization 128
b. Illegal Assistance by an Employer to a Union 131
c. Bargaining with One of Competing Unions 132
d. Execution of Contract during Pendency of Representation Proceeding 133
3. Discrimination against Employees 134
a. Knowledge of Union or Concerted Activities 136
b Protected and Unprotected Employee Activities 137
(1) Strikes and Work Stoppages 137
(2) Refusing to Cross Picket Line 139
(3) Other Concerted Activities 139
c. Discrimination in Strike Situations 140
(1) Replacement of Strikers 141
(2) Refusal to Reinstate Strikers 143
(3) Discharge of Strikers for Misconduct 144
(4) Condonation of Misconduct or Unprotected Activities 145
d. Discrimination Under Union-Security Agreements 147
(1) Terms of Union-Security Agreements 147
(2) Discrimination 150
(3) Illegal Application of Union-Security Agreement 150
e. Encouraging Union Membership 153
f. Lockout as Bargaining Weapon Held Illegal 154
g. Other Forms of Discrimination 157
h. Rights of Supervisors 158
4. Discrimination for Filing Charges or Testifying 159

CHAPTER Page
V. Unfair Labor Practices—Continued
A. Unfair Labor Practices of Employers—Continued
5. Refusal to Bargain in Good Faith 159
a Majority Status of Representative 159
b. Appropriate Unit 164
c. The Request to Bargain 164
d. Extent of the Duty to Bargain 165
(1) Subject Matter of Bargaining 166
(2) Effect of Contract—Waiver—Impasse 167
e. Individual Bargaining and Unilateral Action 168
(1) Effect of Impasse in Bargaining 170
f. Imposing Improper Conditions 171
g. Refusal to Furnish Information 172
h. Good Faith in Bargaining 173
i Effect of Other Unfair Labor Practices 175
j. Bargaining with a Noncomplying Union 176
k. Bargaining Not Required During Slowdown 178
B. Unfair Labor Practices of Unions 179
1. Restraint or Coercion of Employees 180
a. Strike Against Decertification 180
b. Violence and Threats of Violence 180
c. Threats of Loss of Employment 181
d. Discrimination 183
e. Discriminatory Membership Rules 185
2. Causing or Attempting to Cause Illegal Discrimination 185
a. Causing Discrimination 186
b. "Attempts" to Cause Discrimination 187
c. Discrimination Under Valid Union-Security Agreements 188
3. Refusal to Bargain 189
4. Illegal Secondary Strikes and Boycotts 189
5. Strike for Recognition Against Certification 193
6. Jurisdictional Disputes Under 8 (b) (4) (D) 194
7. Excessive or Discriminatory Fees for Union Membership 196
8. Union Responsibility for Unfair Labor Practices 198
C. The 6-Month Limitation on Charges 199
1. Matters Not Alleged in Original Charge 202
2. Service of Charges 202
3. Effect of Withdrawal or Settlement of Charges 203
D. Remedial Orders 204
1. The Scope of Orders 205
2. Types of Remedies 207
3. Back Pay 209
4. Other Remedies 210
VI. Supreme Court Rulings 211
VII. Enforcement Litigation 213
1. Jurisdiction of the Board 214
a. Enterprises Subject to the Act 214
b. Discretion of the Board 217
2. Persons Entitled to the Benefits of the Act 218
3. Protected Employee Activities 219

CHAPTER Page

VII. Enforcement Litigation—Continued
4. Employer Unfair Labor Practices 224
a. Interrogation 224
b. Employer Rules Against Union Activities 225
c. Discrimination 227
(1) The Union-Security Proviso 227
(2) Discrimination for Giving Testimony in Board Proceedings 231
(3) Benefits Based on Union Membership 232
(4) Lockouts of Nonstriking Employees 234
d. The Duty to Bargain 235
5. Union Unfair Labor Practices 239
a. Restraint and Coercion of Employees 239
b. Restraint and Coercion of Employers 241
c. Causing or Attempting to Cause Discrimination 241
d. Refusal to Bargain 243
e. Secondary Boycotts 243
f. Featherbedding 245
6. Remedial Orders 246
7. Determination of Bargaining Representatives 247
a. Majority Determinations 248
b. Unit Determinations 248
8. The 6-Month Limitation on Charges 249
9. Affidavit Requirements 252
10. Procedural Problems 254
11. Contempt Proceedings 255
VIII. Injunction Litigation 259
1. Injunctions Under Section 10 (j) 261
a. General Principles 262
b. Need and Scope of Relief 262
2. Injunctions Under Section 10 (l) 264
a. Conduct Enjoined 264
b. Denial of Injunction 266
IX. Miscellaneous Litigation 268
1. Suits to Enjoin or Compel Board Action 268
2. Subpoena Litigation 272
3. Litigation Involving Jurisdiction 273
4. Other Litigation 274
X. Fiscal Statement 276

List of Appendices

APPENDIX
A. Definitions of Types of Cases Used in Tables 277
B. Statistical Tables for Fiscal Year 1951 278
C. Statistics of Union-Shop Elections, 1947–1951 304
D. Text of Act, as Amended 1951 310
E. NLRB Regional Offices 335

List of Tables

Tables in Chapters VII and VIII

TABLE Page
1. Results of Litigation for Enforcement or Review of Board Orders 213
2. Summary of Injunction Litigation 260

Tables in Appendix B

(Statistics for Fiscal Year 1952)

1. Number of Cases Received, Closed, and Pending (Petitioner or Complainant Identified) 278
1A. Unfair Labor Practice Cases 279
1B. Representation Cases 280
2. Types of Unfair Labor Practices Alleged 281
3. Remedial Action Taken in Unfair Labor Practice Cases Closed 282
4. Geographic Distribution of Cases 283
5. Industrial Distribution of Cases 284
6. Formal Actions Taken, by Number of Cases 285
7. Disposition of Unfair Labor Practice Cases Closed 286
8. Disposition of Representation Cases Closed 287
9. Types of Elections Conducted 288
10. Collective Bargaining Elections by Affiliation of Participating Unions 288
10A. Outcome of Collective Bargaining Elections 289
10B. Voting in Collective Bargaining Elections in Which a Representative Was Chosen 290
10C. Voting in Collective Bargaining Elections in Which a Representative Was Not Chosen 291
11. Decertification Elections by Affiliation of Participating Unions 292
11A. Voting in Decertification Elections 292
12. Size of Unit in Representation Elections 293
13 Industrial Distribution of Collective Bargaining Elections 294
14. Industrial Distribution of Decertification Elections 295
15. Geographic Distribution of Collective Bargaining Elections 296
16. Geographic Distribution of Decertification Elections 298
17. Record of Injunctions Petitioned for, or Acted Upon, Under Section 10 (j) and 10 (l) 300
18. Record of Final Offer Ballots Conducted Under National Emergencies Provision of LMRA Section 209 (b) 302

Tables in Appendix C

(Statistics of Union-Shop Elections, Aug. 22, 1947–Oct. 22, 1951)

C–1. Union-Shop Authorization Cases Received, Closed, and Pending, August 22, 1947–October 22, 1951 304
C–2. Disposition of Union-Shop Authorization Cases Closed 304
C–3. Union-Shop Authorization Cases in Which Formal Action was Taken 305
C–4. Types of Union-Shop Authorization Polls Conducted 305
C–5. Size of Units in Union-Shop Authorization Polls Conducted 305
C–6. Results of Union-Shop Authorization Polls Conducted 306
C–7. Industrial Distribution of Union-Shop Authorization Polls 307
C–8. Geographic Distribution of Union-Shop Authorization Polls 308

E R R A T U M

Page 1, Line 7, the number of elections should read: 6,866 involving 778,724 employees.

I

Operations in Fiscal Year 1952

THE volume of cases coming to the National Labor Relations Board during the 1952 fiscal year continued at approximately the same high level as in the preceding year. Filings of the various types of cases also corresponded closely to the filings of fiscal 1951. However, there was a noticeable change in the character of the agency's output of cases. The outstanding development was the record number of elections conducted—6,525 involving 674,000 employees.

Because of a reduction in staff resulting from a cut in the agency's appropriation for fiscal 1952,[1] the five-Member Board found it necessary to adopt a policy of giving priority in processing and decision to representation cases. The Board Members decided that giving preference to representation election cases would serve the purposes of the act better than to permit the reduction in staff to slow down the output of decisions on both principal types of cases—representation and unfair practices. The Board Members at the same time took steps to speed the processing of representation cases by simplifying the decisional forms used in cases which present no novel issues. The General Counsel also directed the field offices to place emphasis on expediting representation cases by shortening procedures wherever possible.[2] Consequently, there was a marked decrease in actions upon unfair labor practice cases, but this was partly offset by a substantial increase in the number of representation cases processed, despite the staff reduction.

Among the considerations that led to the decision to give priority to representation cases rather than unfair labor practice cases were

[1] The Board's total staff in Washington and in the field on June 30, 1951, numbered 1,404 employees; on June 30, 1952, it numbered 1,132 employees. This was a reduction of more than 19 percent.

[2] The average time required to process a *contested* representation case, from filing of petition to decision, has been reduced from 151 days, in fiscal 1947, to a current average of 69 days. As a result of new field procedures put into effect by the General Counsel in early 1952, the average time required between the filing of a petition and issuance of a notice of hearing in such cases was reduced from 41 days to an average of 4 days. Moreover, on December 15, 1951, the Board Members delegated to the regional directors authority to issue certifications in stipulated election cases, thus eliminating the necessity of processing these cases in Washington.

these: A representation case ordinarily affects a much larger number of persons. The conduct of an election eliminates uncertainty as to the employees' choice of bargaining representative and often thereby eliminates one possible source of unfair labor practices. Unfair labor practice cases require considerably more time to process, on an average, because of their adversary character and because of the greater complexity of the issues ordinarily involved.

Under this policy of priority for representation cases, the Board Members were able to increase their output of decisions in contested representation cases by approximately 7 percent. However, this increase was more than offset by a decrease of nearly 12 percent in the number of contested unfair labor practice cases decided—cases thereby necessarily put over to future years for final action.

The number of elections conducted rose to a new all-time peak of 6,866. This was an increase of 5 percent over the Board's prior record of 6,525 elections, which was scored in fiscal 1951, and an increase of nearly 20 percent over the 5,731 conducted in fiscal 1950. A total of 778,724 employees was eligible to vote in the 1952 elections, and valid ballots were cast by 674,412, which is 86.6 percent of those eligible. Seventy-five percent of the elections was conducted by agreement of the parties.

The regional offices were able to maintain field activity in closing unfair practice cases by settlement, withdrawal, or dismissal, without formal action, at about the same level as in the preceding year. Approximately 89 percent of the 5,387 unfair practice cases closed by the agency was so disposed of by field action. But the issuance of formal complaints declined 11 percent because of the staff reduction.

In representation cases, there was a noticeable increase in those requiring formal action of some type—28 percent in fiscal 1952 compared with 25 percent the preceding year. In numbers of cases, this meant that formal action had to be taken in 3,013 representation proceedings, compared with 2,638 requiring formal action the year before. Nevertheless, the agency closed 10,603 representation cases, which was an increase of 3 percent over the preceding year.

1. Case Activities of Five-Member Board

The five-Member Board issued formal decisions and opinions during the 1952 fiscal year in 369 unfair labor practice cases which were brought to it on contest over either the facts or the application of the law. This compared with 419 such cases decided by the Board Members in fiscal 1951.[3]

[3] During the middle months of fiscal 1953, the Board has been issuing decisions in unfair labor practice cases at the rate of about 500 per year.

Of the 369 contested cases decided, 293 involved charges against employers and 76 involved charges against unions. Violations of one or more sections of the act were found in 232 of the cases against employers, or 79 percent of the employer cases decided. In the remaining 61, the complaint was dismissed in its entirety. Violations were found in 70 of the cases against unions, or 92 percent of the union cases decided. In the other 6, the entire complaint was dismissed.

In addition, the Board issued formal decisions adopting the intermediate reports of trial examiners in 39 cases where no exceptions to the reports were filed by the parties. Of these, 35 were cases against employers—25 finding violations and 10 dismissals—and 4 were cases against unions—all finding violations. The Board also issued orders in 82 unfair labor practice cases by consent of the party charged with violation. Of these, 67 were cases against employers and 15 were against unions.

In representation cases, the Board directed 1,809 elections to determine whether or not the employees involved wished to choose a representative for collective bargaining. This was an increase of 7 percent over the 1,689 directed in fiscal 1951. The Board dismissed petitions in 290 cases. The 2,099 contested representation cases decided compares with 1,955 decided in fiscal 1951.

2. Activities of the General Counsel

The statute gives the General Counsel the sole and independent responsibility for investigating charges of unfair labor practices, issuing complaints in cases where his investigators find evidence of violation of the act, and prosecuting such cases before the Board Members.

Also, under an arrangement between the five-Member Board and the General Counsel,[4] members of the field staff under his supervision act as agents of the Board in the preliminary investigation of representation and union-shop deauthorization cases. In the latter capacity, the field staffs in the regional offices have authority to effect settlements or adjustments in representation and union-shop deauthorization cases and to conduct hearings on the issues involved in contested cases. However, decisions in contested cases of all types are made by the five-Member Board.

Dismissals by regional directors of charges in unfair labor practice cases may be appealed to the General Counsel in Washington. Re-

[4] See amended Board Memorandum Describing the Authority and Assigned Responsibilities of the General Counsel of the National Labor Relations Board (effective October 10, 1950), 15 Federal Register 6924 (published October 14, 1950). The General Counsel also acts on behalf of the Board in seeking injunctions against unfair labor practices, as provided by the statute, and in court litigation to enforce orders of the Board or to protect Board processes. The activities in these fields are reported in chapters VI, VII, VIII, and IX.

gional directors' dismissals in representation cases may be appealed to the Board Members.

a. Representation Cases

The field staff closed 8,558 representation cases during the 1952 fiscal year. This was 81 percent of the 10,603 representation cases closed by the agency.

In representation cases, consent of the parties for holding an election was obtained in 5,126 cases. Petitions were dismissed by the regional directors in 658 cases. Recognition was granted by the employer in 137 cases without necessity for an election. In 2,622 cases, the petitions were withdrawn by the filing parties.

b. Unfair Labor Practice Cases

In the capacity of prosecutor of unfair labor practice cases, the General Counsel's staff during the 1952 fiscal year closed 4,778 unfair practice cases of all types without the necessity of formal action. This was 88.7 percent of all unfair practice cases closed by the agency.

In addition, the regional directors, acting under the General Counsel's statutory authority, issued formal complaints alleging violations of the act in 699 cases. Of these, 581 were against employers and 118 against unions. Complaints against employers thus constituted 83.1 percent of those issued and those against unions 16.9 percent. This compares with a ratio of charges filed during the year of 79 percent against employers and 21 percent against unions.

The 699 complaints issued by the General Counsel in fiscal 1952 compares with 792 issued in fiscal 1951, a decrease of 11.7 percent. Thus, formal complaints, which launch the trial of the case before the Board Members, were issued in approximately 13 percent of the 5,477 cases on which the General Counsel acted during the 1952 fiscal year.

Of the 4,778 unfair labor practice cases which the field staff closed without formal action, 930, or 20 percent, were adjusted by various types of settlements, and 1,235, or 26 percent, were administratively dismissed after investigation. In the remaining 54 percent, the charges were withdrawn; in many cases, such withdrawals actually reflected a settlement of the matter at issue between the parties through the offices of the field staff. Of the charges against employers, 964, or 25 percent, were dismissed; 784, or 21 percent, were adjusted; and 2,058, or 54 percent, were withdrawn. Of charges against unions, 271, or 28 percent, were dismissed; 144, or 15 percent, were adjusted; and 544, or 57 percent, were withdrawn.

3. Division of Trial Examiners

Trial examiners for the Board, who usually conduct hearings only in unfair practice cases, conducted hearings on 535 such cases during fiscal 1952 and issued intermediate reports and recommended orders in 435 cases.

This was a decrease of more than 20 percent in the number of cases heard compared with the preceding fiscal year and a decrease of nearly 30 percent in the number of cases on which intermediate reports were issued. The size of the Board's staff of trial examiners was reduced substantially during fiscal 1952.

In 39 cases coming to the five-Member Board during the year, the trial examiners' reports were not contested by the parties. Ten of these intermediate reports recommended dismissal of the case in its entirety.

During the year, 72 cases were closed by direct compliance with the trial examiners' recommended orders. This was 16 percent of the cases in which intermediate reports were issued compared with 12 percent in which direct compliance occurred in fiscal 1951.

4. Results of Representation Elections

The Board conducted a total of 6,866 representation elections of all types during the 1952 fiscal year.[5] This was an increase of 5 percent over the 6,525 elections conducted in fiscal 1951. It was also the largest number of representation elections conducted in any one year in the Board's history.

In the 1952 representation elections, collective bargaining agents were selected in 4,960 elections. This was 72 percent of the elections held, compared with selection of bargaining agents in 74 percent of the 1951 elections and 73 percent in 1950.

In these elections, bargaining agents were chosen to represent units totaling 587,363 employees. This was 75 percent of those eligible to vote.

Of 674,412 employees actually casting valid ballots in Board representation elections during the year, 506,212, or approximately 75 percent, cast ballots in favor of representation. Eighty-seven percent of the 778,724 who were eligible to vote cast valid ballots.

Of the representation elections, 153, or about 2 percent, were held as a result of petitions filed by employers. Bargaining representatives were selected in 91 of these elections, or 58 percent. A total

[5] The term "representation election" embraces both certification elections, where a candidate bargaining agent is seeking certification, and decertification elections, where a group of employees is seeking to decertify a recognized or previously certified bargaining agent.

228330—53——2

of 24,529 employees was eligible to vote in all elections held on employers' petitions, and 18,407 of these, or 75 percent, were in the units which chose collective bargaining representatives.

Elections held on petitions filed by employees asking decertification of a currently recognized or certified bargaining representative numbered 101, or 1.5 percent of the elections held. A total of 7,378 employees was eligible to vote in these elections. The representative involved was decertified in 74 of the elections, or 73 percent; the representative won certification in 27. The units in which the union was decertified embraced 4,045 employees, or nearly 55 percent of the employees involved in this type of elections. The units in which the union received a majority embraced 3,333 employees, or 45 percent.

Unions affiliated with the American Federation of Labor won bargaining rights in 3,075 of the 4,650 elections in which they took part. This was 66.1 percent of the elections in which they participated.

Affiliates of the Congress of Industrial Organizations won 1,394 out of 2,473 elections. This was 56.4 percent.

Unaffiliated unions won 464 out of 765 elections. This was 60.7 percent.

A study of Board elections showed that 60 percent of the collective bargaining elections was held in units of less than 40 employees.[6] Eighty percent was held in units of less than 100 employees.

5. Types of Unfair Labor Practices Charged

The most common type of unfair labor practice charged against either employers or unions continued to be illegal discrimination against employees because of their union activities or because of their lack of union membership.

Employers were charged with having engaged in such discrimination, usually because of employees' union activities, in 2,972 cases filed during the 1952 fiscal year. This was 69 percent of the 4,306 cases filed against employees.[7]

The second most common charge against employers was refusal to bargain in good faith with the representative of their employees. This was alleged in 1,226 cases, which was 28.5 percent of the cases filed against employers.

Unions were charged with having caused or attempted to cause employers to discriminate illegally against employees, usually because of the employees' lack of union membership, in 675 cases during

[6] See table 12, appendix B.

[7] Percentages may add up to more than 100 because violations of more than one section often are charged in one case. See table 2, appendix B.

fiscal 1952. This was 59 percent of the 1,148 cases filed against unions.

The second most common charge against unions was illegal restraint or coercion of employees in the exercise of their right to engage in union activity or to refrain from it. This was alleged in 651 cases, or 57 percent, filed against unions. Other major charges against unions were secondary boycott, made in 189 cases, or 16 percent, and refusal to bargain in good faith, made in 105 cases, or 9 percent. Refusal-to-bargain charges usually are based upon allegations that the union has insisted upon contract provisions which violate the act, such as a closed shop or an illegal union shop.

The number of employees involved in cases of illegal discrimination closed during fiscal 1952 also showed a marked decline, but the average amount of back pay due them registered a substantial increase. Employees found to have suffered illegal discrimination in cases closed during fiscal 1952 numbered 2,821 compared with 7,549 in the cases closed during fiscal 1951. However, the employees in the cases closed in fiscal 1952 were found to be entitled to a total of $1,369,792 in back pay for the periods during which they were illegally discharged or demoted. This is an average of $496 per employee compared with an average of $294 for the cases closed in the preceding year. Of the total back pay, $1,345,882 accrued in cases where employers were found in violation and $23,910 accrued in cases where unions were found in violation.

6. Non-Communist Affidavits

At the close of the 1952 fiscal year, 230 national and international unions were currently qualified to use the processes of the Board, by having filed certain financial data and non-Communist affidavits executed by their officers.

Of these unions, 121 were affiliated with the American Federation of Labor, 36 with the Congress of Industrial Organizations, and 73 were independent. At the time, 37 national unions were out of compliance because of incomplete filings. Eleven of these were AFL unions, 2 CIO unions, and 24 unaffiliated.

At the same time, 13,465 local unions were in full compliance with the act's filing requirements.

In addition, 10,752 local unions with 92,455 officers had permitted their compliance to lapse.

A number of unions were out of compliance merely because an affidavit of one officer had expired. An affidavit is valid only for 1 year. In other cases, the financial and other reports required by the act were out of date.

7. National Emergency Ballots

The Board conducted one ballot during fiscal 1952 in a labor dispute designated by the President as a national emergency under Section 206 of the Act. Such ballots are required under certain circumstances by Section 209 (b). The vote is taken on the employer's "last offer" as stated by the employer.

The 1952 ballot was conducted November 20, 1951, among 3,169 employees of 8 copper and nonferrous metals mining companies. The dispute originally involved 25 companies but no vote was taken at the other 17 companies because the dispute had been settled with them. In the ballot on the final offer at the remaining 8 companies, 1,808 voted in favor of accepting the employers' last offer and 629 voted against.

This was the fourth such vote taken by the Board since this provision was adopted in 1947. Data on this and the earlier ballots are set forth in table 18, appendix B.

II

Jurisdiction of the Board

THE Board continued during the 1952 fiscal year to apply the nine principal standards it established in 1950 for determining whether or not to assert jurisdiction in particular cases. The standards are yardsticks to guide the Board in determining the relative impact of a given business upon interstate commerce.[1] Also, they assist employers, unions, and others in determining for themselves whether or not the Board can be expected to take jurisdiction in a particular case.

Under these standards, the Board generally will take jurisdiction in the 48 States [2] over enterprises in the following 9 categories:

1. Instrumentalities and channels of commerce, interstate or foreign.
2. Public utility and transit systems.
3. Establishments operating as an integral part of a multistate enterprise.
4. Enterprises producing or handling goods destined for out-of-State shipment, or performing services outside the State in which the firm is located, valued at $25,000 a year.
5. Enterprises furnishing goods or services of $50,000 a year or more to concerns in categories 1, 2, or 4.
6. Enterprises with a direct inflow of goods or materials from out of State valued at $500,000 a year.
7. Enterprises with an indirect inflow of goods or materials valued at $1,000,000 a year.
8. Enterprises having such a combination of inflow or outflow of goods or services, coming within categories 4, 5, 6, or 7, that the percentages of each of these categories, in which there is activity, taken together add up to 100.
9. Establishments substantially affecting the national defense

1. Application of Standards To Prior Cases

In applying the standards, the Board in fiscal 1952 followed the general rules it had laid down in the preceding year. Thus, the Board adhered to its policy of declining to apply the standards retroactively

[1] The jurisdictional standards were announced in a series of decisions by the Board in October 1950. For citations of decisions in which the standards were announced, see Sixteenth Annual Report, 1951, pp 15, 39.

[2] In the District of Columbia and the Territories, the Board's jurisdiction is plenary and extends to all enterprises regardless of the nature or extent of their operations. *Roy C. Kelley,* 95 NLRB 6. For example, while the Board does not take jurisdiction over the hotel industry in the 48 States, it takes jurisdiction over hotels and apartment houses in the District of Columbia and the Territories. See *Hotel Association of St. Louis,* 92 NLRB 1388.

to unfair labor practice cases.[3] However, this rule does not apply to representation cases. The Board has stated that it will not hold itself bound to refuse a representation case merely because it had rejected the case on jurisdictional grounds before announcement of the present standards.[4]

2. Lack of Complete Annual Data

Because certain of the Board's jurisdictional standards are expressed in terms of annual dollar volume of sales or purchases, the Board is confronted at times with a question as to the method of applying the standards in cases where the figures available cover only a portion of a year. During fiscal 1952, the Board followed its established policy [5] of asserting jurisdiction if representative figures for a shorter period indicated a "reasonable expectation" that the standard for annual volume of business would be met during a year.[6] In one case, sales figures for 3 months were used.[7] Projecting these figures over a year, the Board inferred that the employer's annual operations affecting interstate commerce were large enough to warrant the assertion of jurisdiction. In another case, jurisdiction was taken on the basis of a projection of a company's contracts with interstate employers, although the contracts could be canceled at the end of any 13-week or shorter period.[8] The Board found a "reasonable expectancy" that the contracts would be continued for at least 1 year at the existing volume.

The Board has pointed out that the jurisdictional standards expressed in terms of annual dollar volume of business do not necessarily relate to a specific 12-month period, but may be satisfied by estimating commerce data for an appropriate annual period.[9] This rule was followed in an unfair labor practice case where a strike, which was the subject of the employer's charge, had curtailed operations to such an extent that the company's actual volume of business did not measure up to the minimum jurisdictional standards.[10] Finding that the standards would have been met on the basis of inflow of goods if the strike had not taken place, the Board asserted jurisdiction. To do otherwise, the Board said, "would have the effect of depriving

[3] *Tom Thumb Stores, Inc.*, 95 NLRB 57; *Almeida Bus Lines, Inc.*, 99 NLRB No. 79.

[4] See Sixteenth Annual Report, p. 16; see also *Screw Machine Products*, 94 NLRB 1609.

[5] *C. & A. Lumber Co.*, 91 NLRB 909; *General Seat and Back Mfg. Co.*, 93 NLRB 1511; see also Sixteenth Annual Report, pp. 17, 18.

[6] *Essex County Carpenters Council (Fairmount Construction Co.)*, 95 NLRB 969; *UMW, District 2 (Mercury Mining and Construction Corp.)*, 96 NLRB 1389.

[7] *Walter G. Brix, Inc.*, 96 NLRB 519.

[8] *Broadcast Engineers and Technicians (TelePrompTer)*, 95 NLRB 1369.

[9] *UMW, District 2 (Mercury Mining)*, cited above; see also *Calera Mining Co.*, 97 NLRB 950.

[10] *Essex County Carpenters (Fairmount)* cited above; see Sixteenth Annual Report, p. 18.

the Board of jurisdiction to correct an alleged unfair labor practice by the very conduct which is the subject of the complaint."

3. Extent of Operations Considered

In determining whether or not to assert jurisdiction, the Board generally considers the totality of the employer's operations even though only one operation may be involved in the case before the Board. This applies equally when the employer is engaged in different types of business.

The employer in one such case was engaged in the operation of 22 retail food stores but only 5 of the stores were involved directly in the Board proceeding.[11] The Board based its jurisdictional determination on the total amount of direct and indirect out-of-State purchases for all 22 stores. Because of the integrated nature of the employer's total operations, the Board rejected the contention that only the amount of business done by the 5 stores should be considered.

A similar result was reached in the case of an employer who operated a chain of 25 retail music stores and a piano factory. Only 1 of the employer's stores was involved in the proceeding. In assuming jurisdiction over the store, the Board took into consideration the fact that the employer's purchasing, advertising, and labor relations policies, as well as other matters, were centrally determined, and that all stores were served by common general warehousing and purchasing facilities.[12]

The totality-of-operations test has been applied also in the case of affiliated corporations which in the Board's opinion constituted a single employer. In this type of case, the Board has relied on such factors as the central control of employment and labor relations, extensive interchange of employees, common use of plant facilities, and the fact that parent and subsidiary had the same officers.[13] But common ownership and direction, alone, were rejected as grounds for considering the operations of companies other than the one directly involved in the case.[14]

The Board also uses the total-operations test in applying its jurisdictional standards to the building and construction industry.[15]

---

[11] *Krambo Food Stores,* 98 NLRB No. 208 (Members Murdock and Styles dissenting on other grounds).

[12] *Grinnell Brothers,* 98 NLRB No. 13. The Board held that in view of the prevailing functional integration and the degree of centralized control, the case was distinguishable from the *Shawnee Milling Co.* case (*N. L. R. B.* v. *Shawnee Milling Co.,* 184 F. 2d 57 (C. A. 10)) where the court reversed the Board's jurisdictional findings. However, the Board stated that, with due respect for the court's opinion, it was constrained to adhere to its views in that case until the Supreme Court has had an opportunity to pass on the question.

[13] *Industrial Lamp Corp.,* 97 NLRB 1021.

[14] *Toledo Service Parking Co.,* 96 NLRB 263.

[15] See e. g., *White Oak Park,* 98 NLRB No. 60.

a. Associations of Employees

The jurisdictional standards are applied on the basis of total operations also in cases involving associations or groups of employers joined together for the purpose of collective bargaining.[16] Accordingly, the Board asserted jurisdiction on the basis of total services rendered to out-of-State customers by a group of cleaning and dyeing establishments who for a number of years had bargained through a joint committee.[17] The Board again pointed out that where the totality of the operations of an employer group warrants assertion of jurisdiction, it need not determine whether or not it would assert jurisdiction over each employer separately.

However, a majority of the Board declined to measure jurisdiction by the total operations of a contractors' association in a case in which a nonassociation subcontractor on a grocery store construction project had charged a union with enforcing illegal union-security provisions of a contract to which the general contractor was a party as an association member.[18] The majority declined jurisdiction because neither the operations of the general contractor nor those of the subcontractor equalled the standards.

4. Instrumentalities or Channels of Commerce

In the category of instrumentalities and channels of commerce, the Board asserted jurisdiction over radio stations,[19] telephone companies,[20] operators and seagoing vessels,[21] and licensed freight carriers.[22] Newspapers which used interstate telegraph news services and publish syndicated features and advertisements of nationally sold products also may come within this category.[23]

---

[16] The principles previously established in such cases are discussed in Sixteenth Annual Report, pp. 20, 22

[17] *Samuel Bernstein & Co*, 98 NLRB No. 39. See also *Pacific Coast Shipbuilders and Ship Repairers*, 98 NLRB No. 35; *Fish Industry Committee*, 98 NLRB No. 109.

[18] *Local 428, Journeymen of Plumbing and Pipefitting Industry (Palladino Brothers)*, 95 NLRB 1480 (Member Reynolds dissenting).

[19] *Arlington-Fairfax Broadcasting Co., Inc. (Radio Station WEAM)*, 95 NLRB 846; *Radio Station KHMO*, 94 NLRB 1416; *Harding College*, 99 NLRB No. 148; *International Broadcasting Corp. (KWKH)*, 99 NLRB No. 25

[20] *Southwestern Bell Telephone Co*, 97 NLRB 79; *The Chesapeake and Potomac Telephone Co. of West Virginia*, 98 NLRB No 168

[21] *Longshoremen's Local 19 (Waterfront Employers of Washington)*, 98 NLRB No. 44; *Pacific American Shipowners Association*, 98 NLRB No. 99; *Alaska Steamship Co*, 98 NLRB No. 12.

[22] *Teamsters Local 236 (William T. Traylor)*, 97 NLRB 1003; *Stibbs Transportation Lines, Inc.*, 98 NLRB No. 74; *Warehousemen Local 636, AFL (Roy Stone Transfer Corp.)*, 99 NLRB No 111.

[23] *The Bethlehem's Globe Publishing Co*, 98 NLRB No. 191.

a. Rule on Taxicabs Modified

After the close of the 1952 fiscal year, the Board modified its policy on asserting jurisdiction over taxicab companies.[24] Under existing policy, the Board will assert jurisdiction over a taxi company only if it meets all three of the following requirements: (1) It serves an interstate transportation terminal, (2) it is the sole company serving the area or it operates under a contract, license, or franchise from an instrumentality of interstate commerce, and (3) it derives a substantial part of its total revenue directly from carrying passengers to and from interstate terminals or depots.

5. Public Utilities and Transit Systems

In this category, the Board took jurisdiction of gas companies,[25] electric power companies including cooperatively owned enterprises,[26] local bus systems,[27] and a local water company.[28]

In taking jurisdiction over a bus company operating wholly within one State,[29] the Board took into consideration that the company operated under a State certificate of public convenience and necessity and included, in its daily route, service to an interstate concern and two army installations.

6. Multistate Enterprises

During fiscal 1952, the Board continued to assert jurisdiction over various local establishments on the basis of their functioning as an integral part of a multistate enterprise. In this category were locally owned outlets for interstate manufacturers, such as retail automobile dealers,[30] distributors of farm and truck equipment,[31] and soft drink bottlers and distributors.[32] A number of other cases involved locally operated units of multistate enterprises, such as a retail dry goods and apparel store,[33] a plant engaged in the manufacture and distrbu-

---

[24] *Cambridge Taxi Co*, 101 NLRB No 217 (December 1952). *Cashman Auto Co*, 98 NLRB No 134, distinguished See also *Breeding Transfer Co*, 95 NLRB 1157.

[25] *Roanoke Gas Co*, 94 NLRB 1431; *Western Kentucky Gas Co*, 97 NLRB 917; *Montana Dakota Utilities Co*, 95 NLRB 887; *San Diego Gas and Electric Co*, 98 NLRB No. 146

[26] *Jackson Electric Membership Corp.*, 10–RC–1640 (not printed); *Rural Cooperative Power Association*, 97 NLRB 235, *Graham County Electric Cooperative Inc.*, 96 NLRB 684; *Black River Electric Cooperative*, 98 NLRB No. 86; *Salt River Valley Water Users Association*, 99 NLRB No. 129.

[27] *Harrisburg Railways Co.*, 94 NLRB 1028; *Cluff (Columbus Celina Coach Lines)*, 97 NLRB 777.

[28] *El Dorado Water Co*, 95 NLRB 1223.

[29] *Cluff (Columbus Celina Coach Lines)*, 97 NLRB 777

[30] *Howell Chevrolet Co.*, 95 NLRB 410; *Reeder Motor Co.*, 96 NLRB 831; *Gilbert Motor Sales, Inc*, 97 NLRB 98; *Miller (California Willys)*, 98 NLRB No. 45; *Louis Rose Co.*, 99 NLRB No. 105; *Cashman Auto Co*, 98 NLRB No. 134.

[31] *Hallam & Boggs Truck and Implement Co*, 95 NLRB 1443.

[32] *Coca-Cola Bottling Co. of Pottsville*, 97 NLRB 503; *American Factors Co.*, 98 NLRB No. 67.

[33] *S. & L. Co. of Pipestone*, 96 NLRB 1418.

tion of culvert pipe and other highway materials,[34] an employer engaged in the distribution and installation of industrial and commercial insulation products,[35] a wholesale bakery,[36] a limestone plant,[37] several construction companies,[38] and a corporation operating a chain of beauty salons in several States.[39]

Where so-called "franchised" dealers and distributors are concerned, the Board's assumption of jurisdiction has not depended on the form of the dealership agreement. The Board has given weight rather to the control exercised by the manufacturer over the dealer's operations. Thus, the Board took jurisdiction over a farm implement retailer whose dealership agreement with a national implement maker gave the national firm "a substantial degree of control" over the manner in which the retailer operated the business, even though the agreement did not give the retailer any exclusive sales territory.[40] The manufacturer's control in this case extended to such matters as prices, inventories, sufficiency of sales and service facilities, financial records, insurance coverage, and advertising. Similarly, the Board asserted jurisdiction over an automobile dealer who did not have an exclusive franchise but whose contract with the manufacturer provided specifically for capital requirements, place of business, hours, service facilities, personnel, and advertising details.[41]

The Board took jurisdiction also in a case involving a beer wholesaler who distributed beer for two breweries under oral agreements terminable at will.[42] The agreements gave the wholesaler exclusive rights in the county, and they were made directly with the breweries. While the agreements did not specify any methods of operation or distribution to be followed by the wholesaler, he stated at the hearing that his operations would be subject to any direction exerted by the breweries. Also, the wholesaler paid a percentage of his sales for advertising and promotion of the beers handled. But the Board declined to take jurisdiction over an intrastate chain of three stores on the basis of a nonexclusive "franchise" the stores had with a wholesaler of a national make of electrical appliances.[43] In this case, the Board did not consider the matter of the stores' servicing and repair of appliances under warranties of the manufacturer, because the store company, which was a petitioner in the case, did not furnish informa-

[34] *Tri-State Culvert and Mfg Co.*, 96 NLRB 1208.
[35] *Mundet Corp Corp*, 96 NLRB 1142.
[36] *Meyer's Bakery of Little Rock, Inc*, 97 NLRB 1095.
[37] *Standard Lime and Stone Co.*, 95 NLRB 890.
[38] *Del E. Webb Construction Co.*, 95 NLRB 153; *Utah Construction Co*, 95 NLRB 218
[39] *Charles of the Ritz Operating Corp*, 96 NLRB 309
[40] *Hallam & Boggs Truck and Implement Co.*, 95 NLRB 1443.
[41] *Howell Chevrolet Co.*, 95 NLRB 410.
[42] *Myers and Fiddler (M & F Distributing Co.)*, 97 NLRB 999. In this case the Board also based its assertion of jurisdiction on the additional fact that the employer shipped empty containers valued at more than $25,000 per year to breweries located outside the State; see also *Caldarera (Falstaff Distributing Co.)*, 97 NLRB 997
[43] *Reiley's Stores, Inc.*, 96 NLRB 516.

tion as to the amount of money it had received from the manufacturer for this service.

In assuming jurisdiction over the local project of a multistate construction company,[44] the Board rejected the contention that the project could not be considered an integral part of the company's multistate enterprise because the project constituted a completely independent operation and was confined to a single State. Nor does mere corporate separation of the enterprises in an interstate chain alter their multistate character. Thus, the Board took jurisdiction over a retail clothing store which was 1 of 2 operated within the same State by a corporation which was a wholly owned subsidiary of a company that owned 36 or 37 separately incorporated stores in several States.[45] But neither does common ownership with enterprises in other States, alone, establish a local business as an integral part of multistate enterprise. Thus, the Board declined to take jurisdiction over a local company operating a parking garage and other parking facilities, merely because the local company was controlled by the same stockholders and directors as several other companies engaged in similar operations in a number of States. The Board held that these facts did not establish such an integration of the several corporations' operations as to make them a single integrated operation for jurisdictional purposes.[46]

7. Concerns Engaged Directly in Commerce

In applying the $25,000-a-year jurisdictional standard for a business producing or handling goods for out-of-State shipment, or rendering out-of-State services, the Board was again confronted with a question of what should be counted as an out-of-State shipment. This case, like a similar one in the preceding fiscal year, involved a mortuary.[47] The employer contended that shipments initiated at the request of local customers should not be counted because the Board in the earlier case had based the computation only on shipments made at the request of out-of-State clients. The Board rejected the contention on two grounds: (1) Under Supreme Court precedent, the shipments in question constituted interstate commerce and (2) the Board's earlier ruling was not intended to imply that a different result would have been reached in that case had the shipments there

[44] *Utah Construction Co*, 95 NLRB 196

[45] *S & L Co. of Pipestone*, 96 NLRB 1418

[46] *Toledo Service Parking Co*, 96 NLRB 263

[47] *Forest Lawn Memorial-Park Association, Inc.*, 97 NLRB 309 The earlier case was *Riverside Memorial Chapel*, 92 NLRB 1594 (January 1951); see Sixteenth Annual Report, pp. 29, 30.

been ordered by local clients.[48] The Board also held in this year's case that, in computing the value of the employer's out-of-State shipments, the trial examiner properly took into account the value of embalming and other services rendered in connection with each shipment, as well as the value of caskets and shipping cases.

8. Concerns Serving Interstate Enterprises

In applying the $50,000 a year jurisdictional standard for enterprises furnishing goods or services to instrumentalities of commerce, public utilities, or enterprises with out-of-State business of $25,000 a year, the Board is at times confronted with a contention that the enterprise served by the employer is not engaged in commerce within the meaning of the act. This problem was presented in one case involving a company that supplied bottled gas to certain cotton gins.[49] The gins did not ship their processed cotton out of State, but exchanged it for negotiable receipts from local warehouses. While noting that negotiation of the warehouse receipts might cause the cotton to change hands several times before being shipped out of State, the Board held that it was sufficient that the cotton eventually would enter the stream of commerce, to satisfy the test of "goods destined for out-of-State shipment" within the Board's formula.[50] The Board observed that it had previously considered and rejected the argument that the transfer of title is a decisive element in determining the nature of a transaction for jurisdictional purposes. In several cases, the Board also had occasion to reaffirm the well-established principle that lack of title to the goods which move in commerce does not remove an employer who handles the goods from the jurisdiction of the act. Thus, the Board held that it was not precluded from taking jurisdiction over: An employer who provided stockyard facilities and services but took no direct part in the purchase and sale of the livestock handled;[51] a company operating cotton compressing and warehousing facilities which did not own the cotton that moved through its plants into interstate commerce;[52] or a Government contractor who produced and processed materials, title to which was at all times in the Government.[53]

---

[48] The Board's observation in the *Riverside* case as to the location of the clients was in response to the employer's claim that jurisdiction should not be asserted because its responsibility for out-of-State shipments terminated at the State line.

[49] *National Gas Co*, 99 NLRB No. 44

[50] For the standard, see *Hollow Tree Lumber Co.*, 91 NLRB 635; Sixteenth Annual Report, p. 30.

[51] *The Evansville Union Stockyards*, 95 NLRB 631.

[52] *Federal Compress & Warehouse Co.*, 95 NLRB 899.

[53] *Great Southern Chemical Corp*, 96 NLRB 1013

Similarly, the Board asserted jurisdiction over a coal mine operator who marketed his product through an interstate brokerage company which in turn sold the coal to out-of-State customers;[54] and a logging and sawmill operator who sold his entire output to local wholesalers engaged in an interstate enterprise.[55] In the latter case, the Board pointed out that, because the value of the wholesalers' annual out-of-State sales exceeded $25,000 a year, it was unimportant that almost all of the goods purchased from the lumber company were sold locally. The Board stated that it "makes no attempt to follow the goods" in computing business volume under this standard. The Board also asserted jurisdiction over an employer engaged in the sale of scrap iron who annually furnished over $50,000 worth of scrap to brokers who in turn shipped the material to interstate enterprises located within the State.[56]

However, in applying this standard, the Board continues to exclude sales made by the employer "to local units operating as integral parts of multistate enterprises, unless the local unit itself has sufficient inflow or outflow to warrant assertion of jurisdiction." [57] This rule was held to apply to the sales by an employer to local stores of a national grocery chain.[58] It was applied also to the installation of equipment in local gasoline stations owned by interstate oil companies where none of the stations had out-of-State sales in excess of $25,000.[59]

Other enterprises over which the Board asserted jurisdiction under this standard included: An employer engaged in publishing financial information and furnishing financial advice;[60] a concern rendering shipping, billing, and collecting services to publishers of periodicals;[61] a corporation engaged in heavy engineering construction;[62] a laundry and linen service supplying such interstate firms as railroads, utilities, and industrial plants;[63] a trucking contractor engaged in coal hauling for several mine operators engaged in commerce;[64] a corporation furnishing fruit and vegetable inspection services for 31 companies engaged in commerce;[65] the owners of office buildings, each of whom re-

---

[54] *UMW District 31*, 95 NLRB 546; see Sixteenth Annual Report, p. 30.
[55] *Walter G. Brix, Inc*, 96 NLRB 519
[56] *Gaby Iron and Metal Co.*, 13–RC–2311 (not printed).
[57] *National Gas Co.*, 99 NLRB No. 44.
[58] See footnote 57; the Board, however, asserted jurisdiction in this case on the basis of other factors See p 16
[59] *Christopher (Crown Sign and Construction Co.)*, 99 NLRB No. 133.
[60] *Standard & Poor's Corp.*, 95 NLRB 248.
[61] *Leader News Co.*, 98 NLRB No 22.
[62] *Foley Brothers, Inc*, 97 NLRB 1482.
[63] *Office Towel Supply Co.*, 97 NLRB 449
[64] *UMW District 2 (Mercury Mining and Construction Corp.)*, 96 NLRB 1389
[65] *National Perishable Inspection Service, Inc*, 97 NLRB 779.

ceived over $50,000 in rents from tenants engaged in commerce;[66] and a corporation engaged in furnishing garbage collections service and receiving over $100,000 for disposal of waste materials from interstate concerns.[67]

9. Establishments Affecting National Defense

While the national defense test was applied in a number of cases during the past year, the Board had occasion to indicate that it will assume jurisdiction only where the effect of the employer's operations on national defense is substantial. Thus, jurisdiction was declined in a case involving the operation of a local parking garage with a total annual business of about $250,000, only approximately $600 of which was derived from services under a contract with the United States Government.[68]

In one case, the Board was requested to decline jurisdiction over a copper and cobalt mining company because, at the times material to the case, plant facilities were still under construction and mining operations had not yet begun.[69] Rejecting the contention, the Board observed that the employer's construction activities preparatory to production were "as intimately related to the ultimate purpose of its business and its effect on national defense as [were] the mining and shipment of the end product of its enterprise."

Other enterprises over which the Board asserted jurisdiction on the basis of the national defense standard included: A general construction company engaged in building plants for the Atomic Energy Commission;[70] a corporation engaged in repairing truck bodies under a Defense Department contract;[71] a general construction contractor performing maintenance services for the United States Government at a munitions plant;[72] an employer engaged in furnishing pies, sandwiches,[73] and other products to post exchanges on United States military reservations and to ship service stores on Navy vessels;[74] a processor of dairy products making sales to military installations and veterans' hospitals;[75] a training school for pilots for the U. S. Air

[66] *Van Schaak & Co*, 95 NLRB 1028
[67] *Oakland Scavenger Co.*, 98 NLRB No. 215.
[68] *Toledo Service Parking Co.*, 96 NLRB 263
[69] *Calera Mining Co*, 97 NLRB 950.
[70] *F. H. McGraw & Co.*, 96 NLRB 821
[71] *Capital Trailer Co., Inc.*, 96 NLRB 66
[72] *Whittenberg Construction Co.*, 96 NLRB 29
[73] *Johnnie W. Miller Sandwich Co*, 95 NLRB 463.
[74] *Great Southern Chemical Corp*, 96 NLRB 1013
[75] *Kress Dairy, Inc.*, 98 NLRB No. 63

Force;[76] and a funeral establishment which furnished supplies and services under an exclusive contract to military establishments.[77]

10. Jurisdiction of Certain Types of Enterprises

In several cases during the past year, the Board again had to pass on assertions that under the act it did not have, or in its discretion should not exercise, jurisdiction over certain types of employers or enterprises.

a. Nonprofit Enterprises

In one case, the Board had to determine whether or not a hospital operated by a mining company was outside the Board's jurisdiction, either because it was a nonprofit hospital within the specific exemption of section 2 (2) of the amended act, or because its operations did not affect commerce in the jurisdictional sense.[78] In assuming jurisdiction over the company's hospital employees, the Board restated its former conclusion that the statutory exemption of nonprofit hospitals applies only where the organization operating the hospital is itself operated on a nonprofit basis. The Board also held that the hospital involved in the case was clearly an integral part of the company's interstate mining operations and was therefore subject to the act.

In cases involving other nonprofit enterprises whose operations were technically within the broad scope of the act, the Board continued to follow its policy of asserting jurisdiction "only in exceptional circumstances and in connection with purely commercial activities of such organizations."[79] Thus, in the *Columbia University* case, the Board declined to assert jurisdiction over certain noncommercial activities which were "intimately connected with the charitable purposes and educational activities" of the university. The Board similarly declined to assert jurisdiction in a case involving the association which operates the Philadelphia Symphony Orchestra.[80] The Board stated:

> While we are of the opinion that under recent court decisions the Board may constitutionally assert jurisdiction in this matter, we are not convinced that it would effectuate the purposes of the Act to do so. The effect on interstate commerce of the activities of a nonprofit organization like the Respondent Association, devoted to the presentation of musical performances of artistic merit, is too remote to warrant taking jurisdiction in a field where we have not previously asserted it.

---

[76] *Hawthorne School of Aeronautics,* 98 NLRB No. 165.

[77] *Hazen & Jaeger Funeral Homes,* 95 NLRB 1034.

[78] *Kennecott Copper Corp.,* 99 NLRB No. 110

[79] *The Trustees of Columbia University,* 97 NLRB 424 See also *Henry Ford Trade School,* 58 NLRB 1535; *Illinois Institute of Technology,* 81 NLRB 201; and *Port Arthur College,* 92 NLRB 151, distinguished

[80] *Philadelphia Orchestra Association,* 97 NLRB 548

make them. Consequently the State court had no power to proscribe the present strike on the ground that its objective failed to accord with Massachusetts' labor relations policy.

* * * * * * *

Plainly, the Board is not bound by a decision as to the objectives of the strike which the State court had no power to make Nor is it bound by that court's ruling respecting the character of the means. The Act vests the Board with "exclusive primary jurisdiction over all phases of the administration of the act." *California Ass'n* v. *Bldg. & Const. Trades Council,* 178 F. 2d 175, 177 (C. A. 9). Effectuation of this objective necessarily requires that the Board's conclusions, as to whether the purpose or means of the instant strike "illegalize" it for purposes of the Act, should not turn upon "whatever different standards the respective States may see fit to adopt." *N. L. R. B.* v. *Hearst Publications,* 322 U. S. 111, 123.

Similarly, in a representation proceeding involving an employer engaged in commerce, the Board pointed out again that its jurisdiction could "not be ousted by prior State action, even where . . . all parties participated in the State [representation] proceedings."[89] Nor can the Board's determinations in an unfair labor practice case be affected by an arbitration award. Thus, the Board held that an award directing an employer to discharge an employee, unless he paid arrears in his union dues, clearly could not preclude the Board from finding that the discharge of the employee in accordance with the award violated the act.[90] The Board quoted the Court of Appeals for the Ninth Circuit to the effect that:

Clearly, agreements between private parties cannot restrict the jurisdiction of the Board. . . . We believe the Board may exercise jurisdiction in any case of an unfair labor practice when in its discretion its interference is necessary to protect the public rights defined in the act.[91]

The Board also observed that, as far as its discretion was concerned, there could be no justification for giving effect to an arbitration award which was at odds with the act.[92]

---

[89] *Krambo Food Stores,* 98 NLRB No. 208.

[90] *Monsanto Chemical Co ,* 97 NLRB 517. See also *UAW Local 291 (Timken Detroit Axle Co.),* 92 NLRB 968

[91] *N. L. R. B.* v. *Walt Disney Products,* 146 F 2d 44 (C. A. 9).

[92] Compare *Timken Roller Bearing Co ,* 70 NLRB 500 While reiterating in this case that section 10 (a) precludes an arbitration award from having binding effect in a proceeding under the act, the Board did not permit the relitigation of charges which the complaining union had previously submitted to arbitration with results unfavorable to it

III

The Filing Requirements

THE act requires that a labor organization, in order to use the Board's processes in any type of case, file certain documents and statements, including a non-Communist affidavit from each of its officers, and also furnish its members with annual financial reports.[1] Absent such compliance, the act forbids the Board to take action upon different types of cases at different stages. In an unfair labor practice case, the Board may not issue a complaint based on a charge made by a labor organization which has not complied.[2] In a representation case, the act forbids investigation of a question of representation "raised by" a noncomplying union.[3] A union also must comply with the filing requirements in order to make a valid union-shop agreement.[4]

1. Application of Section 18 (1951 Amendment)

The Supreme Court's *Highland Park* decision,[5] holding that compliance by parent labor federations (such as CIO and AFL) is required when their affiliated unions seek to utilize Board processes, led to the 1951 amendment of the act which became law October 22, 1951. The amendment added section 18, which provides that "no petition entertained, no investigation made, no election held, and no certification issued" under section 9 shall be invalid because of the noncompliance of the CIO and AFL with the filing requirements prior to the time these organizations first filed. However, this section further provides that "no liability shall be imposed under any

[1] Sec 9 (f), (g), and (h).

[2] The Board's interpretation is that this requires compliance by the time the complaint is issued rather that at the earlier time the charge is filed (see, e. g., *Dant & Russell*, 95 NLRB 252, and *United States Gypsum Co*, 97 NLRB 889). The Board's interpretation was upheld by the Supreme Court, *Dant & Russell* case (No. 97, Oct. Term 1952).

[3] This applies equally to representation petitions filed by an employer, because the act permits such a petition to be filed only after a labor organization (or an individual acting on behalf of employees) has made a claim to represent employees. *Herman Loewenstein, Inc.*, 75 NLRB 377 (1947); *M. F. Fetterolf Coal Co.*, 6-RM-64 (Administrative Decision of the Board, July 25, 1951).

[4] Public Law No. 189, approved Oct. 22, 1951.

[5] *N. L. R B. v. Highland Park Mfg Co*, 341 U. S 322 The effect of the *Highland Park* decision on outstanding Board orders was discussed in detail in the Sixteenth Annual Report (pp. 42, 44).

provision of this act upon any person for failure to honor" any such election or certificate prior to the effective date of the amendment, unless there is in effect a final court judgment or decree.

The application of section 18 during the past year led to the dismissal of refusal-to-bargain charges in a number of cases. In each case, the Board considered itself precluded from finding a violation of section 8 (a) (5) because the employer's refusal amounted to a failure to honor a certification that was issued at a time when the union's parent federation had not complied, or was based upon an investigation of the complaining union's majority status made at such time.[6] In the *Advertiser* case, the Board further held that an unlawful refusal to bargain could not be found even though the union could demonstrate its majority status before the election. In the Board's opinion, section 18 does not permit the imposition of "liability" in the face of the Board's own invalid certification, even though the union's majority at the time of the alleged refusal to bargain could be proven independently of the certification. In the *Bowling Green* case, the Board held that the application of section 18 required not only the dismissal of the 8 (a) (5) allegation of the complaint, but also of the allegation that the employer's unilateral grant of a wage increase constituted an independent violation of section 8 (a) (1). The wage increase following the union's certification, the Board noted, was not unlawful under either section of the act, because it constituted merely a permissible "failure to honor" the union's certificate under the amendment.

In another case,[7] section 18 likewise was held to preclude a finding that section 8 (a) (3) and section 8 (b) (2) were violated because of the discharge of an employee under the union-security agreement of a union whose authorization certificate was invalid under the *Highland Park* decision. This conclusion was necessary, the Board said, because section 18 was specifically designed to protect against unfair labor practice charges parties who acted in reliance on such Board certificates.

In view of the certificate's validation by section 18, the Board during the past year denied a union's motion to rescind the certification of another union because of the noncompliance of the latter's parent federation.[8] In similar circumstances in another case, the Board held that section 18 rendered moot a contention that a decertification pro-

---

[6] *United States Gypsum Co*, 97 NLRB 889, amending, 94 NLRB 112; *American Twine & Fabric Corp.*, 97 NLRB 868; *Mac Smith Garment Co.*, 97 NLRB 842; *The Bowling Green Rubber Co*, 97 NLRB 1148; *Denison Cotton Mills Co*, 97 NLRB 1191; *Reynolds & Manley Lumber Co.*, 97 NLRB 188; *Union Bus Terminal of Dallas, Inc*, 97 NLRB 206; *The Advertiser Co*, 97 NLRB 604; *Morris Milling Co*, 97 NLRB 875.

[7] *Chisholm-Ryder Co.*, 96 NLRB 508

[8] *The Laclede Gas Light Co.*, 97 NLRB 75.

ceeding should be dismissed because the union was certified at a time when its parent had not complied.[9]

2. Union-Security Agreements by Noncomplying Unions

Under the 1951 amendments, union-security agreements are valid only if the contracting union "has at the time the agreement was made or within the preceding twelve months received from the Board a notice of compliance with section 9 (f), (g), and (h)."[10] In view of this requirement, the Board held that a contract made by a union which was not in possession of such notice could not bar a present determination of representatives.[11] The new requirement was likewise held to prevent a union-shop agreement from constituting a bar to an election where the agreement was made by an international on behalf of the members of its local and where the local, which actually represented the employees covered, was not in compliance.[12]

In the first union-shop deauthorization case to come before the Board itself, a majority of the Board dismissed the petition on the ground that the union involved was not in compliance at the time when its union-shop agreement was made.[13] The Board held that there was no occasion to hold a referendum to determine whether to rescind the union's authority to make the agreement, because the union did not legally have any such authority.

3. Fronting for Noncomplying Unions

The Board has continued to protect its processes by ascertaining in each case whether a complying labor organization or an individual (who is not subject to the filing requirements[14]) is seeking to institute proceedings as a "front" for noncomplying unions. However, in those cases during the past year in which "fronting" was alleged at the hearing, the Board found that no such abuse of its processes was in fact involved. In one case, the Board held that a decertification proceeding was not barred merely because the petitioning individual was a member and attended meetings of the incumbent union and of another noncomplying union.[15] The Board noted that the petitioner had testified without contradiction that he had received no financial assistance from any labor organization, that the expenses of the proceeding were shared by the other employees concerned, and that he was

[9] *Williams Laundry Co.*, 97 NLRB 995.
[10] Sec 8 (a) (3).
[11] *Mellin-Quincy Mfg. Co*, 98 NLRB 457.
[12] *Fein's Tin Can Co.*, 99 NLRB No 32
[13] *The D. M. Bare Paper Co.*, 99 NLRB No. 164 (Chairman Herzog and Member Styles dissenting).
[14] See *Campbell Offset Printing Co.*, 92 NLRB 1421 (1951).
[15] *Knife River Coal Mining Co.*, 96 NLRB 1.

acting only in his individual capacity. "Fronting" charges were also rejected in a decertification proceeding where the record similarly showed that the petitioning employee had himself secured authorization to file the petition, and that he had no contact with any noncomplying union regarding the representation of employees concerned.[16]

Contentions in two cases that the individual employees who filed unfair labor practices charges were "fronting" for noncomplying unions were rejected as not supported by the record.[17]

4. Administrative Investigations of Compliance

The Board undertook administrative investigations of the validity of the compliance of unions in two cases.

In the first such case, a question arose as to whether all persons who actually were officers of a union had filed.[18] The Board issued an order requiring the union to show cause why the Board should not determine administratively that the union was not in compliance, and never had been, because it had failed to designate three trustees and one sergeant-at-arms as "officers" who were required to file the non-Communist affidavits. The Board found that the union actually had failed to comply with the filing requirements. Thereafter, the Board, on a further notice to show cause, vacated the union's prior certification and a Board order requiring an employer to bargain with the union on the basis of that certification.[19]

The second case, which arose after close of the fiscal year, involved a union one of whose officers was convicted in United States district court on October 24, 1952, of having previously filed a false non-Communist affidavit with the Board.[20] The Board on November 21, 1952, declared the union out of compliance and issued a notice requiring it to show cause why its certifications as bargaining representative for employees at five plants should not be struck down. After hearing oral argument on the matter, the Board declared the union's certifications to be of "no further force and effect." [21] The Board stated that it acted "in the interest of protecting its own processes from further abuse."

---

[16] *Archer-Daniels-Midland Co*, 97 NLRB 647. See also *Ketchum & Co.*, 95 NLRB 43, where the Board found that the union allegedly represented by the petitioner had complied with the filing requirements.

[17] *Pecheur Lozenge Co*, 98 NLRB No. 84 (intermediate report); *Coal Creek Co*, 97 NLRB 49.

[18] *Compliance Status of Local No. 1150, UE*, 96 NLRB 1029.

[19] *Sunbeam Corp*, 98 NLRB No 98, setting aside 93 NLRB 1205.

[20] *Compliance Status of Local 80-A, United Packinghouse Workers of America*, 101 NLRB No. 223, November 21, 1952

[21] *Charles B. Knox Gelatine Co.*, Case No. 4-RM-79; *Kind and Knox Gelatine Co*, Case No. 4-RM-78; *Consolidated Cigar Corp*, Case No. 4-RC-996; *A Siegal & Sons, Inc.*, Case No 4-RC-997; *A. Siegel & Sons*, Case No. 4-RC-1636, all December 19, 1952.

IV

Representation and Union-Shop Cases

THE act requires that an employer bargain with the representative selected by a majority of his employees in a unit appropriate for collective bargaining.[1] But the act does not require that the representative be selected by any particular procedure, as long as the representative is clearly the choice of a majority of the employees. As one method for employees to select a majority representative, the act authorizes the Board to conduct representation elections.[2] However, the Board may conduct such an election only after a petition has been filed by the employees or any individual or labor organization acting on their behalf, or by an employer who has been confronted with a claim of representation from an individual or labor organization.

Once a petition has been properly filed, the Board has full statutory power to determine the employees' choice of collective bargaining representative in any business or industry where a labor dispute might affect interstate commerce, with the major exceptions of agriculture, railroads, and airlines. It does not always exercise that power, however, where small or local enterprises are involved.[3] It also has the power to determine the unit of employees appropriate for collective bargaining.

Under the amended act, the Board may formally certify a collective bargaining representative in a representation case only upon the basis of the results of a Board-conducted election by secret ballot.[4] Once certified by the Board, the bargaining agent is the exclusive representative of all employees in the appropriate unit for collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment. The right of a bargaining agent to exclusive representative status, however, is limited by a statutory proviso to section 9 (a) that any individual employee or group of employees has the right to present grievances to their employer and

[1] Sec. 9 (a).

[2] Sec. 9 (c) (1).

[3] See Board's standards for asserting jurisdiction, p 9

[4] However, in an unfair labor practice case involving refusal to bargain, the Board may use other evidence to determine whether or not an individual or labor organization claiming representation rights actually was the choice of a majority of employees at the time of the alleged refusal to bargain.

to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of any collective bargaining agreement then in effect. The statute requires, however, that the bargaining representative must be given an opportunity to be present at any such adjustment.

The amended act also empowers the Board to conduct an election to decertify an incumbent bargaining agent which has been previously certified or which is being currently recognized by the employer. Decertification petitions may be filed by employees or individuals other than management representatives, or by labor organizations acting on behalf of employees.

Petitions for Board elections are filed in the regional office in the area in which the plant or business involved is located. The Board provides standard forms for filing petitions in all types of cases.

A. The Question of Representation

Section 9 (c) of the act provides machinery for the certification of the bargaining agent which an employee group has selected in a Board-conducted election, as well as for the decertification of an incumbent bargaining agent. In the case of a petition for either certification or decertification, the Board must determine whether or not there is a sufficient interest among the employees concerned to justify the holding of an election, and whether a question concerning their representation exists, as required by section 9 (c) (1).

1. Showing of Employee Interest

A petition by employees, or a union, or an individual claiming to represent employees, for an election to determine the employees choice of a bargaining representative, if any, must allege that "a substantial number of employees" desire representation.[1] In applying this provision, the Board continues to follow certain well-established rules regarding the manner in which the existence of the required employee interest will be determined, the parties to the proceeding who will be required to show such an interest, and the extent of interest which a particular party must show to participate in an election.[2]

The Board consistently takes the position that the regional director's administrative determination that sufficient employee interest has been shown to merit investigation of a petition is final, and may not be

[1] Sec. 9 (c) (1) (A).

[2] An employer seeking an election is required to show only that a union has made a bona fide claim to represent a majority of the employees. Sec. 9 (c) (1) (B).

challenged by the parties in subsequent proceedings.[3] Accordingly, the Board declined to consider assertions that the showing of interest was not made within the time prescribed by the Board's rules and regulations;[4] that the record contained no proof of any showing of interest by the petitioner among the employees involved;[5] that the authorization cards used to show interest were not authentic;[6] that a petitioner's showing of interest did not apply to the proper unit;[7] and that a majority of the employees in the unit had withdrawn their authorization and no longer desired the union to represent them.[8]

The required interest may be shown by submitting authorization cards signed by employees, or any other suitable evidence, which will be checked by the Board's investigators against the payroll for the unit involved.

a. Petitioner's Interest

In giving effect to the statutory requirement that petitions filed under section 9 (c) (1) (A) must be supported by a substantial number of employees, the Board requires a showing before the regional director that not less than 30 percent of the employees in the proposed bargaining unit desires representation. This is based upon "the Board's administrative experience that in the absence of special factors the conduct of an election serves no purpose under the statute unless the petitioner has been designated by at least 30 percent of the employees."[9] A petition not so supported will be dismissed.

The required showing of interest must relate to the unit which the petitioner seeks to represent. This rule was held satisfied in a case in which a union requested a system-wide gas and electric utility unit and demonstrated a sufficient employee interest concentrated in those of the company's geographical divisions previously represented by the union.[10] The Board held that it was not necessary for the union to make a separate showing in each of the company's divisions so long as the union represented more than 30 percent of the employees on a system-wide basis. But in another case, which involved a self-determination election among the employees in three separate units which were sought to be merged in a single unit, the Board held the petitioning union had to make a showing of interest in each of the three groups.[11]

---

[3] *Valencia Service Co*, 99 NLRB No 57; *Charles A Krause Milling Co.*, 97 NLRB 536; *Great Southern Chemical Corp*, 96 NLRB 1013; *Seashore Transportation Company*, 95 NLRB 1296.

[4] *Wilson & Co., Inc.*, 97 NLRB 1388.

[5] *New Castle Products, Inc.*, 99 NLRB No. 120.

[6] *Charles A. Krause Milling Co.*, 97 NLRB 536.

[7] *Pacific Gas and Electric Co.*, 97 NLRB 1397.

[8] *East Coast Fisheries, Inc*, 97 NLRB 1261.

[9] Statements of Procedure, effective June 3, 1952, sec. 101.17.

[10] *Pacific Gas and Electric Co.*, 97 NLRB 1397.

[11] *Standard & Poors' Corp.*, 95 NLRB 248.

If the Board finds that a unit different from that requested in a petition is appropriate, it will nevertheless direct an election if the interest shown by the petitioner is sufficient in the unit found appropriate, and the petitioner is willing to represent the unit found by the Board.[12] However, if the petitioner does not wish to participate in an election in the unit found by the Board, a timely request for the withdrawal of the petition without prejudice will be granted.[13] In one case, where the petitioner apparently was in a position to make a sufficient showing in the appropriate unit, the Board instructed the regional director to postpone the election in order to afford the union an opportunity to make the necessary showing. When the interest shown by the petitioner is insufficient in the appropriate unit, the petition will be dismissed without prejudice.[14]

In the case of a petition involving employees in a seasonal industry where employment fluctuates, the Board continues to require a showing of sufficient interest among the employees in the unit at the time the petition is filed.[15]

A petition filed by an *employer* who has been presented with a representation claim need not be accompanied by proof of the claimant's interest or actual representation.[16]

b. Intervenor's Interest

While the statute specifically requires a showing of interest only from petitioning employees, individuals, and labor organizations, the Board has long recognized that the orderly administration of the representation procedures of the act also calls for some showing from other parties who claim an interest in the proceeding and seek to intervene for the purpose of appearing on the ballot. As a general rule, an intervenor is required to show a current or recent contractual interest,[17] or a representative interest,[18] in the employees involved in order to appear on the ballot.

---

[12] *The Great Atlantic & Pacific Tea Co*, 99 NLRB No. 155; *Alpine Metals Manufacturing Co.*, 95 NLRB 1190.

[13] *Hampton Roads Broadcasting Corp (WGH)*, 98 NLRB No. 162; *Emhart Manufacturing Co*, 96 NLRB 375 See also *Sixteenth Annual Report*, p. 56.

[14] *Franklin Simon & Co., Inc*, 96 NLRB 671.

[15] *S. Martinelli & Co.*, 99 NLRB No. 12; *J. J. Crossetti Co.*, 98 NLRB No. 42. See also Sixteenth Annual Report, p 57.

[16] Statements of Procedure, effective June 3, 1952, sec. 101 17, sec 9 (c) (1) (B).

[17] *Bethlehem Steel Co.*, 97 NLRB 1072; *Holland Furnace Company*, 95 NLRB 1339. See also *Krueger Sentry Guage Co.*, 98 NLRB No. 65, where a union with a present contractual interest, which did not participate at the hearing, was placed on the ballot with leave to withdraw.

[18] *Kennecott Copper Corp*, 98 NLRB No 148; *Don Lee Broadcasting System*, 98 NLRB No 70. See also *Bethlehem Steel Co.*, 97 NLRB 1072, holding that an intervenor could not

NATIONAL LABOR RELATIONS BOARD LIBRARY

An intervenor which lacks a contractual interest need not show a full 30 percent authorization interest, unless it seeks a unit substantially different from the one specified in the petition.[19]

The interest on which an intervenor may rely in order to participate in the election must have been acquired before the close of the hearing.[20] However, an intervenor with such an interest may be permitted to make the necessary showing even after the close of the hearing.[21] In the case of an election to be held by mutual consent of the parties, the interest required for an intervenor to participate must have been acquired not later than the date of the consent election agreement.[22]

2. Existence of a Question of Representation

Before the Board may direct a representation election, it must find that a question concerning representation exists. In a contested case, this determination is made on the basis of the facts disclosed at the hearing, rather than the allegations of the petition.[23] The rules previously developed by the Board for determining the existence of a question of representation in both certification and decertification proceedings have been followed during the past year.[24]

a. Certification Proceedings

In certification proceedings, the Board ordinarily will direct an election if a specific request for recognition has been made by the petitioning representative and denied by the employer named in the petition. Moreover, an election will normally be directed at the request of an uncertified but currently recognized union, because such a union "is entitled to the benefits of a Board certification notwithstanding the employer's recognition of the [union's] majority status." [25]

---

rely on the interest of a sister union in a group over which the intervenor claimed jurisdiction.

[19] *Seaboard Machinery Corp.,* 98 NLRB No. 93. See also *Ford Motor Co., Aircraft Engine Division,* 96 NLRB 1075, where a 30 percent showing was required in a unit in which no employees were hired until after the hearing.

As an administrative practice, the Board has long required an intervenor who lacks a contractual interest to present a showing of at least 10 percent employee support in order to contest an election petition to which all other parties agree. However, in consent elections which are held by the agreement of parties with substantial interests, the Board grants the intervenor a place on the ballot on the basis of a lesser showing of interest, provided that the intervenor accepts the terms of the consent election agreement.

[20] See *Sixteenth Annual Report,* p. 58.

[21] See, for instance, *Kennecott Copper Corp., Ray Division,* 98 NLRB No. 148, where certain intervenors were afforded an opportunity to show their interest to the regional director within 10 days after issuance of the Board's direction of election.

[22] *Stationers Corp*, 99 NLRB No. 47.

[23] Sec 9 (c) (1). See *Coca-Cola Bottling Co, of Pottsville,* 97 NLRB 503.

[24] See Sixteenth Annual Report, pp 59. 61, Fifteenth Annual Report, pp 34, 36

[25] *Natona Mills, Inc*, 97 NLRB 11; *Bell Aircraft Corp*, 98 NLRB No. 206.

To establish the existence of the question of representation, the petitioner's request for recognition need not be accompanied by a claim or proof of present majority representation.[26] Nor does the existence of a question of representation depend on a substantial showing of interest by the petitioner, such as is required in advance of a hearing.[27] Moreover, the Board considers the filing of a representation petition itself a sufficient demand,[28] and a question of representation exists if the employer refuses to recognize the petitioning union at the hearing. Such a refusal was found where an employer declined to answer the hearing officer's question as to whether the employer was willing to recognize the petitioner.[29] A mere statement of recognition, not consummated in a collective bargaining agreement, does not bar a current determination of representatives.[30] Where a refusal of recognition by the employer is concerned, the fact of nonrecognition, and not the employer's motives or intentions, is material.[31]

An employer's petition likewise must be based upon a request for recognition by a bargaining agent, which the employer refuses to grant. This requirement was held to have been satisfied where an employer refused to sign an exclusive recognition contract submitted by a union,[32] or refused to grant the request of an incumbent bargaining agent for continued recognition [33] or for a new contract.[34]

An employer's petition raises a valid question of representation only when there is a current claim to represent all employees in the unit set forth by the petition.[35] Consequently, no representation question existed when the employer set forth in its petition a unit that included employees both at its plant and in outlying areas, whereas the union claimed to represent only the plant employees.[36]

An employer's petition will be dismissed if the union which requested recognition later disclaims its interest in the employees in a "clear and unequivocal" manner.[37] No such disclaimer was found where a union began to picket the employer's premises the same day

---

[26] *U. S. Phosphoric Products Division, Tennessee Corp.*, 96 NLRB 7.

[27] *J. I. Case Co.*, 95 NLRB 1493. *New Castle Products, Inc.*, 99 NLRB No 120

[28] See *The Great Atlantic & Pacific Tea Co.*, 96 NLRB 660.

[29] *J. I. Case Co., Bettendorf Works*, 18–RC–1210 (not printed).

[30] *Great Southern Chemical Corp.*, 96 NLRB 1013.

[31] *Philadelphia Electric Co.*, 95 NLRB 71; *Coca-Cola Bottling Co., of Pottsville*, 97 NLRB 503.

[32] *The Johnson Bros. Furniture Co.*, 97 NLRB 246. See also *Commercial Equipment Co, Inc*, 95 NLRB 354.

[33] *Commercial Equipment Co, Inc*, cited above.

[34] *Philadelphia Electric Co.*, 95 NLRB 71.

[35] *Ware Laboratories, Inc.*, 98 NLRB No. 152.

[36] *Wm. Wolf Bakery, Inc.*, 97 NLRB 122.

[37] *Kimel Shoe Co.*, 97 NLRB 127; *Cal-Ar Corp.*, Case No. 21–RM–207, Board's Administrative Decision No. 645, made public April 14, 1952; *The Pontiac Coach Co*, Case No. 7–RM–87, Board's Administrative Decision No. 648, made public April 14, 1952; *Valco Mfg. Co.*, Case No. 21–RM–213, Board's Administrative Decision No. 666, made public June 9, 1952.

it requested recognition.[38] The Board held that in these circumstances it was immaterial that the pickets' placards did not demand recognition, that the union submitted a statement to a Board agent that it had made no request warranting an election, and that the union did not appear at the hearing held later. An election was likewise directed where, following a telegraphic disclaimer, the union reaffirmed its representation claim by the continued use of picket signs referring to the employer's alleged refusal to recognize the union.[39] However, a majority of the Board held that picketing activities which were carried on primarily for organizational purposes and the placing of the employer on an unfair list did not invalidate a prior disclaimer of any claim to represent a majority of the employees.[40]

b. Decertification Proceedings

The Board has consistently held that it may direct an election in a decertification proceeding only if the incumbent bargaining agent has been certified or is currently recognized by the employer.[41] In one case, a majority of the Board held that an uncertified union was not currently recognized when the employer refused to enter into negotiations with it for a new contract, because a majority of the employees had requested the employer not to negotiate further on their behalf and because decertification proceedings had been instituted.[42] The majority declined to hold that the employer's withdrawal of recognition was merely temporary, or to give effect to the employer's motive in withdrawing recognition. The majority also rejected the view that the requirement of current recognition must be tested as of the date of the filing of the petition, rather than as of some later date. The majority said:

> . . . It is true . . . that the Employer might, after our dismissal of the petition herein, again recognize the Union as the representative of its employees. However, we do not believe that such a speculative possibility is sufficient to warrant a strained construction of the Act which would require the Board to use Federal funds to conduct an election which may deny to the employees for 12 months the right to select any representative. . . .

In a decertification proceeding, as in a certification proceeding instituted by an employer, the petition will be dismissed if the bargain-

---

[38] *The Johnson Bros. Furniture Co*, 97 NLRB 246. See also *Commercial Equipment Co., Inc.*, 95 NLRB 354.

[39] *Kimel Shoe Co*, 97 NLRB 127.

[40] *General Paint Corp*, 95 NLRB 539 (Chairman Herzog dissenting on the facts; Board Member Reynolds dissenting from the disclaimer rules). See also *Peter Paul, Inc*, Case No. 20–RM–91, Board Administrative Decision No. 640, made public April 14, 1952.

[41] See *Coca-Cola Bottling Co., of Pottsville*, 97 NLRB 503, Chairman Herzog and Board Member Reynolds dissenting.

[42] *Coca-Cola Bottling Co.*, cited above.

ing agent involved has effectively disclaimed that it is the majority representative.[43]

3. Qualification of Representative

Under the act, the bargaining representative of employees may be an employee or group of employees or any individual or labor organization acting in their behalf.[44] The Board continues to give effect to the principle that the selection of a bargaining agent is primarily a matter for the employees' own choice. However, it is the Board's policy not to direct an election or issue a certificate if the proposed bargaining agent lacks the qualifications of a bona fide representative of the employees.

a. Capacity for Representation

In a number of cases, the Board was requested to dismiss representation petitions on the ground that the petitioner was not a "labor organization" within the meaning of the act. In each of these cases, the Board found that the petitioner was capable of acting as bargaining agent because it was an organization "in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers" concerning subjects of collective bargaining.[45] Thus, the Board rejected a contention that an AFL district council was not a proper bargaining agent because it had confined itself to assisting certain locals in negotiating contracts and to furnishing them administrative services.[46] The Board pointed out that the council not only existed for the purposes named in section 2 (5), but also had indicated its intention to permit employee participation in its operations by securing designations among the employees it was seeking to represent directly. Similarly, the Board held that the CIO was a labor organization for the purposes of section 9 (c) because it was seeking to represent employees and to bargain for them directly with the employer named in the petition.[47] A contention that a petitioning independent committee was not a labor organization also was rejected by the Board because the record showed that the committee had a substantial employee membership, officers, and its bylaws provided for

[43] *Cleveland Decals, Inc.*, 99 NLRB No. 115.

[44] Sec 9 (c) (1) (A)

[45] Sec. 2 (5) defines the term "labor organization" as any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

[46] *National Clay Products Co*, 98 NLRB No. 17. See also *Twentieth Century-Fox Film Corporation*, 96 NLRB 1052

[47] *Electro Metallurgical Co.*, 98 NLRB No 186.

bargaining and grievance committees.[48] The chairman of the committee testified that it was formed for bargaining and grievance purposes.

The Board in several cases declined requests for the exclusion of a union from the ballot on the ground that it had ceased to be a labor organization. In one such case, the Board held that a schism vote, in which members of a local union voted to disaffiliate from the parent international and set up a new local affiliated with another international, did not destroy the old local as a labor organization. The old local's charter was not revoked and it still had members and unrevoked authorizations from employees for deduction of their dues from their pay, and it still held meetings.[49] The Board likewise held that representative capacity was not lost by an independent union which affiliated with an international union,[50] or by an international union whose merger with another international was imminent at the time of the hearing.[51] However, in the latter case, the Board authorized the regional director to substitute the union's new name if the merger was completed prior to the election.

In one case, the employer contended that a division set up within a national union to represent the company's employees on national basis was not a labor organization under the act because it was "illegally constituted" in violation of the union's constitution or bylaws.[52] The Board held that whether it was legally constituted did not affect its status as a labor organization under the act's definition. The Board said: "The question of the legality of its establishment is an internal union matter which is not a concern of the Board."

In one case, the Board rejected the contention that the petitioner was disqualified as bargaining representative because of the admission of United States Government workers to membership.[53] The Board pointed out that the union did not seek to represent Government employees, and that it existed in fact for the purpose of bargaining on behalf of employees of the employer. The Board also declined to dismiss a petition merely because the petitioner had sought to include groups which may not properly form a part of a bargaining unit, such as supervisors.[54]

The Board again reiterated that the qualification of a union to act as bargaining agent for a group of employees is not determined by its so-called "jurisdiction" for enrolling members. Thus, in a case in

[48] *Hardy Manufacturing Company*, 98 NLRB No 127
[49] *The Mountain Copper Company, Ltd*, 96 NLRB 1018
[50] *The Great Atlantic & Pacific Tea Company*, 98 NLRB No. 55.
[51] *Green Bay Drop Forge Company*, 95 NLRB 1122.
[52] *Continental Baking Company*, 99 NLRB No. 123.
[53] *Ravenna Arsenal, Inc.*, 98 NLRB No 10.
[54] *Capital Transit Co.*, 98 NLRB No. 27.

which an employer objected to the addition of certain employees to an existing operating and maintenance unit because of certain provisions of the union's constitution, the Board said: "The authority of a bargaining agent to represent employees must be sought in the consent of the employees and not in the constitution of the labor organization." [55] Thus, rejecting a contention that a craft union could not represent an industrial unit, the Board observed that it is the union's willingness to represent the employees that controls and not the employees' eligibility to membership or the exact extent of the union's jurisdiction.[56] The same principle was applied where production and maintenance unions sought to represent clerical [57] or technical [58] employees. The Board also rejected a contention that a petitioning union was incapable of representing employees outside its geographical jurisdiction.[59]

According to section 9 (c) (1), employees may be represented for collective bargaining purposes not only by labor organizations but also by individuals. However, the Board has consistently held that a supervisory employee may not qualify as bargaining agent.[60] The Board has likewise dismissed petitions in which employees were represented by supervisors for the purpose of decertification proceedings.[61]

b. Equal Representation of Employees

It is the Board's policy to withhold certification from a labor organization if it is shown that it will not represent all employees in the unit, fairly and without discrimination.[62] However, in the absence of proof of a union's unequal treatment of some members in the bargaining unit, the Board will not inquire into the union's internal organization.[63]

In one case, the Board granted a self-determination election to a group of employees which it found had not been given equal representation by the union which had been certified to represent them.[64] In this case, the Board found the following situation: The union had been certified to represent these employees more than 18 months before. The current contract, although listing these employees as covered,

---

[55] *Capital Transit Company,* cited above.

[56] *Buzza-Cardozo Company,* 99 NLRB No. 19.

[57] *RCA Service Company,* 98 NLRB No. 62; *Fox Deluxe Foods, Inc.,* 96 NLRB 1132; *Wilson & Co., Inc,* 97 NLRB 1388.

[58] *Bulldog Electric Products Company,* 96 NLRB 642.

[59] *National Clay Products Company,* 98 NLRB No. 17.

[60] *Kennecott Copper Corporation,* 98 NLRB No 14.

[61] *Coast Drum and Box Company,* 96 NLRB 1135 Cf. *Kraft Foods Co,* 97 NLRB 1097.

[62] See Sixteenth Annual Report, p. 63. Compare *National Clay Products Co.,* 98 NLRB No. 17.

[63] *Tri-State Culvert & Manufacturing Company,* 96 NLRB 1208.

[64] *Queensbrook News Co., Inc.,* 98 NLRB No. 21.

contained no wage scale for them and stated that their rates of pay, hours, and conditions of work "will be separately negotiated." Moreover, the union had similar provisions relating to this class of employees in contracts with four other similar companies. The employees involved were paid $32 a week less than any of the other employees in the unit. The union had granted none of them union membership and had processed no grievances for them.

In the election, the employees voted for separate representation by a different union and the Board certified that union as their new representative. The employees involved were return room employees of a magazine distributing company.

The Board, in its decision granting them a self-determination election, said:

> It is clear that no equal representation was accorded the Employer's return room employees by the Intervenor although that union was certified by the Board as their collective bargaining representative. In these circumstances we are of the opinion that the inclusion of return room employees in a broader unit under our prior unit determination does not necessarily render inappropriate at this time a separate unit of return room employees. Had the question of representation for these return room employees arisen originally at a time when no union sought to represent them in a single unit with other employees, the Board might well have found appropriate a residual or departmental unit of return room employees and directed an election among them on that basis. Such a unit is no less appropriate now. Because of the absence of any previous bargaining for these return room employees as a separate unit, we did not in our earlier decision deem it necessary to give them a self-determination election. In the light of development since then we think the advisability of such an election is apparent.

B. The Contract Bar Rule

To encourage stability of labor-management relations the Board ordinarily will not conduct a representation election among a group of employees who are covered by a valid collective bargaining contract which still has a period to run. In many cases in which a petition is filed for a representation election, the Board is confronted with a claim that the employees are covered by an existing contract and that, therefore, the petition should be dismissed. If it is found that the asserted contract exists in fact and conforms to certain requirements, it is the Board's policy to consider the contract a bar to a present election.[1] This "contract bar rule," as recently pointed out by the Board, "is not compelled by the act or by judicial decision thereunder. It is an administrative device early adopted by the Board in

[1] The petitioner's own contract covering the employees involved cannot serve as a bar. *Puerto Rico Cement Corporation,* 97 NLRB 382; *Western Equipment Company,* 96 NLRB 1376.

the exercise of its discretion as a means of maintaining stability of collective bargaining relationships." [2]

The Board's contract bar rule generally applies if there is in existence [3] a valid, written collective bargaining agreement, signed by the parties, granting the contracting representative exclusive recognition, and containing substantive terms and conditions of employment.[4]

An oral contract does not constitute a bar to an election.[5] This applies even if the parties' oral understanding was later incorporated into a written agreement which was made retroactive.[6] Nor did it make any difference that the parties had deferred writing out their agreement only to wait for Wage Stabilization Board approval of a wage increase which had been agreed upon.[7] A written memorandum embodying some but not all essential terms of an oral interim agreement also was held insufficient to bar a present determination of representatives.[8]

The further rule that a contract is not a bar unless it is signed by the parties [9] has been applied in the case of a contract which had been approved by the employees covered and was in effect at the time of the filing of the petition.[10] In order to be a bar, the contract must be signed by all parties named in the contract. Thus, a contract signed by the employer and an international union, but not by a local named as joint bargaining agent, was held no bar.[11] A contract between a union and an employer association, which had been signed at the time of the petition by only three out of five association members, was held no bar.[12] But the signing of a contract by a person with apparent authority to bind the contracting party is sufficient,[13] and a contract initialed by the proper parties has been held to be properly signed for contract bar purposes.[14]

---

[2] *Ford Motor Company,* 95 NLRB 932.

[3] See *Ocean Tow, Inc.,* 98 NLRB No. 23.

[4] The same contract bar rules apply in certification and decertification proceedings. Sixteenth Annual Report, p. 64

[5] See *Peters Sausage Company,* 95 NLRB 740. The fact that an oral agreement may be enforceable as a matter of contract law is immaterial for contract bar purposes, *Groveton Papers Co., Inc*, 96 NLRB 1369.

[6] *Groveton Papers Company, Inc*, 96 NLRB 1369.

[7] *The Specialty Mfg. Co.,* 18–RC–1366 (not printed).

[8] *Groveton Papers Co, Inc.,* 96 NLRB 1369.

[9] *American Suppliers, Inc.,* 98 NLRB No. 108; *Weber Showcase & Fixture Co., Inc*, 96 NLRB 358.

[10] *Crossett Paper Mills,* 98 NLRB No. 87.

[11] *Filtration Engineers, Incorporated,* 98 NLRB No. 182 (Member Styles dissenting).

[12] *New Jersey Brewers Association,* 96 NLRB 1011.

[13] *New Jersey Oyster Planters and Packers Association, Inc.,* 98 NLRB No. 174; *Arco Manufacturing Company,* 97 NLRB 645; *Lewittes and Sons,* 96 NLRB 775. Cf *Herrall-Owens Company,* 92 NLRB 160, *Worthington Pump and Machinery Corporation,* 99 NLRB No. 24.

[14] *Worthington Pump and Machinery Corporation,* 99 NLRB No. 24; *Bemis Brothers Bag Co.,* 97 NLRB 1.

Because a contract must fix the terms and conditions of employment for the employees covered in order to bar an election, an agreement regarding pensions only was rejected as a bar.[15] A contract containing a no-strike, no-lockout clause, providing for an insurance and pension plan, but simply continuing "present employment terms" was held no bar because it made no reference to any specific document setting forth present employment conditions.[16] On the other hand, an agreement embodying new wage rates and providing for the continuation of the terms of a specified contract,[17] and a contract fixing essential working conditions in detail though leaving wage rates to future negotiations,[18] each was held to constitute a bar.

1. Effect of Invalid Union-Security Clauses

In keeping with the practice of not giving effect to contracts which conflict with basic policies of the act, the Board has consistently held that a contract does not bar an election if it contains an invalid union-security clause.[19] Such clauses are valid only if (1) the contracting union is the majority representative of the employees in the appropriate units covered; (2) the union is, at the time of the execution of the agreement, in compliance with section 9 (f), (g), and (h) of the act; (3) the union's authority to make such an agreement has not been rescinded in an election under section 9 (e);[20] and (4) the form of union security provided conforms to the limitations of section 8 (a) (3).[21]

a. Failure To Provide a 30-Day Grace Period

Section 8 (a) (3) provides that an employer and a union may make an agreement requiring employees subject to its terms to join the

[15] *The Gates Rubber Co.*, 95 NLRB 351; *Groveton Papers Co, Inc*, 96 NLRB 1369, *Bethlehem Steel Company*, 95 NLRB 1508

[16] *Bethlehem Steel Company*, 95 NLRB 1508.

[17] *Super Service Motor Freight Co*, 98 NLRB No. 73.

[18] *Spartan Aircraft Company*, 98 NLRB No. 19.

[19] In one case in which the validity of a union-security agreement was in issue, the Board rejected the employer's contention that the Board could not proceed without first obtaining a declaratory judgment determining the validity of the contract. *C. Hiltebrant Dry Dock Co., Inc.*, 98 NLRB No. 201.

[20] On October 22, 1951, the act was amended to dispense with the former requirement that a union must obtain the approval of a majority of employees in a Board-conducted referendum in order to make a union-security agreement. (Public Law 189, 82nd Congress, 1st Session.) See Sixteenth Annual Report, pp. 13, 14.

[21] The Board ruled that a checkoff provision which may be invalid under section 302 of the act does not destroy a contract as a bar. The Board pointed out that the interpretation of section 302 was entrusted to other Government agencies and, therefore, the legality of checkoff provisions in a contract may not be determined in a representation proceeding. *Crown Products Co.*, 99 NLRB No. 99, modifying insofar as inconsistent *C Hager & Sons Hinge Manuacturing Company*, 80 NLRB 163; *Decker Clothes, Inc*, 83 NLRB 484; *The Broderick Company*, 85 NLRB 708, and *Saginaw Furniture Shops, Inc*, 97 NLRB 1488

union "on or after the thirtieth day following the beginning of [their] employment or the effective date of [the] agreement whichever is later." This mandatory period is generally known as the 30-day grace period.

The Board during the past year held that this 30-day grace period must be granted "only to those employees who are not members of the union on the effective date of the union-security clause of the contract, and to new employees hired after said effective date," but it need not be granted to persons already employed on that date who were members of the union.[22] This reversed the rule of the *Worthington Pump* line of cases.[23]

Applying the *Krause Milling* rule, the Board held valid a union-security clause which required maintenance of membership in good standing by all old employees who were members on the effective date of the contract and all employees who became members thereafter, when such clause either (1) provided a 30-day grace period for new employees [24] or (2) did not require them to become members.[25] But a clause which did not provide a 30-day grace period for old employees who were not members of the union at the time the contract was executed destroyed the contract as a bar.[26] Nor did a clause requiring union membership "after thirty days of employment" satisfy the requirements of section 8 (a) (3), because it compelled employees with more than 30 days of employment before the effective date of the contract to join the union at once.[27] Other union-security clauses held defective on this ground included one requiring all present employees "to maintain their membership in the union"; [28] others providing that all employees covered by the agreement "shall be and remain members of the union"; [29] or that "membership in good standing is a condition of continued employment." [30] Similarly, an agreement requiring that "all those employees now working for the company * * * shall, not later than two weeks after the signing of this contract, be-

[22] *Charles A. Krause Milling Co.*, 97 NLRB 536

[23] *Worthington Pump and Machinery Corporation*, 93 NLRB 527; *Rock-Ola Manufacturing Corporation*, 93 NLRB 1196; *Blue Ribbon Creamery*, 94 NLRB 201. See Sixteenth Annual Report, pp 65, 66. In view of this holding, the Board vacated the election in this case with permission to the petitioner to file a new petition. *Worthington Pump and Machinery Corporation*, 99 NLRB No. 34.

[24] *American Seating Company*, 98 NLRB No. 123; *Jersey Millwork Co*, 97 NLRB 1559.

[25] *Worthington Pump and Machinery Corporation*, 99 NLRB No. 24; *West Steel Casting Company*, 98 NLRB No. 32; *American Cyanamid Co.*, 98 NLRB No. 5; *Southland Paper Mills, Inc.*, 97 NLRB 896.

[26] Example: *S. G. Martinelli*, 99 NLRB No. 12.

[27] *Krambo Food Stores, Inc.*, 98 NLRB No. 208 (Members Murdock and Styles dissenting); *National Lead Co.*, 97 NLRB 651. See also *Al Massera*, 97 NLRB 712.

[28] *Lever Brothers Company*, 97 NLRB 1240

[29] *Archer-Daniels-Midland Co*, 97 NLRB 647; see also *American Coating Mills*, 97 NLRB 638.

[30] *C. Hilterbrant Dry Dock Company, Inc.*, 98 NLRB No 201.

come members" of the union likewise was held invalid for contract bar purposes.[31]

Other agreements held no bar because of defective union-security clauses included: A contract providing that new employees must apply for union membership "within 10 days after going to work," and that such employees would be admitted to membership after 4 weeks of satisfactory service.[32] An agreement requiring old nonmember employees and new employees to become and remain members in good standing "for the duration of their employment." [33]

In several cases the validity of union-security clauses was in doubt because their terms were ambiguous. In such cases, the Board determined the question by the intent of the parties to the contract. Thus, in the case of an agreement which did not specifically allow employees already on the payroll 30 days to become members of the union, the Board held that the contract was nevertheless a bar because another clause expressed the union's intent to incorporate by reference the 30-day grace period provision of section 8 (a) (3).[34] Similarly, the Board in an unfair labor practice case held valid a contractual provision which in effect required old employees to become members within 20 days from the Board's certification of the union's authority to enter into a union-security agreement.[35] In finding that the clause was not intended to circumvent the 30-day grace requirement, the Board took into consideration the language of the clause, the direct reference to section 8 (a) (3), and the fact that the old employees concerned had actually been accorded 30 days' grace.

A contract requiring seasonal employees to join the union if retained in the company's employ after a certain date likewise was held intended to treat such employees as regular employees and therefore automatically entitled to the statutory grace period.[36]

b. Preferential Hiring Clauses

Because the union shop is the maximum form of union security permitted by section 8 (a) (3), a contract providing for any type of union security which goes beyond the union shop is invalid and will

---

[31] *Kress Dairy, Inc.*, 98 NLRB No. 63. The Board in this case also held that the defect could not be cured by making the contract effective retroactively. Otherwise, the Board observed, the 30-day requirement could be circumvented by predating by 30 days every contract containing a union-security clause.

[32] *Valley Motor Co*, 96 NLRB 1416.

[33] *New Castle Products, Inc.*, 99 NLRB No. 120

[34] *American Seating Company*, 98 NLRB No 123, *Kimble Glass Division, Owens Illinois Glass Co*, 96 NLRB 640

[35] *Standard Brands*, 97 NLRB 673. (The case arose prior to the 1951 amendment of sections 8 (a) (3) and 9 (e)) See also *Kaiser Aluminum & Chemical Corp.*, 98 NLRB No 116

[36] *Kuner Empson Company*, 97 NLRB 952.

not bar an election. Thus, an election is not barred by a contract which contains a clause requiring the employer to give preference in hiring to members of the contracting union.[37] Similarly, a contract was destroyed as a bar by provisions that only union members should have seniority rights, that the laying off and subsequent rehiring of employees should be governed by seniority, and that temporarily laid-off employees could be rehired only after clearance by the union.[38] Other contracts held no bar include: A contract requiring that only union members in good standing be hired when available, and that new nonunion employees join the union in the manner prescribed by the union's constitution.[39] A contract providing that nonunion members, hired when no satisfactory union members were available, must apply for union membership when employed and "may be taken into the Union" after 30 days of satisfactory service.[40] A contract providing that the union shall supply members to take the place of employees discharged for failure to achieve good standing.[41]

However, an employer's agreement to "continue to employ none but members of the union in good standing," with no reference to the hiring of new employees, was held not to constitute an illegal preferential hiring agreement.[42] Nor was an agreement held unlawful where the requirement that the company employ only persons in good standing with the union was accompanied by the statutory requirement that all employees shall become members after 30 days following their employment or the effective date of the agreement, and shall then remain members in good standing.[43]

c. Membership Requirements

Section 8 (a) (3) limits lawful discharges based upon union-security agreements to situations in which the employee has failed or refused to pay the periodic dues and initiation fees uniformly required as a condition of union membership. In view of this limitation, the Board has held that a union-security agreement cannot bar an election if it requires, as a condition of the union membership necessary to retain employment, payments other than those specified in section 8 (a) (3), such as "general assessments," which have no

[37] See *S. G. Martinelli*, 99 NLRB No. 12; *Knife River Coal Mining Company*, 96 NLRB 1.

[38] *Slater & Son*, 96 NLRB 1026. But see *American Dyewood Co*, 99 NLRB No. 17 (Member Houston dissenting on another point).

[39] *Stewart and Nuss, Inc.*, 97 NLRB 1132.

[40] *F. J. Kress Box Company*, 97 NLRB 1109

[41] *C. Hiltebrant Dry Dock Company, Inc*, 98 NLRB No. 201.

For unfair labor practice cases in which similar clauses were held invalid see *Utah Construction Co.*, 95 NLRB 196; *Mundet Cork Corp.*, 96 NLRB 1142.

[42] *Danita Hosiery Mfg. Co.*, 97 NLRB 1499

[43] *Blackstone Mills, Inc.*, 98 NLRB No. 59.

"element of regularity or periodicity."[44] Similarly, the Board held that an election was not barred by a contract including a union-security clause requiring the payment of "special dues" shown to be levied as fines for nonattendance at union meetings.[45] Likewise, an agreement providing for union membership after a 60-day probationary period but requiring the payment of dues as of the date of hiring was held no bar.[46] In so holding, the Board pointed out that the act does not sanction a requirement that employees, as a condition of employment, pay past union dues which accrued at a time when there was no obligation to maintain union membership.

On the other hand, the Board held valid a union-security clause which provided that religious objectors need not acquire union membership but were required to pay "support money" equivalent to the union's membership dues.[47] The Board held that Congress did not intend, either in the Wagner Act or in the amended act, to forbid the practice of obtaining support payments from nonunion members who would otherwise be "free riders."

A contract clause which does not clearly impose excessive membership requirements is presumed to be legal for contract bar purposes.[48]

d. Deferred or Amended Clauses

An illegal union-security provision does not prevent a contract from barring an election if it is accompanied by a clause which clearly defers its effectiveness. Thus, a contract was held a bar in view of a saving clause which specifically deferred its union-security provision until such time as existing laws had been amended, or intepreted, to permit the particular provisions.[49] But, a provision that a union-security agreement was "subject to Federal law and to a final decision of a court of last resort," was held insufficient to suspend the agreement's operation and to preserve the contract as a bar.[50] The Board also declined to find that a union-shop clause was effectively deferred either by a provision that, if the clause "shall conflict with any present or future Federal or State law, the provisions of such law shall apply," or by a further provision that the employer shall not make, under the union-shop clause, deductions from wages "which

[44] *International Harvester Company,* 95 NLRB 730. See Sixteenth Annual Report, pp 67, 68. See also *Continental Can Company, Inc.,* 98 NLRB No. 200, and *Lever Brothers Company,* 97 NLRB 124

[45] *Federal Telephone and Radio Corporation,* 98 NLRB No 216.

[46] *Sperry Gyroscope Company,* 98 NLRB No. 138.

[47] *American Seating Company,* 98 NLRB No. 123.

[48] *Spartan Aircraft Company,* 98 NLRB No 19.

[49] *American Dyewood Company,* 99 NLRB No 17.

[50] *Maiden Form Brassiere Co., Inc.,* 96 NLRB 678, *Malden Electric Company,* 96 NLRB

are prohibited by . . . law," and that the clause shall terminate if the deductions "shall be prohibited by law."[51] Nor does an oral understanding or an unsigned agreement that an illegal union-security clause shall not be enforced preserve a contract as a bar.[52]

Proper rescission or correction of an illegal union-security clause restores a contract as a bar to a representation proceeding.[53] However, to be effective, the amendment of the contract must be made before the filing of the representation petition.[54] Moreover, a rival union's claim to recognition also may forestall amendment of an illegal clause if the rival union follows up its claim by filing a petition within 10 days.[55] A proper amendment has been held effective for contract bar purposes even though the employees covered were not directly advised of the amendment.[56]

2. Coverage of Contract

A collective bargaining contract bars a petition only to the extent that it covers employees in a group which is generally appropriate for bargaining and also is substantially identical with, or forms a part of, the unit sought by the petitioner. Thus, an election is not barred by a contract which specifically excludes the employee group described in the petition.[57] On the same ground, an association contract is not a bar to an election among employees of an employer who is neither a party to the contract nor an association member at the time of the filing of the petition.[58] But a multiplant contract was held to bar an election among the employees of one plant.[59] This was not changed by the fact that the employees at the plant involved had rejected the over-all contract, when there was a 4-year-old custom that ratification by the employees at a majority of the plants was sufficient to validate contracts.

A contract in which the parties have substantially departed from the unit previously certified by the Board does not bar an election in the certified unit.[60] But no such departure was found where a smaller certified unit was merged into a larger group but no actual change in the composition of the Board-certified unit resulted.[61]

---

[51] *National Malleable and Steel Casting Co*, 99 NLRB No 114

[52] *Kelchum & Company*, 95 NLRB 43.

[53] *Avco Mfg. Co*, 97 NLRB 645.

[54] *Canada Dry Ginger Ale, Incorporated*, 97 NLRB 597

[55] *National Lead Co.*, 97 NLRB 651.

[56] *New Jersey Oyster Planters and Packers Association, Inc*, 98 NLRB No. 174, *Avco Manufacturing Corporation*, 97 NLRB 640; *Canada Dry Ginger Ale, Incorporated*, 97 NLRB 597.

[57] *W. H. Anderson Co., Inc.*, 99 NLRB No. 127; *Bell Aircraft Corp*, 98 NLRB No 206; *Western Gear Works*, 98 NLRB No 29, *Queensbrook News Co*, 98 NLRB No. 21, *Bingham-Herbrand Corporation*, 97 NLRB 65

[58] *Steward and Nuss, Inc*, 97 NLRB 1250.

[59] *Lever Brothers Company*, 96 NLRB 448.

[60] *Central Truck Lines, Inc.*, 98 NLRB No 56.

[61] *Lever Brothers Company*, 96 NLRB 448

On the matter of the appropriateness of the unit in a contract claimed as a bar, the Board this year drew a distinction between units marked out by the Board in a contested case and units arrived at by voluntary agreement between the employer and union. The Board indicated that, in units set merely by agreement among the parties, it would tolerate some deviation from the Board rules on appropriate unit. Thus, a majority of the Board upheld as a bar a contract covering production and maintenance employees which also contained some terms relating to the working conditions of guards.[62] While recognizing that the act prohibits the Board from including plant guards in the same unit with other employees, the majority said:

> . . . the amended act merely forbids the Board itself to establish as appropriate a unit containing guards as well as other employees. It does not impose upon the Board a duty to police every contract voluntarily established by the parties, to determine whether they have covered the working conditions of individual employees whom the Board, if called upon to make a decision, would exclude. The Board's contract bar rule is based upon broad policy considerations. It aims to stabilize the relationship between employers and their employees' bargaining representatives for the duration of a reasonable contract term. The Intervenor (union) and the Employer are bargaining on the basis of such a contract. To disrupt that relationship, it seems to us, should require something more than a finding that several employees should not have been included in an otherwise clearly appropriate unit. We specifically do not find that guards may be appropriately included in a production and maintenance unit. Contrary to our dissenting colleague's position, we do not believe that we are indirectly making any such decision. We simply are not persuaded, as a matter of over-all policy, that the existence of coverage here warrants disturbing stability by making inapplicable the Board's normal contract bar doctrine. To do so, we are convinced, would invite wholesale examination of existing contracts as a first step toward raids by competing labor organizations. It would jeopardize numberless existing contracts for no reason other than the parties' voluntary inclusion of a fringe category of employees whom this Board, when exercising its affirmative statutory powers, would concededly lack authority to direct them to include.

A Board panel applied this case as precedent for holding that an election was barred by a contract made by a union which had been certified through a consent election as the representative of a unit of production employees which also included some plant guards.[63] In the consent election proceeding which had led to the union's certification, the employer and union had stipulated that certain "guard-watchmen" were not plant guards within the meaning of the act. On that basis, they were included in the unit. But the Board, in considering whether the contract should bar an election, found that these employees actually were guards within the meaning of the act. The Board, on its own motion, thereupon excluded them from the unit, but

[62] *American Dyewood Co*, 99 NLRB No. 17 (Member Houston dissenting).
[63] *Sonotone Corp*, 100 NLRB No. 170, decided September 11, 1952.

it declined to hold that this mistaken inclusion of guards in the unit with other employees had destroyed the contract as a bar.

a. New, Resumed, and Changed Operations

A contract is not a bar if it was executed before operations at the plant had begun, or assumed normal proportions, or before the employer had recruited a complement of employees with job functions representative of its complete work force.[64] Nor does such a contract become a bar because of its amendment after a representative number of employees has been hired unless the amendment constitutes the execution of a new contract.[65] In this case, the amendment only revised wage scales and progression schedules.

Nor is a contract a bar if a substantial change has occurred in the employer's operations between the execution of the contract and the filing of the petition. Thus, the Board directed an election where the sawmill and dry kiln operations covered by a contract had been transferred and combined with lumber mill operations at a new location.[66] Similarly, in a case involving the employees of two bus garages which had been acquired by a new corporation, the Board held that an election for the combined operations was not barred by preconsolidation contracts covering the employees of one garage, because the consolidation had resulted in a completely new operation.[67]

But a mere transfer of employees from another plant does not destroy a contract as a bar. Thus, the Board rejected a contention that a contract covering certain classifications in one of the employer's plants was destroyed as a bar because employees doing similar work were transferred to the plant covered by the contract from another plant which had been closed.[68] The Board pointed out that the transfer did not change the character of the jobs and functions of the employees in the contract unit, nor result in the creation of new types of jobs.

b. Members-Only Contracts

In accordance with its established policy, the Board rejected as a bar to an election a contract covering "members only." [69] In another case, where it was not clear whether coverage only of members was contemplated, the Board admitted evidence to show that the contract

---

[64] *The Hertner Electric Company,* 99 NLRB No 85; *American Can Company,* 98 NLRB No. 175; *Atlantic Refining Co.,* 96 NLRB 952; *Emhart Mfg. Co.,* 96 NLRB 375; *General Metals Corp*, 95 NLRB 200.

[65] *Carbide & Carbon Chemicals Division,* 98 NLRB No. 41.

[66] *Michigan-California Lumber Co.,* 96 NLRB 1379.

[67] *Greyhound Garage of Jacksonville, Inc.,* 95 NLRB 902.

[68] *Builders Emporium,* 97 NLRB 1113.

[69] *Liggett & Myers Tobacco Company,* 98 NLRB No. 210 Cf *Herff Jones Company,* 97 NLRB 1070; *H. Muehlstein & Company, Inc.,* 98 NLRB No. 104.

was not intended to apply only to members, but to all employees in the unit.[70]

3. Schism or Change of Status of Bargaining Agent

The Board adhered to its policy that a contract may not bar an election if a split or schism within the ranks of the contracting union creates a serious doubt as to the bargaining right of the competing factions.[71] The Board has likewise continued to apply the rule that no contract bar will be found if the contracting agent has ceased to function on behalf of the employees concerned.

The schism doctrine is applied only when the Board finds that the employees in the contract unit by some formal concerted action have unequivocally and effectively disaffiliated themselves from the contracting union.[72] The Board recently declared that this exception to the contract bar rule will be narrowly applied, to prevent it from becoming a means of circumventing that rule, or being used merely for the purpose of "facilitating a raid by a rival union during a contract's term, or permitting a group of dissident members to express their dissatisfaction with the bargain made by the representative holding the contract." [73] Thus, no schism sufficient to invalidate a contract as a bar was found where disaffiliation action was taken by a bare majority or only a minority of the union's membership among the employees in the contract unit; [74] nor where, following a disaffiliation vote, the contract union continued to perform its functions under the contract.[75] Nor was a contract removed as a bar by disaffiliation action which was immediately rescinded,[76] or which was not followed by affirmative steps toward collective bargaining by the dissident group,[77] or by disaffiliation vote taken at a meeting under control of the petitioner.[78] Moreover, a contract was held a bar where the alleged disaffiliation

[70] *Liggett & Myers Tobacco Company,* 98 NLRB No 210

[71] See *Boston Machine Works Co*, 89 NLRB 59; Fifteenth Annual Report, pp. 64, 65.

[72] E g., *Barker and Williamson, Inc*, 97 NLRB 562; *The Mountain Copper Co, Ltd*, 96 NLRB 1018; *General Electric Co*, 96 NLRB 566; *Automotive Electric Co*, 96 NLRB 314; *Kearney & Trecker Corp*, 95 NLRB 1125; *Acme Quality Paints, Inc.,* 95 NLRB 1005; *Fitzgerald Mills Corp*, 95 NLRB 948.

[73] *Saginaw Furniture Shops, Inc.,* 97 NLRB 1488.

[74] *Allied Container Corporation,* 98 NLRB No. 90. See also *American Cyanamid Co.,* 98 NLRB No 5; *Harris Products Co*, 96 NLRB 812 See also *Trio Industries, Inc*, 97 NLRB 1146; *Lewittes & Sons,* 96 NLRB 775.

[75] *Allied Container Corporation,* 98 NLRB No 90. See also *American Cyanamid Co.,* 98 NLRB No. 5; *Canfield Oil Co*, 99 NLRB No 112; *Continental Southern Lines, Inc.,* 99 NLRB No. 42. See also *Allied Container Corp*, 98 NLRB No 90.

[76] *Canfield Oil Co*, 99 NLRB No 112; *Continental Southern Lines, Inc.,* 99 NLRB No. 42 See also *Allied Container Corp*, 98 NLRB No. 90.

[77] *Loroco Industries,* 99 NLRB No. 13; *Phoenix Manufacturing Company,* 98 NLRB No. 135; *West Steel Casting Company,* 98 NLRB No. 32; *Hardy Manufacturing Company,* 98 NLRB No. 127.

[78] *Bendix Products Division,* 98 NLRB No. 169; *Boyle-Midway, Inc.,* 97 NLRB 895; *Rex Curtain Corp*, 97 NLRB 899; *General Electric Co*, 98 NLRB No. 25.

was merely an expression of dissatisfaction with the contracting union's bargain, rather than an indication of a basic intraunion conflict over policies or operation.[79]

The Board also continued to hold that a contract is not a bar to an election if the contracting union no longer functions as the bargaining agent of the contract unit,[80] or has abandoned the administration of the contract.[81] Abandonment of a contract was found when the union which asserted the contract withdrew from the proceeding after the hearing, apparently for the purpose of avoiding competition with an affiliate.[82]

4. Forestalling Contract Bar

While the foregoing rules govern the Board's determination whether an existing contract is valid for contract bar purposes, another body of Board rules fixes the time when rival union action must be taken in order to forestall a contract from becoming a bar to an election.

Generally, the making of a contract or the renewal of an expired contract following the filing of a rival petition does not bar an election.[83] Nor does a contract become a bar because the petition was later amended regarding such matters as a change in the petitioner's affiliation,[84] or an insubstantial change in the unit requested.[85] However, an amendment requesting a substantially different unit was held to constitute a new petition and, therefore, barred by a contract made after the filing of the original petition but before the amendment.[86]

The effective date of the contract rather than the date of its execution generally controls the Board's determination as to whether a petition is barred. Accordingly, a petition filed after the execution of a contract but before its effective date is timely.[87] However, a contract may not be made effective retroactively for contract bar purposes.[88]

Another rule which the Board continues to apply is that an existing contract which is about to expire is not a bar to an election.[89] But the

---

[79] *Canfield Oil Co.*, 99 NLRB No. 112; *Continental Southern Lines, Inc*, 99 NLRB No. 42 See also *Allied Container Corp.*, 98 NLRB No. 90; *Lewittes & Sons*, 96 NLRB 775.

[80] *Armour & Co.*, 95 NLRB 956; *Federal Compress & Warehouse Co.*, 95 NLRB 899. See also *Ordill Foundry & Manufacturing Co., Inc.*, 98 NLRB No. 53.

[81] *Gardner-Denver Co*, 97 NLRB 77. In *Cleveland Decals, Inc*, 99 NLRB No. 115.

[82] *The Smith & Winchester Mfg. Co.*, 98 NLRB No. 159.

[83] *Thatcher Glass Mfg. Co., Inc.*, 97 NLRB 238; *Weber Showcase & Fixture Co.*, 96 NLRB 40; *Peters Sausage Co.*, 95 NLRB 89; *Standard & Poor's Corp*, 95 NLRB 36; *Crown Zellerback Corp.*, 96 NLRB 378.

[84] *Kennedy Broadcasting Co*, 96 NLRB 354.

[85] *The Rauland Corporation*, 97 NLRB 1333; *Hughes Aircraft Company*, 99 NLRB No 145

[86] *American Suppliers, Inc*, 98 NLRB No. 108; *Herff Jones Company*, 97 NLRB 1070.

[87] See Sixteenth Annual Report, p 75

[88] *Stewart and Nuss, Inc., d/b/a Herndon Rock Products*, 97 NLRB 1250.

[89] *The Pure Oil Company*, 98 NLRB No. 18; *Twentieth Century Fox Film Corp.*, 96 NLRB 1052; *Robertson Brothers Department Store, Inc.*, 95 NLRB 271.

Board held a petition was prematurely filed when it was filed so early that the matter came up for Board decision more than 30 days before the automatic renewal date of the contract.[90] A petition filed for the purpose of forestalling a renewal of an existing contract also was held premature in a case in which the contract still had 4½ months to run,[91] and in another case in which the expiration date was 3 months away.[92]

a. Representation Claim—10-Day Rule

The assertion by a union or other representative of a representation claim which has substantial support also prevents the later execution or renewal of a contract with another union from barring an election. However, if the claim is unsupported, a later contract will become a bar unless the representative which seeks recognition files a petition within 10 days from the date of its claim.[93]

A representation claim in such a case takes effect as of the time it is received by the employer. In one case, a claim was held to have been received when a telegraph operator attempted to transmit the content of the union's telegram to the employer's treasurer after business hours, but was instructed to hold the message until the next working day.[94] In another case, a telegraphic claim addressed to the employer's president and received in his absence by the chief operating engineer was held sufficient notice to prevent a subsequent contract from becoming a bar.[95]

b. Automatic Renewal—Timeliness of Petition

Collective bargaining agreements in many instances contain provisions for automatic renewal on a fixed date unless one of the parties, on or prior to that date, gives notice that it desires to modify or terminate the contract. As first announced in the *Mill-B* case,[96] a rival petition ordinarily must be filed before the automatic renewal date of a contract to prevent the contract from continuing as bar to an election if it is automatically renewed.[97] In one case, the Board rejected a contention that the Board's alleged failure to process a timely petition

---

[90] *Portsmouth Clay Refractories Co*, 97 NLRB 1144.

[91] *Allied Container Corporation*, 98 NLRB No. 90

[92] *Phoenix Manufacturing Company*, 98 NLRB No. 135.

[93] *Swift & Co.*, 99 NLRB No. 158; *The Rauland Corp*, 97 NLRB 1333; *Groveton Papers Co.*, 96 NLRB 1369; *Kennedy Broadcasting Co.*, 96 NLRB 354; *Grinnell Corporation*, 97 NLRB 1268. The 10-day rule was established in *General Electric X-Ray Corp.*, 67 NLRB 997, and is usually referred to by that name

[94] *Samuel Stamping and Enameling Co.*, 97 NLRB 635.

[95] *Groveton Papers Co, Inc.*, 96 NLRB 1369.

[96] *Mill B., Inc.*, 40 NLRB 346. Since this case the automatic renewal date of a contract has been commonly referred to as the "*Mill-B* date."

[97] *Foundry Manufacturers Negotiating Committee*, 98 NLRB No. 187; *Kreuger Sentry Gauge Co.*, 98 NLRB No. 65; *The Gates Rubber Co.*, 95 NLRB 351.

until after the automatic renewal date of the contract precluded the direction of an election.[98]

c. The 60-Day Notice Rule

When the parties to a contract have given 60 days' notice of termination in accordance with section 8 (d) (1) of the act, the execution of a new contract within the 60-day period bars a rival petition. This rule, announced in the *De Soto Creamery* case [99] applies even though the petition is filed before the automatic renewal date of the original contract. In one case in which the rule was applied, the Board rejected a contention that the 60-day notice served by the contract union was ineffective because the terms of the new contract had in fact been agreed upon before notice of termination of the old contract was served.[1]

5. Reopening of Contracts

The Board continued to apply its rule [2] that the reopening of a contract by the mutual consent of the parties, for the purpose of adjusting terms to changed conditions, does not remove the contract as a bar to an election.[3] However, the Board again pointed out that a premature extension of the contract made in such renegotiation will not be given effect, and that the Board's earlier decisions, "while permitting changes made necesary by fluctuating economic conditions, have carefully preserved the right of employees to change their bargaining representative at predictable intervals." [4]

6. Premature Extension

To prevent the contract bar principle from being used to deprive covered employees indefinitely from exercising their right to change representatives, the Board has consistently applied the rule that a prematurely extended contract does not bar a petition which would have been timely except for the premature extension. This rule was again applied during the past year, both in the case of petitions which were timely in relation to the original expiration date of the extended contract [5] and of petitions filed before the automatic renewal date of the original contract.[6] However, the Board also pointed out again

---

[98] *U. S. Phosphoric Products Div.*, 96 NLRB 7.

[99] *DeSoto Creamery & Produce Company*, 94 NLRB 1627 (1951). See Sixteenth Annual Report, pp. 79, 80.

[1] *Robertson Brothers Department Store, Inc.*, 97 NLRB 258

[2] *Western Electric Co , Inc ,* 94 NLRB 54. See Sixteenth Annual Report, p. 74.

[3] See for instance, *F. Burkart Mfg. Co.*, 96 NLRB 1049.

[4] *National Gypsum Co.*, 96 NLRB 676.

[5] *Pan American Refining Corp.*, 95 NLRB 625

[6] *The Reliance Electric & Engineering Company*, 98 NLRB No 92; *Sprague Electric Company*, 98 NLRB No. 89; *General Foods Corporation*, 97 NLRB 1243.

that premature extension of a contract does not render the extended contract ineffective as a bar during the period that the original contract would have remained in effect without the extension.[7] But there was no premature extension when the parties to a contract gave 60 days' notice of termination under section 8 (d) (1) and executed a new contract during the 60-day period.[8]

In other cases, the Board declined to deny employees the right to change bargaining agents, if they wished, merely because substantial benefits were obtained for employees by bargaining for a longer period;[9] or because an extended contract was necessary to incorporate a revised wage schedule for Wage Stabilization Board approval,[10] or because the contract extension was otherwise prompted by changed economic conditions.[11] The Board also held that the premature extension doctrine applies even though the contracting parties have no knowledge of rival union activity.[12] But a majority of the Board expressed the view that participation by the petitioning union in the negotiation of the extended contract should be held to preserve an otherwise prematurely extended contract as a bar, because the petitioner by its action accepted the benefits of the extended contract.[13]

New Test of Long Term Contracts

The Board, after the close of the 1952 fiscal year, adopted a new test for determining the reasonable term for a collective bargaining agreement to operate as a bar to a Board representation election. The new test applied to contracts of more than 2 years' duration is based upon whether or not a substantial part of the industry concerned is covered by contracts of similar term.[13a] Applying this test, the Board found that contracts of approximately 5-year terms could operate as election bars in the automobile,[13b] farm equipment[13c] and automotive parts industries.[13d]

8. Termination of Contract

The existence of a contract as a bar depends at times upon whether or not the asserted contract has in fact been terminated by proper

[7] See *The Reliance Electric & Engineering Company,* 98 NLRB No. 92.

[8] *Robertson Brothers Department Store, Inc.,* 97 NLRB 258.

[9] *National Gypsum Company,* 96 NLRB 676.

[10] *Barber Motors, Inc*, 99 NLRB No. 33.

[11] *The Van Iderstine Company,* 95 NLRB 966.

[12] *National Gypsum Company,* 96 NLRB 676.

[13] *Raytheon Manufacturing Company,* 98 NLRB No. 121 (panel Member Murdock dissenting) and 98 NLRB No. 217 (decision by the full Board, Members Houston and Styles dissenting).

[13a] *General Motors Corp*, 102 NLRB No. 115 (February 1953)

[13b] *General Motors Corp.,* cited above, *General Motors Corp*, 102 NLRB No. 124 (February 1953).

[13c] *Allis Chalmers Mfg. Co.,* 102 NLRB No. 116 (February 1953).

[13d] *Bendix Product Division,* 102 NLRB No. 114 (February 1953).

notice from the parties. Because termination must be made in the manner provided in the contract, giving notice to terminate a contract with an automatic renewal date *on* that date was held insufficient where the contract called for notice *before* the renewal date.[14] However, a termination notice received by an employer 59 days before the termination of a contract which provided for 60 days' notice was given effect by the Board when the conduct of the parties during a period of 3 months before the Board hearing indicated an intention to waive the defect in the union's notice.[15]

In one case, the timely termination of a master contract negotiated by the petitioner was held to have also terminated the contract of the intervenor which, under an established practice, had accepted the master contract as to wage rates.[16] In holding that the automatic renewal of the intervenor's contract had been effectively prevented, the Board took into consideration the fact that the intervenor, by participating in the negotiations between the employer and the petitioner for a new contract, apparently had acquiesced in the termination of its contract.

C. Waiver

The Board is at times confronted with the contention that a petitioning or intervening union has waived the right to represent employees in a proposed unit and therefore should not be permitted to participate in an election.

In the *Raytheon* case, dismissal of a craft severance petition was sought because of the existence of an agreement between the petitioning union and intervening union in which the petitioner had obligated itself for an indefinite time not to petition for any unit other than the employer's production and maintenance employees.[1] In the earlier *Briggs Indiana* case, the Board had declined to entertain the petition of a union which had agreed with an employer not to seek to represent plant protection employees for 1 year.[2] But the Board refused to give effect to the contract in the *Raytheon* case. Two members of the Board [3] were of the view that while the *Briggs Indiana* rule would have applied during the first 2 years of the interunion agreement, it should not be applied to permit the agreement to prevent an election after having run for nearly 4 years. Two Board members [4] favored an election on the ground that the agreement was of an indefinite duration,

---

[14] *Williams Laundry Co*, 97 NLRB 995

[15] *Augat Bros, Inc*, 97 NLRB 993

[16] *Portland Bolt & Manufacturing Co*, 97 NLRB 1340

[1] *Raytheon Manufacturing Company*, 98 NLRB No 121 and 98 NLRB No 217 (Member Murdock dissenting).

[2] *Briggs Indiana Corp*, 63 NLRB 1270.

[3] Chairman Herzog and Member Peterson

[4] Members Houston and Styles.

was vague, and unlike the contract in *Briggs Indiana*, bound two unions rather than an employer and the representative of its employees.[5] Another case, involving alleged waivers, the Board declared that the public interest in industrial stability requires that

> A party to a contract who wishes to waive or avoid the Board's contract bar doctrine should be required to obtain from the other party approval of contractual provisions which do so in clear and unmistakable language.

This case involved a contract which provided that the company agreed to recognize the union as the representative of employees in units for which it is *and continues to be*" the designated representative through Board certification.[6] The termination clause of the contract stated that the agreement was between the company and the "recognized" union. The petitioning union and the employer contended that these two clauses, read together, rendered the contract inoperative as a bar. The contracting union contended that these clauses were intended only to relieve the employer of liability under the contract in case the Board, on other grounds, found the contract no bar to an election. The Board held that the language of the two clauses was not sufficiently clear to justify reading them as a general waiver of the contract bar rule.[7]

The Board also held that the express exclusion of a group of employees from a contract unit does not constitute an agreement on the part of the contracting union not to represent them.[8] In another case, the Board rejected the contention that a union had previously waived its right to assert an existing contract as a bar by consenting to an election in one of the units covered by the contract.[9]

D. The Impact of Prior Determinations

To enable a newly certified bargaining agent to establish bargaining relations and negotiate a contract, the Board has long followed the policy of considering a certification as a 1-year bar to any redetermination of the representative of the same unit. The Board's policy is reinforced by section 9 (c) (3) of the amended act, which prohibits the holding of more than one Board election in the same unit during any 12-month period.

---

[5] Member Murdock dissented on other grounds.

[6] *General Electric Company,* 99 NLRB Nos. 35, 36, 37, and 38.

[7] After the close of the fiscal year, the Board directed elections in the *General Electric* cases because the petitions in those cases were filed only about 30 days from the automatic renewal date of the contract involved. See *General Electric Co.,* 100 NLRB Nos. 215, 216, and 217.

[8] *Western Gear Works,* 98 NLRB No. 20; *Martin Parry Corporation,* 95 NLRB 1506.

[9] *General Electric Company,* 98 NLRB No. 25.

228330—53——5

1. Prior Certification

Under the Board's 1-year rule, a petition filed within 1 year from the date of the incumbent union's certification will be dismissed in the absence of unusual circumstances.[1] This rule was strengthened after the close of the fiscal year [2] when the Board dispensed with the practice of docketing petitions filed during the twelfth month of the certification year.[3] Upon reconsideration of its former practice the Board concluded that

> the mere retention on file of such petitions, although unprocessed, cannot but detract from the full import of a Board certification, which should be permitted to run its complete 1-year course before any question of the representative status of the certified union is given formal cognizance by the Board.[4]

In one case, the Board held that, as indicated in earlier precedents, evidence of a schism within a certified union "is an unusual circumstance which justifies the processing of a petition within the certification year." [5] In another case,[6] a certified union was found not entitled to the normal 1-year protection where the union had entered into an illegal union-security agreement and had taken no steps to cure the defect in its contract. But the Board reaffirmed its rule that a union does not lose the benefit of certification because of its affiliation later with another union when no substantial change in organization resulted.[7]

2. Prior Election

In giving effect to the 12-month limitation on elections provided in section 9 (c) (3), the Board has continued to compute the 12-month period from the date of the balloting.[8] It rejected contentions that the period of limitation begins to run on the date of the final determination of the results of the election. The Board also reaffirmed its ruling that section 9 (c) (3) does not prohibit the initial processing of a petition filed near the close of the election year, if the new election is not to be held until more than 1 year after the prior election.[9]

The rule that a prior election does not bar a new election for employees omitted from the earlier voting unit was held applicable in a

---

[1] Example: *Swift & Co.*, 94 NLRB 917.

[2] See *Centr-O-Cast & Engineering Co.*, 100 NLRB No. 253 (October 1952), overruling prior inconsistent decisions.

[3] See Sixteenth Annual Report, p. 84.

[4] *Centr-O-Cast & Engineering Co.*, cited above.

[5] *General Electric Company*, 96 NLRB 566. See also *Swift & Company*, 95 NLRB 917 and *Jasper Wood Products Co., Inc*, 72 NLRB 1306. See discussion of Schism, p. 47.

[6] *F. J. Kress Box Co.*, 97 NLRB 1109.

[7] *The Great Atlantic & Pacific Tea Company*, 98 NLRB No. 55.

[8] *Heekin Can Company*, 97 NLRB 783.

[9] *Ingleheart Brothers Division, General Foods Corp.*, 96 NLRB 1005.

case in which, before the close of the hearing, the petition for a plant-wide unit was amended to exclude employees among whom an election had been held less than a year before.[10] Nor was a one-State election for employees of an interstate insurance company held barred because some of the employees in the one-State unit, less than 12 months before, had participated in an election among employees in a number of the company's districts located in several States. In the Board's view, the one-State unit was not the "unit or . . . subdivision" in which the prior election took place, and in which a new election was prohibited by section 9 (c) (3).[11]

In two cases, the Board found that the prior elections were invalid and that, therefore, the 12-month limitation of section 9 (c) (3) did not apply.[12] One case involved a consent election which was set aside by the regional director upon finding that the consent election agreement of the parties was defective.[13] In the other case, an election in an employer-wide unit was held invalid as to one group of employees, because they had been included in the voting unit through error.[14]

E. Unit of Employees Appropriate for Bargaining

The Board has the duty under the act to determine what group of employees constitutes an "appropriate" unit for bargaining with their employer, to "assure to employees the fullest freedom in exercising the rights guaranteed by this Act."[1] The Board makes such a determination only when required in a representation or unfair labor practice case before it.

The Board's discretion in determining bargaining units is limited, however, by section 9 (b) to the extent that "the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof." The proviso of section 9 (b) further limits the Board's discretion as follows:

1. Professional employees may not be included in a unit of non-professional employees, unless a majority of the professional employees vote for inclusion in such unit.

2. No craft unit may be held inappropriate on the ground that a different unit was established by a prior Board decision.

---

[10] *Florida Citrus Canners Cooperative, Inc*, 96 NLRB 1021

[11] *Home Beneficial Life Insurance Co.*, 98 NLRB No. 160; see also *Robertson Brothers Department Store*, 95 NLRB 271. Compare *The Great Atlantic & Pacific Tea Company*, 98 NLRB No. 55.

[12] Sec. 9 (c) (3) specifies "a valid election."

[13] *The Welch Grape Juice Company*, 96 NLRB 214.

[14] *Ravenna Arsenal, Inc*, 98 NLRB No. 10.

[1] Sec. 9 (b). The act does not require the Board to determine the only ultimate, or most appropriate, unit but merely *an* appropriate unit. See Sixteenth Annal Report, p. 85.

3. Plant guards, who enforce rules for the protection of property or safety on an employer's premises, may not be included with other employees.[2]

The broad standards of section 9 (b) are applied in all cases in which the Board is asked to determine the exclusive bargaining representative. Besides representation election cases, this includes cases in which an employer is charged with violating section 8 (a) (5) by refusing to bargain with the representative of employees in an appropriate unit, cases in which a union that represents employees in an appropriate unit is charged with violating section 8 (b) (3) by refusing to bargain with their employer, and cases in which the Board must determine whether a union-security agreement is valid, in that it covers employees in an appropriate unit as required by section 8 (a) (3).

In determining the appropriateness of a unit, the Board is usually confronted with one or more of the following basic issues: (1) The type of the unit, i. e., whether an industrial unit, embracing all production and maintenance employees, a craft unit, or some other group of employees with mutual interests is proper; (2) the scope of the unit, i. e., whether it should be a multiemployer, multiplant, plant-wide, or some smaller departmental unit; and (3) the composition of the unit, i. e., whether "fringe" groups such as clerks, inspectors, or custodial employees should be included in the unit. The composition of bargaining units also is limited by section 2 (3) of the Act, which exempts certain classes of employees from its operation.[3]

The numerical size of a unit is important only in that the Board has consistently held one-man units inappropriate,[4] but two employees may constitute an appropriate unit.[5]

In resolving unit issues, the Board has developed certain rules and standards which it recapitulated in a recent decision.[6] The Board said in this case:

> First and foremost is the principle that mutuality of interest in wages, hours, and working conditions is the prime determinant of whether a given group of employees constitute an appropriate unit.

---

[2] Moreover, the Board may not certify as bargaining agent for guards any union that admits other employees as members or that is "affiliated directly or indirectly" with an organization admitting nonguard employees. Sec. 9 (b) (3).

[3] Sec. 2 (3) expressly excludes from the term "employee" as used in the act "any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any individual having the status of an independent contractor, or any individual employed as a supervisor, or any individual employed by an employer subject to the Railway Labor Act, as amended from time to time, or by any other person who is not an employer as herein defined."

[4] *Sinclair Rubber,* 96 NLRB 220. *National Container Corp.,* 99 NLRB No. 172.

[5] *Kentucky Synthetic Rubber Corporation,* 95 NLRB 453.

[6] *Continental Baking Company,* 99 NLRB No. 123 (Member Styles dissenting).

The Board specifically declined to depart from the mutual interest principle and determine the appropriate unit on the basis which would provide the greatest degree of bargaining power for the employees, as suggested by the union. Rejecting the consideration of such a "power" factor, the Board said:

> We do not believe that, even considering Section 9 (b) together with Section 1 of the Act, as urged by Continental Division [the union], the inference is warranted that Congress intended that the Board should consider the power factor in unit determination. Section 1 only discusses inequality of bargaining power between employers and "employees who do not possess full freedom of association or actual liberty of contract." That is not the case here * * *.
>
> The application of a power test would bring economic warfare to the forefront of collective bargaining, instead of keeping it in the background where it belongs. Indeed, one of Continental Division's objections to the present units seems to be that it is handicapped by not being able to strike all Continental plants at the same time. Finally, the Board would be faced with an impossible administrative problem in trying to decide when equality of bargaining power does not exist. For all these reasons, we reject the proposed power factor as a test in unit determinations.

Regarding the sufficiency of mutual interests among employees, in a proposed unit, the Board said:

> In deciding whether the requisite mutuality exists, the Board looks to such factors as the duties, skills, and working conditions of the employees involved, and especially to any existing bargaining history. In relevant cases, the Board also considers the extent of organization, and the desires of employees where one of two units may be equally appropriate. Where the employees in more than one plant of an employer are involved, such factors as the extent of integration between plants, centralization of management and supervision, employee interchange, and the geographical location of the several plants, are also considered.[7]

Also the Board continues to follow its policy of not considering special factors unrelated to work interests and functions. Thus, the Board refused to exclude employees from a unit on the basis of union limitations on membership.[8] Nor did the Board agree with an employer's contention that the unit placement of certain firemen should be controlled by the fact that the firemen could effectively shut down the plant in the event of a strike.[9] The Board also continues to apply the rule that bargaining units will not be established on the basis of such factors as race, nationality, or sex. Thus, the Board in one case

---

[7] Section 9 (c) (5) provides that "In determining whether a unit is appropriate * * * the extent to which the employees have organized shall not be controlling," but this does not preclude the Board from giving some consideration to the extent of self-organization where other factors are given proper weight. *Walgreen Co. of New York, Inc.*, 97 NLRB 1101; *Emil Denemark, Inc.*, 96 NLRB 1087; *Tin Processing Corporation*, 96 NLRB 300; *Muswick Beverage and Cigar Co., Inc.*, 97 NLRB 509.

[8] *Charles of the Ritz Operating Corp.*, 96 NLRB 309. See also *Broadhead-Garrett Co*, 96 NLRB 669, and *Underwriters Salvage Co., of New York*, 99 NLRB No. 54.

[9] *C. D. Peck & Co., Inc.*, 96 NLRB 1130.

declined to separate employees in a salvage warehouse from employees in a cotton salvage "pickery," for unit purposes, simply because the warehouse employees were generally men whereas those in the "pickery" were generally women.[10]

1. Collective Bargaining History

The history of collective bargaining pertaining to any group of employees whose representation is under consideration often plays an important part in determining the appropriate unit. While the Board does not consider itself bound by the applicable bargaining history in deciding whether a unit is appropriate,[11] it generally does not disturb a well-established bargaining pattern unless strong reasons exist for doing so.[12] For example, in the case of a grocery chain, the Board held that in view of an existing bargaining history a unit of one out of five store groups in one of the employer's operating districts was appropriate, although the group was not an administrative entity.[13] The Board stated, "Though ordinarily the Board seeks to establish a unit pattern which conforms to the Employer's organizational structure, we cannot ignore a pattern of bargaining which has established units without regard for administrative lines, as in this case, and impose a disruptive finding upon a fixed bargaining pattern." Similarly, in another case, the Board found inappropriate a unit of powerhouse employees, where for 10 years they had been represented as parts of four plant-wide craft units and a plant-wide residual unit.[14]

However, the prior inclusion of a public utility's meter readers and collectors in a unit with physical or outside employees was held not to preclude their transfer to a system-wide clerical unit.[15] In the Board's opinion, the prior unit placement was not controlling because the employees concerned shared a greater community of interest with the utility's other clericals and their former inclusion in the physical unit had interfered with their promotion.

To be accorded controlling weight by the Board, the bargaining history of the unit must be substantial both as to duration and as to the basis on which the parties bargained. Thus, where a plant was in full operation for only about 2 months before the filing of the petition, the Board held that a bargaining history of such short dura-

[10] *Underwriters Salvage Co.*, 99 NLRB No 54

[11] *National Cash Register Company*, 95 NLRB 27; *Stack & Company*, 97 NLRB 1492 (Member Murdock dissenting).

[12] See Sixteenth Annual Report, p 86.

[13] *The Great Atlantic & Pacific Tea Co.*, 98 NLRB No 55. See also *Safeway Stores, Inc.*, 96 NLRB 998.

[14] *Phelps Dodge Corporation*, 98 NLRB No. 107.

[15] *Pacific Gas and Electric Company*, 97 NLRB 1397.

tion was clearly not controlling.[16] Similarly, where the history of bargaining on a multiemployer basis was of less than 1 year's duration, and was preceded by 10 years of bargaining on a single-employer basis, the Board held that such a history was insufficient to warrant a conclusion that only a multiemployer unit was appropriate.[17] But a 19-month period of association-wide bargaining immediately preceding the filing of the petition was found sufficiently long to preclude the establishment of a single employer unit, notwithstanding a previous bargaining history of about 16 years on a single employer basis.[18]

The Board does not give controlling weight to an inconclusive, confused, or fluctuating history. Thus, the Board discounted past bargaining which was conducted on the basis of varying unit concepts and therefore did not establish a fixed unit pattern.[19] Similarly, the Board ignored a history of bargaining conducted on a basis which no longer existed as an effective means for bargaining.[20] Moreover, the Board attaches little weight to bargaining relations maintained only on behalf of employees who are members of the union.[21] A bargaining history established by consent election agreement and one based on bargaining without any written contract are not controlling.[22] Nor is a history controlling if it preceded the employment of a representative group of workers, or if a substantial change in operations has since taken place.[23]

---

[16] *Sprague Electric Co.*, 98 NLRB No. 89: *Thatcher Glass Manufacturing Co., Inc.*, 97 NLRB 238 See also *Permanente Steamship Corp.*, 96 NLRB 827.

[17] *The Van Iderstine Co*, 95 NLRB 966. See also *Manhattan Coil Corp.*, 98 NLRB No 194, where a 3-month bargaining history based on a Board election was held not controlling in view of a 9-year history on a different basis and an organizational change in operations. And see *St. Regis Paper Co*, 97 NLRB 1051; and *Metro Glass Bottle Co*, 96 NLRB 1008.

[18] *Taylor and Boggis Foundry Division Consolidated Iron-Steel Manufacturing Co*, 98 NLRB No. 83. See also the *Manufacturers' Protective & Development Ass'n.* (*Consolidated Iron-Steel Manufacturing Co., Taylor and Boggis Division*), 95 NLRB 1059, involving the same employer, where a majority of the Board directed a union-security election in a single employer unit, holding that a 1-year history of association-wide bargaining was too brief to make this broader unit the only appropriate one

[19] *Western Electric Co, Inc*, 98 NLRB No. 154; *Stewart and Nuss, Inc.*, 97 NLRB 1250. See also *Ocean Tow, Inc*, 98 NLRB No 23, and 99 NLRB No. 84; and *J. C. Penney Co., Inc*, 97 NLRB 243.

[20] *Gladding, McBean & Co.*, 96 NLRB 823 (disintegration of multiemployer bargaining relationship).

[21] *Liggett & Myers Tobacco Co.*, 98 NLRB No. 210. Compare with *International Paper Co.*, 97 NLRB 764, where, while the contract in the latter case provided for recognition of certain unions as "agencies representing their memberships," the bargaining history was held controlling since the contract's substantive provisions clearly showed the intention to grant exclusive recognition as the representative for all employees and was so interpreted in practice. See also *St. Regis Paper Co.*, 97 NLRB 1051, and *Foundry Manufacturers Negotiating Committee*, 98 NLRB No. 187.

[22] *Standard Lime and Stone Co*, 95 NLRB 1141, footnote 5.

[23] *Emhart Mfg. Co.*, 96 NLRB 375. See also *Industrial Lamp Corp.*, 97 NLRB 1021, where the Board found that, when a parent company and its subsidiary constituted a single employer, the bargaining history for the subsidiary alone, before the parent company began operations at the plant, could not militate against its unit finding.

The Board has consistently declined to make a unit determination on the basis of a bargaining history which disregards well-established Board principles. Thus, a history of bargaining on a company-wide basis, which was inconsistent with the Board's certification of a separate plant unit, was held not to be controlling.[24]

Ordinarily, the bargaining history which the Board considers is that of the employees sought to be represented, but in some cases the Board has also considered as a factor in unit determinations the established bargaining practices of other similar groups of employees in the locality or industry. Thus, in finding a unit of soda fountain clerks employed at several chain drug stores inappropriate, the Board considered the fact that there was an established pattern of store-wide bargaining for chain drug stores in the area.[25] Similarly, in granting a self-determination election to certain employees, the Board accorded weight to the established bargaining pattern in the maritime industry.[26] However, the Board declined to find a separate unit of paper handlers appropriate merely because such units existed elsewhere in the newspaper industry. The Board noted in this case that it was not shown that such a pattern of bargaining was characteristic of the industry, and no such unit had ever been certified.[27] Nor would the Board limit a unit to English language announcers at a radio station employing both English and foreign language announcers, merely because the petitioning union had contracts with other stations in the area limited to artists performing on English language programs.[28]

2. Units of Craft Employees

The grouping of employees for collective bargaining on the basis of their skills as craftsmen is requested in numerous cases. The act does not require that craftsmen be granted separate units, but it does provide that the Board shall not reject such a unit merely because a different unit was established by a prior Board determination.[29]

---

[24] *Bethlehem Pacific Coast Steel Corp.*, 99 NLRB No. 21. See also *Merck & Co, Inc.*, 98 NLRB No. 52.

While the Board has also held that the bargaining experience of a union found to have been illegally assisted by an employer is not controlling (see Sixteenth Annual Report, p. 87), it did not consider itself precluded from giving weight to a bargaining history merely because of the presence of an illegal union-security clause in a contract, *Meyer's Bakery of Little Rock, Inc.*, 97 NLRB 1095.

[25] *Walgreen Co. of New York, Inc.*, 97 NLRB 1101. See also *Kress Dairy, Inc.*, 98 NLRB No. 63.

[26] *Ocean Tow, Inc.*, 98 NLRB No. 23.

[27] *The Denver Publishing Company*, 97 NLRB 1454.

[28] *Emil Denemark, Inc.*, 96 NLRB 1087. See also *The Arthur A. Johnson Corp.*, 97 NLRB 1466, where a pattern of area-wide bargaining applicable to building trades employees was found inapplicable to technical employees and insufficient to defeat the request for an on-the-site single project unit for field technical employees

[29] Section 9 (b). See *National Tube Co.*, 76 NLRB 1199 (1948).

The Board has continued to follow its general policy of granting craft employees separate elections to enable them to express their own wishes on their grouping for collective bargaining.[30] In such an election, if the craft employees vote for the union seeking the broader unit, they are taken to desire inclusion in a representation unit with the other employees; if they vote for the union seeking the craft unit, they are taken as desiring a separate unit.

However, in certain industries, the Board has declined to carve out units of craftsmen because of the close integration of the work of the craftsmen with that of other production employees. These industries are basic steel production, basic aluminum production, lumbering, and wet-milling.[31]

To establish a craft unit, of course, it is necessary to show that the employees involved actually are craftsmen engaged in their craft. The Board recently restated its policy on this point as follows:

> . . . the initial prerequisite for the establishment or severance of what is alleged to be a craft unit is the existence and use of true craft skills by the particular employees involved. [An operation] can be a true craft when it involves nonrepetitive work performed by individuals who on the basis of training or experience possess and utilize a high degree of craft skills. But [the same operation] can also involve repetitive, routine work performed by individuals who either do not possess or are not required to utilize any true craft skills. Therefore . . . in the case of any group asserted to be craft, the Board will neither establish a separate craft group nor include [the employees] in any other *pure* craft units unless the work involved calls for the exercise of craft skills and the employees involved possess such skills.[32]

The Board has consistently recognized the craft status of employees who are engaged in the work of a traditional craft and who have had to undergo extensive training or apprenticeship in order to qualify in their particular craft.[33] These have included such established crafts as machinists, millwrights, carpenters, electricians, blacksmiths, pipefitters, and watchmakers.[34]

The Board also continues to grant separate bargaining units to employees in certain types of work which have come to be traditionally

---

[30] *Campbell Soup Co.*, 98 NLRB No. 112; *Reliance Electric & Engineering Co*, 98 NLRB No. 92; *Pacific Coast Shipbuilders and Ship Repairers*, 98 NLRB No. 35; *Sinclair Rubber, Inc.*, 96 NLRB 220.

[31] See discussion, p 64.

[32] *International Paper Co.*, 96 NLRB 295. See also *Ludlow Typograph Co.*, 95 NLRB 2.

[33] See *Bullock's, Inc.*, 99 NLRB No. 103; *Armstrong Cork Co.*, 97 NLRB 1057; and *Sinclair Rubber, Inc.*, 96 NLRB 220. But the mere absence of a formal apprenticeship program at employer's plant does not preclude craft severance, where the employees involved have had comparable training and experience elsewhere or have secured such training through on-the-job instruction. See *Detroit Hardware Mfg. Co.*, 98 NLRB No. 61; *Ravenna Arsenal, Inc.*, 98 NLRB No. 10; *Milprint, Inc.*, 97 NLRB 241; *Sinclair Rubber, Inc.*, 96 NLRB 220; and *United States Time Corp.*, 95 NLRB 941.

[34] See *Armstrong Cork Co.*, 97 NLRB 1142; and *Sinclair Rubber, Inc.*, 96 NLRB 220; *Busch Kredit Jewelry Co, Inc.*, 97 NLRB 1386.

regarded as similar to crafts even though not requiring craft skills. Truck drivers,[35] powerhouse operators,[36] and foundry workers[37] are among the employees falling generally in this category.[38] But the Board has declined to accord craft status to such employee classifications as refrigerator cabinet servicemen at ice cream manufacturing plants,[39] riggers at a tin smelting plant,[40] overhead cranemen at a copper mill,[41] air-conditioning operation and maintenance employees at a rubber plant,[42] shaftmen on a construction job for a copper mine,[43] and lubricators at a floor covering manufacturing plant.[44]

However, the Board has permitted separate representation for a homogeneous group of highly skilled employees even though they are not "true craftsmen within the traditional sense of the term," provided their interests are sufficiently different from those of other employees in the plant.[45] Thus, a Board majority held that full-fashioned hosiery knitters in a hosiery mill could be separately represented because they constituted a homogeneous group of highly skilled employees.[46] Similarly, the Board found separate units appropriate for such categories as cutters at a ladies' blouse manufacturing plant,[47] lithographic processing employees at a metal container manufacturing plant,[48] and alteration department employees at a retail apparel store.[49]

In craft unit cases, the Board continued during fiscal 1952 to apply its established policies. Thus, it was held that the mere fact that craftsmen may work close to production employees, or may at times even use the same machines, does not take away their privilege of separate bargaining.[50] Similarly, the Board held that the fact that members of a craft group perform some production work, or other duties not strictly within their recognized craft, does not destroy their

---

[35] *Kennecott Copper Corp*, 98 NLRB No. 148.

[36] *Charles A. Krause Milling Co*, 97 NLRB 536. See also *Federal Telephone and Radio Corp.*, 98 NLRB No. 216, and *Chrysler Corp*, 98 NLRB No. 163

[37] See *Emhart Mfg. Co.*, 96 NLRB 375.

[38] See Fifteenth Annual Report, p. 42, footnote 20.

[39] *Abbott Dairies, Inc*, 97 NLRB 1064

[40] *Tin Processing Corporation*, 96 NLRB 300. See also *Continental Oil Co*, 95 NLRB 165.

[41] *Kennecott Copper Corp*, 96 NLRB 1423.

[42] *United States Rubber Co*, 96 NLRB 564

[43] *Foley Brothers, Inc.*, 97 NLRB 1482

[44] *Armstrong Cork Co.*, 97 NLRB 1057.

[45] *Angelica Hosiery Mills, Inc.*, 95 NLRB 1284 See also *Sir James, Inc*, 97 NLRB 1572; and *Heekin Can Co*, 97 NLRB 783.

[46] *Angelica Hosiery Mills, Inc*, 95 NLRB 1284 (Member Reynolds dissenting).

[47] *Sir James, Inc*, 97 NLRB 1572.

[48] *Heekin Can Co*, 97 NLRB 783.

[49] *Foreman & Clark, Inc*, 97 NLRB 1080, reversing 95 NLRB 1504. Compare with *Robertson Brothers Department Store, Inc*, 95 NLRB 271, where the Board declined to grant a separate unit for certain department store alteration employees.

[50] *Raytheon Mfg. Co.*, 98 NLRB No. 121. See also *Ravenna Arsenal, Inc.*, 98 NLRB No 10.

identity as a separate craft group if a major portion of their time is spent at the recognized work of their craft.[51] Nor did the fact that certain craft maintenance employees had the same immediate supervision as other maintenance employees affect the right of such craft employees to separate representation.[52] The Board also held that, where the employer normally observes craft lines in assigning maintenance work, the homogeneity of the craft groups is not destroyed by the occasional commingling of employees, such as may occur when members of one craft assist another craft group, or are assisted by some production employees.[53] However, the Board will deny separate craft representation to craftsmen who regularly perform assembly line operations which are an integral part of the plant's production process.[54]

To be entitled to separate representation, a craft group also must include all members of the craft among the employees. Thus, a petition to sever sheet metal workers at a copper mill from a broader unit was dismissed because it did not include the employer's tinners.[55] But the fact that a group for which separate representation is sought includes less skilled workers along with highly skilled craftsmen, does not preclude a craft unit if the less skilled workers "perform related skills in a functional group which has predominantly craft characteristics." Thus, a Board majority found appropirate a separate unit including skilled Oriental rug repairmen together with carpet cutters, carpet layers, and employees performing related duties.[56] However, the Board continues to deny separate representation to multicraft maintenance groups which also include less skilled employees when there is a substantial history of collective bargaining on a plant-wide basis.[57]

In several cases during the past year, the Board also denied requests for the inclusion of separate craft groups in a single unit where there was not sufficient community of interest among the groups to justify the merger. In one such case, a union sought a combined unit of pipe-

---

[51] *Jefferson Chemical Co*, 98 NLRB No. 125; *Milprint Inc.*, 97 NLRB 241; *United States Rubber Co*, 96 NLRB 564. See also *Ravenna Arsenal, Inc.*, 98 NLRB No. 10; and *Armstrong Cork Co.*, 97 NLRB 1057.

[52] *Ravenna Arsenal Inc.*, 98 NLRB No 10

[53] *Sinclair Rubber Inc.*, 96 NLRB 220. See also *Armstrong Cork Co.*, 97 NLRB 1057.

[54] See *Ford Motor Co.*, 78 NLRB 887 (1948). Compare with *Pacific Coast Shipbuilders and Ship Repairers*, 98 NLRB No. 35; *Ravenna Arsenal Inc.*, 98 NLRB No. 10; and *Ford Motor Co.*, 96 NLRB 1075

[55] *Kennecott Copper Corp.*, 96 NLRB 1423. See also *George B. Peck's, Inc*, 96 NLRB 293.

[56] *Bullock's Inc.*, 99 NLRB No. 103 (Chairman Herzog and Member Murdock dissenting). See also *Green Bay Drop Forge Co.*, 95 NLRB 1122.

[57] *Westinghouse Electric Corp.*, 96 NLRB 1128. Compare with *Armstrong Cork Company*, 80 NLRB 1328.

fitters and welders.[58] The Board stated the following rules regarding the unit placement of welders who by the nature of their work frequently work in close association with other crafts: (1) Craft welders who are regularly assigned to work with a particular craft, and therefore share its working conditions and common interest, may be included in the unit of the particular craft; (2) craft welders who form a pool of employees not regularly assigned to work with a particular craft and who work throughout the plant wherever needed, possess a basic community of interest which requires their inclusion in a separate unit; and (3) where craft welders are divided into two groups, one of which is regularly assigned to particular crafts and the other acts as a roving pool, all welders should be established in a single welders' unit.

3. Units in Integrated Industries

In certain industries, the Board has found that the integration of all operations is to complete that deviation from the established plant-wide bargaining pattern would not only have adverse effects on operations and production, but also would defeat the employees' over-all interests in effective representation. Thus, the Board has consistently denied craft severance in the basic steel,[59] basic aluminum,[60] lumbering,[61] and wet-milling industries.[62]

During the past year, the Board again had occasion to apply this rule in the basic steel [63] and lumber industries.[64] But in a steel foundry which was not engaged in basic steel production, electricians were granted severance as a separate unit.[65] The foundry manufactured products from cold scrap steel or steel ingots, but did not purchase or use iron ore, operate blast furnaces, or produce ingot or rolled steel or sheet metal products. Likewise, in an aluminum plant engaged in the manufacture of aluminum die casting, die room employees were granted severance.[66] This operation, the Board found, was not a part of the basic reduction and rolling mill phases of the industry where the integration rule applies.

---

[58] *International Paper Co.*, 96 NLRB 295 (Member Houston dissenting); *Jefferson Chemical Co., Inc.*, 98 NLRB No. 125; *A. O. Smith Corp. of Texas*, 99 NLRB No. 51; *Crossett Paper Mills*, 98 NLRB No. 87.

[59] *National Tube Co.*, 76 NLRB 1199 (1948).

[60] *The Permanente Metals Corp.*, 89 NLRB 804 (1950).

[61] *Weyerhaeuser Timber Co.*, 87 NLRB 1076 (1949).

[62] *Corn Products Refining Co.*, 87 NLRB 187 (1949).

[63] *Scullin Steel Co.*, 95 NLRB 530.

[64] See *Townsend Sash, Door & Lumber Co.*, 96 NLRB 950.

[65] *General Steel Castings Corp.*, 99 NLRB No. 94.

[66] *Aluminum Company of America*, 96 NLRB 781.

The Board has continued to reject contentions that the integration rule should apply in the paper,[67] copper,[68] tin smelting,[69] or radio and radio parts [70] industries. It has also declined to apply the rule to industries manufacturing composing room printing equipment [71] or butadiene, a basic ingredient of synthetic rubber.[72] Nor did the Board find that plants making paper by a process of continuous cooking of pulp in reaction chambers were sufficiently different from those using the sulphite batch process to require deviation from the Board's policy of permitting craft units in that industry.[73]

4. Employees' Wishes in Unit Determinations

The authority to determine the appropriateness of bargaining units under the act is vested exclusively in the Board. However, in exercising this power, it is the Board's policy to give controlling effect to the wishes of the employees concerned in two general types of situations: (1) When one or more units requested by competing unions are equally appropriate and the unit ultimately to be adopted depends on which union the different employee groups select; (2) when it is proposed that a group of employees be merged in a larger unit which the Board has found to be appropriate. In each of these situations, the Board finds out the wishes of the different employee groups by holding a separate election in each group.[74] These are usually termed self-determination elections.

Self-determination elections are most commonly held in situations where one union is seeking an industrial unit that includes a group of craft employees which another union is seeking to represent separately.[75] In these cases, the ballots of the craft employees are segregated and counted separately. If a majority of them vote for the union seeking the craft unit, they are ordinarily accorded separate represen-

[67] *National Container Corporation of Wisconsin,* 97 NLRB 1009; *Crown Zellerbach Corp*, 96 NLRB 378.

[68] *Tennessee Copper Co*, 10–RC–1513 (not printed).

[69] *Tin Processing Corporation,* 96 NLRB 300.

[70] *Raytheon Mfg. Co.,* 98 NLRB No. 121.

[71] *Ludlow Typograph Co.,* 95 NLRB 2.

[72] *Sinclair Rubber, Inc.,* 96 NLRB 220.

[73] *National Container Corporation of Wisconsin,* 97 NLRB 1009.

[74] Such self-determination elections are commonly referred to as "Globe" or "Globe type" elections from the name of the case in which the rule was first established, *Globe Machine & Stamping Co.,* 3 NLRB 294. For an "Armour-type Globe" election (*Armour and Co.,* 40 NLRB 1333), see *Sprague Electric Co.,* 98 NLRB No. 89, and 99 NLRB No. 106.

Self-determination elections are mandatory under sec. 9 (b) (1) to determine whether or not professional employees desire to be included in a unit with nonprofessionals. See discussion under Professional Employees, p. 78.

[75] For examples of elections in various types of alternative units see e. g., *W. H. Anderson Co., Inc.,* 99 NLRB No. 127; *Western Electric Co., Inc.,* 98 NLRB No. 154; *Sprague Electric Co.,* 98 NLRB No. 89; *KTTV, Inc.,* 97 NLRB 1477; *Columbia Broadcasting System, Inc.,* 97 NLRB 566; *Lervick Logging Co.,* 95 NLRB 946.

tation, but if they vote for the union seeking the industrial unit, they are ordinarily included in that unit. However, the principle of self-determination for craft groups does not apply where there is no union seeking to represent the craft group separately.[76]

The Board also conducts self-determination elections in alternative units where the bargaining representative of one unit seeks to add to the unit a group of employees currently represented in a separate appropriate unit or as part of a larger appropriate unit.[77] Thus, in one case, the Board held that two groups of employees who had been successfully represented for 9 years in separate certified units should not be joined in a single unit at the instance of one of the incumbent unions without first ascertaining the employees' wishes in separate elections in the existing units.[78] In another case, the Board directed a self-determination election among development machinists, grinders, toolroom machine operators, and tool crib attendants in a plant to find out whether they wished to be included in a certified unit of tool and die makers or to remain in another certified unit of hourly paid employees.[79]

Self-determination elections were also directed to determine whether employees in newly acquired plants preferred to continue in their respective appropriate units or to have an over-all unit.[80] Similarly, the Board granted a self-determination election to employees in a recently added division at a chemical plant, where such employees could appropriately either constitute a unit by themselves or be added to the existing unit.[81]

In two other types of situations, the Board also ordinarily holds self-determination elections: (1) When it is proposed to merge historically separate bargaining groups into a single unit by the bargaining representative of one of the groups and the petitioning union seeks an election in the proposed over-all unit;[82] and (2) when it is proposed that a previously unrepresented group of employees be added to an existing unit and no election is requested in the over-all unit

[76] See e. g, *Chrysler Corp.*, 98 NLRB No. 163; *Sinclair Rubber, Inc.*, 96 NLRB 220.

[77] See *Ford Motor Co.*, 96 NLRB 1075, footnote 24; and *Florida Citrus Canners Cooperative, Inc.*, 96 NLRB 1021.

[78] *Standard & Poor's Corp.*, 95 NLRB 248. See also *Merck & Co.*, 98 NLRB No. 52, where an election was directed to determine whether craft groups desired to merge with the production and maintenance unit. However, no elections were directed in this case because the petitioning union had failed to make the necessary showing of interest in the group which it sought to absorb.

[79] *General Electric Co.*, 97 NLRB 1265. See also *The Broderick Co.*, 97 NLRB 926.

[80] *General Metals Corp.*, 95 NLRB 1490. See also *Sprague Electric Co.*, 98 NLRB No. 89; *Thatcher Glass Mfg Co., Inc*, 97 NLRB 238; *Lervick Logging Co.*, 95 NLRB 946; *Permanente Steamship Corp.*, 96 NLRB 827 (a ship).

[81] *R. P. Scherer Corp.*, 95 NLRB 1426. See also *W. H. Anderson Co., Inc.*, 99 NLRB No. 127; and *Ware Laboratories, Inc.*, 98 NLRB No. 152.

[82] See *New Jersey Brewers Association*, 92 NLRB 1404 (1951), and cases cited therein. And see dissent in *W. S Tyler Co*, 93 NLRB 523 (1951).

which has been found appropriate.[83] In neither type of case does the Board specifically determine the status of the voting groups as appropriate bargaining units.

In a case of the first type, the Board held that the parts and service employees of an automobile sales and service agency with a history of separate bargaining were entitled to a self-determination election for the purpose of indicating whether they wished to be merged with the company's repair employees, currently represented by the petitioning union.[84]

The second type of case usually involves the proposed addition of so-called "fringe" employees to an existing appropriate unit.[85] In accordance with the rule stated in the *Waterous* case,[86] the Board directed self-determination elections for such "fringe" groups as plant clericals and custodial employees,[87] and machine shop helpers in cases where the union seeking to add them to an existing unit did not seek an election in the basic unit. Thus, in one case, the Board directed an election among a group of plant clericals at a meat packing plant to determine whether they desired to be added to the plant's production and maintenance unit for which no election was requested.[88] However, in another case, the Board also directed an election among machine shop helpers to determine whether they wished to be included in a unit of machine shop employees, although the petitioning union requested an election in the basic over-all unit. In this case, the union currently representing the other machine shop employees, which intervened in the case, refused to include the helpers in the unit.[89]

Questions are raised occasionally as to the interpretation of the results of such elections. In one case during the past year, a self-determination election on the question of whether employees at a newly acquired plant preferred single-plant or multiplant representation

[83] See *Great Lakes Pipe Line Co*, 92 NLRB 583 (1950) (Member Murdock dissenting), Sixteenth Annual Report, p. 95. Compare with *Waterous Co.*, 92 NLRB 76 (1950), where the Board declined to direct a self-determination election, when the only union seeking to represent a fringe group on any basis asked for an election and certification in the over-all appropriate unit. See also *Florida Citrus Canners Cooperative, Inc*, 96 NLRB 1021.

[84] *Valley Motor Co*, 96 NLRB 1416. No election was directed in this case, as the petitioner failed to establish the necessary showing of interest among the parts and service employees sought to be added.

[85] "Fringe" employees should be distinguished from those employees who cannot be properly excluded from a unit, such as newly hired or transferred employees doing work similar to that done by employees in the unit, and are therefore not accorded self-determination elections. See *Hughes Gun Co.*, 97 NLRB 913; and *Bronx County News Corp.*, 89 NLRB 1567 (1950).

[86] *Waterous Co*, 92 NLRB 76 (1950), discussed in Sixteenth Annual Report, pp. 93, 96.

[87] *The Carborundum Co.*, 95 NLRB 897.

[88] *Wilson & Co, Inc*, 97 NLRB 1388. See also *H & B American Machine Co.*, 97 NLRB 9; and *Arcade Mfg. Division of Rockwell Mfg Co*, 96 NLRB 116, where the Board accorded a self-determination election to one plant clerical, a timekeeper.

[89] *Wheland Co*, 10-RC-1313 (not printed).

was inconclusive and necessitated a runoff election.[90] However, the combined vote for the two unions which sought to represent the employees in a one-plant unit was a substantial majority of the votes of the employees at the new plant. It was contended that the employees should have been given another opportunity to make a unit choice in the runoff election. The Board rejected this contention on the ground that the employees had already indicated their preference for a single-plant unit.

In another case, one of the participating unions received a majority vote in voting group A and a majority of the total votes cast in both groups A and B, combined.[91] The Board declined the union's request to be certified as the representative of both groups in a single unit because a majority of the employees in group B had voted for the second union. The Board said:

> . . . in instances where separate self-determination elections are being simultaneously held, it is impossible for the employees participating in such elections to know in advance whether the union for which they cast their vote will be successful in either, or both, of the voting groups. The only logical import that can be given to their vote . . . is to assume they have registered a desire to have the union of their choice represent them in a unit embracing the group or groups in which it might ultimately win a majority vote.

5. Multiplant Units

When dealing with employees of companies which operate more than one plant, the Board must frequently determine whether an employer-wide unit, or a less comprehensive one, is appropriate. In making such determinations, the Board must take into consideration all relevant factors, but it is precluded by the act from determining the scope of the unit solely on the basis of the extent to which the company's employees have organized.[92] This statutory limitation sometimes is invoked in opposition to a less than company-wide unit. On this point, the Board has repeatedly held that it is precluded only from giving *controlling* weight to extent of organization, but not from taking the present extent of the employee's organization into consideration together with other pertinent circumstances.[93] In cases where extent of organization was the only basis for the proposed unit, the Board has consistently rejected the unit.[94]

---

[90] *Sprague Electric Co.*, 99 NLRB No 106.

[91] *Wheland Co.*, 96 NLRB 662.

[92] Section 9 (c) (5).

[93] See e. g., *Walgreen Co., of New York, Inc.*, 97 NLRB 1101; and see *Silverwood's*, 92 NLRB 1114 (1950), and cases cited therein.

[94] *Pacific Laundry Co., Ltd.*, 99 NLRB No. 147; *Monarch Machine Tool Co.*, 98 NLRB No. 196 (Members Houston and Styles dissenting); *Pioneer Mercantile Co.*, 95 NLRB 274; *Lloyd A. Fry Roofing Co.*, 95 NLRB 158.

Principal factors considered in cases where multiplant units are proposed include: (1) Bargaining history, (2) the extent of interchange and contacts between employees in the various plants, (3) the extent of functional integration of operations between the plants, (4) differences in the products of the plants or in the skills and types of work required, (5) the centralization, or lack of centralization, of management and supervision, particularly in regard to labor relations and the power to hire and discharge, and (6) the physical or geographical location of the plants in relation to each other.

In most cases, several of these factors are present; some pointing to the appropriateness of a multiplant unit, others pointing to the appropriateness of a narrower unit. In each case, the Board must weigh all the factors present, one against the other, in deciding the proper scope of the unit. However, in certain industries, company-wide or multiplant units are generally favored. Foremost among such industries are public utilities, such as power, telephone, and gas companies, where it has long been the Board's policy to establish system-wide or multiplant units whenever feasible.[95] This policy is based upon the highly integrated and interdependent character of public utility operations and the high degree of coordination among the employees required by the type of service rendered.[96] The Board, therefore, has held that where a labor organization is prepared to represent utility employees on a system-wide basis, a system-wide utility unit is ordinarily appropriate notwithstanding a bargaining history on a narrower basis.[97] But when no union sought a system-wide representation, a unit limited to a single station of an electric utility with an 8-year bargaining history was held appropriate.[98]

The Board similarly favors system-wide and division-wide units of employees in the transportation industry.[99] While the Board has expressed the belief that the ultimate appropriate unit in the insurance business is also a company-wide unit, the Board approved a State-wide unit when the employees involved worked only in the single State, were not interchanged with employees in other States, and no labor organization was seeking to represent them on a broader basis.[1]

---

[95] *Pacific Gas and Electric Co.*, 97 NLRB 1397; *Rural Cooperative Power Ass'n.*, 97 NLRB 235; *Southern California Gas Co.*, 96 NLRB 1070; *Montana Dakota Utilities Co.*, 95 NLRB 887. See also *Western Electric Co.*, 98 NLRB No. 154.

[96] See *Pacific Gas and Electric Co.*, 97 NLRB 1397; *Rural Cooperative Power Ass'n.*, 97 NLRB 235, and cases cited therein See also Sixteenth Annual Report, pp. 98, 99.

[97] *Rural Cooperative Power Ass'n.*, 97 NLRB 235, where the bargaining history covered only two of seven plants.

[98] *Philadelphia Electric Co.*, 95 NLRB 71.

[99] *Smith's Transfer Corp., of Staunton, Va.*, 97 NLRB 1456.

[1] *Home Beneficial Life Ins. Co.*, 98 NLRB No. 160.

In a recent case in the construction industry,[2] the Board was requested to establish a unit of all the employer's projects, present and future, coextensive with the petitioning union's jurisdiction. The Board denied the request and limited the unit to the project presently under construction. In doing so, the Board pointed particularly to the fact that because of the fluidity and fluctuation of employment in the construction industry the requested unit would prevent substantial numbers of new and future employees from voicing their own representation desires.

In most industries, the Board continues to apply its standard tests in determining the unit appropriate for a multiplant enterprise.

In several cases, the Board based its unit determination on the existing bargaining pattern. Thus, a multiplant unit of production and maintenance employees was held appropriate because of the bargaining history, although there were differences in working conditions, hiring and firing of employees was done at the local level, supervision was divided, and there was no interchange of employees except for infrequent permanent transfers between several plants.[3] In another case, the Board declined to sever the employees at one store from an established three-store unit in view of a 10-year bargaining history on the broader basis. In this case, each store hired its own employees and there was seldom any transfer of employees.[4]

In still another case, in which the request for a Nation-wide unit for a bakery concern was denied, the Board took into consideration the long history of bargaining on a local multiemployer basis.[5] However, in one case, the Board permitted a group of apprentice draftsmen to withdraw from a multiplant production and maintenance unit and join an existing single-plant unit of journeymen draftsmen.[6] The Board disregarded the history of multiplant bargaining for the apprentices because a single-plant unit had been previously certified for the journeymen draftsmen, the basic and numerically predominant group.

Interchange of employees,[7] or the lack of such interchange,[8] are likewise factors which continue to influence the Board in determining

---

[2] *The Arthur A. Johnson Corp.*, 97 NLRB 1466.

[3] *Wolverine Shoe and Tanning Corporation*, 97 NLRB 592. See also *Underwood Corp.*, 99 NLRB No 77

[4] *Pioneer Mercantile Co.*, 95 NLRB 274.

[5] *Continental Baking Co*, 99 NLRB No. 123 (Member Styles dissenting).

[6] *Bethlehem Steel Co, Shipbuilding Div.*, 99 NLRB No. 136.

[7] *Parsons Corporation*, 95 NLRB 1335. See also *Hearne Motor Freight Lines*, 99 NLRB No. 2; *Western Electric Co.*, 98 NLRB No. 154; *Phillips-Jones Corp.*, 96 NLRB 153; *Industrial Truck and Trailer Co*, 95 NLRB 354.

[8] See *Brighton Mills, Inc.*, 97 NLRB 774; *Smith's Transfer Corp, of Staunton, Va.*, 97 NLRB 1456; *Stanolind Oil and Gas Co.*, 98 NLRB No. 143; *Continental Baking Co.*, 99 NLRB No 123 (panel majority); *V. J Elmore Stores*, 99 NLRB No. 163.

whether or not separate plants of the same employer should be grouped in a single unit. Similarly, the Board continues to give consideration to the presence or absence of contact between the employees of a multiplant employer.[9]

The integration of operations between plants or divisions is another factor often considered by the Board in multiplant cases. Thus, a unit limited to one of the employer's oil and gas producing districts was held inappropriate where the particular district and another district in an adjoining State were operated as a single integrated enterprise.[10] The integration of a lumber company's sawmill operations with its planing mill, box factory, and drying yard operations similarly was held to preclude a separate unit of only sawmill and logging employees.[11] Likewise, the integration of a company's wholesale fish house with its retail fish store operations was held to require a single unit rather than separate units.[12] However, where two warehouses were independently operated, the Board confined the unit to the employees at one warehouse.[13].

As to evidence establishing integration, close proximity of separate plants alone has been held insufficient. Thus, the Board found appropriate a separate unit at each of two plants which were situated directly across the street from each other but were operated independently.[14] Nor does distance establish lack of integration. A unit of two clearly integrated plants was therefore held appropriate notwithstanding their location 50 miles apart.[15] However, the geographical location of separate plants of an employer is a factor in determining the proper scope of a unit. Thus, in one case the Board held that a proposed unit of employees at only one of the employer's two offices was not appropriate when the two offices were located only 4 or 5 miles apart.[16] In several other cases, the Board similarly held that varying distances between plants did not preclude the appropriateness of multiplant units.[17] However, in some cases the distance between the several

---

[9] See *Smith's Transfer Corp. of Staunton, Va.*, 97 NLRB 1456, *Continental Baking Co.*, 99 NLRB No. 123.

[10] *Union Sulphur and Oil Corp.*, 15–RC–560 (not printed)

[11] *Michigan-California Lumber Co.*, 96 NLRB 1379. But see *Brookings Plywood Corp*, 98 NLRB No. 131; and *Lervick Logging Co.*, 95 NLRB 946.

[12] *East Coast Fisheries, Inc*, 97 NLRB 1261. See also *Snively Groves, Inc.*, 98 NLRB No. 172; *Chesty Foods, Inc.*, 98 NLRB No. 176; *Hawthorne-Mellody Farms Dairy*, 99 NLRB No. 30.

[13] *King City Warehouse Co.*, 97 NLRB 1336.

[14] *Wilson Athletic Goods Mfg Co., Inc.*, 95 NLRB 892.

[15] *Reliance Electric & Engineering Co.*, 98 NLRB No. 92.

[16] *Radio Distributing Corp.*, 7–RC–1440 (not printed).

[17] *Hawthorne-Mellody Farms Dairy*, 99 NLRB No. 30; *Underwriters Salvage Co, of N. Y.*, 99 NLRB No. 54; *Andrews Co*, 98 NLRB No. 16; *The Muller Co., Ltd*, 98 NLRB No 110; *The Reliance Electric & Engineering Co*, 98 NLRB No. 92; see also *Underwood Corp*, 99 NLRB No. 77; *Western Electric Co*, 98 NLRB No. 154; *Chesty Foods, Inc.*, 98 NLRB No. 176.

plants of the particular employer were taken into consideration by the Board in holding multiplant units inappropriate.[18]

The extent of centralization of management and supervision, particularly in regard to labor relations and hiring and firing of employees, is frequently a major factor in multiplant cases.[19] However, the Board has held that highly centralized control of labor relations policies alone does not necessarily dictate a multiplant unit when hiring and firing is done locally and there is little or no interchange of personnel between plants.[20]

Differences in product and the skills and techniques required in different plants of an employer also may make a multiplant unit inappropriate.[21]

6. Multiemployer Units

The appropriateness of a bargaining unit composed of employees of more than one employer must be decided in cases where a group of employers conduct collective bargaining negotiations jointly as members of an association or through a joint bargaining agent. Generally, the Board will find that such a unit is appropriate if there is a controlling bargaining history on a multiemployer basis. The Board has held in a number of cases that bargaining on such a basis is controlling if the members of the employer group involved have participated in joint bargaining negotiations for a substantial period of time and have uniformly adopted the resulting agreements, thereby indicating their intention to be bound by joint, rather than individual, action.[22] It is not necessary that the employer group be organized into a formal association.[23] Nor is it important that an employer association or its bargaining committee has no authority to bind its members[24] and

[18] *V. J. Elmore Stores*, 99 NLRB No. 163 (20-mile separation); *Brown Wood Preserving Co*, 98 NLRB No. 43 (110 miles); *Smith's Transfer Corp. of Staunton, Va.*, 97 NLRB 1456 (up to 120 miles); *Brighton Mills, Inc.*, 97 NLRB 774 (150 miles). See also *Holland Furnace Co.*, 95 NLRB 1339; *Texas Pacific Coal and Oil Co.*, 96 NLRB 1330; *Continental Baking Co.*, 99 NLRB No 123 (panel majority).

[19] *Andrews Co*, 98 NLRB No. 16. See also *Riegel Paper Corp*, 96 NLRB 779.

[20] *RCA Service Co., Inc.*, 98 NLRB No. 62. See also *Calivogue Sportswear*, 96 NLRB 228.

[21] *Wilson Athletic Goods Mfg. Co., Inc.*, 95 NLRB 892; *Mid-West Refineries, Inc.*, 98 NLRB No. 150; *Ramsey Motor Co., Inc.*, 99 NLRB No. 68. Cf. *Continental Baking Co.*, 99 NLRB No. 123 (panel majority; employer-wide unit inappropriate, although all plants handle same products).

[22] *Safeway Stores, Inc.*, 98 NLRB No 95; *United States Warehouse Co.*, 98 NLRB No 9; *Abbotts Dairies, Inc.*, 97 NLRB 1064; *Sea Food Producers Assn. of New Bedford, Inc.*, 95 NLRB 1137. But see Member Styles' dissenting opinion in *Continental Baking Co.*, 99 NLRB No. 123.

[23] *Metz Brewing Co.*, 98 NLRB No. 54; *Abbotts Dairies, Inc.*, 97 NLRB 1064.

[24] *Fish Industry Committee*, 98 NLRB No. 109. See also *Al Laman Motors, Inc.*, 98 NLRB No. 102; and *Safeway Stores, Inc.*, 98 NLRB No. 95.

that separate rather than group contracts are signed by individual employers.[25]

Such multiemployer bargaining, however, may be denied weight because of special circumstances. Thus, the Board usually declines to base a unit upon a history of joint negotiations which have resulted in contracts applicable only to members of the contracting union.[26] However, where the members-only bargaining had been superseded by bargaining resulting in *exclusive* recognition contracts, the latter history was held controlling.[27] In another case, the Board found that bargaining for the employees of a certain employer on a multiemployer basis had become confused, had disintegrated, and had ceased to exist as an effective bargaining pattern.[28] In this case, one of the employer's three plants had been closed; after a consent election at a second plant, another union was certified as the representative of the employees at that plant; and a schism had occurred in the union which insisted on the continuation of the former bargaining scheme. The Board held that the employees' inclusion in a multiemployer unit was no longer appropriate. Another multiemployer case also presented a combination of unusual circumstances.[29] The unit in this case had included, with a group of employers primarily engaged in the manufacture of refrigerating equipment, one employer who produced specialized items for the aviation industry. The different working conditions of the employees in the aviation equipment plant had given rise to a special addendum to the master contract negotiated between the participating employers and unions. The appropriateness of a separate unit for the employees of the aviation products plant had even been recognized at one time by all the parties to the master contract. Moreover, these employees expressed continued dissatisfaction with the joint bargaining relationship. These circumstances, together with the fact that the employer group had not adhered strictly to multiemployer bargaining and the fact that there were overlapping contracts for employees in at least three over-all units, were held by the Board to militate against giving controlling weight to the multiemployer bargaining history. The Board approved a separate unit for the aviation equipment plant employees.

---

[25] *Fish Industry Committee*, 98 NLRB No. 109; *Samuel Bernstein & Co.*, 98 NLRB No. 39; *Abbotts Dairies, Inc.*, 97 NLRB 1064.

[26] See Sixteenth Annual Report, p. 103.

[27] *Foundry Manufacturers Negotiating Committee*, 98 NLRB No. 187.

[28] *Gladding, McBean & Co.*, 96 NLRB 823. See also *J. C. Penney Co., Inc.*, 97 NLRB 243

[29] *Weber Showcase & Fixture Co., Inc., Aircraft Division*, 96 NLRB 358.

Multiemployer bargaining, like any other type of bargaining history, was denied controlling weight when it was of less than 1 year's duration.[30]

In several cases, the appropriateness of a multiemployer bargaining pattern depended upon whether the employer involved was in fact bound by the joint negotiations of an employer group. Thus, the Board held that inclusion of employees in a multiemployer unit was not justified where the employer was merely a member in the association or had merely adopted group contracts, but had not participated in joint negotiations either directly or through an authorized representative.[31] But an association-wide unit was held to include the employees of a new member who agreed to be bound by association contracts as a condition of membership.[32]

Conversely, a multiemployer bargaining history ceases to be controlling when the employer abandons joint bargaining. But for such an abandonment to be effective, the Board requires that it be both unequivocal and timely.[33] In one case, the employer withdrew from the association prior to the execution of the current association contract, did not participate in the negotiations leading to the new contract, and did not accept or ratify the contract.[34] The Board held a separate unit of his employees appropriate. Under these circumstances, the Board found that the employer had indicated a clear intent to pursue an independent course in bargaining and was no longer obligated to bargain on a multiemployer basis. In a prior decision involving the same employer, the Board had found that an attempted withdrawal from joint bargaining when the contract then current still had some 15 months to run was untimely and ineffective.[35] In another case, the Board declined to establish a separate unit for employees of an employer who had not indicated unequivocally an intention to abandon group bargaining.[36] The circumstances were as follows: Upon being notified of

[30] *The Van Iderstine Co.*, 95 NLRB 966. See also *Metro Glass Bottle Co.*, 96 NLRB 1008; and *The Manufacturers Protective & Development Assn.*, 95 NLRB 1059 (union-security election; 1-year history of association-wide bargaining).

[31] See *Denver Heating, Piping and Air Conditioning Contractors Assn.*, 99 NLRB No. 50, and Sixteenth Annual Report, p. 103. But see *Pacific Coast Shipbuilders and Ship Repairers*, 98 NLRB No. 35, where certain employers were included in a multiemployer unit although not represented at joint negotiations, absent any objections to such inclusion by the employers or the union.

[32] *Denver Heating, Piping and Air Conditioning Contractors Assn.*, 99 NLRB No. 50.

[33] See Sixteenth Annal Report, pp. 103, 104

[34] *W. S. Ponton of N. J., Inc.*, 95 NLRB 581. See also *Fish Industry Committee*, 98 NLRB No. 109, where members of a formal association continued to bargain on the same joint basis after disbanding the formal association.

[35] *W. S. Ponton of N. J., Inc.*, 93 NLRB 924.

[36] *Washington Hardware Co.*, 95 NLRB 1001. Compare with *Gladding, McBean & Co.*, 96 NLRB 823, where the Board permitted an employer to withdraw from multiemployer bargaining in the middle of a contract term because of the disintegration of the joint bargaining relationship including a schism in the contracting union.

the filing of a petition for the decertification of the representative of one unit of its employees, the employer withdrew authorization for group negotiations concerning these employees, for the stated purpose of avoiding "anything improper or illegal" while the petition was pending. The employer, however, did not cancel its membership in the joint employers' bargaining group, nor did it indicate any intent to discontinue participation in joint negotiations regarding employees not involved in the decertification proceeding. The Board, therefore, held that the preceding multiemployer bargaining history continued to be controlling.

The Board also has held that group action is not abandoned merely because an employer handles some of his labor relations on an individual basis. Thus, the Board declined to find that an association employer had abandoned group action by the execution of a separate minimum wage agreement which was supplemental to and by its terms became a part of the association's master contract to which the employer remained a party.[37] Similarly, a multiemployer unit was held to continue to be appropriate although piecework rates were set at single-plant level and although individual employers in the group made separate changes in the master contract on such matters as termination notices, contract extension, and "no-liability" clauses.[38] The Board observed in this case that the individual settlement of piece rates is not unusual in multiemployer bargaining and that the occasional single-employer action was relatively insignificant when compared with the basic matters determined at the association level. The individual handling of grievances by each member of an employer group likewise does not militate against continued multiemployer bargaining.[39] Nor was a multiemployer unit precluded by the fact that one member of an association, unlike the others, bargained on an individual basis regarding nonjourneymen employees.[40]

But, while withdrawal of a member from an employer association may preclude his inclusion in the former multiemployer unit, such a withdrawal does not make the multiemployer unit comprised of the remaining members of the group inappropriate.[41]

Whenever there is a controlling bargaining history on a multiemployer basis as outlined above, the only appropriate unit is the unit

---

[37] *Safeway Stores, Inc.*, 98 NLRB No 95.

[38] *Furniture Employers' Council of Southern California, Inc.*, 96 NLRB 1002.

[39] *Metz Brewing Co.*, 98 NLRB No 54.

[40] *Foundry Manufacturers Negotiating Committee*, cited above See also *Karas & Karas Glass Co.*, 99 NLRB No. 86

[41] *Foundry Manufacturers Negotiating Committee*, 98 NLRB No. 187. See also *Samuel Bernstein & Co.*, 98 NLRB No. 39 (fluctuating membership).

which includes the entire employer group.[42] Moreover, the presence of a controlling bargaining history defeats the presumption that a single-employer unit is appropriate even for those employee classifications which have been omitted from joint negotiation. Thus, for example, a clerical unit limited to a single employer was held inappropriate in view of a 5-year history of multiple-employer bargaining with respect to other employees of the employer.[43] However, a multiemployer bargaining pattern for one group of employees is not controlling for another group which has a separate history of single-employer bargaining.[44]

Where separate corporations are found to constitute a single employer in view of common ownership and control, the Board includes these employees in a single unit if the interest of such employees are sufficiently identical, even though bargaining may have taken place on a single-company basis.[45]

7. Employees in Separate Units

The establishment of separate units for employees in certain classifications is regulated in some instances by specific statutory provisions and in others by principles developed by the Board. In the first category are plant guards and professional employees, while the second category includes such classifications as clerical and technical employees.

a. Plant Guards

The Board may certify a collective bargaining representative for plant guards only if the guards are in a unit separate from other employees and represented by a labor organization not affiliated with nonguard employees or their organizations.[46]

In determining whether an employee is a "guard" for the purposes of the act, the Board looks to the employee's actual duties rather than

[42] *Safeway Stores Inc.*, 98 NLRB No. 95; *Taylor and Boggis Foundry Division of the Consolidated Iron-Steel Mfg. Co.*, 98 NLRB No. 83; *Abbotts Dairies, Inc.*, 97 NLRB 1064; *Globe Iron Co.*, 95 NLRB 939. See also *Denver Heating, Piping and Air Conditioning Contractors Assn.*, 99 NLRB No. 50, where a multiemployer unit of two associations was found appropriate because of the overlapping membership of the associations and the joint bargaining of both associations.

[43] *Kenosha Auto Transport Corp.*, 98 NLRB No. 85. See also *Weber Showcase & Fixture Co., Inc., Aircraft Division*, 96 NLRB 358.

[44] *Metro Glass Bottle Co.*, 96 NLRB 1008.

[45] *Commercial Equipment Co., Inc.*, 95 NLRB 354. See also *Industrial Lamp Corp.*, 97 NLRB 1021.

[46] Sec. 9 (b) (3). A guard is described in this section as "any individual employed . . . to enforce against employees or other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises."

his payroll classification.[47] Nor does an employee's status as a guard necessarily depend on whether or not he is armed, deputized, or uniformed.[48]

Generally, the Board finds that employees are guards in the statutory sense, if in enforcing plant rules, they perform such duties as checking for fire or other safety hazards, identifying persons entering the plant, stopping and reporting violations of plant regulations, and punching clocks while making their rounds through the plant.[49] Plant protection employees who do not enforce rules against employees or others are not guards.[50] Thus, the Board held that fire watchmen whose duties were limited to the making of regular tours to observe and report fire hazards were not guards.[51] Persons employed by a company furnishing plant protection services to its customers are not guards within the meaning of the act.[52]

The Board continues to apply the rule that an employee, in order to be considered a guard for the purposes of the act, must spend more than 50 percent of his time in the performance of guard duties.[53]

In view of the second limitation of the act on the representation of guards, the Board also must determine whether a union which seeks to represent a unit of guards is disqualified because it is "affiliated directly or indirectly with a labor organization which admits to membership employees other than guards."[54] This question usually arises when the petitioning union has come into existence with the aid or assistance of a nonguard union. The Board has held that such assistance during the guard union's organizational stage or infancy does not establish "affiliation" within the meaning of section 9 (b) (3) as long as the guard union remains free to, and does, formulate its own policies and decide its own course of action. Thus, assistance by a nonguard union confined to the use of its union hall and participation of its chief steward at the guards' organizational meeting was held not to disqualify the emerging guard union.[55] However, a union

---

[47] See *American Car and Foundry Co.*, 96 NLRB 638, where the Board held that certain former plant protection employees who continued to be classified as such for payroll purposes were not "guards" since their former functions had been transferred to an outside agency.

[48] *West Virginia Pulp and Paper Co.*, 96 NLRB 871.

[49] See Sixteenth Annual Report, pp. 106, 107. See also *Socony Vacuum Oil Co.*, 99 NLRB No. 58; and *Wilson Athletic Goods Mfg. Co.*, 95 NLRB 892.

[50] See footnote 46.

[51] *West Virginia Pulp and Paper Co.*, 96 NLRB 871.

[52] *American District Telegraph Co. of Pa.*, 6-RC-809 (not printed).

[53] *Sea Food Producers Assn. of New Bedford, Inc.*, 95 NLRB 1137, footnote 2. See also *The Muller Co., Ltd.*, 98 NLRB No. 110 (not printed). See also *Liberty Cork Co, Inc.*, 96 NLRB 372, where the Board, in applying the 50 percent rule to a production employee who performed guard duties during off hours in return for living quarters, excluded from computation the employee's meal and sleeping times.

[54] Sec. 9 (b) (3).

[55] *Westinghouse Electric Corp.*, 96 NLRB 1250. See also *Westinghouse Electric Corp.*, 96 NLRB 316.

was not permitted to represent guards when it had not only received nonguard assistance in its formation, but had for approximately 4 months after its organization held no formal meetings, collected no dues, taken no independent action, and continuously depended upon the nonguard union for material aid as well as advice and guidance. The Board found that the guard union, in consequence of its "lack of freedom and independence in formulating its own policies and deciding its own course of action," was "indirectly affiliated" with the nonguard union and was therefore disqualified.[56]

However, the Board in another case pointed out that the act "restricts only the power of the Board to certify a nonguard union for guards and places no restrictions on the right of guards to join nonguard unions. . . ." [57]

b. Professional Employees

As to professional employees, the act states that the Board may not "decide that any union is appropriate . . . if such unit includes both professional employees and employees who are not professional employees unless a majority of such professional employees vote for inclusion in such unit." [58] Consequently, if a proposed unit is to contain both professional and nonprofessional employees, the Board directs a self-determination election among the professionals in order to ascertain whether or not they desire to be included.[59] However, the Board has construed the proviso on professionals as not requiring such an election where only a small number of nonprofessionals are to be included in a predominantly professional unit.[60]

In determining whether employees are "professional" under the act, the Board applies the tests indicated in the definition of professionals in section 2 (12) to the work performed by the particular employees. On the basis of those tests, the Board found that readers at a motion picture studio were professional employees because their diversified work was predominantly intellectual in character and required advanced knowledge in art and literature.[61] The Board similarly found that certain types of engineers with a college degree were professional employees within the statutory definition. These included an estimator whose job was to determine the method and frequency of certain tests to be made of terrain, and office engineers who regularly exercised a substantial degree of independent judgment

[56] *The Magnavox Co.*, 97 NLRB 1111.
[57] *F. Burkart Mfg. Co.*, 96 NLRB 558.
[58] Sec. 9 (b) (1).
[59] *Air Line Pilots Assn , International*, 97 NLRB 929.
[60] See Fifteenth Annual Report, p. 49.
[61] *Twentieth Century-Fox Film Corp.*, 96 NLRB 1052

in making computations.[62] Other types of employees held to be professionals included nonregistered nurses performing the normal duties of registered nurses,[63] chemists,[64] physicists,[65] and machine and tool designers.[66]

Conversely, in a number of cases the Board rejected the contention that the duties performed by various types of employees were of a professional nature. Thus, the Board in one case held that certain time-study men did not come within the definition of section 2 (12) because their duties did not require knowledge of an advanced type in a field of science or learning.[67] Similarly, methods engineers making time studies, methods analyses, and cost computations were held not engaged in professional work.[68] Other employees whose duties have been held not to be of a professional nature include draftsmen;[69] actors, actresses, and narrators, performing routine work on radio programs;[70] assistant chemists;[71] laboratory testers[72] and technicians;[73] inspectors of perishable foods;[74] art department employees at a greeting card plant;[75] and product designers and methods men.[76]

c. Clerical Employees

The unit placement of clerical employees is governed by well-established precedents developed by the Board rather than by any specific statutory language. These precedents distinguish between office employees and plant clericals. The former, because of their different work and interests, usually are excluded from larger units and grouped in a separate unit. The Board applies this rule in spite of a contrary collective bargaining history.[77] Plant clericals, on the other hand, usually are included in production and maintenance units because of the similarity of the interests and working conditions of the two groups.[78]

---

[62] *The Arthur A. Johnson Corp.*, 97 NLRB 1466. For other types of engineers found professional, see *Worden-Allen Co*, 99 NLRB No. 67; *Potomac Electric Power Co*, 99 NLRB No. 29; and *Western Electric Co.*, 98 NLRB No. 154.

[63] *The Timken-Detroit Axle Co.*, 95 NLRB 736

[64] *Swift & Co.*, 98 NLRB No. 117; *Western Electric Co*, 98 NLRB No. 154

[65] *Western Electric Co*, cited above.

[66] *Western Electric Co.*, cited above.

[67] *The De Laval Separator Co.*, 97 NLRB 544.

[68] *Westinghouse Electric Corp.*, 97 NLRB 1271

[69] *Arnold Hoffman and Co.*, 95 NLRB 907.

[70] *Colgate-Palmolive-Peet Co.*, 96 NLRB 311

[71] *Lyntex Corp.*, 98 NLRB No. 147.

[72] *Warren Petroleum Co.*, 96 NLRB 1428.

[73] *Swift & Co.*, 98 NLRB No. 117; *Bell Aircraft Corp.*, 98 NLRB No. 206.

[74] *National Perishable Inspection Service, Inc.*, 97 NLRB 779.

[75] *Buzza Cardozo Co.*, 99 NLRB No. 19.

[76] *The De Laval Separator Co.*, 97 NLRB 544.

[77] *Socony Vacuum Oil Co, Inc.*, 99 NLRB No. 58; *Cutter Laboratories*, 98 NLRB No. 69; *Nash Boulevard Corp.*, 98 NLRB No. 31, footnote 4.

[78] *Belknap Hardware and Mfg. Co.*, 96 NLRB 157.

Exceptions to the general rule of separate units for office employees have been made when office clericals were found to have strong mutual interests with other employee groups. Thus, office personnel has been included in store-wide units in department stores,[79] in a company-wide unit at a telephone company,[80] and in a unit with salespeople of an automobile dealer.[81]

In determining whether a group of clerical employees are plant clericals rather than office personnel, the Board considers such factors as the relation of their work to production operations,[82] working contacts with production employees,[83] interchange with such employees,[84] relative location in the plant,[85] use of the same facilities,[86] identity of supervision,[87] and similarity of working conditions.[88]

Applying these tests in one case, the Board reaffirmed its view that "timekeepers engaged in the normal functions of their classification, * * * are in fact plant clerical employees."[89] In the same case, production control clerks, inventory clerks, and receiving clerks were also held to be plant clericals with sufficiently similar interests to be included in the production and maintenance unit. These employees worked in close association with the plant employees, punched time clocks, used the same facilities, and were not interchanged with office personnel.[90] Other employees found by the Board to fall within the category of plant clericals included warehousemen and storekeepers,[91] shipping and receiving clerks, dispatchers, and scheduling clerks.[92]

d. Technical Employees

Technical employees usually are placed in separate units unless one of the interested parties objects to the establishment of such a unit.[93]

---

[79] *Stack & Co.*, 97 NLRB 1492. See also *S H. Kress & Co.*, 92 NLRB 15 (1950); and *Albert's Inc.*, 90 NLRB 110 (1950).

[80] *The Elyria Telephone Co.*, 96 NLRB 162. For the Board's practice in public utility cases, see *East Ohio Gas Co.*, 94 NLRB 61 (1951).

[81] See *Nash Boulevard Corp.*, 98 NLRB No. 31, footnote 4.

[82] *Western Gear Works*, 98 NLRB No. 20. See also *Bell Aircraft Corp.*, 98 NLRB No. 206.

[83] *Belknap Hardware Co*, 96 NLRB 157.

[84] See *W. F. & John Barnes Co.*, 96 NLRB 1136.

[85] *Bell Aircraft Corp.*, 98 NLRB No. 206. *Lone Star Producing Co.*, 96 NLRB 1063.

[86] *Bingham-Herbrand Corp.*, 97 NLRB 65.

[87] *Bell Aircraft Corp.*, 98 NLRB No. 206; *Western Gear Works*, 98 NLRB No. 20; *Lone Star Producing Co.*, 96 NLRB 1063; *Belknap Hardware Co.*, 96 NLRB 157.

[88] *Belknap Hardware Co.*, 96 NLRB 157.

[89] *Radio Corp. of America*, 96 NLRB 889, overruling *Chase Aircraft Co., Inc.*, 91 NLRB 288 (1950), as to any language there which might seem inconsistent.

[90] *Bingham-Herbrand Corp.*, 97 NLRB 65.

[91] *Lone Star Producing Co.*, 96 NLRB 1063.

[92] *Western Gear Works*, 98 NLRB No. 20.

[93] *Florence Stove Co.*, 98 NLRB No. 4; *Westinghouse Electric Corp.*, 97 NLRB 1271; *Bulldog Electric Products Co.*, 96 NLRB 642; *The Timken-Detroit Axle Co.*, 95 NLRB 736; compare with *Bell Aircraft Corp.*, 98 NLRB No. 206; *Swift & Co.*, 98 NLRB No. 117. See also *Barker and Williamson, Inc.*, 97 NLRB 562.

The reason for grouping technical employees separately is that ordinarily their duties and interests differ substantially from those of other employees in the same plant.[94] The Board, however, has declined to establish a separate unit which includes some, but not all, of an employer's technical employees.[95]

Employees whose duties have been held to be of such a technical nature as to permit their placement in separate units include draftsmen,[96] assistant chemists,[97] liaison engineers, engineer product designers, time-study men,[98] methods engineers,[99] laboratory technicians, blueprint operators, production planners, copywriters, and model makers.[1]

In some instances, technical employees were placed in units with other groups of employees. Thus, in one case, certain time-study men and rate setters were joined in a residual unit with other technical employees and office and clerical personnel with whom they had sufficient common interests.[2] Similarly, in another case, time-study men were included in a unit with office and shop clericals, draftsmen, and laboratory assistants.[3] The Board found that a separate unit for the time-study men was not appropriate because their work, while technical, was not so highly specialized as to make their interests substantially different from the semitechnical and nontechnical employees in the unit.

e. Residual Units

In order not to deprive employee groups excluded from established units of the opportunity to obtain the benefits of collective bargaining, the Board often establishes such groups as separate bargaining units. For instance, where a commercial printing plant unit had omitted copy holders, messengers, and clerks in the proofroom, as well as proof boys, galley boys, cut boys, copy runners, smelter employees, lunkers, and wrappers in the composing room, the Board held that a residual unit of these unrepresented employees was appropriate notwithstanding the contention that they constituted a heterogeneous group without common interest.[4] Similarly, a residual unit was established for 18 stores of a grocery chain which were the

---

[94] *Florence Stove Co.*, 98 NLRB No. 4; *Bulldog Electric Products Co.*, 96 NLRB 642.

[95] *The Monarch Machine Tool Co.*, 98 NLRB No. 196 (Members Houston and Styles dissenting). See also *The De Laval Separator Co.*, 97 NLRB 544.

[96] *Arnold Hoffman & Co., Inc.*, 95 NLRB 907.

[97] *E. H. Sargent & Co.*, 99 NLRB No. 156; *Lyntex Corp.*, 98 NLRB No. 147.

[98] *Florence Stove Co.*, 98 NLRB No. 4.

[99] *Westinghouse Electric Corp.*, 97 NLRB 1271.

[1] *Bulldog Electric Products Co.*, 96 NLRB 642.

[2] *Bethlehem Steel Co.*, 97 NLRB 1072.

[3] *Goodall-Sanford, Inc.*, 1-RC-2228 (not printed), distinguishing *Florence Stove Co*, 94 NLRB 1434 (1951).

[4] *The Wilson H. Lee Company*, 97 NLRB 1023.

chain's only stores in one of its districts that were not represented for bargaining purposes.[5]

A departmental or residual unit was also found appropriate for a group of employees who had been a part of a previously certified over-all unit, but had not been accorded equal representation by the certified union.[6] The Board observed that a separate unit of these employees would have been appropriate at the time of the earlier representation proceeding.

8. Seasonal, Part-Time, and Probationary Employees

During the past year, the Board was again confronted with contentions that employees other than regular full-time employees should be excluded from proposed bargaining units. In these cases, the Board has repeatedly made it clear that a

> unit finding is based upon functionally related occupational job categories, and all employees working at jobs within the unit are necessarily included and entitled to representation, irrespective of the tenure of their employment.[7]

Consequently, as in the case of other groups of employees, the factor which will determine whether seasonal, part-time, or probationary employees shall be included in a given unit is the similarity of their interests and working conditons to those of other employees in the proposed unit. However, the employees' tenure is important in determining their eligibility to vote.[8]

9. Excluded Employees

Persons engaged in certain types of work are specifically excluded from the act's definition of the term "employee"[9] and therefore may not be included by the Board in a bargaining unit. These include supervisory employees, independent contractors, agricultural laborers, domestic servants employed in a home, individuals employed by a parent or spouse, and individuals employed by an employer under the Railway Labor Act.[10]

In addition, the Board has long followed the policy of excluding from bargaining units employees whose duties are managerial, and employees who stand in a confidential relationship to executives handling labor relations of the employer.

---

[5] *Safeway Stores, Inc.*, 96 NLRB 998.

[6] *Queensbrook News Co.*, 98 NLRB No. 21.

[7] See for example *Warden-Allen Co.*, 99 NLRB No. 67; *Commercial Equipment Co., Inc.*, 95 NLRB 354.

[8] See Sixteenth Annual Report, pp. 119. 120.

[9] Sec. 2 (3).

[10] None of the cases decided during the past year involved employees in the last three categories.

a. Supervisory Employees

Since the amended act excludes supervisors from its protection,[11] the Board must frequently determine whether employees sought to be included in, or excluded from, a proposed unit come within the definition of the term supervisor.[12]

In determining supervisory status, the Board is not guided by the employee's job title or classification but by his actual duties, taking into account the type of work done and responsibility exercised, as well as all other relevant factors.[13] Similarly, the Board's determination will be based on the actual exercise of authority rather than on assertions of the employer that he conferred supervisory authority on a particular employee.[14]

Supervision of the type customarily exercised by experienced employees over those less skilled does not confer supervisory status within the meaning of the act the Board has held.[15] Similarly, experienced employees who train or instruct other employees but possess no authority to change their employment status are not supervisors, the Board has ruled.[16]

Because a supervisor must exercise authority over "other employees," the Board has consistently held that employees who exert control over equipment, and direct personnel only incidentally, are not within the statutory definition.[17] Thus, the Board declined to exclude from a unit maintenance foremen of an electrical power cooperative who were responsible for maintaining service lines, making meter changes, and handling consumer complaints.[18] Similarly, inspectors of a public transportation system who were responsible for the maintenance of schedules, and who reported serious or repeated violations of safety rules without any recommendation were found not to be supervisors.[19] The Board has also held that nurses, who reported findings concerning employees' physical condition rather than the quality of their work,

---

[11] Sec. 2 (3).

[12] Sec. 2 (11) provides, "The term 'supervisor' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of merely routine or clerical nature, but requires the use of independent judgment."

[13] *Cinch Mfg. Co.*, 98 NLRB No. 118; *Leland-Gifford Co.*, 95 NLRB 1306; *Continental Oil Co.*, 95 NLRB 358.

[14] *Greater Erie Broadcasting Co.*, 3-RC-513 (not printed) (Member Reynolds dissenting).

[15] *Warren Petroleum Corp.*, 97 NLRB 1458; *Mathews Lumber Co., Inc.*, 96 NLRB 322.

[16] *National Cash Register Co.*, 95 NLRB 27.

[17] See Sixteenth Annual Report, pp. 110, 111.

[18] *Black River Electric Cooperative*, 98 NLRB No. 86.

[19] *Capital Transit Co.*, 98 NLRB No. 27.

were not supervisors, even though the reports might affect the employees' status.[20]

An employee presently without subordinates is not a supervisor, the Board has held, but an employee who normally supervised one subordinate was not deprived of his supervisory status while the subordinate's position was vacant and pending the hiring of a substitute.[21] The Board has also ruled that employees who actually possess supervisory authority do not lose their supervisory status because of the nonexercise of their authority. This rule was applied in the case of subforemen who had authority effectively to recommend the hire, discharge, or discipline of employees, and who attended supervisory meetings where they received instructions to make recommendations "effecting or leading to discipline or promotion of employees."[22] But an employee who does not presently possess supervisory authority will not be classified as a supervisor because he may acquire such authority at some indefinite future time.[23] If a supervisory position is presently vacant, the Board will not determine the status of a future incumbent.[24]

In view of the tests of supervisory responsibility specified in section 2 (11), the Board has had to determine whether the duties of employees claimed to be supervisory involved the *responsible* direction of others, and whether the employees' exercise of authority required the use of "independent judgment" or was "of a merely routine or clerical nature."

Applying the responsible-direction test, the Board in one case held that a brickmason leadman was a supervisor because he spent about 75 percent of his time in laying out, assigning, and directing the work of other employees who were not subject to the immediate supervision of anyone else, and he could request assignment of helpers as needed and could authorize overtime.[25]

The "independent judgment" test was applied in a number of cases. Thus, a panel majority held that night-shift "first operators," in charge of production during the absence of regular supervisors, did not exercise supervisory authority because of the routine nature of their work. These operators spent 50 to 70 percent of their time in manual labor and, during the regular supervisor's absence, received

[20] *Le Roi Co.*, 13–RC–2211 (not printed).

[21] *Ramsey Motor Co.*, 99 NLRB No. 68.

[22] *Standard Lime and Stone Co.*, 95 NLRB 1141.

[23] *Igleheart Bros. Division, General Foods Corp.*, 96 NLRB 1005, involving an employee in training to become a supervisor.

[24] *S. & L. Co. of Pipestone*, 96 NLRB 1418.

[25] *Kennecott Copper Corp*, 98 NLRB No. 14. For other cases in which the responsible-direction test was applied see *Kennecott Copper Corp.*, 99 NLRB No. 110; *Pacific Gas and Electric Co.*, 97 NLRB 1397; *West Virginia Pulp and Paper Co.*, 96 NLRB 871; *Warren Petroleum Corp.*, 95 NLRB 1468.

detailed written orders and instructions from the plant foreman.[26] In another case, a panel majority held that a gang foreman was not a supervisor merely because he passed on to other employees instructions received from the chief engineer. Although the gang foreman was the only person present at times to see that the crew of two to seven men did their work properly, the majority found that his supervision was of a routine nature which did not require the use of independent judgment.[27]

The ratio of supervisors to employees also may be considered by the Board if other factors do not clearly indicate whether or not a given category of employees possesses supervisory authority. Thus, where supervisory status was claimed for 16 employees with a total of only 36 subordinates,[28] and for 6 employees alleged to supervise 19 of the rank and file,[29] the Board held that the high ratio indicated the nonsupervisory status of the particular employees.[30] However, the Board has held that supervisory status is not necessarily indicated by the fact that the treatment of the particular employees as rank and file would result in leaving a disproportionate number of employees in the charge of other supervisors.[31]

Another factor which the Board takes into consideration in determining supervisory status is the regularity with which an employee performs supervisory functions. Thus, irregular or sporadic exercise of such functions often has been held insufficient to require the exclusion of employees from bargaining units.[32] This applies also in the case of employees who, as an exception rather than as a rule, are given authority to hire helpers.[33] On the other hand, exercise of authority at regular intervals has been held to establish supervisory status. On the basis of this test, the Board excluded from the bargaining unit employees who acted as supervisors 1 or 2 days each week,[34] and assistant store managers who regularly substituted for the manager 1 hour each day and 1 day each week.[35]

---

[26] *Potash Co. of America,* 97 NLRB 511 (Member Reynolds dissenting).

[27] *Warren Petroleum Corp.,* 97 NLRB 1458 (Chairman Herzog dissenting). For other cases in which the alleged supervisory duties were found to constitute merely routine direction, see *Wm. Cameron & Co., Inc.,* 98 NLRB No. 149; *Sprague Electric Co.,* 98 NLRB No. 89; *The American Envelope Co.,* 97 NLRB 1541; *East Texas Steel Castings Co.,* 95 NLRB 1135; *Arnold Hoffman & Co., Inc.,* 95 NLRB 907.

[28] *Stack & Co.,* 97 NLRB 1492.

[29] *Potash Company of America,* 97 NLRB 511.

[30] See also *East Coast Fisheries, Inc.,* 97 NLRB 1261.

[31] *Pent Electric Products Co.,* 95 NLRB 1186; *Warren Petroleum Corp.,* 97 NLRB 1458; compare *Warren Petroleum Corp.,* 95 NLRB 1468.

[32] *Linzer (Everlast Process Printing Co.),* 98 NLRB No. 214; *Black River Electric Cooperative,* 98 NLRB No. 86; *Wilson & Co., Inc,* 97 NLRB 1388; *Diamond Bros. Co.,* 96 NLRB 1420.

[33] See *Puerto Rico Dairy, Inc.,* 99 NLRB No. 144; and Sixteenth Annual Report, p. 111.

[34] *Snively Groves, Inc.,* 98 NLRB No. 172; *Walgreen Co. of New York,* 97 NLRB 1101.

[35] *The Great Atlantic and Pacific Tea Co.,* 96 NLRB 660.

Rate of pay in itself is not a controlling factor. Thus, a head janitress who had the authority to hire and to recommend the discharge of other employees was held a supervisor notwithstanding the fact that she performed the same work at the same rate of pay as the other employees.[36]

b. Independent Contractors

Independent contractors are specifically excluded from the protection of the amended act by section 2 (3), and therefore may not be included by the Board in any bargaining unit. In determining the status of a particular individual under this section, the Board relies primarily on the "right of control" test. The Board has outlined this test as follows:

> While no single factor considered apart from all other relevant factors is necessarily determinative of an individual's status as an employee or independent contractor, it is well settled that the most essential characteristic of an employer-employee relationship is the retention by the employer of the right to direct and control the manner in which the employee's work shall be performed, that is, the right to determine not merely the result but the methods and means by which such results is to be accomplished. In this connection, it is not necessary that the employer actually direct or control the manner in which the services are performed. It is sufficient if he has a right to do so. An important element bearing on the existence of the "right to control" is the right of the employer to hire and discharge the person doing the work, and where an employer has the right to terminate the relationship at will it indicates an employer-employee relationship.[37]

In this case, the Board held that the carrier boys who distributed newspapers were employees and not independent contractors. The Board noted the following facts about these carriers: They were not vendors hawking newspapers to random customers and assuming the risks of the trade, but delivery boys distributing predetermined numbers of papers to known subscribers. Their earnings were in the nature of wages of the kind received by such employee categories as sales personnel, routemen, or collectors. They were required to devote certain amounts of time to the solicitation of new subscribers. The selection of substitutes in case of absence or illness was controlled by the company's district agents, and the company could terminate the relationship at will. The Board concluded that these circumstances indicated a degree of employer control which outweighed such factors as the company's failure to list the carriers on its payroll, to deduct

---

[36] *Van Schaak & Co.*, 95 NLRB 1028.

[37] *Citizen News Co.*, 97 NLRB 428; cf. *J. Howard Smith, Inc.*, 95 NLRB 21. Compare *American Factors Co.*, 98 NLRB No. 67, where the Board observed that Congress had indicated its intent to "recognize as employees those who 'work for wages or salaries under direct supervision,' and as independent contractors those who 'undertake to do a job for a price, decide how the work will be done, usually hire others to do the work, and depend for their income not upon wages, but upon . . . profit'" See 80th Cong., 1st Sess., House of Representatives Report No. 245, April 11, 1947, p. 18.

from their earnings funds for income taxes, social security, and unemployment insurance charges,[38] or to grant them vacation, holiday, and severance pay benefits as well as the requirement that the carriers furnish their own supplies and equipment.

Similarly, commission milkmen, under oral agreement with a dairy terminable at will, were found to be employees, rather than independent contractors.[39] The Board took into consideration these facts: The product sold and the uniforms and equipment used by the commission men bore the dairy's name. The company paid for truck fuel and repairs. The men worked exclusively for the dairy, on a reasonably regular basis each day, and were subject to discharge for misconduct or failure to perform their work. They were held accountable for the quantities of milk received, and reimbursed the dairy for spoilage and unsold milk. The company determined the price at which the milk was to be sold and received complaints from customers. While the commission men themselves decided the distribution and creation of routes, the dairy notified customers of the discontinuance of routes. The Board noted also that the company deducted sums for social security and made workmen's compensation payments for the commission men.

Control sufficient to establish an employer-employee relationship was found also in the case of a person who had contracted to operate a lumber mill for its owner. In this case, the operator did not provide the premises, equipment, labor, capital, or any of the other facilities essential to a working enterprise; the contract was of indefinite duration and subject to unilateral termination by the mill owner, who also retained the ultimate control over wage rates and labor relations.[40]

In another case, the Board held that a contract between a company and its former installation employees, for the installation of certain appliances, did not establish a true independent contractor relationship because of the degree of control which the company continued to exercise over the work performed under the contract.[41] The company retained the power to terminate the contract at will; the work involved was formerly a part of the company's regular business and was carried out by the contractors in substantially the same manner and under the same conditions as before; the company supplied most of the materials and supplies and controlled the time and sequence of operations; the contractors worked only for the company; and upon

[38] While tax withholding may have a bearing on the question of an individual's status, it is not regarded as a determinative factor. See, e. g., *Plainfield Courier-News Co*, 95 NLRB 532.

[39] *Puerto Rico Dairy Co.*, 99 NLRB No. 144.

[40] *The Whiting Lumber*, 97 NLRB 265. See also *Elyria Telephone Co*, 96 NLRB 162; and *Enterprise Lumber and Supply Co.*, 96 NLRB 784.

[41] *National Gas Co.*, 99 NLRB No. 44.

cessation of their contract operations, the company took back the equipment it had sold to the contractors without loss to them, and reemployed two of them and one of their helpers.

Similarly, in another case, a newspaper's photographer who also free lanced was held to be an employee and not an independent contractor, because the newspaper had retained the right to terminate at will its relationship with the photographer and also had retained, though without exercising it, the right to direct and control the manner of his work.[42] This photographer derived about 25 percent of his income from other sources, employed and paid another photographer to take his place 1 day each week, had no income or social security taxes deducted from his salary, and paid for all of the film, photographic paper, and chemicals used in printing and developing his photographs.

But, applying the right-of-control test, the Board found in several other cases that the individuals involved were independent contractors and therefore not subject to the act. Thus, certain truck owners who leased their vehicles to a trucking company and then operated them for the company, either personally or through hired drivers, were held to be independent contractors rather than employees.[43] Under the lease arrangement, the truck owners had to "comply with the [company's] instructions . . . with relation to the manner and method of caring for and handling the traffic transported," and the company made safety inspections of outgoing trucks, maintained a road patrol, and reserved the right to reject drivers. However, the company did not control departure and arrival times and issued no instructions to drivers other than destination, and the bona fide owners of the trucks had partial control over operational profits and losses. Under these circumstances, the majority of the Board concluded that whatever control the company retained over the truck drivers was directed to the *end* to be accomplished rather than to the *means and manner* in which trucking operations were to be performed.

Similarly, soft drink route salesmen who owned their own trucks and equipment, determined their own hours and manner of work, and received no compensation except the difference between what they paid for beverages and what they collected from customers were held to be independent contractors.[44]

Several cases involved questions on the alleged independent contractor status of persons connected with radio program broadcasting. Persons in this field found by the Board not to be independent con-

---

[42] *The Bethlehem's Globe Publishing Co.*, 98 NLRB No. 191.

[43] *Oklahoma Trailer Convoy, Inc*, 99 NLRB No. 150 (Member Styles dissenting).

[44] *American Factors Co.*, 98 NLRB No. 67. See also *J. Howard Smith, Inc.*, 95 NLRB 21; cf. *Southern Shellfish Co., Inc.*, 95 NLRB 957.

tractors but employees of the broadcaster, included actors and narrators performing on advertising programs under the immediate direction of the program director;[45] announcers who broadcast their own programs and derived their sole income from the sale of such programs to sponsors, but who were subject to the station's right to accept or reject programs and to utilize the announcers' services for the station's own purposes.[46] In one case, certain announcers known as "time-brokers" presented a special problem.[47] These "brokers" purchased time from the station for resale to sponsors, but they also were paid for making commercial announcements procured by the station. The Board held that the "time-brokers" were independent contractors to the extent that they purchased time, prepared programs, and hired performers who were paid by them directly or by the sponsor, and over whom the station had no control. However, the Board held that they were entitled to representation in collective bargaining on their activities as commission-paid announcers, but because the record in the case did not establish that they engaged in this employment either frequently or regularly, the Board found they did not have a sufficient interest to entitle them to vote in the representation election. In another case, a choir director who hired, paid, discharged, and directed singers, and was paid for the program on a package basis, was held to be an independent contractor.[48]

c. Agricultural Laborers

Section 2 (3) specifically excludes "any individual employed as an agricultural laborer" from the coverage of the act. The determination whether an employee is an "agricultural laborer," must be made in accordance with the definition of the term in section 3 (f) of the Fair Labor Standards Act of 1938, as required by continuing riders to the acts of Congress annually appropriating funds for the Board. This definition reads:

> "Agriculture" includes farming in all its branches and among other things includes . . . the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities . . . and any practices performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or market or to carriers for transportation to market.

In applying the definition, the Board is guided by the construction given it by the Department of Labor and its wage-hour division, which

[45] *Colgate-Palmolive-Peet Co.*, 96 NLRB 311.
[46] *Neptune Broadcasting Co.*, 94 NLRB 1052 (1951).
[47] *Emil Denemark, Inc.*, 96 NLRB 1087.
[48] *Hampton Roads Broadcasting Corp. (WGH)*, 98 NLRB No. 162 (Member Styles dissenting on another point).

has primary responsibility for the administration of the Fair Labor Standards Act, and by the Supreme Court.[49]

In one case,[50] it was contended that a 1949 amendment to the Fair Labor Standards Act was intended to bring irrigation employees within the agricultural labor definition and to supersede the Supreme Court's decision in the *Farmer's Reservoir* case [51] holding that the employees of an irrigation company were not agricultural laborers. The Board rejected this contention, holding that the amendment did not relate to section 3 (f) of the Fair Labor Standards Act and, in any event, it was concerned only with employees engaged in supplying water exclusively for agricultural purposes and not to employees of a company also serving urban communities as did the company in the case under consideration.

Applying section 3 (f) of the Fair Labor Standards Act in a number of cases, the Board held that the following employees came within the definition of "agricultural laborers": Sugar plantation employees, including (1) field employees who operated trucks and other machinery in connection with the planting, cultivating, and harvesting of crops, and transporting harvested cane to railroad sidings and loading it on cars, and (2) shop employees who serviced, maintained, and repaired machinery used by the employer solely in its farming operations.[52] Field employees in an alfalfa mill, who operated mowing, raking, pickup, and chopping machines in connection with the harvesting of growing crops bought from farmers, and loadermen, operating tractors for the gathering of alfalfa in the fields,[53] dairy farm workers who were chiefly engaged in feeding and caring for animals on a dairy farm and in processing and delivering milk to customers.[54]

However, the Board held that packing shed employees were not agricultural laborers where they performed no functions connected with planting or harvesting crops, and worked under separate supervision in sheds which constituted distinct commercial enterprises separate from any farm.[55] The Board also declined to hold that the employees of a stockyard, which provided facilities for the caring and

---

[49] *See Sixteenth Annual Report,* pp. 115, 116.

[50] *Twin Falls Canal Co.,* 97 NLRB 1473. See also *Luce & Co. S. En C.,* 98 NLRB No. 166.

[51] *Farmer's Reservoir & Irrigation Company* v. *McComb,* 337 U. S. 755.

[52] *Luce & Co. S. En C.,* 98 NLRB No. 166. See also *Eastern Sugar Associates,* 99 NLRB No. 121, involving tractor and mechanic shop employees repairing machinery used solely for farming operations; and *Holtville Alfalfa Mills, Inc.,* 98 NLRB No. 153, involving field maintenance men repairing agricultural machines on farms.

[53] *Holtville Alfalfa Mills, Inc.,* 98 NLRB No. 153; *Allied Mills, Inc.,* 96 NLRB 369, involving cuttermen mowing green alfalfa standing in farmers' fields; and *Archer-Daniel-Midland Co.,* 97 NLRB 1463 (field men).

[54] *Bemis Brothers Bag Co.,* 95 NLRB 44.

[55] *Colorado River Farms,* 99 NLRB No. 41. See also *J. J. Crosetti,* 98 NLRB No. 42; *Comer Produce Co.,* 95 NLRB 12.

sale of livestock, were agricultural laborers.[56] Other types of employees held not to be agricultural laborers included truck drivers primarily engaged in transporting alfalfa from fields to the mill for processing,[57] and grinder men producing black strap molasses from sugar cane.[58]

d. Managerial and Confidential Employees

The Board continues to adhere to its policy of excluding from bargaining units employees performing managerial functions and employees who possess or have access to confidential information regarding labor relations matters. The Board, however, has declined to exclude employees from bargaining units because of their possession of, or access to, information which is confidential only in technical or financial respects, such as in research work,[59] or the custody of company money.[60]

During the past year, the Board held that management functions, justifying exclusion from bargaining units, were exercised by an assistant purchasing agent and buyers,[61] and by long distance truck drivers,[62] who had authority to pledge the employer's credit.[63] However, an employee who had only limited authority to purchase supplies for his employer was held not to be a managerial employee.[64]

An employee who merely participated in conferences of supervisory personnel and was not authorized to bind the employer contractually or financially, was held not to be a managerial employee, although his recommendations were considered in making decisions and he had authority to deal directly with outside contractors.[65] Assistant managers who handled office work connected with the procurement, processing, allocation to customers, and pricing of certain types of meat, likewise were held not to be managerial employees because they did not participate in the formulation of policies and their work was constantly reviewed to determine whether the employer's policies were being followed.[66]

---

[56] *The Evansville Union Stockyards Co.*, 95 NLRB 31.
[57] *Holtville Alfalfa Mills, Inc.*, 98 NLRB No 153
[58] *Evan Hall Sugar Cooperative*, 97 NLRB 1258.
[59] *Swift & Co*, 98 NLRB No. 117.
[60] *Capital Transit Co.*, 98 NLRB No. 27.
[61] *Florence Stove Co.*, 98 NLRB No. 4; *The Girdler Corp.*, 96 NLRB 894.
[62] *East Coast Fisheries, Inc.*, 97 NLRB 1261.
[63] See also *Worden-Allen Co*, 99 NLRB No. 67, where a chief engineer and vice president was excluded from a unit because of his combined supervisory and managerial authority.
[64] *Westinghouse Electric Corp.* (*Steertevant Division*), 1-RC-2210 (not printed).
[65] *Westinghouse Electric Corp.* (*Irwin Mica Works*), 97 NLRB 1271.
[66] *Wilson & Co., Inc.*, 97 NLRB 1388.

In addition to employees with managerial authority, the Board also excludes from bargaining units employees who are closely identified with management,[67] or closely related to the employer or to managerial employees.[68]

The Board has adhered to the principle that "mere ownership of stock in a corporation does not preclude the inclusion of a stockholder in a collective bargaining unit of the corporation's employees unless the employee-stockholder's interest is of such a nature as to give him an effective voice in the formulation and determination of corporate policy." [69] However, a sufficient interest to justify exclusion on the ground of stock ownership was found in one case, where each of 118 nonsupervisory employees held 1 share out of a total of 250 shares of common capital stock in the employer's business. In the Board's opinion, the possibility that this large homogeneous group might influence management policies was not remote. Moreover, the Board found that each stockholder had certain powers which enabled him to affect operations. The Board further took into consideration that stockholder-employees held the most desirable jobs and that, in at least one instance, a nonstockholder had been "bumped" from a desirable job by a stockholder, and that a uniform wage rate policy and a separate grievance procedure for stockholders existed. Finally, the Board noted that stockholders might favor cost policies inconsistent with the wage demands of nonstockholder employees.[70]

In a number of cases in which the exclusion of employees from bargaining units was sought on the ground of their asserted confidential status, the Board found that the relationship of the particular employees did not involve labor relations matters and, therefore, did not come within the Board's exclusion rule. Thus, the required possession of, or access to, labor relations information was held not present in the case of employees who merely had opportunities to overhear conversations between company officers relating to labor relations.[71] In other cases, the Board held that the required confidential relation-

---

[67] See Sixteenth Annual Report, p. 118.

[68] See for example *Nash Boulevard Corp*, 98 NLRB 156 (employer's son); *E. J. Kelley Co.*, 98 NLRB No. 79 (employer's son and nephew); *National Perishable Inspection Service, Inc.*, 97 NLRB 779 (brother of employer's president); *Grinnell Brothers*, 98 NLRB No. 13 (wife of store manager); *Caldarera (Falstaff Distributing Co.)*, 97 NLRB 997 (nephew of partner); *Plainfield Courier-News Co.*, 95 NLRB 532 (nephew by marriage of employer's president excluded from voting group).

[69] *Brookings Plywood Corp.*, 98 NLRB No. 131.

[70] *Brookings Plywood Corp.*, cited above. See also *Oakland Scavenger Co.*, 98 NLRB No. 215, where employee-stockholders who received higher compensation than other employees, and had interests diverse from nonstockholder employees, were excluded from the unit.

[71] *Hughes Tool Co*, 97 NLRB 354. See also *Ford Motor Co., Aircraft Engine Division*, 96 NLRB 1075 (courtesy and station wagon drivers).

ship was not established for methods and standards department employees, rate setters, adjustors, and router clericals;[72] or plant clerical employees.[73] Similarly, the Board declined to exclude from a unit the clerical employees who were not presently engaged in confidential labor relations work and whose prospects of so doing in the future were highly speculative.[74]

F. Conduct of Representation Elections

When the Board finds that a question of representation exists, it can be resolved only through an election by secret ballot.[1] But the act leaves generally to the discretion of the Board the determination of the voting eligibility of employees, the mechanics of conducting elections, and the certification of election results.[2]

Election and certification procedures are primarily governed by the Board's published Rules and Regulations.[3] However, the Board is often called upon to decide the proper application of its rules, or to rule on situations not covered by the Rules and Regulations.

1. Eligibility To Vote

Generally, eligibility to vote in a Board-directed election is limited to employees who were employed in the appropriate unit during the payroll period immediately preceding the date of the issuance of the direction of election. This includes employees who did not work during the payroll period because they were ill or on vacation or temporarily laid off.[4] It also includes employees in the military services of the United States who appear in person at the polls.[5]

Not eligible to vote are employees who quit or were discharged for cause and who have not been reinstated prior to the date of the election. "Employees on strike who are not entitled to reinstatement" are specifically barred from voting by section 9 (c) (3) of the act.

Pointing out again that the "essential element in determining an employee's eligibility to vote is his status on the eligibility payroll date and on the date of election," the Board recently held that it is without controlling significance that an individual employed on those dates

[72] *The Monarch Machine Tool Co.*, 98 NLRB No. 196.
[73] *Truscon Steel Co.*, 95 NLRB 1005.
[74] *S. & L. Co. of Pipestone*, 96 NLRB 1418.
[1] See sec. 9 (c) (1).
[2] For limitations on the frequency with which elections may be held, see D, Impact of Prior Determinations, pp. 53–55.
[3] See sec. 102.61, Rules and Regulations, Series 6, effective June 3, 1952, as amended.
[4] See *Whiting Corp.*, 99 NLRB No. 26.
[5] Sixteenth Annual Report, p. 123.

may have intended to quit, or actually did quit, shortly after the election.[6] The fact that an employee is a minor does not affect his voting eligibility regardless of the effect that his minority may have on the employee's other legal status.[7]

a. Part-Time, Temporary, and Probationary Employees

Part-time and extra employees ordinarily are eligible to vote if they work regularly and perform work similar to that of full-time employees under comparable employment conditions.[8] Conversely, part-time employees whose employment is neither frequent nor regular are ineligible to vote.[9] Nor was a part-time employee in an excluded classification permitted to vote merely because he might be recalled to work within the voting unit at some indefinite future time.[10] If a part-time employee has other employment with another employer, he will be eligible to vote only if his part-time employment in the voting unit is regular and for a substantial portion of his time.[11]

During the past year, the Board modified its rule regarding the voting eligibility of employees who work part time in the voting unit and part time elsewhere for the same employer.[12] Previously, such employees were permitted to vote only if they worked 50 percent of their time in the voting unit. But, under the new rule, they are treated in the same manner as part-time employees who during the remainder of their time are idle, or work for a different employer. Applying this rule, the Board held that an employee working 20 percent of his time in the voting unit was eligible to vote.[13]

Temporary and casual employees hired for a specific task or a peak period in a nonseasonal industry usually are not permitted to vote, unless they have a reasonable expectation of permanent employment after the completion of the particular work or at the end of the peak period.[14] However, temporary employees hired for a task of indefinite or unpredictable duration have been held eligible to vote.[15] Similarly, employees hired for special work on Government contracts were permitted to vote where the employer did not inform the particular employees of the limited nature of their employment and the employer

---

[6] *Reidbord Brothers Company,* 99 NLRB No 23.

[7] *E. J. Kelley Co.,* 98 NLRB No. 79.

[8] *Silver Knit Hosiery Mills, Inc.,* 99 NLRB No 65; *Commercial Equipment Co.,* 95 NLRB 354.

[9] *Emil Denemark, Inc.,* 96 NLRB 1087.

[10] *Igleheart Brothers Division, General Foods Corp.,* 96 NLRB 1005.

[11] See Sixteenth Annual Report, p. 122.

[12] *Ocala Star Banner,* 97 NLRB 384; see Sixteenth Annual Report, p. 122.

[13] *The Broderick Co. (Header-Press Division),* 99 NLRB No. 60.

[14] *East Coast Fisheries, Inc.,* 97 NLRB 1261.

[15] *Hollingsworth & Whitney Co.,* 97 NLRB 599; *Snively Groves, Inc.,* 98 NLRB No. 172.

was not certain that no further Government contracts would be received. However, in seasonal industries such as canning and fishing, eligibility to vote is usually determined at or near the peak of operations.[16]

Temporary employees, to be eligible to vote, must have a substantial interest in the employment conditions of the voting unit, but this does not require that they were covered by any prior contract. Thus, temporary employees who did not share in the contractual benefits of the regular employees in the unit were permitted to vote, because (1) their functions, hours, and supervision were the same as those of permanent employees, and they received comparable wages and bonuses; (2) they had worked considerable periods for the employer during 4 years, although intermittently; and (3) the employer's practice was to recall workmen who had previously worked for him, and to fill vacancies or new jobs in permanent classifications with temporary employees.[17]

Probationary and student employees ordinarily are held eligible to vote if they have sufficient interests in common with regular employees in the same classifications and have a prospect of eventually achieving permanent employee status.[18]

b. Laid-off Employees and Strikers

In determining voting eligibility, the Board at times is faced with a question of whether the separation of employees who are not presently working is of a temporary or permanent nature. In such cases, the eligibility of laid-off employees depends upon whether the particular employees have a reasonable expectancy of employment in the near future.[19] When the probability of future employment was remote, the laid-off employees were not permitted to vote even though they retained their seniority rights,[20] or continued to be carried on the employer's payroll or preferential hiring list.[21]

Section 9 (c) (3), which provides that strikers not entitled to reinstatement shall not be eligible to vote, was applied during the past year in the case of economic strikers whose jobs had been abolished.[22] In cases in which the record does not clearly show whether

---

[16] See Timing of Elections, p. 97.

[17] *Puerto Rico Cement Corp.*, 97 NLRB 382.

[18] *Pent Electric Co., Inc.*, 95 NLRB 1186 (probationary employees); *National Cash Register Co.*, 95 NLRB 27 (student employees); *The Great Atlantic & Pacific Tea Co.*, 96 NLRB 660 (regular part-time student employees). Cf. *Falls City Creamery Co.*, 95 NLRB 1425; *Western Kentucky Gas Co.*, 97 NLRB 917.

[19] *F. B. Rogers Silver Co.*, 95 NLRB 1430; cf. *Kraft Foods Co.*, 97 NLRB 1097.

[20] *Igleheart Brothers Division, General Foods Corp.*, 96 NLRB 1005.

[21] *Vulcan Tin Can Co.*, 97 NLRB 180.

[22] *E. J. Kelley Co.*, 98 NLRB No. 79.

economic strikers are entitled to reinstatement or have been validly replaced, both strikers and their replacements are permitted to vote subject to challenge.[23]

c. Employees Whose Status Is in Doubt

An employee whose status is in doubt usually will be permitted to vote subject to challenge. This rule was applied where it could not be determined from the record whether an employee was a supervisor,[24] an independent contractor,[25] or a full-time or part-time employee.[26] Where the question of whether strikers were validly replaced depended upon the outcome of an unfair labor practice proceeding, the strikers also were permitted to vote subject to challenge.[27]

2. Selection of Payroll for Eligibility

Whenever the Board directs an election, it must select the payroll or payrolls which most accurately list the employees whose interests are involved, to serve as the basis for determining eligibility to vote. The payroll normally chosen is the one which covers the payroll period immediately preceding the date of the Board's direction of election.

However, the nature of a particular business or special circumstances may occasionally make it necessary to select another payroll in order to assure the right to vote to the greatest number of employees directly concerned. Thus, in a case involving employees of two heating and plumbing contractors associations, the Board granted a request to determine eligibility on the basis of 13 weekly payroll periods preceding the direction of election in order to grant voting rights to employees who were employed on a project basis.[28] This method of determining eligibility was held appropriate even though over 50 percent of the employees of the association members concerned had permanent status and, therefore, constituted a representative group. In seasonal industries, the Board normally uses the payroll for the period immediately preceding the date of issuance of the notice of election by the regional director, which is at or near the peak of operations.[29]

But no departure from the usual eligibility date was held required by the existence of a strike,[30] a minor employment fluctuation at the

---

[23] Sixteenth Annual Report (1951), p. 124.

[24] *Philadelphia Electric Co.*, 95 NLRB 71.

[25] *Emil Denemark, Inc.*, 96 NLRB 1087.

[26] *Otis Steel Products Co.*, 95 NLRB 624.

[27] *Grinnell Bros.*, 98 NLRB No. 13.

[28] *Denver Hosiery Contractors Association*, 99 NLRB No. 50.

[29] Examples: *Colorado River Farms*, 99 NLRB No. 41; *Tarke Warehouse Co.*, 95 NLRB 1133.

[30] *Otis Steel Products Co.*, 95 NLRB 624.

end of the winter months,[31] or an insignificant change in the number of employees between normal and peak operations.[32]

3. Timing of Elections

As a rule, the Board's direction of an election provides that the election shall be held not later than 30 days from the date of the direction. However, the selection of a later date is left to the regional director if the Board finds that an immediate election is not appropriate because of the seasonal nature of the business involved, a temporary cessation of operations, an impending change in operations, or other circumstances.

In the case of seasonal industries, the regional director is usually instructed to fix the election date "at or about the next approximate seasonal peak," the purpose being to extend the right to vote to the employees most interested in selecting a bargaining agent.[33] Thus, an election for fishermen and other salmon cannery employees was directed to be held at the peak of the next fishing season, with instructions to the regional director to select a time when a representative number of employees would be employed in the unit.[34] The Board similarly postponed an election among production and maintenance employees of a sugar cane grinding plant because the grinding season was about to end and a reduction of 50 percent in the work force was expected as a result.[35]

A contemplated expansion or reduction in the employer's operations also may require postponement of the election. In the case of business expansion, the Board considers an immediate election inappropriate if the employer's present working force is not representative of the contemplated complement of employees. Thus, where the employer's plant had not yet been completed and the present working force was still employed in construction and development work, the Board postponed the election until such time "as the Regional Director shall determine that a representative and substantial segment of the total work force to be engaged in the processing and manufacturing operations has been employed." [36] But no postponement was found necessary where the employer's present work force constituted about 40 percent of the force to be employed during the next year, and where no material change in job classifications was proposed during the year,

[31] *Mid-West Refineries, Inc.,* 98 NLRB No. 150.
[32] *Scenic Citrus Cooperative, Inc.,* 98 NLRB No 49.
[33] *Colorado River Farms,* 99 NLRB No. 41; *Tarke Warehouse Co.,* 95 NLRB 1133.
[34] *Alaska Salmon Industry, Inc,* 98 NLRB No. 179.
[35] *Evan Hall Sugar Cooperative, Inc,* 97 NLRB 1258
[36] *Standard Lime and Stone Co.,* 95 NLRB 890.

and future changes in job classifications and manufacturing methods were entirely speculative.[37]

An immediate election will not be directed at a plant which is about to be closed temporarily,[38] or when a plant is definitely scheduled to be abandoned and will cease to operate shortly.[39] But an election will not be postponed because of a reduction of the working force if a representative number of employees remains in the voting unit.[40] Nor will an election ordinarily be postponed because of a contemplated but indefinite reduction in operations.[41]

Ordinarily, an election will not be held while unfair labor practice charges involving the voting unit are pending. But this rule does not apply if the charging party has filed a waiver to the effect that the subject of the charges will not later be used as an objection to the election.[42] In one case, the Board declined to set aside an election which was held while unfair labor practice charges were pending, because the charges were subsequently dismissed.[43]

4. Standards of Election Conduct

Board elections are conducted in accordance with strict standards designed to assure that the participating employees have an opportunity to register a free and untrammelled choice in selecting a bargaining representative. If these standards have not been met, any party to the election may file, within 5 days after receipt of the tally of ballots, objections to the conduct of the election or conduct affecting its results.[44] If, upon investigation of such objections, it is found that either the employer or a participating union engaged in conduct which made it improbable that the employees could exercise a free choice, the Board will set the election aside and will direct a new election to be held as soon as circumstances permit a free choice.[45]

---

[37] *R. P. Scherer Corp., Hypospray Division,* 95 NLRB 1426 See also *Ford Motor Co., Aircraft Engine Division,* 96 NLRB 1075; *Emhart Manufacturing Co.,* 96 NLRB 375.

[38] Compare *Ludlow Typograph Co*, 95 NLRB 2.

[39] *Pride Mfg. Co.,* 98 NLRB No. 72; *A. R Tohl,* 97 NLRB 93. Cf. *American Metal Decorating Co.,* 95 NLRB 1003

[40] *The Brush Beryllium Co*, 96 NLRB 1383; *Girdler Corporation,* 96 NLRB 894.

[41] *Parsons Corp.,* 95 NLRB 1336.

[42] *Mid-West Refineries, Inc.,* 98 NLRB No. 150; *U. S. Phosphoric Products Division, Tennessee Corp.,* 96 NLRB 7; *Grinnell Brothers,* 98 NLRB No. 13.

[43] *Dumont Electric Corp.,* 97 NLRB 94.

[44] Section 102.61, Rules and Regulations, Series 6, as amended.

[45] See, for example, *General Shoe Corporation (Marman Bag Plant),* 97 NLRB 499 See also *The Great Atlantic & Pacific Tea Co.,* 101 NLRB No. 210 (December 1952) overruling *Denton Sleeping Garment Mills, Inc.,* 93 NLRB 329 (1951) on the rule regarding the extent to which the Board will consider preelection misconduct as grounds for voiding an election.

a. Mechanics of the Election

The manner in which elections are to be conducted is governed in general by the Board's rules and regulations. However, the regional director who conducts an election has broad discretion in arranging its details.[46]

Objections based on election mechanics, during the past year, were primarily concerned with such matters as election observers and the use of mail ballots. In two cases, elections were set aside because, contrary to the Board's rules, the employer had selected as election observers persons closely identified with management, such as close relatives[47] or a company attorney.[48] In one case, the Board rejected the employer's contention that the use of mail ballots was improper because it was not provided by the Board's rules and regulations.[49] The Board pointed out that it was within the discretion of the regional director to arrange for balloting by mail, in view of the circumstances of the case.

In another case, the Board declined to set aside an election because of the employer's refusal to furnish the Board's agent a list of laid-off employees whom he considered ineligible to vote.[50] While observing that the employer's conduct was not to be condoned, the Board considered it insufficient to invalidate the election.

b. Electioneering and Campaign Tactics

In cases in which exception is taken to the preelection conduct of a participant, the Board will set the election aside if in its opinion the conduct exceeded the limits of legitimate electioneering or campaigning and thereby tended to prevent a free expression of the employees' choice of representatives.[51] Thus, an election was set aside because the employer's observer went through the plant with an eligibility list, calling off the name of each voter and checking off each voter's name as he left to vote.[52] The Board pointed out that it was its policy "to prohibit anyone from keeping any list of persons who have voted, aside from the official eligibility list used to check off the voters as they receive their ballots."

While elections have been set aside because of threats and violence on the part of union representatives, or violations of the Board's rule

[46] See *F. W. Woolworth Co.*, 96 NLRB 380.
[47] *Gastonia Weaving Co.*, 97 NLRB 770.
[48] *Peabody Engineering Co.*, 95 NLRB 952.
[49] *F. W. Woolworth Co*, 96 NLRB 380.
[50] *Vulcan Tin Can Co.*, 97 NLRB 180.
[51] See Sixteenth Annual Report, pp. 129, 132
[52] *International Stamping Co.*, 97 NLRB 921 (Member Reynolds dissenting). See also *Belk's Department Store*, 98 NLRB No. 46.

against electioneering near the polling place,[53] no equally serious election misconduct was brought to the Board's attention during the past year. Thus, the Board declined to invalidate an election merely because a union used campaign buttons which were similar in color to those worn by Board agents and election observers, but which differed from the latter in size and lettering.[54] Nor was an election set aside merely because electioneering before the polls opened had been loud and boisterous or because of the presence of a small number of placard-carrying pickets who did not prevent anyone from entering the plant.[55] The Board also declined to direct a new election where publication of the Board's decision in the representation case by the union's newspaper was incomplete but was not so misleading as to constitute an abuse of the Board's processes.[56]

The circulation or posting of marked sample ballots was held not to invalidate an election, unless the ballot bears the name and title of a Board representative, thereby giving the impression that the Board is officially taking sides in the election.[57] In one case, the Board found no sufficient reason for setting aside an election where official sample ballots were defaced by members of one of the participating unions but the defaced election notices were immediately replaced.[58]

Also, an election was voided because of the announcement, a few days before the balloting, of a 10 percent wage increase which had no basis in any established pattern of granting increases in the plant.[59]

(1) Preelection Propaganda

The Board has found also that preelection propaganda sometimes creates an atmosphere in which employees are unlikely to be able to express themselves freely as to their choice in the matter of bargaining representation.

If preelection propaganda contains either promises of benefits or threats of reprisal calculated to restrain employees in the exercise of their voting privileges, it not only constitutes an unfair labor practice,[60] but it also is grounds for voiding the election.[61] When objections are raised to campaign propaganda, the Board customarily looks

---

[53] See, for instance, Sixteenth Annual Report, p. 130; Fifteenth Annual Report, p. 83.

[54] *Western Electric Co.*, 96 NLRB 318.

[55] *Dumont Electric Corp.*, 97 NLRB 94.

[56] *Kearney & Trecker Corp.*, 96 NLRB 1214.

[57] *Silver Knit Hosiery Mills, Inc*, 99 NLRB No. 65; *Gray Drug Stores, Inc.*, 95 NLRB 171; *Pennington Brothers, Inc.*, 98 NLRB No. 141; *General Shoe Corp*, 97 NLRB 499.

[58] *McQuay-Norris Mfg. Co.*, 98 NLRB No. 144.

[59] *Trinity Steel Co.*, 97 NLRB 1486; *Western Electric Co*, 96 NLRB 318; *Kearney & Trecker Corp.*, 96 NLRB 1214.

[60] See chapter V of this Report, pp. 121–122 and 181–183.

[61] *Spengler-Loomis Mfg. Co.*, 95 NLRB 243; see also *Hudson Hosiery Co.*, 98 NLRB No. 7, and *General Shoe Corp.*, 97 NLRB 499.

first to determine whether or not it contains such promises or threats.[62] If it does, the election ordinarily is voided. The Board adopted a finding in one case that a threat of loss of employment was implied by a union's statements that union membership would be necessary in the future as a condition of employment.[63] However, in this instance, the Board found that any coercive element in such statements had been effectively dissipated by later antiunion speeches of the employer's president, so it declined to set aside the election.

However, in determining whether preelection propaganda has interfered with the holding of a free election, the Board looks not only at the content of the propaganda but also at the circumstances under which it was disseminated. Thus, in a case in which the employer had called employees into his office individually and in small groups urging them to reject the union, the Board said:

> . . . the Employer communicated his antiunion views to the employees in a manner the effect of which was calculated to interfere with a free choice in the election. When rank-and-file employees are brought to the company offices in small groups, they do not deal in an "arms length" relationship with the company officials they are directed to see. Antiunion opinions, and the suggestion that the employees reject the union, when uttered in that locus of final authority in the plant, take on a meaning and a significance they do not possess under other circumstances. The coercive effect may be subtle, but it is nonetheless there. And it is that much stronger when, as in this case, the employees are also brought into the office individually. We therefore reaffirm our holding in the earlier *General Shoe* case and conclude that, without regard to precisely what was said at the meetings with employees, the manner in which these meetings were conducted interfered with a free choice by the employees and warrants setting aside the election.[64]

The Board also found in the same case that the employer improperly interfered with the election by questioning and threatening some employees. In this respect, the Board pointed out that it was immaterial that only a small number of employees were involved, for

> an election serves its purpose only if it affords an opportunity for *all* employees to register a free and uncoerced choice of bargaining representative.[65] Moreover, where, as in one instance here, the threat is one to close the plant which is almost certain to become known to other employees, the Board's determination to set the election aside cannot rest solely upon the number of instances of such interference or the number of employees directly involved.

---

[62] *Spengler-Loomis Mfg. Co.*, cited in footnote 61.

[63] *Bender Playground Equipment, Inc.*, 97 NLRB 1561.

[64] *General Shoe Corp.*, 97 NLRB 499; cf. *American Envelope Co.*, 97 NLRB 1541, where the Board refused to set an election aside under somewhat similar circumstances, because only a minor portion of the employees went to the employer's office, some went voluntarily, and the employer's statements were confined to a reading of certain portions of the union's constitution and some of its contracts with other employers.

[65] The Board quoted its earlier decision in *G. H. Hess, Inc.*, 82 NLRB 463.

(2) Discrimination in Rules on Solicitation of Employees

The Board has long recognized that an employer, in the interest of plant efficiency and discipline, may forbid the solicitation of employees during working time, for union membership or support or for any other purpose.[66] However, the Board has held that such rules must be enforced without discrimination.[67] It has thus been held unlawful interference with employees' organizational rights if such a rule is applied so as to restrain activity on behalf of one union while permitting it on behalf of a favored organization, or to impede pro-union activity while tolerating or encouraging antiunion activity.[68] This doctrine applies with equal force to representation elections because discriminatory limitations upon solicitation prevent a free choice of representatives.[69] Thus, when an employer enforced its no-solicitation rule against union organizers but permitted the circulation and signing of antiunion petitions during working hours, the Board voided the election.[70]

The Board also applied this doctrine this year to situations in which an employer prohibited solicitation of employees by union advocates during working time, but permitted one of its officials to deliver an antiunion speech to the employees during working time. In the first such case, the Board held that by refusing the union an equal opportunity to reply, the employer engaged in unlawful interference with the employees' freedom of choice in the selection of a bargaining representative.[71] The Board therefore voided the election.[72] The Board did not base its decision upon the manner in which the employees were assembled, whether voluntary or involuntary. The majority opinion said:

---

[66] *Peyton Packing Co*, 49 NLRB 828 (1943), enforced 142 F. 2d 1009 (C. A. 5), certiorari denied 323 U. S. 730, where the Board said (p. 843):

"The Act, of course, does not prevent an employer from making and enforcing reasonable rules covering the conduct of employees on company time. Working time is for work. It is therefore within the province of an employer to promulgate and enforce a rule prohibiting union solicitation during working hours. Such a rule is presumed to be valid in the absence of evidence that it was adopted for a discriminatory purpose."

See also *Republic Aviation Corp.* v. *N. L. R. B.*, 324 U. S. 793, p. 804.

[67] *Hershey Metal Products*, 76 NLRB 695; *Macon Textile, Inc.*, 80 NLRB 1525; *Jacques Power Saw Co*, 85 NLRB 440 (1949); *N. L. R. B.* v. *Continental Pipe Line Co.*, 161 F. 2d 302 (C. A. 5); *N. L. R. B.* v. *American Furnace Co.*, 158 F. 2d 376 (C. A. 7); *N. L R. B.* v. *Gallup American Coal Co.*, 131 F. 2d 656 (C. A 10).

[68] See Fifteenth Annual Report (1950), p. 96.

[69] *The Great Atlantic & Pacific Tea Co*, 97 NLRB 295.

[70] *The Great Atlantic & Pacific Tea Co.*, 97 NLRB 295.

[71] *Bonwit Teller, Inc*, 96 NLRB 608 (Member Reynolds dissenting). The court of appeals upheld the Board's ruling but remanded the case to the Board to modify its order in such a manner as to permit the employer a choice of either revoking its no-solicitation rule or giving the union an equal opportunity to reply. 197 F. 2d 640 (C. A. 2).

[72] The Board found also that this conduct constituted an unfair labor practice in violation of sec 8 (a) (1) For discussion of this aspect of the case, see pp. 115–118.

. . . we do not proscribe, nor find illegal what the Respondent [employer] said, or the manner in which it assembled its audience. We are concerned with *what the Respondent refused to do.* We have held that by such refusal the Respondent enforced its no-solicitation rule in a discriminatory manner and denied to its employees a reasonable opportunity to hear both sides of the issue of union representation. We leave the Respondent free to exercise fully its right of free speech. We say only that when it chose to speak under the circumstances involved here, then, within the limitations set forth . . . it could not lawfully deny the Union's reasonable request for an opportunity to reply under the same circumstances.

The Board said also in this decision:

There is . . . an even more fundamental consideration—wholly apart from the Respondent's disparate use of the no-solicitation rule—which justifies the result we reach. We believe that the right of employees, guaranteed by Section 7 of the Act, freely to select or reject representation by a labor organization necessarily encompasses the right to hear both sides of the story under circumstances which reasonably approximate equality. . . .

A number of cases during the 1952 fiscal year presented similar situations. In one representation case, a plant manager assembled the employees of a factory during working time about 2 hours before a Board election and announced that no one would be permitted to answer anything he said about the union except by coming to his office to state it to him personally.[73] He then made a speech against the union. When an employee, apparently the president of the local union, rose to speak at the conclusion of the meeting, the plant manager did not accord her recognition and the employees left without hearing her. In this case, the record did not disclose the existence of a general no-solicitation rule. The Board majority held, however, that the lack of such a rule was immaterial because actual discrimination occurred. The Board also rejected the employer's contention that the Board should allow an employer greater latitude in a factory than in a retail store, because the retail establishment is permitted to make broader rules against the solicitation of employees. No charges of unfair labor practices were involved, only the issue of setting aside the election.

Summarizing the ruling in this case, the Board majority said:

. . . The employer dedicated company property and time to a campaign against the union, while refusing to accord to the union an opportunity to reply under equal circumstances. Discrimination being present, it is immaterial that it occurred in a factory rather than in a retail sales establishment. . . .

In most such cases coming to the Board, the union learned in advance of the employer's plan to make an antiunion speech during working hours and requested an equal opportunity to address the em-

[73] *Biltmore Mfg. Co.*, 97 NLRB 905 (Member Reynolds dissenting).

ployees, which was either denied or not answered.[74] But, in one case, the Board declined to set aside the election because the union had made no clear request for an opportunity to speak, although the union's attorney had discussed the matter with an employer representative in an offhand manner 3 days before the speech was given.[75] However, the Board has held that no request is necessary when such speeches are timed by the employer to foreclose any opportunity for reply before the balloting. Most such speeches have been delivered from a day or two to a few hours before the Board election.[76] In one case, the plant manager, speaking over a public address system installed for the occasion, began addressing the employees only 30 minutes before the polls opened and finished just 15 minutes before the voting.[77] The union made no request to reply, but filed objections to the election based on this conduct. The Board held that this stratagem constituted improper interference with the employees' freedom of choice. The Board said:

> . . . the plant manager quite effectively foreclosed the possibility of a union reply by timing his remarks as he did. This conduct was tantamount to a refusal to consider a request to reply.[78] Therefore we view the failure to request time for a reply as hardly decisive against the Union. What we do consider decisive is the fact that the Employer preempted the last opportunity for equal discussion and argumentation on the union question by waiting as he did until a time when no such equality would be physically possible. This use by the Employer of working hours for campaigning, timed so as to deny a substantially equal opportunity for presentation of the Union's views, was discriminatory and prejudiced that atmosphere we believe is essential to a fair exercise of their franchise by the voters. . . .

In another case, the president of the company made a tour of the firm's nine stores during the 2 days before the election making speeches against the union during worktime.[79] The stores were located in eight different cities in the area. The union first learned of the speeches the evening before the election. There was no allegation that the

---

[74] See also *Bernardin Bottle Cap Co., Inc*, 97 NLRB 1559; *Belknap Hardware & Mfg. Co.*, 98 NLRB No. 88; *Metropolitan Auto Parts, Inc.*, 99 NLRB No. 73; *Massachusetts Motor Car Co., Inc.*, 99 NLRB No. 74; *Higgins, Inc*, 100 NLRB No. 134.

[75] *Silver Knit Hosiery Mills, Inc.*, 99 NLRB No. 65

[76] *Belknap Hardware & Mfg. Co.*, 98 NLRB No. 88 (5 hours); *Silver Knit Hosiery Mills, Inc.*, 99 NLRB No 65 (1 day); *Bernardin Bottle Cap Co*, 97 NLRB 1559 (1 day); *Higgins, Inc.*, 100 NLRB No. 134 (1 day); *Metropolitan Auto Parts, Inc*, 99 NLRB No. 73; and *Massachusetts Motor Car Co., Inc.*, 99 NLRB No. 74 (2 days). In the first case, *Bonwit Teller*, the principal speech was given 6 days before the election.

[77] *The Hills Brothers Co.*, 100 NLRB No. 141 (September 1952). Chairman Herzog, not participating, later indicated a dissent to this ruling in *Foreman & Clark, Inc.*, 101 NLRB No 12 (October 1952).

[78] Here the Board cited the court's opinion in *Bonwit Teller, Inc.* v. *N. L. R. B.*, 197 F. 2d 640 (C. A. 2).

[79] *Foreman & Clark, Inc.*, 101 NLRB No. 12 (October 1952). Chairman Herzog dissented, contending that this ruling had the effect of requiring that labor organizations "must always have the last word." See also *John Irving Stores*, 101 NLRB No. 21 (October 1952).

content of the speeches went beyond the bounds of free speech permitted by the act. Holding that the timing of the speeches had the effect of denying the union an opportunity to reply under comparable circumstances, the Board voided the election and ordered that a new one be conducted. The Board majority said:

> . . . Taking into account the locations of the nine stores involved and the amount of time necessary to cover these distances, as evidenced by the time consumed by the Employer's own schedule in making his speeches, it is clear that the Employer by so timing his remarks precluded the possibility of the Union being able to request and be given a similar opportunity to speak. By thus using the company time and property for electioneering speeches to employee assemblies while, in effect, denying the Union similar use, the Employer prevented the employees from hearing "both sides of the story under circumstances which reasonably approximate equality." This discriminatory use of company facilities interfered with the employees' freedom of choice in the selection of a bargaining representative. . . .

The majority opinion added:

> . . . The Board's decisions in this area rest only on the proposition that an employer cannot utilize company time and property for campaign purposes while discriminatorily denying the Union the equal opportunity to so campaign; and that an employer who resorts to the strategem of a last-minute speech to his employees, thereby precluding the possibility of an effective request or opportunity for the Union similarly to address the employees, has in effect denied the equal opportunity to the Union. Had his Employer apprised the Union of its intention to make eleventh hour speeches in time for the Union to request a similar opportunity and had the Employer honored the request by allowing a union representative to speak first, reserving last place for itself, we would have rejected any union claim that the election should be set aside because the Union had not had "the last word." The vice in the instant case is the denial to the Union of the similar opportunity to speak *at all*. . . .

(3) Preelection Concessions

Concessions actually granted or promised shortly before an election also may constitute interference of a kind which warrants the setting aside of the election.[80] Thus the Board directed a new election where the employer had ascertained the causes of dissatisfaction in conferences with employees and then held further conferences in the course of which the employees were informed of the extent to which adjustments had been made.[81] The Board noted that the employer's preelection concessions were not made in accordance with established practices or a predetermined plan, but were made in response to the complaints voiced by the employees during the conferences with management. In another case, the Board in invalidating an election took

[80] The Board's general policy in this respect was announced in the *United Screw & Bolt Corp.* case, 91 NLRB 916. See Sixteenth Annual Report, p. 134.

[81] *Spengler-Loomis Mfg. Co.*, 95 NLRB 243.

into consideration the employer's announcement of a wage increase a few days before the election.[82] In this case, the Board observed that the announcement constituted a promise of benefit which, even though not conditioned on the union's losing the election, had the purpose and natural effect of convincing the employees that the union was not needed to obtain improved working conditions. However, in another case, a majority of the Board held that a preelection wage increase did not justify setting aside the election because the petitioning union had been permitted to take credit for the increase.[83]

G. The Union Shop Referendum

On October 22, 1951, section 9 (e) of the act was amended to eliminate the requirement that a union obtain authorization in a referendum of employees before it could make a valid union-security agreement.[1] However, the amended section 9 (e) still provides for a referendum among employees who have indicated a desire to revoke their bargaining agent's authority to make a union-shop agreement.[2] This type of referendum, known as a deauthorization poll, may be held upon a showing that 30 percent of the employees involved have indicated a desire to revoke the authorization.

The Board generally has applied the same principles in determining the appropriate unit in both representation and union-security proceedings.[3]

Following the 1951 amendment, the Board had occasion to pass on a petition for the deauthorization of a union which had entered into a union-security agreement at a time when it was not in compliance with the filing and affidavit requirements of section 9 (f), (g), and (h).[4] Dismissing the petition, a majority of the Board observed that, in view of the union's noncompliance, no valid union-security agreement existed because the union at no time had authority to make such an agreement. Thus, the Board held the prerequisites for a deauthorization election under section 9 (e) were not met, and there was no occasion for an election to ascertain whether the employees

[82] *Bonwit Teller Inc.*, 96 NLRB 608. See also *Gastonia Wearing Co.*, 97 NLRB 770; *Maine Fisheries Corp*, 99 NLRB No. 98.

[83] *Wilson and Company*, 95 NLRB 882 (Chairman Herzog dissenting).

[1] Public Law 189, 82d Cong, ch. 534, 1st sess., approved October 22, 1951.

[2] Under the amendment, a union must first obtain from the Board a notice of compliance with the non-Communist and filing requirements of the act (sec. (f), (g), and (h)) in order to make a valid union-security agreement. Moreover the agreement must still conform to the provisions of section 8 (a) (3).

[3] See, for example, *The Manufacturers' Protective Development Assn.*, 95 NLRB 1059; *The Kroger Co.*, 95 NLRB 1513. See also Sixteenth Annual Report (1951), pp. 136, 137, Fifteenth Annual Report (1950), pp. 85, 87.

[4] *The D. M. Bare Paper Co.*, 99 NLRB No. 164 (Chairman Herzog and Member Styles dissenting).

involved desired the rescission of authority which the union had never had. In the majority's opinion, section 9 (e) was intended to afford a ready means by which employees, subject to loss of employment under a valid union-security agreement, could rescind the bargaining representative's authority to make such an agreement. The majority opinion rejected the dissenters' view that the deauthorization provision must also be available to safeguard employees against the restraining effects of the mere existence of an invalid union-security agreement. According to the majority, the remedies under section 8 (a) (2), 8 (a) (3), and 8 (b) (2) are sufficient to protect employees against the unlawful effects of the existence and enforcement of such agreements.

1. Contract Bar Rules Not Applicable

In a decision handed down after close of the 1952 fiscal year, a majority of the Board held that a union-shop deauthorization referendum may be held at any time during the term of a union-security agreement and that the results of the referendum apply immediately.[5] The Board held that the contract bar principles applied in representation cases do not apply to union-shop deauthorization proceedings.

The majority opinion said:

> The Union contends that, even if an election is now directed and an affirmative deauthorization vote is cast, the effect of a deauthorization vote should nevertheless only be prospective, and the existing union-security agreement should be held effective for the remainder of its term, which does not expire until October 1953. We must reject this contention, which would postpone for a year any consummation of the employees' expressed desires. And we do not believe that Congress intended the expression of those desires, whether affirmative or negative, to be postponed until the agreement has run its course. As we see it, the union-security clause was valid subject to a condition subsequent.
>
> * * * * * * *
>
> . . . Our decision is founded upon the assumption that, as the employees concerned have never affimatively authorized a union-security provision, the contracting union has such authority upon a conditional basis only.

The dissenting opinion asserted the view that the act provides a referendum only to rescind the union's "authority to bargain" for a union-security agreement or its renewal or extension, and that, therefore, a referendum should not be permitted until near the end of the term of the agreement.

The Board indicated that even though the union-security authorization were revoked in midterm of the contract, the other provisions of the contract "would in any event remain intact."

---

[5] *Great Atlantic & Pacific Tea Co. (National Bakery Division)*, 100 NLRB No. 251 (October 1952) (Members Murdock and Styles dissenting). Petition for reconsideration denied, 102 NLRB No. 16 (January 1953).

V

Unfair Labor Practices

THE Board is empowered by the Act "to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce." [1] In general, section 8 forbids *an employer* or *a union* or their agents from engaging in certain specified types of activity which Congress has designated as unfair practices that interfere with the free flow of commerce, stability of industrial relations, free collective bargaining or the rights of employees to engage in, or refrain from, concerted activities directed toward group bargaining or other mutual aid or protection.

The Board, however, may not act to prevent such activities until a charge of unfair labor practice has been filed with it. Even then, the Board will issue an order to prevent future unfair labor practices only after it has received proof that the union or employer involved has engaged in past unfair practices.

Unfair practice charges may be filed by an employer, an employee, a labor organization, or other private party. Such charges are filed with the regional office of the Board in the area where the unfair practice allegedly was committed.

Formal proceedings before the Board itself, however, are initiated only upon issuance of a formal complaint after investigation of the charges filed by the private parties. Final authority over the investigation of charges and the issuance of formal complaints, on behalf of the Board, is conferred by the act upon the General Counsel. Once a formal complaint is issued, the act provides for hearing of testimony and other evidence in the case by the Board or by a Board Member or by a trial examiner designated by the Board. In practice, all hearings on unfair practice complaints are conducted by trial examiners.

After completion of the hearing, the trial examiner issues a report and recommended order, which becomes an order of the Board unless exceptions to it are filed by the parties within 20 days after it has been served on them. If exceptions are filed, the Board Members make a decision after considering the entire record of the case, the trial examiner's findings, and any further arguments the parties may make.

[1] Sec. 10 (a).

The Board's orders are designed to remedy past unfair practices and prevent future ones.

To enforce its orders, the Board is empowered to petition any United States court of appeals for a decree of enforcement. Any person aggrieved by a final order of the Board, including charging parties whose charges have not been sustained by the Board, also may petition the courts of appeals for review of a Board order.

The act provides, however, that "no objection that has not been urged before the Board . . . shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances." The act also provides further that "the findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive." [2]

A. Unfair Labor Practices of Employers

In general, the act requires an employer to bargain in good faith with the representative chosen by a majority of a group of employees which is appropriate for collective bargaining.[3] To assure the freedom of employees in bargaining, the act forbids an employer to interfere with the right of employees to engage in concerted activities directed toward collective bargaining.[4] Similarly, the act forbids an employer to assist or dominate an organization of employees which is formed, or is being formed, for the purpose of bargaining.[5] The act also specifically forbids an employer from discriminating in the terms or conditions of employment against employees either because of their participation in the concerted activities protected by the act, or because of their refusal to participate in such activities except under a valid union shop.[6] The specific sections of the act which lay down these rules and the Board's rulings based upon them are discussed in the following subsections of this chapter.

1. Interference With Employees' Rights

Section 8 (a) (1) of the act forbids an employer "to interfere with, restrain, or coerce" employees in the exercise of their rights to engage in, or refrain from, collective bargaining and self-organizational activities as guaranteed by section 7. Violations of this general pro-

[2] Quotations in this sentence and the preceding one are from sec. 10 (e).
[3] Secs. 8 (a) (5) and 9 (a).
[4] Sec. 8 (a) (1).
[5] Sec. 8 (a) (2).
[6] Sec. 8 (a) (3).

hibition may take the form of any of the types of conduct specifically identified in subsections 2 through 5 of section 8 (a), or any other conduct which tends to restrain or coerce employees in exercising their statutory rights.[1] The following sections deal with violations of the second kind which are commonly referred to as "independent 8 (a) (1) violations."

a. Questioning of Employees

The Board has consistently held that an employer interferes with the organizational freedom guaranteed by the act by questioning employees or applicants for employment [2] as to their union affiliation [3] or their union views and sympathies.[4] Moreover, the Board adheres to its view that such interrogation, even standing alone, has restraining or coercive tendencies and therefore is *per se* violative of section 8 (a) (1).[5] These principles were applied during the past year in a case in which an employer, without disclosing his purpose, questioned employees as to their union membership in order "to verify" the representation claim of their representative.[6] The Board observed that the proper course to be pursued by the employer was to ask the union for proof of its representative status or to insist on the union's certification by the Board.

(1) Exception to Rule Against Questioning

In the *Joy Silk* case and similar earlier cases, the Board held that inquiry into union membership is permissible if necessary to the defense of unfair labor practice charges and if strictly limited to the issues raised in the complaint.[7] This exception to the rule against questioning of employees was spelled out further during the past fiscal year. A majority of the Board held that the exception did not exonerate an employer who solicited affidavits in which employees were to deny union membership and authorization in order to support the employer's suit to enjoin the union from picketing his plant while seeking recognition.[8] The majority said:

---

[1] See *Harcourt and Co , Inc.*, 98 NLRB 892.

[2] *Utah Construction Co.*, 95 NLRB 196; *Knickerbocker Plastic Co.*, 96 NLRB 586; *E. H. Sargent & Co*, 99 NLRB No 156; *Textile Machine Works, Inc.*, 96 NLRB 1333; cf. *Stafford Operating Co.*, 96 NLRB 1217.

[3] Example: *Dinion Coil Co.*, 96 NLRB 1435.

[4] Example: *Calcasieu Paper Co.*, 99 NLRB No. 122.

[5] *Pecheur Lozenge Co.*, 98 NLRB 496. See *Standard-Coosa-Thatcher Co.*, 85 NLRB 1358, discussed in Fifteenth Annual Report, pp. 94, 95 For court opinions regarding this question see section 4a of chapter VII of this Report, pp. 224–225.

[6] *American Bottling Co*, 99 NLRB No. 59.

[7] See *Joy Silk Mills*, 85 NLRB 1263, and cases cited in the intermediate report there. *N. & W. Overall Co., Inc*, 51 NLRB 1016; *May Department Stores Co.*, 70 NLRB 94.

[8] *Katz Drug Co.*, 98 NLRB 867, Member Murdock dissenting.

An exception, however, such as the one applied in *Joy Silk Mills* to the general rule guaranteeing employees their right to be free from unlawful interrogation, must be narrowly applied. As the court in that case stated,[9] a limited amount of such questioning may be permitted in fairness to the employer. But each case must be carefully scrutinized on its facts, lest undue license to employers result in substantial interference with the rights of employees protected by Section 7 of the Act. An employee confronted by his superior with an affidavit in which he is asked to swear that he is not a member of a union seeking to represent him, while that union is engaged in picketing the employer as part of an organizing campaign, might reasonably conclude that his election not to sign would bring swift economic reprisal. . . .

The majority ruled that the exception to its anti-interrogation rule did not apply in this case, because "the normal coercive effect of the [affidavits] was unmitigated by any explanation" to the employees concerning the purpose for which the affidavits were to be used. The majority made it clear that the exception to the ban on interrogation depends upon a sufficient explanation to the employees of the purpose of the inquiries. The question did not come up before because this requirement was met in *Joy Silk* and similar prior cases.

(2) Forms of Interrogation

Violations of section 8 (a) (1) in the form of inquiries addressed to individual employees included direct questions on: Whether an employee had signed a union application card,[10] had received a union button,[11] brought union circulars into the plant,[12] or felt "backward" or ashamed about joining up with the union.[13] Why employees wanted a union,[14] or what advantages they thought they could derive from a union.[15] "How the union was getting along,"[16] or the progress of the union campaign,[17] who had attended the union meeting,[18] whether it was a big meeting,[19] and what occurred at the meeting.[20] Whether an employee had voted for the union[21] or intended to vote for the union[22] in a representation election. What an employee thought about a pending strike, accompanied by a suggestion that he

[9] See *Joy Silk Mills, Inc.*, v. *N. L. R B*, 185 F. 2d 732 (C. A., D. C.) certiorari denied, 341 U. S. 914.

[10] *Cullman Electric Cooperative*, 99 NLRB No. 97.

[11] *Philips & Buttorff Mfg. Co.*, 96 NLRB 1091

[12] *Syracuse Foundry, Inc.*, 97 NLRB 402.

[13] *Phillips & Buttorff Mfg. Co., supra.*

[14] *Portage-Manley Sand Co*, 95 NLRB 862.

[15] *England Brothers, Inc.*, 99 NLRB No. 43.

[16] *Southland Mfg. Co.*, 98 NLRB 53

[17] *Keeshin Poultry Co*, 97 NLRB 467.

[18] *Cullman Electric Cooperative, supra.*

[19] *England Brothers, Inc., supra.*

[20] *Hazen & Jaeger Funeral Home*, 95 NLRB 1034.

[21] *Stratford Furniture Corp.*, 96 NLRB 1031.

[22] *The Jackson Press, Inc*, 96 NLRB 897.

convey to other workers the employer's sentiment that a vote for the strike would be foolish.[23] How a striker voted on the union's strike ballot, followed by a threat never to reinstate him.[24] What was the employees' attitude with respect to the union's position after an impasse in bargaining negotiations had occurred.[25]

Section 8 (a) (1) also has been held violated by statements from which an employee could infer that the speaker expected an answer relating to union membership, sympathies, or activities, such as "I understand you are in the union." [26]

The polling of employees to determine their union views likewise was held in several cases to have violated section 8 (a) (1).[27] In one such case, an employer was found to have engaged in unlawful interrogation by permitting and encouraging the circulation of an antiunion petition among his employees. While the petition originally was the result of spontaneous expressions of antiunion sentiment, the Board found that the employer had made it the vehicle for obtaining information as to the union attitude of his employees.[28]

No violation of section 8 (a) (1) was found when: An employer questioned an employee spokesman for the union whether he was about to get "the union matter straightened out." [29] An employer asked what his employees expected to have left of their pay after the Government and the union each got its cut.[30] An employer, on the day of the first union meeting, inquired in a jocular manner whether an employee was "going over to get some free beer." [31]

The Board has held that it is not a defense to interrogation charges that the questioning was "isolated," [32] or prompted by "idle curiosity," [33] or by innocent or benign motives.[34] However, a panel majority in one case declined to find a violation of section 8 (a) (1) in preelection questioning of 3 out of 1,200 employees regarding their union sympathies, even though it was coupled with remarks to a fourth employee which could be construed as a warning that union adherence would result in discharge.[35] In another case, the Board held that the

[23] *Reynolds & Manley Lumber Co.*, 97 NLRB 188.
[24] *Harcourt and Co*, 98 NLRB 892
[25] *Harcourt and Co., supra.*
[26] *England Brothers, Inc.*, 99 NLRB No. 43.
[27] *Krimm Lumber Co.*, 97 NLRB 1574; *Cullman Electric Cooperative*, 99 NLRB No. 97; *E. H. Sargent & Co.*, 99 NLRB No. 156.
[28] *Nina Dye Works*, 95 NLRB 824, set aside on other grounds, July 24, 1952 (C. A. 3).
[29] *Stafford Operating Co*, 96 NLRB 1217.
[30] *Keeshin Poultry Co.*, 97 NLRB 467.
[31] *Beaver Machine & Tool Co.*, 97 NLRB 33.
[32] *I. B. S. Mfg. Co.*, 96 NLRB 1263; *Pecheur Lozenge Co*, 98 NLRB 496.
[33] *Dinion Coil Co.*, 96 NLRB 1435.
[34] *Charbonneau Packing Corporation*, 95 NLRB 1166.
[35] *Wilson and Co.*, 95 NLRB 882. Chairman Herzog dissenting.

issuance of a remedial order was not warranted although section 8 (a) (1) was technically violated by an isolated incident involving the inducement of an employee to find out and disclose the union attitude of a fellow worker.[36]

b. Employer Surveillance of Union Activities

Closely related to questioning as a form of illegal interference with employees' organizational rights is the surveillance of their union activities by an employer, a management representative, or anyone acting on behalf of the employer. Unlawful surveillance was found in cases in which supervisory employees parked their cars or otherwise placed themselves near the place where a meeting was in progress;[37] or drove or walked several times past the meeting place.[38] The uninvited presence of an employer or his representative at a union meeting likewise was held to be unlawful.[39] Similarly, a violation of section 8 (a) (1) was found where an organization meeting, which was arranged by the employer at the request of employees, was attended throughout by management representatives who made a tape recording of the entire proceeding. The Board observed that employees who spoke in favor of organization and revealed their union sympathies at the meeting exposed themselves to the risk of economic reprisal even though they were assured full freedom of speech and action.[40] Presence of an uninvited employer representative has been held improper even though the particular union meeting was not a formal business meeting,[41] or the presence of the employer representative was motivated by a "personal reason."[42]

The Board continues to hold that it is likewise unlawful for an employer to request or instruct others to pry into his employees' union activities.[43] Expressly overruling prior contrary decisions,[44] a majority of the Board took the position that such instructions were unlawful even when the instructions were not carried out and there was no recourse to illegal means.[45] On this, the majority said:

---

[36] *American Thread Co*, 97 NLRB 810.

[37] *Wood Mfg. Co.*, 95 NLRB 633; *Standard Coil Products, Inc.*, 99 NLRB No. 131.

[38] *International Furniture Co.*, 98 NLRB 674; *Cullman Electric Cooperative*, 99 NLRB No. 97.

[39] *Cullman Electric Cooperative*, 99 NLRB No. 97.

[40] *American Bottling Co.*, 99 NLRB No. 59

[41] *Arkport Dairies, Inc.*, 95 NLRB 1342.

[42] *Arkport Dairies, Inc., supra.*

[43] *Swan Fastener Corp.*, 95 NLRB 503; *Wafford Cabinet Co.*, 95 NLRB 1407; *Graniteville Co., Sibley Div.*, 96 NLRB 456; *Syracuse Foundry, Inc.*, 97 NLRB 402; *Southland Mfg. Co.*, 98 NLRB 53.

[44] *Atlantic Stages*, 78 NLRB 553, 554.

[45] *H. N. Thayer Co.*, 99 NLRB No. 165, Member Murdock dissenting.

The instructions themselves suffer from two of the vices which stamp the interrogation by an employer of an employee's union activity as unlawful: (1) They inject the employer into an area guaranteed by the Act to be the exclusive concern of employees, and (2) they constitute an attempt to obtain the kind of information which can be used by the employer for no other purpose than to interfere with the employees' right to self-organization.

Moreover, a violation was found when an employer, while not actually engaging in surveillance, purposely created the impression that union activities were being watched. In one such case, a supervisor told employees that he was kept fully informed as to what happened at union meeting,[46] and in another case, a supervisor said that he had observed employees leaving a union meeting.[47]

But no illegal surveillance was found when a telephone company tapped the home telephone of an employee to check whether operators on duty were making union solicitations in violation of valid company rules, and one of the company's supervisors observed an organizational meeting of operators in the company's women's lounge.[48]

c. Rules Restricting Union Activities

The right guaranteed to employees by the act to organize freely for collective bargaining "comprehends whatever may be lawful to accomplish and maintain such organization."[49] The Supreme Court has declared that this includes "their right fully and freely to discuss and be informed concerning this choice, privately and in public assembly."[50]

However, against this statutory right of employees, the Board must balance the property right of management to conduct its business with efficiency and discipline.[51] In striking this balance of rights, the Board has consistently held that, in the interest of plant efficiency and discipline, an employer may prohibit union activities on the plant premises during the employees' actual working time.[52] But to prohibit these union activities during the employees' off-duty time in the plant, such as lunch hours or rest periods, ordinarily constitutes unlawful interference with the employees' right to self-organization.[53] Moreover, an employer violates the act by enforcing an otherwise valid

---

[46] *Knickerbocker Plastic Co.*, 96 NLRB 586.

[47] *Roxboro Cotton Mills*, 97 NLRB 1359.

[48] *The Chesapeake and Potomac Telephone Co. of West Virginia*, 98 NLRB 1122.

[49] *Thomas* v. *Collins*, 323 U. S. 516. See also *Republic Aviation Corp.* v. *N. L. R B.; Le Tourneau Co. of Georgia* v. *N. L. R. B.*, 324 U. S. 793; *N. L. R. B.* v. *Schwartz*, 146 F. 2d 773 (C. A. 5, 1947).

[50] *Thomas* v. *Collins, Ibidem.*

[51] *N. L. R. B.* v. *May Department Stores*, 154 F. 2d 533 (C. A. 8) at p. 536. Compare *N. L. R. B.* v. *Lake Superior Lumber*, 167 F. 2d 147 (C. A. 6).

[52] See Sixteenth Annual Report, p. 146.

[53] See *Colonial Shirt Corp.*, 96 NLRB 711, and *Cullman Electric Cooperative*, 99 NLRB No. 97. See also *N. L. R. B.* v. *La Salle Steel Co.*, 178 F. 2d 829.

rule in a discriminatory manner.[54] Such discrimination occurs when a valid no-solicitation rule is enforced so as to prevent union solicitation without also prohibiting other forms of solicitation, or when a valid rule is enforced against one union while solicitation by another union is permitted.[55]

(1) Discriminatory Enforcement

The discriminatory-enforcement principle was applied during fiscal 1952 to a novel type of situation in the *Bonwit Teller* case.[56] In this case, the employer had in effect a rule forbidding solicitation by union organizers on selling floors both during working and nonworking time — a rule which the Board holds to be proper in the case of department stores. This rule was strictly enforced against the union and the employees during a preelection organizational period. But a few days before the election, the employer's president made an antiunion speech in the store during business hours. When the complaining union asked for a similar opportunity to reply, the company refused. The Board held that the employer's conduct violated section 8 (a) (1) of the Act, declaring:

> We believe the special privilege of department stores to promulgate the broadest type of rule against union solicitation gives rise to an equal obligation to assure that such rules are enforced with an even hand. For an employer, in the face of such a rule, to utilize its premises for the purpose of urging its employees to reject the Union, and then to deny the Union's request to present its case to the employees under the same circumstances, is an abuse of that privilege which, we believe, the statute does not intend us to license.

The Board likewise found that section 8 (a) (1) was violated by an employer who rigidly prohibited prounion activity during an organizational campaign, while the employer himself engaged in such antiunion conduct as the distribution of proemployer buttons and using the bulletin board for posting of antiunion notices.[57]

(2) Solicitation of Employees in Retail Stores

In a retail store, the Board permits an employer to make rules against union solicitation much broader than those that other employers may make. This stems from the nature of retailing and the relationship between the customer and the salesperson.

---

[54] See *Cherry Rivet Co.*, 97 NLRB 1303; *The Chesapeake and Potomac Telephone Co. of West Virginia*, 98 NLRB 1122; *Cullman Electric Cooperative*, 99 NLRB No. 97. Compare *Marshall Field & Co.*, 98 NLRB 88, where the Board pointed out that a company rule which unlawfully prohibits union solicitation does not become valid merely because union solicitors and other solicitors are in fact treated alike.

[55] Statement in *Bonwit Teller, Inc.*, 96 NLRB 608. For discussion of court ruling in this case, see sec. 4b, ch. VII of this Report, pp. 225–227.

[56] Cited in footnote 55.

[57] *Cherry Rivet Co.*, 97 NLRB 1303.

An employer operating a retail store has the same statutory duty as any other employer to permit employees to engage in union solicitation on company property during their free time, unless there is a showing that such solicitation disrupts the business or interferes with discipline. But the Board has long adopted the presumption that, on the selling floor, union solicitation would tend to disrupt business and discipline even if the employees involved were on their own free time.[58] So the Board permits an employer operating a retail store to prohibit any type of solicitation of employees to union membership or activity, by either fellow employees or nonemployee organizers, on the selling floor.[59] This year a series of questions arose as to union solicitation in the nonselling areas of a retail store. The questions came up in a case involving a large department store in downtown Chicago.[60]

Store officials testified that only two types of union solicitation were permitted on the store premises: (1) Employees who were off duty on their lunch or rest periods could solicit other off-duty employees in nonselling areas closed to the public such as the employee restaurants, and (2) off-duty employees could meet nonemployee organizers by appointment in the store's public restaurants, provided the organizers did not move from table to table.

All other solicitation on company premises by employee organizers and nonemployee organizers was prohibited whether or not conducted in selling areas, or on the employees' free time. The no-solicitation rule thus applied to nonselling areas where the public was admitted, such as the public rest rooms, the waiting rooms, and a private street that bisects the main building of the store. Solicitation also was forbidden in nonselling areas open only to employees, such as the stockrooms, workrooms, and the store libary. Nonemployee organizers were excluded also from the employee restaurants.

The Board found that in several particulars these rules violated the act by barring solicitation off the selling floors. The Board said:

> . . . The Board has consistently held that employees' nonworking time, either before or after work, or during luncheon and rest periods, may be used for self-organizational purposes as the employees wish without unreasonable restraint, although the time is spent on company property.[61] When this rule was applied to retail department stores, it was qualified to exclude from any solicitation *only* that portion of the store devoted to selling purposes. The qualification of the general rule was considered necessary, in the case of such stores, in order to prevent undue interruption or disturbance of the customer-salesperson relation-

[58] *Meier & Frank Co., Inc.,* 89 NLRB 1016, see also Sixteenth Annual Report, p 146.

[59] *Bonwit Teller, Inc*, 96 NLRB 608.

[60] *Marshall Field & Co*, 98 NLRB 88, enforced with modifications, C. A. 7, No. 10593, Nov. 14, 1952.

[61] Here the Board cited *Peyton Packing Co, Inc*, 49 NLRB 828.

ship and the consequent disruption of store business. We do not believe, however, that solicitation in areas not used for selling purposes amounts to an undue interference with store business even though customers may be present in such places. Accordingly, the Board . . . finds . . . that the Respondent violated the Act by prohibiting all solicitation by employee and nonemployee union organizers in all nonselling areas of its store when all employees concerned are off duty. [Footnote renumbered.]

However, the Board found that the store's rules were valid insofar as they prohibited any solicitation by any organizer, employee or nonemployee, in the following areas:

Selling floors, aisles, corridors, elevators, escalators, stairways, areas reasonably closed to discussion such as the library, and "working areas" to which either the solicitor or the employee solicited is not allowed free access, such as the stockrooms which are closed to employees not engaged in the department.

But the Board found that the rules violated the act by prohibiting off-duty solicitation in the following areas:

By all organizers in the private street and the public waiting and rest rooms.[62]

By employee organizers in nonpublic employees "working" areas to which both the solicitor and solicitee are permitted free access such as the stockrooms and workrooms.[62a]

By nonemployee organizer in employee restaurants.[62b]

As to the public restaurants, the Board found the company's limitation of such solicitation to appointments between employees and nonemployee organizers to be a "lawful and suitable" limitation, "designed to insure that solicitation is carried on in the public restaurants only an incident to normal use of such facilities." The Board rejected the trial examiner's recommendation that the organizers should be permitted to move about from table to table talking to employees in these restaurants.

In employee restaurants and cafeterias, the Board ruled that the company should admit nonemployee organizers "in reasonable numbers." In so ruling, the Board noted a number of factors including

[62] Chairman Herzog dissented on this point. He would have held the company justified in excluding organizers from the waiting and rest rooms and all other parts of the store "dedicated to the use and passage of the public." The court reversed the Board's ruling in regard to public waiting and rest rooms.

[62a] The court substituted for the Board's order on this the following:

"The Respondent (company), shall cease and desist from prohibiting employee union organizers from soliciting for a union when all employees involved are on non-working time in any portion of the Respondent's (company's) premises except that solicitation may be prohibited in selling space, aisles, corridors, elevators, escalators, stairways, and in such other areas which are reasonably closed to discussion or to the employees involved, and also in public waiting rooms and rest rooms." *Marshall Field & Co.* v. *N. L R B*, C. A 7, No. 10593, Nov. 14, 1952.

[62b] The court reversed this ruling of the Board absent a showing that it was necessary because the employees were "uniquely handicapped in the matter of self-organization and concerted activity."

(1) the rule against solicitation in selling areas; (2) the location of the store in a busy downtown business area of a large city; (3) the staggered lunch and rest periods prevent employees from circulating freely among other off-duty employees at their work stations, as in a factory. The Board said:

Inherent in the right to concerted activities is the right and opportunity to contact, communuicate, and be instructed as to group action[63] Because of the peculiar conditions existing in department stores, Respondent's employees are severely hampered in finding opportunity for communication among themselves, so that their need for outside consultation is therefore more pressing. In the absence of any showing of harm or undue burden to the Respondent, and we find no such showing herein, the barrier thus erected by exclusion of nonemployee organizers from the employee restaurants and cafeterias must be considered an unreasonable impediment to employee self-organization, outweighing the property rights incident thereto.

The Board finds . . . that the Respondent's rule prohibiting access to employee restaurants and cafeterias by nonemployee union organizers acts to deny essential assistance to employees who, by the force of circumstances of their employment and the lawful rules prohibiting free use of off-duty time, are uniquely handicapped in matters of self-organization and concerted activity. . . . [Footnote renumbered.]

(3) Distribution of Union Literature

The general principle that an employer may not enforce plant rules which interfere with legitimate union activities is further qualified in that

[A]n employer can lawfully prevent the distribution of literature in the plant, even during the employees *nonworking* time, in the interest of keeping the plant clean and orderly, at least where it is not evident that such activity cannot readily be conducted away from the employer's premises. . . .[64]

Applying this principle in another case, the Board held that the employer did not unlawfully interfere with employee rights by prohibiting the distribution of union literature in the area between the plant gate and the public sidewalk where it had not been shown that literature could not be effectively distributed to employees off the employer's property.[65] However, in another case, a rule against literature distribution on the employer's parking lot and outside its plant gates during nonworking time was held to violate section 8 (a) (1.).[66] Rejecting the employer's contention that there were reasonable oppor-

[63] Here the Board cited the Supreme Court's decision in *Thomas* v. *Collins*, 323 U S 516, that: "Necessarily correlative [to the right to organize] was the right of the union, its members and officials . . . to discuss with and inform the employees concerning matters involved in their choice"

[64] *Colonial Shirt Corp.*, 96 NLRB 711. The Board in this case held, however, that the employer violated section 8 (a) (1) by discriminatorily enforcing its rule against literature distribution so as to interfere with union solicitation during nonworking time.

[65] *Mooresville Mills*, 99 NLRB No. 96.

[66] *Caldwell Furniture Co*, 97 NLRB 1501, enforced C. A. 4, No. 6475, October 16, 1952.

tunities to contact employees at the intersection of the plant road and the public highway, the Board observed that distribution of literature to employees off the company's premises was virtually impossible and at times hazardous; and only a small number of employees could be contacted off the company's property. Nor did the company show that any special circumstances necessitated its rule against literature distribution.

d. Discouraging Concerted Activities

Violations of section 8 (a) (1) frequently occur in the form of employer attempts to induce their employees to abandon organization or other concerted activities (1) by concessions or promises of economic advantages or (2) by actual or threatened reprisals.

(1) Economic Benefits

In a substantial number of cases, employers were found to have attempted to forestall employee organization by granting wage increases,[67] and insurance benefits,[68] or by promising wage increases,[69] promotions,[70] overtime privileges,[71] pension plans,[72] as well as various other benefits.[73]

(2) Discrimination [74]

Unlawful interference with employee rights was found in numerous cases in which employees were penalized by discharge or other discriminatory treatment because of their participation in activities protected by section 7.

These cases involved: Discharge of an employee who sought to induce group action by expressing to other employees dissatisfaction with existing working conditions.[75] Discharge and subsequent refusal to reinstate an employee who participated in making plans for an employee meeting and demands for a wage increase.[76] Discharge of economic strikers.[77] Discharge of two employees at the request of other employees as a condition to the other employees abandoning the union.[78] Transfer of an employee to an unacceptable position because

---

[67] *Wood Mfg. Co.*, 95 NLRB No 84, *E H. Sargent & Co*, 99 NLRB No 156.

[68] *West Coast Casket Co.*, 97 NLRB 820.

[69] *Wafford Cabinet Co.*, 95 NLRB 1407; *Krimm Lumber Co.*, 97 NLRB 1574.

[70] *Marshall Field & Co*, 98 NLRB 88

[71] *Geigy Co.*, 99 NLRB No. 126.

[72] *Harding College*, 99 NLRB No. 148.

[73] *Roxboro Cotton Mills*, 97 NLRB 1359.

[74] For instances of discrimination which also violated the specific antidiscrimination provisons of secton 8 (a) (3), see pp. 134–159

[75] *The Office Towel Supply Co.*, 97 NLRB 449, Chairman Herzog dissenting; set aside C. A 2, No 99, Jan. 6, 1953.

[76] *Coca-Cola Bottling Co. of Asheville, N. C.*, 97 NLRB 151.

[77] *Buzza-Cardoza*, 97 NLRB 1342; *Modern Motors, Inc.*, 96 NLRB 964; *United States Cold Storage*, 96 NLRB 1108.

of the filing of a grievance.[79] Refusal to reinstate a striker who made a radio speech presenting the union's side of the strike.[80] Penalizing an employee with a 30-day layoff for attending a Board hearing without the employer's permission.[81]

Other instances of discriminatory treatment in retaliation for participation in union or other concerted activities included: Eviction from a rent-free company house.[82] Refusal to rehire or promise to rehire former strikers.[83] Discriminating against strikers by reducing their seniority status.[84] Assigning strikers more onerous work and working conditions.[85] Denying stock benefits regularly given employees of 25 years service on the ground that the employee's strike participation constituted a break in service.[86]

(3) Threats of Retaliation

As in the case of actual reprisals, the Board has consistently held that threats of such action for the purpose of inducing abandonment of union activity or adherence likewise constitutes prohibited interference.

Cases in which violations of this type were found involved: Threats that in case of union organization the employer's plant would be closed or moved to another location.[87] Threats that loss of employment would result,[88] or that the employees' income would be adversely affected.[89] Threats that life, health, and accident insurance benefits would be lost,[90] or that pension and profit-sharing plans would be canceled;[91] that leave or rest period privileges would be curtailed;[92] or that employees participating in strike activities would be blacklisted.[93]

---

[78] *Reeder Motor Co*, 96 NLRB 831

[79] *Todd Shipyards Corp., Los Angeles Div*, 98 NLRB 814

[80] *H N Thayer Co.*, 99 NLRB No. 165.

[81] *Stratford Furniture Co.*, 96 NLRB 1031.

[82] *L. J. Williams Lumber Co*, 96 NLRB 635 (supplemental decision. See original decision 93 NLRB 1672, 1676).

[83] *Textile Machine Works, Inc.*, 96 NLRB 1333; *Brown and Root (Ozark and Flippin)*, 99 NLRB No. 153.

[84] *H. N. Thayer Co.*, 99 NLRB No. 165. Cf. *E. H. Sargent & Co.*, 99 NLRB No 156; *Stibbs Transportation Lines, Inc*, 98 NLRB 422.

[85] *Brown and Root (Ozark and Flippin)*, 99 NLRB No. 153.

[86] *United Shoe Machinery Corp*, 96 NLRB 1309

[87] *Colonial Shirt Corp*, 96 NLRB 711; *Roxboro Cotton Mills*, 97 NLRB 1359; *Southland Mfg. Co.*, 98 NLRB 53; *H. N. Thayer Co.*, 99 NLRB No. 165, *Nina Dye Works Co*, 95 NLRB 824; and *Edward Brothers, Inc*, 95 NLRB 1451.

[88] *Nina Dye Works Co*, 95 NLRB 824; *Charbonneau Packing Corp*, 95 NLRB 1166; *Graniteville Co., Sibley Div.*, 96 NLRB 456; *Southland Mfg. Co.*, 98 NLRB 53; *Cullman Electric Cooperative*, 99 NLRB No. 97.

[89] *Portage-Manley Sand Co*, 95 NLRB 862; *Geigy Co.*, 99 NLRB No 126

[90] *Hagen & Jaeger Funeral Home*, 95 NLRB 1034.

[91] *Edwards Brothers, Inc.*, 95 NLRB 1451.

[92] *Hagen & Jaeger Funeral Home*, 95 NLRB 1034; *Graniteville Co., Sibley Div.*, 96 NLRB 456; *Photoswitch, Inc.*, 99 NLRB No. 170.

[93] *National Gas Co.*, 99 NLRB No. 44.

(4) Other Forms of Discouragement

As heretofore, the Board also held that employers interfered with employee rights by inducing employees to withdraw from their union and assisting them in effecting their resignations;[94] by authorizing or condoning physical violence,[95] and by ejecting and causing the arrest of union organizers.[96]

e. Influencing Employee Elections

The Board also continued to hold that an employer interferes with employees' rights under the act by using promises of benefit or threats of reprisal to influence the voting of employees in a Board election. Section 8 (a) (1) was found to have been violated in this sense where an employer promised new recreational facilities, medical aid, and an immediate wage increase if the union lost the election, and at the same time threatened to discontinue the employer's policy of making loans to employees and of granting season-end bonuses if the union won.[97] The employer in this case contended it had merely meant to explain that wage increases could not legally be granted during the pendency of the representation proceeding, but the Board observed that the employer had failed to make its alleged purpose clear and that "employees are not required to look behind the plain meaning of words to find an unexpressed *reason* for their utterance." In another case, the Board found that section 8 (a) (1) was similarly violated by preelection promises of economic benefits, and statements to the effect that the selection of any union as bargaining agent would result in the loss of overtime work.[98] The Board further held that the employer violated section 8 (a) (1) by making false accusations that the petitioning union was responsible for the withholding of bonus payments[99] and that, in case of the union's election, the Board would order the cancellation of a prior wage increase.

However, no violation was found in one case where the employer decided to withhold a wage increase at a plant involved in a repre-

---

[94] *Wallick and Schwalm Corp.*, 95 NLRB 1262; *Phillips & Buttorff Mfg. Co.*, 96 NLRB 1091; *Charles R Krimm Lumber Co.*, 97 NLRB 1574; *The Chesapeake and Potomac Telephone Co of West Virginia*, 98 NLRB 1122, *National Gas Co.*, 99 NLRB No. 44; *American Bottling Co.*, 99 NLRB No. 59. Cf. *Hazen & Jaeger Funeral Home*, 95 NLRB 1034.

[95] *J. D. Jewell, Inc.*, 99 NLRB No 20 See also *Marshall Field & Co.*, 98 NLRB 88.

[96] *National Gas Co.*, 99 NLRB No 44

[97] *Western Cotton Oil Co*, 95 NLRB 1433.

[98] *Pacific Moulded Products Co*, 99 NLRB No. 8. See also *Scott & Williams, Inc*, 99 NLRB No 140, where the Board adopted the trial examiner's conclusion that a preelection wage increase partly motivated by business reasons was unlawful because it was also motivated by a desire to influence the employees' choice in the election

[99] Member Murdock dissented on this point.

sentation proceeding, and made a statement to the employees that the increase would be postponed until after the election.[1] The Board observed that the employer had made it clear to the employees that the wage increase was withheld to avoid the possibility of violating the act, and that the increase would be granted after the election, without regard to its results. Moreover, the Board noted that the announcement regarding the increase was not deliberately timed to influence the election, but was made in response to inquiries from employees.

In numerous cases during the past year, violations of section 8 (a) (1) were found where employers attempted to bring about the defeat of unions by immediate concessions, such as wage increases and insurance benefits;[2] or by promises of economic advantages such as pay raises,[3] profit-sharing plans,[4] seniority privileges,[5] medical aid,[6] and other benefits.[7] Similar violations were found where employers sought to achieve the same result by threats that the union's success would result in the closing or removal of the employer's plant,[8] loss of employment,[9] reduced income,[10] or loss of retirement, bonus, and financial assistance benefits.[11]

f. Efforts To Undermine Employees' Agent

Another recurring form of section 8 (a) (1) violation is the attempt of an employer to dislodge an accredited union by unilaterally changing employment terms and conditions, or by dealing directly with enployees. In a number of cases, employers were found to have violated the act by granting wage increases without consulting the employees' bargaining representative.[12] In one case, the Board further

---

[1] *Standard Coil Products, Inc*, 99 NLRB No. 131.

[2] *Squirrel Brand Co.*, 96 NLRB 179; *Paramount Textile Mfg. Co*, 97 NLRB 691; *West Coast Casket Co*, 97 NLRB 820; *The Bowling Green Rubber Co.*, 97 NLRB 1148; *Louisville Container Corp*, 99 NLRB No. 10.

[3] *Howell Chevrolet Co*, 95 NLRB 410; *Western Cottonoil Co*, 95 NLRB 1433; *Bonwit Teller, Inc*, 96 NLRB 608; *Epstein (Top Mode Mfg. Co.)*, 97 NLRB 1397; *Louisville Container Corp*, 99 NLRB No. 10; *Standard Coil Products, Inc.*, 99 NLRB No 131.

[4] *Fein's Tin Can Co.*, 99 NLRB No 32.

[5] *Squirrel Brand Co*, 96 NLRB 179.

[6] *Western Cottonoil Co.*, 95 NLRB 1433; *Squirrel Brand Co*, 96 NLRB 179.

[7] *Standard Coil Products, Inc*, 99 NLRB No. 131.

[8] *Howell Chevrolet Co*, 95 NLRB 410; *Standard Coil Products, Inc.*, 99 NLRB No. 131.

[9] *Squirrel Brand Co*, 96 NLRB 179; *Syracuse Foundry, Inc*, 97 NLRB 402.

[10] *Bonwit Teller, Inc*, 96 NLRB 608; *J. D. Jewell, Inc*, 99 NLRB No. 20; *Photoswitch, Inc.*, 99 NLRB No 170.

[11] *J D. Jewell, Inc.*, 99 NLRB No. 20; *Western Cottonoil Co.*, 95 NLRB 1433

[12] *Wood Mfg. Co*, 95 NLRB 633; *Squirrel Brand Co.*, 96 NLRB 179; *Paramount Textile Mfg. Co*, 97 NLRB 691; *West Coast Casket Co.*, 97 NLRB 820; *The Bowling Green Rubber Co.*, 97 NLRB 1148; *Charles R. Krimm Lumber Co*, 97 NLRB 1574; *Louisville Container Corp.*, 99 NLRB No. 10; *E. H. Sargeant & Co.*, 99 NLRB No. 156.

pointed out that such action on the part of an employer is not excused because of apparent dissatisfaction among his employees with their union, if they have not actually revoked the latter's authority to bargain for them.[13]

Direct negotiations with strikers and solicitation of strikers to return to work are other methods that employers were found to have used for the purpose of undermining the representatives of their employees. In one case, the employer engaged in negotiations with individual employees to set the terms and conditions on which they would return to work.[14] The Board again ruled that a strike does not terminate the employer's duty to bargain with the exclusive representative of its employees, and that, as stated by the Supreme Court, the employer's obligation exacts "the negative duty to treat with no other."[15] The Board further noted that the employer's unlawful conduct in this case had a telling effect in that it undermined the loyalty of some strikers sufficiently to cause them to return to work.

The Board continued to hold that the solicitation of individual strikers to return to work is unlawful if it is either accompanied by coercive threats or promises, or if it is an integral part of the employer's illegal opposition to the purposes of the act and occurs under circumstances which tend to undermine the striking union.[16] Thus, violations of section 8 (a) (1) were found in cases in which the return of strikers was sought by a promise of "more money,"[17] or by coercive statements including threats that strikers would not be returned to their jobs.[18] Conversely, no violation was found where an employer, who sought to reopen its struck plant solely for business reasons, invited the strikers to return to work without disparaging the union, without unlawful threats or promises, and without any indication of an intent to circumvent the union or to undermine its prestige as the employees' bargaining representative.[19] An employer also was held privileged to seek the return of employees who participated in a strike called in support of illegal demands on the employer.[20]

No unlawful attempt to undermine a union was found in a case in which an employer was charged with refusing to give effect to a valid union-security agreement and to comply with the contracting union's request to discharge certain employees for dues delinquency. The Board found that the employer's alleged breach of contract was

---

[13] *Reeder Motor*, 96 NLRB 831. Cf. *Harcourt and Co.*, 98 NLRB 892.
[14] *National Gas Co.*, 99 NLRB No 44
[15] *Medo Photo Supply Corp.* v. *N. L R. B.*, 321 U. S 678.
[16] *The Texas Co.*, 93 NLRB 1358.
[17] *The Jackson Press, Inc.*, 96 NLRB 897.
[18] *Harcourt and Co*, 98 NLRB 892.
[19] *Celanese Corp. of America*, 95 NLRB 664
[20] *Mackay Radio and Telegraph Co, Inc*, 96 NLRB 740.

not motivated by "any design to interfere with or rid itself of the chosen representative of its employees," but by a bona fide belief that the employee's union membership was terminated for reasons other than those protected by the union-security proviso of section 8 (a) (3).[21]

g. Contracts as Interference

The Board continues to apply the rule that contractual recognition of a union as exclusive bargaining representative while a valid question of representation is pending before the Board violates section 8 (a) (1),[22] except that an employer may continue to deal with an *incumbent* union in the face of the petition of a rival union which does not raise a valid representation question.[23] But, in such situations, the employer and union continue bargaining at their own risk, subject to the Board's later finding a violation because the petition did raise a bona fide question of representation. Thus, the Board held that it was unlawful for an employer to continue to bargain with a union for two groups of employees, at a time when another union had petitioned for certification as representative of one of those groups.[24] However, finding in this case that the rival union had raised a real question of representation only as to one group, the Board concluded that continued recognition of the incumbent union as the representative of the second group was not a violation of the act. But, because an employer may grant recognition to rival unions on a members-only basis,[25] nonexclusive recognition of a minority union in the absence of rival claims likewise was held proper.[26]

In another case, the Board held that an employer who violated section 8 (a) (2) by dealing with a dominated union also violated section 8 (a) (1) independently by insisting that contracts with the dominated union be approved and signed by each individual employee.[27]

Contractual interference with employee rights in violation of section 8 (a) (1) has also been held to result from the execution, maintenance, or enforcement of union-security provisions which exceed the limits allowed by section 8 (a) (3), such as closed-shop or preferential hiring clauses.[28] The fact that the parties to the contract neither

---

[21] *Foley's Mill and Cabinet Works*, 95 NLRB 743

[22] *Midwest Piping Co*, 63 NLRB 1060.

[23] Cf. *William Penn Broadcasting Co.*, 93 NLRB 1104. See also cases discussed at p. 1330.

[24] *Alaska Salmon Industry, Inc.*, 98 NLRB 1203

[25] *The Hoover Co.*, 90 NLRB 1614, 1618.

[26] *Consolidated Builders, Inc.*, 99 NLRB No. 135.

[27] *H. N. Thayer Co*, 99 NLRB No 165.

[28] *Port Chester Electrical Corp.*, 97 NLRB 354 (closed shop); *Mundet Cork Corp*, 96 NLRB 1142; *International Longshoremen's Local 19 (Waterfront Employers of Washington)*, 98 NLRB 284; *Pacific American Shipowners Assn.*, 98 NLRB 582. See also *Utah Construction Co.*, 95 NLRB 196, and compare *Southwestern Bell Telephone Co.*, 97 NLRB 79.

intended to, nor did in fact, enforce the unlawful provisions does not annul such a violation.[29] The Board said:

> Such an unlawful provision serves no less as a restraint on employees' right to refrain from joining an organization than if the parties intend to enforce it where . . . there is no evidence that the employees were informed that the closed-shop clause, which heretofore had been in effect, would no longer be operative.[30]

h. Employer's Freedom of Speech

The question whether employee rights under section 7 of the act have been unlawfully invaded frequently depends upon whether the utterances of an employer regarding union organization are privileged by the free speech guarantees of the Constitution, or the provisions of section 8 (c) of the act. Section 8 (c) provides:

> The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit.

As noted in prior Annual Reports, the governing principle is that the oral or written statements of an employer are protected as long as they are not coercive, and do not convey the impression that the employees' exercise or nonexercise of their statutory rights will entail either detriment or advantage.

On the basis of this test, the Board during the past year held that the following remarks were privileged: A statement to a helper that it would take him much longer to become a journeyman in a union shop than in a nonunion shop, and general remarks concerning the advantages of an "open shop." [31] A statement to assembled employees that a union would not do them any good and that the employer, while not threatening anyone's job, would not have a union in the plant.[32] Preelection letters urging employees to "protect" their "jobs" and families and pointing out that economic loss results from strikes, but assuring the employees that no discrimination would follow no matter how they voted.[33] A letter to employees stating, in substance, that the advent of an outside union might aggravate the employer's financial difficulties so as to make it impossible to operate.[34] An announce-

---

[29] *Port Chester Electrical Corp.*, 97 NLRB 354; see also *Pagliero (Technical Porcelain and Chinaware Co.*, 99 NLRB No. 4.

[30] *Port Chester Electrical Corp.*, cited above.

[31] *The Jackson Press, Inc*, 96 NLRB 897.

[32] *Dolores, Inc.*, 98 NLRB 550.

[33] *Dinion Coil Co., Inc.*, 96 NLRB 1435. See also *Pecheur Lozenge Co.*, 98 NLRB 496.

[34] *Beaver Machine & Tool Co.*, 97 NLRB 33. Cf. *Roxanna of Texas, Inc.*, 98 NLRB 1151, where a panel majority (Member Murdock dissenting) adopted an examiner's finding that an employer violated sec. 8 (a) (1) by stating to assembled employees: "If this union agitation continues, and our production is affected, we will go broke."

ment, during a union organizational campaign, of contemplated wage increase and of its deferment until the representation issue was settled.[35]

On the other hand, section 8 (c) was held not to protect statements which were clearly coercive. Examples were: A warning that if, in case of the union's election, the employees did not pay "special assessments," the employer could not keep them in his employ even if he wanted to;[36] and a supervisor's remark to an employee: "I hear you have been getting some union cards signed. . . . If I was you I would keep my nose out of it, and have nothing to do with it."[37]

i. Employer's Responsibility for Acts of Subordinates and Others

The question of whether the act has been violated sometimes requires a determination of whether the actions of subordinates or other persons may be imputed to the employer.

According to well-established principles, an employer ordinarily is liable for the acts of supervisors because of their position as management representatives.[38] Thus, unlawful statements and activities of supervisors, whether or not specifically authorized, will be attributed to the employer.[39] Similarly, an employer may be held responsible for conduct of rank-and-file employees who perform supervisory work in the absence of their superiors and are regarded by other employees as supervisors,[40] or for acts of such employees which the employer apparently endorses[41] or fails to disavow.[42] In one case, acts of an employee who was a close relative of a management representative were also imputed to the employer because the employee was regarded as a company "spokesman" and because the employer accepted the benefits of the actions.[43]

Employers have also been held responsible for the acts of persons who were not regular members of the employer's staff, as well as for acts of outsiders who apparently acted on their behalf. Thus employer responsibility was found in the case of unlawful conduct of a public accountant who participated in bargaining negotiations,[44] and of a

[35] *Standard Coil Products, Inc.*, 99 NLRB No. 131.

[36] *Standard Coil Products, Inc*, 99 NLRB No. 131

[37] *Semet-Solvay Div., Allied Chemical & Dye Corp.*, 99 NLRB No. 48.

[38] *Howell Chevrolet Co.*, 95 NLRB 410, *J. D. Jewell, Inc*, 99 NLRB No. 20.

[39] *Edwards Brothers, Inc*, 95 NLRB 1451.

[40] *Connecticut Chemical Research Corp*, 98 NLRB 160.

[41] *Reed & Prince Mfg Co.*, 96 NLRB 850; *J. D Jewell, Inc*, 99 NLRB No. 20; *Mathews Lumber Co*, 96 NLRB 322.

[42] But see *Roxanna of Texas*, 98 NLRB 1151, where employees engaged in confidential work were held not so identified with management as to indicate employer liability for their conduct.

[43] *Service Metal Industries*, 96 NLRB 10. See also *Swan Fastner Corp.*, 95 NLRB 503, and *The Eclipse Lumber Co.*, 95 NLRB 464

[44] *I. B S. Mfg. Co*, 96 NLRB 1263. Cf *Beaver Machine & Tool Co.*, 97 NLRB 33.

"production expert" assigned to probe into the status of union activities at the employer's plant.[45] In the special circumstances of another case, an employer was held accountable for antiunion speeches of prominent citizens which the employer failed to repudiate.[46] However, the Board declined to hold an employer liable for the antiunion newspaper advertisement of a "citizens committee," of which he had prepublication knowledge, when only a few copies were distributed within the plant by outside newsboys.[47] An employer may avoid liability in this type of situation by appropriate repudiation, but a statement of neutrality in general terms was held insufficient to repudiate in the absence of measures ensuring observance of the employer's declaration.[48]

Questions of joint liability arise where employers are under common control or associated in collective bargaining. Thus, two separate legal entities found to constitute a single employer by reason of common control, integration of operations, and other factors, were held jointly responsible for unfair practices committed exclusively by supervisors or officials at only one plant and directly involving only the employees at that plant.[49] Similarly, an employer association which executed an unlawful preferential hiring contract for member companies was held to share responsibility with the member companies.[50]

2. Employer Domination or Support of Employee Organization

Section 8 (a) (2) of the act forbids an employer to dominate or interfere with the formation or administration of any labor organization. This section also forbids an employer to contribute financial or other support to such an organization.

The act defines a labor organization as "any organization of any kind . . . in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers" on grievances, labor disputes, or other matters on which the act requires bargaining.[1]

Since the 1947 amendments to the act, the Board has distinguished in the remedy it applies between (a) cases of domination and (b)

[45] *Dinion Coil Co*, 96 NLRB 1435.

[46] *Colonial Shirt Corp.*, 96 NLRB 711.

[47] *Standard Coil Products*, 99 NLRB No 131

[48] *The Chesapeake and Potomac Telephone Co. of West Virginia*, 98 NLRB 1122.

[49] *Calcasieu Paper Co, Inc*, 99 NLRB No. 122

[50] *Pacific American Shipowners Assn.*, 98 NLRB 582. See also *International Longshoremen's Local 19 (Waterfront Employers of Washington)*, 98 NLRB 284.

[1] Section 2 (5). See *Knickerbocker Plastic Co, Inc*, 96 NLRB 586, where the Board held that an employees' committee constituted a labor organization regardless of whether the employer intended to deal with it as such, so long as the organization's purpose met the requirements of sec. 2 (5). Accord: *Saxe-Glassman Shoe Corp.*, 97 NLRB 332 (intermediate report).

cases involving no more than unlawful assistance or support of a labor organization by an employer.[2] In cases where employer interference in a labor organization amounts to domination, the Board orders it completely disestablished as the bargaining representative of employees, regardless of whether it is an affiliated or unaffiliated union.[3] In cases where the interference and support does not reach the point of domination, the Board orders only that the employer withhold recognition of the organization unless and until it has been certified by the Board as the bona fide bargaining representative of a majority of employees.[4]

In one case in which an employer was found to have illegally assisted a union by continuing to give effect to its invalid union-security agreement, the Board held that under the particular circumstances the usual remedy was inappropriate and that it was sufficient to prohibit the employer from entering into or enforcing any union-security agreement not authorized by section 8 (a) (3).[5] Here the complaining union had requested an election while the unfair labor practice proceeding against the employer was pending and had consented to the assisted union's participation. The latter union won the election and was certified by the Board prior to the issuance of the intermediate report sustaining the 8 (a) (2) allegations of the complaint against the employer.

a. Domination of a Labor Organization

The Board customarily finds a labor organization to be employer-dominated where its formation was instigated or encouraged by the employer, where supervisors or other management representatives participated in its formation or have a voice in the administration of its affairs, and where the employer provides financial or other support to the organization.[6] Thus, illegal domination was found in the case of an "inside union" which was suggested by the employer almost immediately after another union asked for recognition, and which was formally organized under the employer's auspices following the outside union's defeat in a Board election.[7] Here, during the outside union's preelection campaign, the company offered the employees a plan that it asserted would "benefit better the men in the plant," and

[2] See Thirteenth and subsequent Annual Reports.

[3] See, e. g., *Coal Creek Coal Company,* 97 NLRB 14.

[4] See, e. g., *Knickerbocker Plastic Co., Inc.,* 96 NLRB 586.

[5] *Technical Porcelain and Chinaware Co.,* 99 NLRB No. 4.

[6] The acts of an employer which may be found to constitute a violation of section 8 (b) (2) must have occurred during the 6-month period before the filing of the charges. However, evidence of earlier conduct that sheds light on events within the statutory 6-month period may be considered as background evidence. See *Thayer Co.,* 99 NLRB No. 165, and precedents cited there.

[7] *Rehrig-Pacific Co.,* 99 NLRB No. 34.

promised certain benefits in return for support of an "inside" union. Employee representatives, who were selected on company time and premises in response to this management suggestion, were then advised to consult company representatives regarding the formation of an "inside" union. The Board noted that the organization which emerged had for one of its officers the supervisor who first suggested its formation; that it had no written constitution or bylaws; that membership was automatic for employees with 90 days' service, and membership did not carry with it any obligation to pay dues; and that the organization had held only one general membership meeting.

In another case, the Board similarly held that "workers councils" in two plants had been unlawfully dominated and supported by the employer.[8] Council number 1 originally came into being at the employer's suggestion at a time when an outside union attempted to organize the plant. The council was permitted to conduct its affairs on the employer's premises and during working hours, and was otherwise supported by the employer. Subsequently, the employer brought about the formation of a similar council at another plant. Council number 2 was given no alternative but to accept the type of contract which had been used by the employer in its relation with council number 1. In each case, the employer required the contract to be signed by each individual employee.

In the same case, when the employer's latest contract with council number 2 had expired, an outside union sought recognition as representative of the employees. The employer threatened to close the plant if the outside union was chosen and pressed for a new contract with council number 2. Outside union sympathizers were discharged and the customary Christmas bonus was withheld pending the adoption of a new contract which was acceptable to the employer and which in all major respects was identical with the employer's contract with council number 1. Following the signing of the contract, the employer instructed the council to elect new officers. The employer also induced council number 2 to adopt a constitution and bylaws identical with those of council number 1. The outside union's effort to organize plant 1 was similarly countered by the employer's threat to shut down and by the renewal of the contract with council number 1. The employer refused to recognize the outside union at either plant on the ground that it was not certified by the Board and was not in compliance with the filing requirements of the act, but the employer entered into contracts with both plant councils, neither of which has been certified or had complied with the filing requirements. These facts, the Board held, amply supported the conclusion that the workers' councils at

[8] *H N. Thayer Co.*, 99 NLRB No. 165.

the two plants were employer dominated and supported. Moreover, the Board found, the employer had interfered with the councils' administration to such an extent that they acted as the employer's agent rather than as independent representatives of the employees.

Disestablishment of a union because of employer domination was ordered in some cases. In one case, a mine operator advised employees, many of whom had joined the United Mine Workers' Union, that he could not operate under UMW terms and suggested the the employees form an independent union similar to one at a neighboring mine, with which they "could really go places."[9] A meeting was arranged at which mine representatives furnished information concerning a welfare plan and other benefits to be derived from such an organization. The employees were also informed that, if the independent were formed, the mine would pay into its treasury a 25-cent royalty for each ton of coal mined. The suggested organization was then formed and incorporated with the aid of an attorney whose fee was to be paid by the mine owner. Following this, a consent election was arranged and employees were urged to support the independent so that the UMW might not "have a chance." A celebration was promised in case of a unanimous vote for the company union. After the success of the new union, the employer gave it further support by incorporating an unauthorized union-security clause[10] in its contract and by permitting membership meetings to be held on company time and premises.[11]

In another case,[12] the following facts were held to require a finding of unlawful domination: Executives and supervisory personnel solicited membership in an inside employees' association at a time when another union endeavored to organize the company's plant. Employees were warned to attend association meetings. The assembled employees were urged by the company's president and plant superintendent to support the association. Solicitation for the association was permitted during working hours while similar privileges were denied outside union adherents. The association held meetings on company time and premises and otherwise could use company facilities without cost. One of the company's supervisors was a member of the association and was active in the selection of its officers.

The employer in this case also checked off dues and initiation fees on behalf of the dominated union. This, the Board noted, constituted

[9] *Coal Creek Coal Co.*, 97 NLRB 14.

[10] The authorization requirement of section 8 (a) (3) was still in effect at the time

[11] The Board rejected a contention that, because the employer-corporation had not come into existence until some weeks after the formation of the union, it could not be found to have violated section 8 (a) (2). The evidence, the Board noted, showed clearly that the control and management of the mine was not affected by the change in the method of doing business.

[12] *Dolores, Inc.*, 98 NLRB 550.

unlawful support under the circumstances, regardless of whether or not written authorizations from the employees had been obtained.[13]

b. Illegal Assistance by an Employer to a Union

Employer interference with the formation and administration of a labor organization, or the contribution of financial or other support, which falls short of actual domination, has been held to constitute illegal assistance in violation of section 8 (a) (2).

This type of violation was found in a case where an employer by a variety of means attempted to induce its employees to retain an independent union and to discourage them from affiliating with a rival outside organization.[14] To this end, independent's representatives were asked to call a membership meeting and employees were ordered to attend. The meeting place and refreshments were furnished by the employer. Employees' signatures were solicited on a petition favoring independent as their representative, and they were told that retention of the inside union would bring an improved vacation plan and would keep the plant open, whereas defection to the outside union would result in a shutdown. Finally, in the face of the rival union's claim for recognition, the employer negotiated a new contract with the company union which incorporated a wage increase which had been promised if the employees retained it.[15]

Other patterns of illegal assistance in violation of section 8 (a) (2) included: Discharges of employees who failed to join a favored union and maintained membership in its rival.[16] Permitting supervisors to be members in the favored union, diverting to its treasury revenues from plant vending machines, checking off dues, and granting holiday pay which had been refused prior to the advent of a rival union.[17]

The Board has consistently held that the enforcement of illegal union-security agreements in itself constitutes illegal assistance to the

---

[13] The Board cited its previous decision on this point in *Jack Smith Beverages, Inc*, 94 NLRB 1401.

[14] *The Standard Transformer Co.*, 97 NLRB 669

[15] In *Knickerbocker Plastic Co, Inc.*, 96 NLRB 586, the Board agreed with the trial examiner's finding that the acts on which he relied constituted illegal assistance to a labor organization. However, in the absence of exceptions to the examiner's failure to find that the employer also dominated the union, the Board expressed no opinion as to whether the employer's conduct also amounted to unlawful domination. Here, the favored union, unlike its rival, was permitted to address employees during working hours, employees were paid for time spent in soliciting members for their organization; and supervisors themselves passed out application blanks. Moreover, the employer supplied financial information to be used in the campaign in behalf of the inside union, contributed $100 towards the cost of distributing its publication, and offered to pay the dues of employees who wished to become members

[16] *Otis Elevator Co*, 97 NLRB 786.

[17] *Beaver Machine & Tool Co, Inc*, 97 NLRB 33

contracting union,[18] and that an employer similarly violates section 8 (a) (2) by becoming party to or by enforcing preferential hiring arrangements with a union.[19]

c. Bargaining With One of Competing Unions

The Board again had occasion to apply the rule that it is a violation of section 8 (a) (2) for an employer to negotiate a contract with a union at a time when he is faced with the conflicting claims of rival unions which seek to represent the same group of employees. Thus, the Board reiterated that in such a situation the employer must maintain strict neutrality and may not enter into a contract with one of the competing unions, because "the making of a contract with a union is the most potent kind of support imaginable."[20] The Board also pointed out again that this rule is qualified only insofar as an employer may recognize rival claimants on a members-only basis.

The Board held that under both of these principles the employer in the *Sunbeam* case clearly violated section 8 (a) (2). Here, at a time when a Board certificate was outstanding, which prevented a new determination of representatives in a Board election, the employer took it upon himself to recognize one of several rivals of the incumbent union. Recognition was granted solely on the basis of authorization cards of the favored union and in the face of another union's proposal to resolve the majority issue by secret ballot in a consent election to be conducted by an impartial outsider. The Board noted that it having been long recognized that authorization cards obtained in the heat of rival organizing campaigns are notoriously unreliable,[21] the employer's conduct was particularly flagrant because of the confused organizational picture which prevailed. During the period in question, one union had won an election by polling 1,488 votes, against 1,016 votes cast for the losing union. Subsequently, a third union secured some 1,200 authorization cards from members of the same group, while the fourth union tendered cards signed by 53.8 percent of the employees which each union sought to represent. In the Board's words,

---

[18] *Technical Porcelain and Chinaware Co.*, 99 NLRB No. 4. And see cases noted at p. 158 of the Sixteenth Annual Report.

[19] *Mundet Cork Corp.*, 96 NLRB 1142; *Pacific American Shipowners Association*, 98 NLRB 582. See also *International Longshoremen's and Warehousemen's Union*, 98 NLRB 284, 101 NLRB No. 53. In this case, the Board adopted the trial examiner's finding that the employer association involved did not violate section 8 (a) (2) because its members paid 50 percent of the cost of operating and maintaining a hiring hall. The trial examiner had observed that the employer's contribution was not made to a labor organization but to an independent body, composed of representatives of both the association and the union, and was consequently not proscribed by section 8 (a) (2).

[20] *Sunbeam Corp.*, 99 NLRB No. 89.

[21] See *Midwest Piping and Supply Co*, 63 NLRB 1060, 1070.

This [was] plainly a case for the application of the doctrine that an employer who undertakes to resolve the conflicting claims presented in such a situation by a necessarily inconclusive card check, and who concludes a contract on such a basis, has accorded "unwarranted prestige and advantage to one of [several] competing labor organizations and thereby prevent[ed] a free choice by the employees." This would be true regardless of the purity of the employer's motives, because of the effect of the conduct.[22]

The employer's contention that its contract with the favored union was a members-only contract and was therefore valid was rejected by the Board on two grounds. First, the Board noted, the record showed clearly that the employer did not intend to limit the coverage of the contract to the union's members. Second, the Board observed that, even assuming the contract was a true members-only contract, the employer engaged in unlawful disparate treatment of the rival organization by making a contract with one of them and intentionally withholding parity of treatment from the others. The Board pointed out that it had long followed the rule that while an employer may lawfully make members-only contracts with *each* competing union, he cannot make such a contract with only one of them without rendering illegal support to the favored union.[23]

d. Execution of Contract During Pendency of Representation Proceeding

The execution of a contract with one of several competing unions while a petition for representation is pending before the Board has long been held to constitute illegal assistance.[24] However, an employer may continue to bargain with an *incumbent* union which has been the established majority representative, even in the face of a rival petition, if the petition raises no *valid* question of representation, as for instance where the proposed unit is inappropriate. But the employer does so at his peril and is subject to unfair labor practice charges if the Board later finds that the petition did raise a valid question of representation.[25]

In line with these principles, the Board held in one case that the employer did not violate section 8 (a) (2) by entering into a contract with an incumbent union for an existing multiemployer unit while

[22] See also *The Standard Transformer Co*, 97 NLRB 669, where the Board adopted a trial examiner's finding that an employer violated section 8 (a) (2) by recognizing and bargaining with a union merely on the basis of the number of employees whose dues were currently checked off under a contract which was about to expire, in disregard of a rival union's representation claim.

[23] See *Carborundum Co.*, 36 NLRB 710, 731.

[24] This is known as the *Midwest Piping* doctrine, from the name of the case in which the principle was first announced, *Midwest Piping and Supply Co.*, 63 NLRB 1060 (1945). See Tenth Annual Report, pp 38, 39

[25] *William Penn Broadcasting Co*, 93 NLRB 1104 (1951). See Sixteenth Annual Report, p. 160.

another union's petition for a single-employer unit was pending.[26] The Board held that its *William Penn* decision was decisive in this case, because not only had the General Counsel failed to prove the appropriateness of the unit sought by the petitioner, but the appropriateness of the unit represented by the incumbent union was affirmatively established by the evidence.

In another case, the employer recognized and executed a contract with the incumbent union for a unit of the employer's resident and nonresident fishermen, after a rival union had petitioned for a unit confined to resident fishermen.[27] Having found that the petition raised a valid question of representation as to resident fishermen,[28] the Board held that under the *Midwest Piping* rule the employer's continued recognition of the incumbent union for these employees violated section 8 (a) (2). On the other hand, no representation question having been raised concerning the nonresident fishermen, the Board further held that the execution of a contract for this second group was proper.

3. Discrimination Against Employees

Section 8 (a) (3) forbids an employer to discriminate against employees "in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization." However, a proviso to section 8 (a) (3) permits an employer to discharge or otherwise discriminate in employment against an employee who fails to tender the initiation fees and dues necessary to join or maintain membership in a union having a valid union-security agreement with the employer.

Because the protection of employees' freedom to organize, if they wish to, is one of the foundations of the statutory policy of promoting industrial peace through collective bargaining, the Board continuously exercises great care in assessing conduct alleged to violate section 8 (a) (3) and in remedying the effect of violations when found. In a case of unlawful discrimination, the Board customarily orders restoration of the employee to his former job or job rights or its equivalent with reimbursement for any wages or other benefits he lost as a result of the discriminatory action against him.[1] Usually, the Board also

[26] *Roegelein Provision Co.*, 99 NLRB No. 130.

[27] *Alaska Salmon Industry, Inc.*, 98 NLRB 1203.

[28] 98 NLRB 1213

[1] Also, an employee may have suffered discrimination which violates only the general prohibitions of section 8 (a) (1) against restraint or coercion of employees in the exercise of their statutory rights. In such cases, the Board also applies the remedy of reinstatement and back pay. See *Salt River Valley Water Users Association*, 99 NLRB No. 129; *Stratford Furniture Corp.*, 96 NLRB 1031; *Coca-Cola Bottling Co. of Asheville, N. C.*, 97 NLRB 151.

orders the employer to refrain from any other such conduct in the future.

In each case in which discrimination prohibited by section 8 (a) (3) is charged, the Board must determine whether the evidence introduced at the hearing supports the allegation of the complaint that the causes for the discrimination were activities in which the employee had a right to engage and for which he could not be disciplined under the act.

Factors which the Board has frequently found to indicate unlawful motivation include: Termination of employment shortly after the employee's participation in union activities,[2] particularly where the employee had a good employment record.[3] Disparate treatment of union and nonunion employees for alyoff purposes, or for the purpose of discipline for similar offenses.[4] Disregard of established practices concerning such matters as seniority or recalling laid-off employees,[5] and, if there is a *prima facie* case of discrimination established, failure on the employer's part to give a satisfactory or plausible explanation for the change in the employee's status.[6]

Demonstrated hostility toward union organization likewise may indicate that the discriminatory treatment of an employee has been unlawful.[7] However, an employer's antiunion disposition, standing alone, does not justify a finding of unlawful discrimination in the face of evidence that a particular employee was discharged for good cause.[8]

The same tests are applied in determining whether a reason assigned by an employer for his discriminatory action was merely a pretext and whether the real reason was the employee's exercise of his statutory rights.[9]

---

[2] See for instance *Buzza-Cardozo,* 97 NLRB 1342, *The Office Towel Supply Co*, 97 NLRB 449, set aside C. A. 2 No 99, January 6, 1953.

[3] See for instance *Phillips & Buttorff Mfg. Co.,* 96 NLRB 1091.

[4] See for instance *Kingston Cake Co.,* 97 NLRB 1445.

[5] See for instance *Squirrel Brand Co.,* 96 NLRB 179.

[6] *Roxboro Cotton Mills,* 97 NLRB 1359; *Stafford Operating Co.,* 96 NLRB 1217; *S. S. Coachman and Sons,* 99 NLRB No 102; *Connecticut Chemical Research Corp*, 98 NLRB 160; *Keeshin Poultry Co*, 97 NLRB 467; *Portage-Manley Sand Co*, 95 NLRB 862; *Dinion Coil Co*, 96 NLRB 1435.

[7] See for instance *Harding College,* 99 NLRB No. 148; *Photoswitch, Inc*, 99 NLRB No. 170; *Union Asbestos and Rubber Co*, 98 NLRB 1055.

[8] See for instance *Dolores, Inc.,* 98 NLRB 550; *Southland Mfg. Co.,* 98 NLRB 53 (panel majority).

[9] See *Nina Dye Works Co.,* 95 NLRB 824; *Portage-Manley Sand Co*, 95 NLRB 862; *Stratford Furniture Corp.,* 96 NLRB 1031; *Mooresville Mills,* 99 NLRB No 96; *Southland Mfg Co.,* 98 NLRB 53; *Miller (Calif. Willys),* 98 NLRB 325. Cf. *Crag Lumber Co*, 95 NLRB 917.

a. Knowledge of Union or Concerted Activities

For the Board to find that a discharge or other action against an employee was discriminatory, it must generally be shown that the employer knew, or was chargeable with knowledge, that the employee had participated in union or concerted activities protected by the law. However, absence of actual knowledge is not determinative if it is shown that the employer's discriminatory action was motivated by his belief or suspicion that the disciplined employee engaged in such activities.[10]

If the employer denies that he was aware of the disciplined employee's union activity, the issue will be determined on the basis of the facts established by the record. Such knowledge was held to have been established, for instance, where the evidence showed that the employer had made antiunion statements, had warned the disciplined employees not to engage in union activities, and had cooperated with other employers in the community in obtaining resignation of his employees from the union.[11] In another case, the Board found that an employer knew the identity of employees who participated in picketing activities and of employees who refused to return to work before the end of the strike.[12] In this case, the evidence showed that, during the strike, attendance records were kept, picket lines were photographed and otherwise observed by supervisors, and letters were sent to the discriminatees urging them to return to work.

In the absence of direct evidence that the employer was informed as to the discriminatees' union activities, such knowledge may sometimes be indicated by circumstances. Thus, the Board has inferred that the employer must have known about employee activities because of the small size of the plant and its location in a small community;[13] or because the employer had attempted to obtain information regarding current union activities through acts of interrogation and surveillance,[14] or because the employer had ample opportunity to observe openly conducted activities.[15] However, charges that an employer refused employment to a job applicant under a discriminatory hiring

---

[10] *Roxboro Cotton Mills,* 97 NLRB 1359; *Stafford Operating Co*, 96 NLRB 1217.

[11] *Editorial "El Emparcial" Inc.,* 99 NLRB No. 6; *Wallick and Schwalm Co*, 95 NLRB 1262, enforced 198 F. 2d 477 (C. A. 3). *Roxboro Cotton Mills,* 97 NLRB 1359.

[12] *Textile Machine Works,* 96 NLRB 1333 (panel majority).

[13] *S. S. Coachman and Sons,* 99 NLRB No. 102; *Connecticut Chemical Research Corp.,* 98 NLRB 160; *Keeshin Poultry Co*, 97 NLRB 467; *Stafford Operating Co.,* 96 NLRB 1217; *Portage-Manley Sand Co*, 95 NLRB 862. *Roxboro Cotton Mills,* 97 NLRB 1359; *Dinion Coil Co.,* 96 NLRB 1435

[14] *S. S. Coachman and Sons,* cited above; *Dinion Coil Co*, cited above; *Stationers Corp.,* 96 NLRB 196; *Portage-Manley Sand Co.,* cited above; *Squirrel Brand Co.,* 96 NLRB 179.

[15] *Mooresville Mills,* 99 NLRB No. 96; *Keeshin Poultry Co.,* cited above; *Dinion Coil Co.,* cited above; *Squirrel Brand Co.,* cited above. See also *Calera Mining Co.,* 97 NLRB 950, Chairman Herzog dissenting.

arrangement were dismissed where the applicant had revealed his membership in a union, other than the favored union, only to the employer's chief guard and there was no other evidence showing that the employer had knowledge of this fact.[16]

b. Protected and Unprotected Employee Activities

The protection of the act is not limited merely to union activities, but extends also to employees' "concerted activities for the purpose of collective bargaining or other mutual aid or protection."[17] Therefore, in cases arising under section 8 (a) (3), the Board must frequently determine whether the activities which gave rise to discrimination were "concerted activities" which the act protects.[18] Moreover, some concerted activities—such as sitdown strikes, violence, slowdowns, or strikes in violation of valid no-strike agreements—have been held not to be protected because they are unlawful or they are contrary to public policy laid down by Congress.

To be "concerted," the activities need not be the action of a large group. The Board has held that activities which involve only a speaker and a listener are concerted within the meaning of the act.[19] Nor is it necessary that the participating employees be members of the same union, or members of any union, or employees of the same employer.[20]

(1) Strikes and Work Stoppages

A strike for a lawful objective ordinarily is a protected concerted activity, for which employees may not be penalized.[21] But a strike may lose the protection of the act because of (1) the manner in which it is conducted—such as a sitdown strike—or (2) because its objective conflicts with Federal law or policies—such as a strike to force an

---

[16] *Whittenberg Construction Co.*, 96 NLRB 29, Member Reynolds dissenting, enforced 200 F. 2d 157 (C. A. 6)

[17] Section 7; *N. L. R. B.* v. *Phoenix Mutual Life Insurance Co.*, 167 F. 2d 983 (C. A. 7).

[18] In order to find a violation of section 8 (a) (3), discrimination for protected employee activities must have the effect of encouraging or discouraging membership in a labor organization. This statutory requirement, however, does not necessarily have reference to membership in an established union. Thus, the Board has often held that employees who act in concert for a single economic objective, such as the presentation of a grievance, constitute a labor organization for the purpose of section 8 (a) (3). See *Buzza-Cardozo*, 97 NLRB 1342; *Modern Motors, Inc.*, 96 NLRB 964, enforcement denied in other respects September 16, 1952, 198 F. 2d 925 (C A. 8).

For cases in which courts disagreed with the Board's conclusion that employer discrimination encouraged or discouraged union membership see pp. 227–235.

[19] *Salt River Valley Water Users Association*, 99 NLRB No. 129; *Root-Carlin, Inc.*, 92 NLRB 1313.

[20] Compare *Rockaway News Supply Co.*, 95 NLRB 336, reversed on other grounds, 197 F 2d 111 (C. A. 2), see p. 220.

[21] Section 13 of the act provides that "Nothing in this Act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right."

employer to violate the act or a strike in breach of a valid no-strike agreement.[22] Employees may be discharged without violation of the act for participating in a strike or other concerted activity which is unprotected. Moreover, individual strikers engaged in a lawful strike may forfeit the protection of the act by engaging in misconduct such as violence, sabotage, or other "indefensible" conduct such as circulating handbills maligning the quality of their employer's product.[23]

However, a no-strike clause in a contract which is invalid because made with a union which was illegally dominated by the employer was held not to make a strike unlawful.[24] The same result was reached in another case in which the contract in question had been set aside in a previous proceeding because of its illegal union-security provisions.[25]

In one case, a majority of the Board held that a strike called primarily to compel the employer to agree to the union's illegal union-security proposals was unlawful, and that the employees who participated in the strike lost their protection under the act.[26]

In two cases, it was contended that strikers had lost their statutory protection when they attempted to enforce economic demands by engaging in an unauthorized or "wildcat" strike. The employers in these cases relied on the *Draper* case,[27] in which the court had held that the particular strike action of a minority group in that case, taken while the recognized bargaining representative was negotiating a contract, did not come within the category of employee activities which the act protects. Holding that the *Draper* doctrine was inapplicable, the Board in one case observed that the purpose of the strike did not, as in the *Draper* case, conflict with the authority and activities of the strikers' own representative, but was designed rather to give support to unfair labor practice strikers represented by another union.[28] In the second case, the Board pointed out that the union which represented the strikers had been refused recognition by the employer on the ground that it did not represent a majority of the employees in

[22] An employer who relies on a no-strike agreement as a defense to discrimination against strikers has the burden of establishing the existence of such an agreement. See *Brown and Root, Inc.*, 99 NLRB No 153.

[23] *Jefferson Standard Broadcasting Co*, 94 NLRB 1507, Member Murdock dissenting, reversed and remanded *Local Union No. 1229* v. *N. L. R. B.*, C. A. D. C, November 20, 1952.

[24] *H. N. Thayer Co.*, 99 NLRB No 165.

[25] *Rockaway News Supply Co.*, 95 NLRB 336, reversed on other grounds, 197 F. 2d 111 (C A 2), see p 220.

[26] *Mackay Radio and Telegraph Co.*, 96 NLRB 740 Member Houston, dissenting, was of the opinion that the evidence did not support a finding that the strikers consciously sought to compel their employer to violate the act, and that the strike was therefore a lawful one.

[27] *N. L. R. B.* v. *Draper Corp.*, 145 F. 2d 199 (C A 4) (1944).

[28] *Brown and Root, Inc.*, 99 NLRB No. 153.

the bargaining unit.[29] In these circumstances, the Board held, "the employees were privileged to assert their rights, as they did, through their own joint action rather than through the Union."

A strike is not outside the protection of the act merely because it was not called or conducted in accordance with procedural requirements provided in the striking union's constitution.[30]

Orderly work stoppages for the purpose of registering a grievance or pressing wage demands were likewise held to be protected concerted activities for which the participating employees could not be disciplined.[31]

Section 8 (d) of the act specifically deprives employees of their status as employees if they engage in a strike during the statutory "cooling off" period of 60 days after either union or employer has given notice of an intent to modify or terminate a current contract. However, these provisions were held not to permit the discharge of strikers whose representative had never been recognized by the employer and had no contract.[32] Moreover, the Board pointed out, section 8 (d) applies only to strikes to terminate or to secure a modification of a collective bargaining contract, and therefore could not be invoked in the case of a strike caused by the employer's unfair labor practices.

(2) Refusing To Cross Picket Line

The Board held in one case that an employee was engaging in protected concerted activities when he refused to cross the lawful picket line of a union other than his own.[33] An employee who so refused to cross a picket line must be taken to make "common cause" and to act in concert with the members of the picketing union, the Board said. However, if the employee's refusal interferes with the performance of his duties, the Board held, the employer is privileged to require that the employee either perform all his duties or, as a striker, vacate his job and run the risk of being replaced.

(3) Other Concerted Activities

The Board also held that an employee could not be lawfully discharged for inducing a group of fellow workers to take action to cor-

---

[29] *Buzza-Cardozo*, 97 NLRB 1342 See also *American Manufacturing Company of Texas*, 98 NLRB 226, where the Board rejected the employer's wildcat strike defense on the ground that, though not authorized by the union's international representative, the work stoppage was subsequently approved by the union and discussed by it with the employer.

[30] *Deena Artware, Inc.*, 95 NLRB 9, enforced with modifications, 198 F. 2d 645 (C. A 6).

[31] *Textile Machine Works*, 96 NLRB 1333; *John H Barr Marketing Co.*, 96 NLRB 875; see also *Modern Motors, Inc*, 96 NLRB 964, expressly sustained on this point, but modified in other respects, 198 F. 2d 925 (C. A. 8) September 16, 1952.

[32] *H. N. Thayer Co.*, 99 NLRB No. 165.

[33] *Rockaway News Supply Co, Inc.*, 95 NLRB 336. The Board's order in the case was set aside by the Court of Appeals for the Second Circuit (197 F 2d 111). See chapter VII, p 220. The Supreme Court affirmed the court's decision (No. 318, March 9, 1953).

rect a grievance.[34] The employee's action, the Board pointed out, was an "indispensable preliminary step to employee self-organization" and unless protected "would permit an employer to frustrate concerted activity at its inchoate stage and make a mockery of the guarantees of Section 7 of the Act."

Concerted employee activities which were also held protected included the planning of an employee meeting to discuss action to press wage demands;[35] presentation of grievances;[36] and an unsuccessful attempt to organize a strike in protest against the discharge of a union steward.[37]

However, not all concerted activities intended to further employee organization or employee interests are protected. For example, employees were subject to discipline for attending to union business at the union hall at a time when they were due to report for work.[38] This activity, the Board held, "amounted to an unwarranted usurpation of company time to engage in a sort of union activity customarily done during nonworking time," and constituted a violation of company rules which justified the employees' discharge. Also, a union steward was held unprotected against discharge for agitating against Sunday work by posting a notice falsely stating that Sunday work was against the union's contract.[39]

c. Discrimination in Strike Situations

Employees may not be subjected to discrimination because of their participation in lawful strikes, and therefore are generally entitled to be restored to their previous employment upon termination of the strike. However, there are at least two important exceptions to the rule that upon the termination of a strike all strikers are entitled to return to their jobs: (1) Employees on strike for the purpose of obtaining economic concessions, such as better wages or improved working conditions, may be permanently replaced by the employer to continue his business.[40] (2) An employer may decline to continue to employ strikers who have engaged in serious misconduct in the course of either an economic or an unfair labor practice strike.[41]

---

[34] *The Office Towel Supply Co*, 97 NLRB 449 Chairman Herzog, dissenting, expressed the view that the manner in which the employee voiced dissatisfaction was not protected by the act; enforcement denied, C A 2, No 99, Jan. 6, 1953.

[35] *Coca-Cola Bottling Co. of Asheville*, 97 NLRB 151.

[36] *Todd Shipyards Corp, Los Angeles Division*, 98 NLRB 814; see also *Trafford Coach Lines*, 97 NLRB 938.

[37] *J. I. Case Co., Bettendorf Works*, 95 NLRB 47; enfd. in part, 198 F. 2d 919 (C. A. 8).

[38] *Gulf Coast Oil Co.*, 97 NLRB 1513.

[39] *Titan Metal Mfg Co.*, 99 NLRB No. 139.

[40] See for instance *Celanese Corp. of America*, 95 NLRB 664; *Coal Creek Coal Co.*, 97 NLRB 14; *The Office Towel Supply Co.*, 97 NLRB 449; *Harcourt & Co.*, 98 NLRB 892, Member Styles dissenting on other points

[41] See subsection (3) of this section, pp. 144–145.

(1) Replacement of Strikers

Cases in which employers are charged with illegally replacing strikers may require a determination as to the nature of the strike. The Board has consistently held that a strike provoked by the employer's violation of rights under the act retains its character as an unfair labor practice strike even though the strike also had an economic objective. The strikers in such a case are, therefore, not subject to permanent replacement.[42] A strike originally called for the purpose of obtaining concessions loses its economic character if it is prolonged by subsequent unfair labor practices. Thus, an employer was held to have forfeited his right permanently to replace economic strikers by refusing to enter into strike settlement negotiations with the striking union;[43] or by threatening to discharge such strikers unless they returned to work by a certain date.[44] However, an intervening unfair labor practice changes the character of a strike only if it can fairly be said to be the responsible cause of the strike's prolongation. Applying this principle, the Board confirmed the right of an employer permanently to replace strikers where it appeared that an impasse in bargaining relations, rather than the employer's concurrent unfair labor practices, was responsible for continuation of the strike.[45]

In one case,[46] the status of two groups of strikers had to be determined under the following circumstances: The representative of two units, including certain employees on a construction project, called a strike because of the employer's refusal to bargain. The strike was joined by other employees on the same project who were represented by another union in separate bargaining units. The strike was also joined by a group of unrepresented employees on a different but related project of the same employer.[47] The Board found that the unrepresented group of employees was entitled to the same protection accorded unfair labor practice strikers because their interests were closely interwoven with those of the members of the striking union and were substantially affected by the employer's refusal to bargain with that union. Under these circumstances, the Board held, the employer's unfair labor practice was the direct cause of the group's participation in the strike. On the other hand, the Board held that the employees in the minority group who joined the strike without authority from their own representative had status only as economic

[42] *The Jackson Press,* 96 NLRB 1028, enforced with modifications, C. A. 7, January 29, 1953

[43] *Pecheur Lozenge Co.,* 98 NLRB 496.

[44] *National Gas Co.,* 99 NLRB No. 44.

[45] *Harcourt and Co ,* 98 NLRB 892, Member Styles dissenting in part.

[46] *Brown & Root, Inc.,* 99 NLRB No. 153.

[47] The Board found that the two corporations which operated the two projects were closely allied and had to be considered a single employer.

strikers. The Board noted that the employer had properly bargained with their representative and that the action of the group was in the nature of a sympathy strike and was not caused by the employer's refusal to bargain with a union other than its own.

Strikers who ceased work because of supposed unfair labor practices will be treated as economic strikers if it is later shown that no violation of the act was present.[48]

Economic strikers may be denied reinstatement only if their jobs have been filled by permanent replacements.[49] In one case, the Board held that economic strikers could not be considered permanently replaced by new employees whose employment was terminated before their probationary periods had expired.[50] In another case, the Board was faced with a situation in which a strike replacement was discharged before the date on which the striking union presented the strikers' offer to return to work.[51] Holding one of the strikers entitled to her old job, the Board said:

> The Union's January 10 offer to return was an application for that vacancy as well as for other jobs. The Respondent did not reply to the offer because, in its view, the strikers' continuing concerted activities relieved it of any obligation to consider applications by strikers for vacancies. As the Respondent's refusal to consider this application was therefore admittedly motivated by the strikers' concerted activity, it is clear that the action was discriminatory. Because this discriminatory action of the Respondent deprived Lundy of being placed in the job she formerly held, we find that the Respondent discriminated against her in violation of Section 8 (a) (3) and (1).[52]

Unfair labor practice strikers may not be permanently replaced. Consequently, if such strikers have been denied reinstatement because their jobs were filled, the Board ordinarily directs the employer to discharge the replacements.[53] Nor is the employer justified in retaining replacements because their removal would not create a sufficient number of vacancies to accommodate all strikers who have offered to

---

[48] See *Dennison Cotton Mills Co*, 97 NLRB 1191, involving a refusal to bargain with a union whose certification by the Board proved to be invalid. See also *Almeida Bus Service*, 99 NLRB No. 79.

[49] See for instance *Union Bus Terminal of Dallas, Inc*, 97 NLRB 206, 98 NLRB 458, *Harcourt and Co*, 98 NLRB 892, Member Styles dissenting on other points; *Union Bus Terminal of Dallas*, 97 NLRB 206; *DeSoto Hardwood Flooring Co.*, 96 NLRB 382.

[50] *Kansas Milling Co.*, 97 NLRB 219.

[51] *Union Bus Terminal of Dallas, Inc*, 98 NLRB 458.

[52] Member Murdock, considering the striker an applicant for new employment, did "not reach or decide the question whether as a matter of law an initial permanent replacement of an economic striker permanently extinguishes her preexisting right to return to her job, or whether, if the replacement has fortuitously vacated the job when there is outstanding an unconditional offer to return to work, the striker then becomes revested with the same right which she had prior to the permanent replacement, to return to her job 'without prejudice to her seniority or other rights and privileges.'"

[53] *The Jackson Press*, 96 NLRB 897; *West Coast Casket Co.*, 97 NLRB 820; *American Manufacturing Co of Texas*, 98 NLRB 226, Member Styles dissenting on another point; *Pecheur Lozenge Co.*, 98 NLRB 496; *National Gas Co.*, 99 NLRB No 44.

return to work.[54] If, when the strikers apply for reinstatement, their jobs are for legitimate reasons no longer available, the Board ordinarily directs that such strikers be placed on a preferential hiring list.[55]

(2) Refusal To Reinstate Strikers

Unfair labor practice strikers, and economic strikers not permanently replaced, must be permitted to return to work if they offer to do so unconditionally. The striking union's unconditional request for the reinstatement of all strikers is sufficient and need not be followed by individual applications of the strikers.[56] However, a majority of the Board held that individual applications were required where a union representative had merely notified the employer that "the local union had voted to call the strike off unconditionally and send all the men back to work," and the union representative had agreed that the men should report individually to indicate their availability.[57] Moreover, in this case, the union informed the strikers to apply individually and filed such applications on behalf of a substantial number of strikers. Strikers who did not apply until 3 to 10 months later were held to have abandoned their reemployment rights.[58] A union's oral request for the return of all strikers made during strike settlement negotiations also was held insufficient in the absence of individual applications.[59] In the same case, application by individual strikers was likewise held necessary where the striking union's formal request was addressed only to one of two struck employers and was made only on behalf of some strikers or such strikers as would present themselves for reemployment.

Strikers who returned to work unconditionally, in the Board's opinion, were not required to answer the employer's question whether the abandonment of the strike was complete.[60] Rather, the Board said, the employer "was under a duty to afford the employees a reasonable time in which to answer through their bargaining representative." Nor, in the Board's view, was is necessary for a union which made an "unconditional" request for reinstatement to spell out the plain meaning of the word "unconditional" by stating that the em-

[54] *Brown and Root, Inc*, 99 NLRB No. 153.

[55] See for instance *The Jackson Press*, 96 NLRB 897; *West Coast Casket Co*, 97 NLRB 820; *American Manufacturing Co of Texas*, 98 NLRB 226, Member Styles dissenting on another point; *Pecheur Lozenge Co.*, 98 NLRB 496; *National Gas Co.*, 99 NLRB No. 44

[56] *John H Barr Marketing Co.*, 96 NLRB 875.

[57] *American Manufacturing Co. of Texas*, 98 NLRB 226.

[58] Compare *H. N. Thayer Co.*, 99 NLRB No 165, where the Board declined to find that reemployment applications more than 1 week after the strike were unreasonably late

[59] *Brown and Root, Inc*, 99 NLRB No. 153

[60] *Paterson Steel & Forge Co*, 96 NLRB 129, Member Reynolds dissenting

ployees had abandoned their demands.[61] The Board observed that the employer had no reason to believe that the unconditional request for reinstatement was subject to any unexpressed reservations. However, a union's request for restoration to the strikers of employee benefits was held not a request for reinstatement, particularly when the union at the same time referred to its decision to intensify strike activities.[62]

Strikers need not apply for reinstatement in order to protect their employment rights if the employer has placed an illegal condition on their reinstatement, as when the employer announces that employees who do not return by a certain date will be permitted to return only as new employees with loss of pay and seniority.[63] Nor are employees who were discharged while on strike obligated to make specific application for reinstatement.[64]

In one case during the past year, an employer defended its refusal to accept applications of former employees partly on the ground that the applications were not requests for new employment, but for reinstatement to prestrike jobs to which the former employees no longer had any claim.[65] Rejecting this defense, the Board pointed out that, in the absence of express language to this effect, the application should not be so interpreted because the applicants were industrial factory workers, and "did not use the terms they employed in the technical sense of labor law experts, but merely expressed themselves in the ordinary manner of former employees seeking jobs from their old employer." [66]

(3) Discharge of Strikers for Misconduct

According to a well-established rule, employees who participate in either economic or unfair labor practice strikes are not entitled to reinstatement if they have engaged in such serious strike misconduct as assaults, threats of violence, destruction of property, or forcible interference with the employer's use of his business premises.

---

[61] *Pecheur Lozenge Co.*, 98 NLRB 496. As to the adequacy of reinstatement applications in cases not involving strikes, see, e. g., *Pacific American Shipowners Association*, 98 NLRB 582.

[62] *U. S. Cold Storage Corp*, 96 NLRB 1108.

[63] *H N. Thayer Co*, 99 NLRB No. 165; see also *Brown and Root, supra.* The same principle is applicable to situations, not involving strikes, where employees seeking employment or reemployment do not apply or renew applications for work after learning of the employer's illegal conditions. *Pacific American Shipowners Association*, 98 NLRB 582; *J. R. Cantrall Co.*, 96 NLRB 786; *Utah Construction Co*, 95 NLRB 196; *Del E. Webb Construction Co.*, 95 NLRB 75; see also *L. Ronney & Sons Furniture Mfg. Co.*, 97 NLRB 891.

[64] See for instance *Buzza-Cardozo*, 97 NLRB 1342.

[65] *Textile Machine Works, Inc.*, 96 NLRB 1333 The applicants did not file discrimination charges within the statutory 6-month period following the termination of their former employment in connection with a strike. For this aspect of the case, see pp. 200–201

[66] But see the courts' opinion in the *Pennwoven, Inc.*, and *Childs Co.*, cases discussed in chapter VII, p. 251.

As to proof of misconduct, the Board during the past year announced a modification of its earlier *Mid-Continent Petroleum*[67] rule, under which an employer's honest belief that strikers had engaged in forbidden conduct was held no defense to their discharge unless the employer showed that the discharged strikers were, in fact, guilty of such conduct. Under the present rule,[68] the employer's honest belief that strikers engaged in misconduct is, if established, a sufficient defense to their discharge, unless the General Counsel produces evidence which proves that the strikers had not, in fact, engaged in the asserted conduct. But an employee may not be disciplined for strike or picket line misconduct unless he is one of the participants in the misconduct.[69]

While reinstatement will be denied strikers who are found guilty of serious misconduct,[70] the Board again held that reinstatement is not precluded by conduct which amounts to no more than that "animal exuberance and mutual harassment" which often is characteristic of strike action.[71]

Pickets who forcibly blocked the entrance to a struck plant and barred entry of plant officials were held to have forfeited reinstatement.[72] However, reinstatement was not held to be precluded in the case of a large number of pickets who circled in front of the plant entrance at times when employees normally arrived at, or left, the plant, but who obeyed instructions to break ranks when requested by police officers to permit ingress and egress.[73] Nor were strikers held to have forfeited their right to reinstatement because they tripped and shoved nonstrikers, when the strikers did not forcibly bar ingress to the plant.[74]

(4) Condonation of Misconduct or Unprotected Activities

Employees who engage in serious misconduct in connection with concerted activities, as well as employees who engage in concerted activities which are entirely unprotected, are subject to discharge or other forms of discipline affecting their employment conditions.

---

[67] *Mid-Continent Petroleum Corp.*, 54 NLRB 912, 933–935 (1944). See also *Standard Oil Co. of California*, 91 NLRB 783, 791.

[68] *Rubin Bros. Footwear, Inc.*, 99 NLRB No. 100

[69] *Victor Products Corp.*, 99 NLRB No. 83; *Wallick and Schwalm Co.*, 95 NLRB 1262, enforced 198 F. 2d 477 (C. A 3), August 1, 1952; *Rubin Bros Footwear, Inc.*, 99 NLRB No. 100.

[70] See, for instance, *The Jackson Press*, 96 NLRB 897; *American Mfg. Co., of Texas*, 98 NLRB 226 (see intermediate report).

[71] See, for instance, *H. N. Thayer Co.*, 99 NLRB No. 165; *Coal Creek Coal Co.*, 97 NLRB 14.

[72] *Coal Creek Coal Co.*, 97 NLRB 14.

[73] *H. N. Thayer Co., supra.*

[74] *The Jackson Press*, 96 NLRB 897.

However, the Board has long applied the rule that an employer who condones such conduct may not later assert it as a defense to discrimination charges. The Board during the past year stated the principle in the following language:

An employee who engages in unprotected activity becomes subject to discharge, but does not lose his status as an employee under the Act. An employer may waive his right to discharge an employee for this reason. Once he has made the waiver, an employer cannot later assert it as a valid reason for discharge or refusal to reinstate. Similarly, although employee participation in unprotected activities gives an employer the right to discharge for such conduct, the employer may act for entirely different reasons. If an employer in fact discharges an employee for discriminatory reasons, the circumstance that the employer might have discharged him for a valid reason, for example, participation in unprotected activities, is not subsequently available as a defense to the discriminatory discharge. [Footnotes omitted.] [75]

Shortly after issuing this decision, a majority of the Board held that the condonation principle does not apply in case of unprotected activities which in themselves constitute a violation of the act.[76] This ruling was made in a case involving a strike called for the purpose of enforcing demands for unlawful union-security proposals. The Board observed that, because of this objective, the striking union would have been found to have committed an unfair labor practice within the meaning of section 8 (b) (2), if charges had been filed against it. Because the strike objective was therefore in conflict with express policies of the act, the Board concluded that the strikers could not invoke the protection of the act regardless of any showing of condonation by the employer. Thus, the majority opinion pointed out, the situation involved "basic *public* policy considerations," whereas in the cases in which the condonation doctrine had been applied it was principally the employer's interests which were unduly jeopardized by the employees' conduct. The Board said:

We are unable to perceive how it will effectuate the Act's policies to give relief to employees who have engaged in conduct violative of those policies. To do so would place the Board in the position of encouraging, through its remedial processes, conduct subversive of the statute. It is rather incumbent upon the Board in a case such as this to discourage such conduct by denying any remedy to employees who have engaged therein.

* * * * * * *

We do not here hold, as our dissenting colleague suggests, that participation in an unlawful strike automatically terminates the strikers' employment relationship. We decide no more than is required by the facts in this case: namely, that the employees who participated in the *unlawful* strike of the kind herein found may not invoke the protection of the Act because they were denied perma-

[75] *Wallick & Schwalm Co.*, 95 NLRB 1262. See also *Stafford Operating Co*, 96 NLRB 1217.

[76] *Mackay Radio and Telegraph Co., Inc.*, 86 NLRB 740, Member Houston dissenting.

nent reinstatement at the end of that strike, even though the Respondents may have failed to assert the illegality of the strike as the basis for denying reinstatement to such strikers. . . .

d. Discrimination Under Union-Security Agreements [77]

Section 8 (a) (3) prohibits discrimination in employment against employees not only to discourage union membership or other protected activities, but also to compel membership in a union which does not have a valid union-security agreement. However, even under a valid union-security agreement, an employee may be discharged or otherwise discriminated against for his lack of union membership only if his lack of membership results from his failure to tender on time "the periodic dues and the initiation fees uniformly required." [78] But different rates of dues and fees may be charged members of different classifications if the classifications are reasonable.[79]

In cases involving alleged discrimination under union-security agreements, the Board must first determine whether the agreement is valid under the proviso to section 8 (a) (3). For such agreement to be valid, *all* of the following requirements must be met:

1. The agreement must cover employees in an appropriate unit who have legally designated the contracting union as their representative.
2. The contracting union must have complied with the filing and non-Communist affidavit requirements of the act.
3. The union's authority to make the agreement must not have been revoked by the employees voting in a union-shop deauthorization poll within the preceding year.[80]
4. The agreement must contain an appropriate 30-day grace period for all employees who are not members of the union when it takes effect.

(1) Terms of Union-Security Agreements

A number of the union-security cases decided during the past year were concerned with the statutory limitation that union membership may be made a condition of employment only "on or after the thirtieth day following the beginning of . . . employment or the effective date of [the] agreement, whichever is later." [81] Because the act thus

---

[77] This section of the Report should be read in conjunction with that on section 8 (b) (2), involving union violations under similar circumstances Many cases were decided under both sections

[78] Section 8 (a) (3) See also *Chrisholm-Ryder Co*, 94 NLRB 508 (1951), discussed p 185, Sixteenth Annual Report, and *Standard Brands, Inc.*, 97 NLRB 737

[79] *Food Machinery and Chemical Corp*, 99 NLRB No. 167, discussed p 152

[80] The former requirement of an affirmative NLRB poll of employees to determine the union's authority to make a union-shop agreement was repealed by Public Law 189, approved October 22, 1951.

[81] Compare the numerous cases in which the same question was of importance for the purpose of determining whether contracts asserted as a bar to representation proceedings were ineffective because they contained invalid union-security clauses See chapter IV, pp. 39–44.

specifically provides for a 30-day grace period, a contract requiring that "all regular employees shall, as a condition of employment, be members of the Union in good standing," is not valid.[82] Union-security clauses which accord employees a grace period of less than 30 days are likewise illegal.[83]

In several cases, the validity of the union-security agreements involved depended on their effect upon old employees who were not members of the union at the time when the agreement became effective.[84] Thus, a contract clause requiring that employees apply for membership "30 days after commencing work" was held invalid because it deprived employees who had begun work before the effective date of the contract of their express statutory right to a like grace period.[85]

When the effect of a union-security clause is in doubt, the Board ordinarily determines its validity on the basis of the intent of the contracting parties. In one case, for instance, an agreement requiring old employees to become members 30 days following the Board's certification of the union's authority to make the agreement was held valid even though the Board's certification had in fact issued 10 days earlier.[86] While a literal interpretation of the clause would have resulted in granting old nonmember employees only a 20-day grace period, the Board found that this was clearly not the intention of the parties. The Board noted that the clause made specific reference to the pertinent provisions of section 8 (a) (3), and that all employees subject to the contract had in fact been accorded the full 30-day grace period. Similarly, a clause that "all employees . . . shall become members of the union on or after the thirtieth day following the beginning of their employment," while susceptible of varying interpretations, was held legal when it was shown the provision had been applied in practice only to require union membership of new employees 30 days after the date of their employment, and in the case of old

[82] *Green Bay Drop Forge Co.*, 95 NLRB 399 ; 97 NLRB 642.

[83] See, for instance, *Medford Building Trades Council*, 96 NLRB 165.

[84] The Board, during the past year, in a representation case, announced its position that the 30-day requirement does not apply to old employees who are already members of the contracting union. *Krause Milling Co.*, 97 NLRB 536; see *Standard Brands, Inc*, 97 NLRB 737.

[85] *Al Massera*, 97 NLRB 712. On December 8, 1952, the Board set aside its original decision in this case. On reconsideration, the Board found that the 30-day clause involved had been entered into before the opening of the employer's operating season and could reasonably be construed as affording employees a 30-day grace period from the date they were to begin work for the new season. The Board noted that no discharges were effected under the union-security clause within 30 days after its execution, and that no claim was made that employees were unlawfully denied the statutory grace period.

[86] *Standard Brands*, 97 NLRB 737 The contract involved was executed before the elimination of the authorization provisions of the act by Public Law No. 189, October 22, 1951.

nonmember employees, 30 days from the effective date of the clause.[87]

Another group of cases involved preferential hiring agreements. In one such case, the Board held illegal an agreement which obligated the employer to refer to the union's list of available workmen before hiring employees.[88] Here the parties had mutually interpreted the agreement as requiring the employer to hire through the union or subject to its clearance, and it was the union's practice to condition clearance upon membership. In the same case, a clause by which the contracting union agreed to furnish workmen in certain classifications upon request and the employer agreed to secure workmen from other sources only if the union failed to supply qualified workers within a reasonable time, was likewise held illegal because another clause of the contract provided that all work covered by the contract was to be performed by members of the union. In another case, the union-security limitations of section 8 (a) (3) were held to have been exceeded by an agreement under which the employer could hire nonunion men only in specified numbers during emergencies and subject to ultimate replacement by union members.[89] However, an agreement which merely provided for the utilization of the union's employment facilities and which did not, on its face, require that preference be given to union members, was held no violation of the act when it was not shown that the contracting union has in fact discriminated in supplying personnel.[90]

In one case, the Board held that a union could not lawfully insist on the adoption of union-security clauses which gave the union the right to terminate employees during their probationary period, as well as to require the discharge of employees for "violation of reasonable union shop rules." [91]

The Board also had occasion to point out that union-security provisions which clearly fail to conform to the requirements of section 8 (a) (3) cannot be validated by the addition of a clause recognizing the controlling effect of "applicable Federal and State laws," or by a further clause purporting to modify the provisions "to conform to any State or Federal law" with which they may be in conflict.[92]

---

[87] *Kaiser Aluminum & Chemical Corp.*, 98 NLRB 753.

[88] *Utah Construction Co.*, 95 NLRB 196. See also *International Longshoremen's Union*, 98 NLRB 284.

[89] *Mundet Cork Corp.*, 96 NLRB 1142.

See also *Webb Construction Co.*, 96 NLRB 75, where the Board found that an implied oral agreement to hire only union laborers was illegal. The Board's order in this case was set aside because of the court's view that the evidence did not sufficiently establish the existence of such an agreement between the employer and the union. 196 F. 2d 841 (C. A. 8).

[90] See *The Hunkin-Conkey Construction Co*, 95 NLRB 433; *Port Chester Electric Corp.*, 97 NLRB 354 (panel majority).

[91] *MacKay Radio and Telegraph Co*, 96 NLRB 740.

[92] *Green Bay Drop Forge Co.*, 97 NLRB 642.

(2) Discrimination

The Board continued to hold that an employer violates section 8 (a) (3) by entering into an illegal union-security agreement, because such an agreement creates discriminatory conditions of employment.[93] However, a majority of the Board declined to apply this rule in a case in which the parties to an illegal closed-shop agreement had indicated their intention not to enforce it.[94] Under these circumstances, the majority concluded, the mere retention of the illegal clause in the contract between the parties did not create discriminatory employment conditions and therefore could not be found to violate section 8 (a) (3).[95]

Section 8 (a) (3) is violated also if an employer cooperates with the contracting union in enforcing illegal union-security provisions against individual employees.[96] Similarly, the act is violated by the refusal of an employer to hire employees who are not members of, or who have not been cleared by, the union with which the employer has an illegal preferential hiring agreement.[97]

(3) Illegal Application of Union-Security Agreement

In some cases, discrimination has resulted from illegal application of union-security agreements, rather than from the inherent invalidity of the contract provision itself. Thus, the discharge of an employee was held to have violated section 8 (a) (3) under the following circumstances: The discriminatee had resigned from the union when the prior contract terminated. The union later entered into a new contract containing a valid maintenance-of-membership clause. The union then demanded the employee's discharge because he had failed to pay dues before and after the effective date of the union's new contract. The Board held that this application of the agreement was illegal (1) because, having previously resigned from the union, the employee had never been under obligation to rejoin the union, and

---

[93] See *Del E Webb Construction Co*, 95 NLRB 75, reversed on other grounds, 196 F 2d 841 (C A 8); *Pacific American Shipowners Association*, 98 NLRB 582, *Longshoremen's Local 19 (Waterfront Employers of Washington)*, 98 NLRB 284 *Mundet Cork Corp*, 96 NLRB 1142, *Utah Construction Co*, 95 NLRB 196

[94] *Port Chester Electric Corp*, 97 NLRB 354 Member Reynolds dissented, because in his view there was insufficient evidence to establish the intent of the contracting parties not to enforce the unlawful provisions

[95] The Board held however, that the retention of the closed-shop clause in the contract, without notice to the employees that it was not to be enforced, operated as a restraint on the employee's right not to join the union The Board, therefore, found that the contracting parties thus violated section 8 (a) (1) and 8 (b) (1) (A), respectively

[96] See for instance *Green Bay Forge Co*, 95 NLRB 399, 97 NLRB 642, *Al Massera*, 97 NLRB 712

[97] See for instance *Utah Construction Co*, 95 NLRB 196, *Mundet Cork Corp*, 96 NLRB 1142; *International Longshoremen's Union*, 98 NLRB 284

(2) because the agreement was retroactively applied to compel the payment of dues which accrued before the agreement became legally effective.[98]

In several cases, the validity of discharges under union-security agreements turned upon whether or not the employer had reasonable cause to believe that (1) union membership "was not available to the employees on the same terms and conditions generally applicable to other members," or (2) that the discharge was requested "for reasons other than the failure of the employee to tender the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership."[99] In one such case, the discharge of an employee was found discriminatory because both of these provisions had been violated.[1] Here, an employee had been required to pay certain fines and all back dues which accrued before the effective date of the union-security agreement and, furthermore, had been denied the privilege accorded other equally delinquent members to settle his dues arrears with a lump sum payment. Thus, the Board pointed out, proviso (A) of section 8 (a) (3) was violated because membership was not available to the employee on equal terms with other employees, and proviso (B) was likewise violated because the employee was denied membership for nonpayment of fines and back dues neither of which constituted "periodic dues" or "initiation fees uniformly required" within the meaning of the proviso. The Board further found that the employee's discharge was discriminatory even though he had not offered to pay at least the initiation fee and dues which could legally be required under the applicable union-security agreement. In this respect, the Board restated the previously announced rule that an employee need not tender the fees and dues he could legally be charged, if union membership is, in fact, available to him only upon compliance with a separate discriminatory condition,[2] or where, as here, the circumstances indicated that such a tender would have been a futile view of the union's insistence on his payment of sums not constituting fees or dues within the meaning of section 8 (a) (3).[3] In another case, a union officer was discharged after he was expelled from the union because of his refusal to sign a non-Communist affidavit, apparently in an effort to favor a rival union, the discharge was held

[98] *Monsanto Chemical Co*, 97 NLRB 517, see also *Eclipse Lumber Co, Inc*, 95 NLRB 464, enforced 199 F 2d 684 (C A 9) Compare *Kingston Cake Co*, 97 NLRB 1445

[99] Section 8 (a) (3), second proviso For cases in which the Board had to determine whether or not the employer had cause to believe that a discharge was requested on a discriminatory basis, see *Eclipse Lumber Co, Inc*, 95 NLRB 464, *Kingston Cake Co*, 97 NLRB 1445

[1] *Eclipse Lumber Co, Inc*, 95 NLRB 464

[2] See *Kaiser Aluminum & Chemical Corp*, 93 NLRB 1203

[3] See *Baltimore Transfer Co*, 94 NLRB 1680

discriminatory in that it was based on his lack of union membership arising from reasons other than the failure to tender periodic dues and initiation fees.[4] The Board pointed out that "however understandable and laudable" the reason for the employee's expulsion and discharge may have been, the Board had no choice under the statute but to hold that section 8 (a) (3) was violated.

On the other hand, a valid union-security agreement was held properly enforced against an employee whose membership had lapsed before the effective date of the agreement and who had refused to pay a $60 reinstatement fee on the ground that first-time applicants were charged an initiation fee of only $30.[5] In the view of a majority of the Board, the union's imposition of a larger fee on former members was based on a reasonable classification and therefore was not discriminatory for union-security purposes.[6] Noting the Board's previous holding that the union-security proviso of section 8 (a) (3) permits such graduation in membership charges,[7] the majority held that the complaining employee's refusal to pay the reinstatement or initiation fee "uniformly required of all former members similarly situated" justified his discharge.[8]

A union-security agreement also was held to have been validly enforced against union members who had failed to tender their dues within the time uniformly required.[9] Under the union's constitution the employees' delinquency resulted in their automatic suspension and consequent termination of their membership.[10] Under these circumstances, the Board observed, the employees were legally subjected to discharge regardless of the fact that the union's sudden insistence on their dismissal may have been harsh and inconsistent with the union's earlier leniency in invoking its union-shop contract. Nor, the Board concluded, was the application of the contract illegal because the union did not permit employees who were more than 3 months delinquent to restore their membership, although automatically suspended members with less than 3 months' delinquency could do so.

---

[4] *Kingston Cake Co*, 97 NLRB 1445

[5] *Food Machinery and Chemical Corp*, 99 NLRB No. 167, Chairman Herzog and Member Houston dissenting, see footnote 8, below

[6] The majority's conclusion that the union's reinstatement fee was not "excessive or discriminatory" within section 8 (b) (5) of the act is discussed at pp 197–198.

[7] *Electric Auto-Lite Co.*, 92 NLRB 1073, enforced 196 F 2d 500 (C. A. 6).

[8] Chairman Herzog and Member Houston, dissenting, took the position that the discharge was unlawful because it penalized the employees for nonpayment of dues accruing at a time when no union-security agreement was in existence and when the employee was therefore under no obligation to maintain his union membership

[9] *Standard Brands, Inc.*, 97 NLRB 737.

[10] The Board pointed out that for union-security purposes "membership" means good-standing membership, and suspension from such membership is equivalent to membership termination.

For, by enforcing this rule, the union was giving effect to a reasonable classification and therefore did not violate the limitations on membership requirements of the union-security proviso of section 8 (a) (3).[11]

e. Encouraging Union Membership

Discrimination which encourages membership in a union which has no valid union-security agreement also violates section 8 (a) (3). In this type of case, the Board has repeatedly pointed out that an employer may not discriminate against an employee on the basis of a labor organization's determination as to who shall be permitted to work when no lawful contractual obligation for such action exists.[12] Consequently, a shipping company was ordered to offer employment to a radio officer who had applied unsuccessfully for a job after his name was stricken from the assignment list of the union through which the company hired all its radio officers.[13] The Board held that the unlawful discrimination in this case resulted not solely from the employer's failure to offer the radio officer employment when a job became available on one of its ships, but also from the very act of discriminatorily striking the employee's name from the union's national assignment list, to which the company assented. An employer was likewise held to have violated section 8 (a) (3) by suspending or discharging employees who, as nonmembers, had been refused clearance or work permits by the union to which they were referred by the employer.[14] The same result was reached in the case of an employer who refused to permit a nonunion employee to trade work assignments.[15] The Board found that the employer had acted on the basis of a union list of persons eligible to trade assignments, from which the employee's name was omitted because of his nonmembership.

In another case, an employer was held to have unlawfully refused to accept certain qualified applicants for available jobs on a construction project, except upon condition that they apply for membership in a particular union.[16] However, a majority of the Board found there was no discrimination against other applicants who were likewise told "to get straightened up with the Union," but at a time when there were no jobs available for which they were qualified. The ma-

---

[11] See also *Kaiser Aluminum & Chemical Corp*, 98 NLRB 753, where the Board reversed the trial examiner's finding that the cause for the discharge of certain employees under a union-security agreement was their refusal to pay a $5 ex-membership fee.

[12] See, for instance, *Engineers Limited Pipeline Co.*, 95 NLRB 176; compare *Consolidated Builders, Inc*, 99 NLRB 135

[13] *Alaska Steamship Co.*, 98 NLRB 22.

[14] *Engineers Limited Pipeline Co.*, 95 NLRB 177; *Schweiger Construction Co*, 97 NLRB 1407.

[15] *Southwestern Bell Telephone Co*, 97 NLRB 79.

[16] *Consolidated Builders, Inc.*, 99 NLRB No. 135, Member Peterson dissenting.

jority pointed out that no discriminatory hiring policy on the part of the employer had been established and that it was therefore speculative whether union membership or clearance would have been required had the same applicants reapplied at a time when jobs were available. The majority distinguished this situation from those cases in which employees applying for work when jobs became available were informed of the existence of a discriminatory hiring policy, which made it clear that future applications by the same employees would be a useless gesture.[17]

f. Lockout as Bargaining Weapon Held Illegal

During fiscal year 1952, for the first time, the Board was confronted directly with the question of whether an employer may use the lockout or layoff as a weapon in collective bargaining.

This question was presented in two cases remanded to the Board by courts of appeals after the courts had rejected the Board's decision of the cases on other grounds.[18]

A majority of the Board held that the bargaining lockout is prohibited by the act's ban against discrimination in employment based upon union activity and by its ban against employer interference with employees' exercise of their right to engage in lawful collective bargaining activities.[19] No exception for such lockouts is dictated either by the specific term of the statute, or the intent of Congress, or as a matter of policy based upon the actual needs of employers in dealing with their employees as a group, the Board held.

Deciding the questions raised in the remands the Board held that, under the act:

1. An employer may not lock out his employees to force them to accept his terms in collective bargaining.

2. Nor may an employer lawfully use such a tactic to break a deadlock in bargaining with the employees' representative.

---

[17] For cases in which the Board adopted the trial examiner's conclusion that the employers involved violated section 8 (a) (3) by complying with the discriminatory requests of certain unions to discharge nonmember employees, see *G W Thomas Drayage & Rigging Co*, 97 NLRB 703 *Otis Elevator Co*, 97 NLRB 786

[18] *Morand Brothers Beverage Co, et al*, 91 NLRB 409 (1950), Member Reynolds dissenting, enforced in part and remanded with questions by the court, 190 F 2d 576 (C A 7). *Davis Furniture Co, et al*, 94 NLRB 279 (1951), Member Reynolds not participating, remanded 197 F 2d 435 (C A 9)

[19] *Morand Brothers Beverage Co*, 99 NLRB No 55, Chairman Herzog reserved judgment on the lockout point in this decision, holding that a decision on it was unnecessary

The remand in this case also presented the question of whether the employees had not actually been discharged, rather than merely laid off in a temporary lockout The Board on the basis of evidence adduced at an additional hearing in the case, unanimously reaffirmed its original finding that the employees had been discharged *Davis Furniture Co*, 100 NLRB No 158 (decided September 1952), Chairman Herzog dissenting

Member Peterson who was appointed to the Board after the original decisions in both cases, did not participate in the supplemental decision in either case

3. Nor may a group of employers lock out their nonstriking employees to counteract a strike called at the plant of one employer after an impasse has been reached in bargaining between the union and the employer group.

4. However, an employer may shut down a plant when it is made necessary by particular operational difficulties created by an impending strike.[20]

5. When a genuine deadlock has been reached after bargaining in good faith, an employer may put into effect the terms he has offered to the employees' representative.

6. An employer may shut down a plant, or otherwise terminate employment, or lay off employees for genuine business reasons, or "any reason, or for no reason, so long as the purpose or necessary effect of his conduct is not to interfere with the rights of employees protected by the Act." [21]

7. If the employees strike, the employer may replace the strikers.

The majority opinion rejected the theory that, because the terms "strike" and "lockout" are mentioned together in various sections of the act,[22] the law equates lockouts with strikes as "correlative economic powers." The Board pointed out that "in each instance . . . where 'strike' and 'lockout' are linked, it is where particular strike activity is proscribed as unlawful. . . . We find nothing in the Act which equates *lawful* strikes and lockouts." [23]

The Board said:

> It is not disputed that a discharge of the Dealers' employees in this case would have violated Section 8 (a) (1) and (3) of the Act, the only question here being whether the temporary layoff in this case likewise violated the Act But neither Section 8 (a) (1) nor Section 8 (a) (3) of the Act draws any distinction between a discharge and a layoff, but proscribes any interruption of the employment relation when directed against protected concerted activity No limitations of this broad proscription is warranted unless clearly required by other sections of the Act.
>
> There is no such clear requirement elsewhere in the Act Section 8 (d) (4) does not expressly sanction lockouts. While it is arguable that, by forbidding resort to lockout under certain circumstances, it impliedly recognizes a right to lockout under other circumstances, such an implication is not sufficient to

[20] *Morand Brothers*, citing *Betts Cadillac Olds, Inc*, 96 NLRB 268 where the Board held that a group of automobile repair shops were justified in shutting down because of fears that customers' cars would be tied up in their shops indefinitely in a partially dismantled state when the union (1) had obtained an authorization to strike all shops, (2) had struck at two shops, (3) declined to say when or where it would call a strike next, and thus kept the employers off balance with a threat of monetary strike hanging over their heads See also *International Shoe Co*, 93 NLRB 907 (1951), where the Board held unanimously that an employer was justified in shutting down an entire plant when employees of one department engaged in intermittent work stoppages See Sixteenth Annual Report, pp 175, 178

[21] *Morand Brothers*, cited above

[22] Sections 8 (d) (4), 203 (a) 206, and 208 (a).

[23] *Davis Furniture*, cited above

overcome the positive and sweeping language of Section 8 (a) (3) and (1). Similarly, other provisions of the Act *curtailing* resort to lockouts (Sections 203 (c), 206, and 208 (a)) do not sufficiently demonstrate congressional intent to strike down the safeguards to employees' rights in Section 8 (a) (3) and (1).[24]

The Board also said:

. . . it seems to us significant that, while Section 13 of the Wagner Act (re-enacted without change in the amended Act) *expressly* preserves the right to strike, there is neither in the original nor in the amended Act any similar express saving of the right to lock out employees. If Congress felt that Section 13 was needed to dispel any implication that the Wagner Act, although in terms regulating *employer* conduct only, curtailed the right of employees to strike, it would seem that there would have been more reason for the *express* reservation of the alleged paralleled right of employers to lockout, had Congress intended to preserve that right. The absence of such a provision, therefore, argues strongly against such an intent.[25]

In holding bargaining lockouts to be illegal, the Board said further:

. . . the mass layoff of union members in this case, depriving them of their means of livelihood for an indefinite period, in order to counteract the strike was necessarily designed to interfere with, restrain, and coerce the employees in the exercise of their right to strike, and to discourage membership in the Union which called the strike. Moreover, even in cases where there was a lack of an intent to interfere with employees' rights guaranteed by the Act, the principal has long been recognized that such absence does not excuse conduct which does in fact interfere.

The fact that the strike in this case threatened to impair the bargaining position of the Dealers or that the Dealers acted to protect their bargaining position affords no basis for distinguishing this strike from any other work stoppage permitted by the Act. It might be urged with equal force that a strike called by a union for recognition or to protest a grievance imperils the bargaining position of the employers as, in each case, the purpose of the strike is, by its very nature, to undermine the employer's resistance to the union's demands. It is not contended, however, that the employer in those cases would be privileged to defend his bargaining position (or "counteract" the strike) by a mass layoff of union members not involved in the strike. The only other basis suggested for distinguishing the strike in this case from other strikes is that it occurred after an impasse in bargaining. But, obviously, a strike does not cease to be a concerted activity merely because it occurs after an impasse, and any layoff of employees to counteract such a strike interferes with concerted activities to the same degree as if the strike had occurred before the impasse. . . .

The suggestion that the Union had a whole arsenal of weapons from which to choose is utterly unrealistic. When the impasse occurred, the Union had only *one* effective weapon—its ancient and protected right to strike. Nor is the notion correct that strikes and lockouts are "commensurate weapons" in collective bargaining and that without the right of lockout an employer has no comparable economic weapon.

Faced with an impasse in bargaining, the employer still retains control of the terms of employment so long as production continues. He is free to continue

[24] *Davis Furniture,* cited above.
[25] *Morand Brothers,* cited above.

the existing terms without any contract, or, indeed, unilaterally to institute any previously proposed changes in those terms. These courses of action are obviously not available to the union. If the union resorts to an economic strike, the employer may lawfully meet the challenge by replacing the strikers. Thus, he may continue to operate on his own terms without any diminution of profits while the strikers suffer partial, if not complete, loss of wages. Even if it should become necessary for the employer to shut down because of the strike, he is generally in no worse position than the strikers. Both adversaries in the conflict would in such a case be under the same economic pressure to terminate the strike and restore the flow of wages and profits. We see no reason in equity or justice to give to employers the privilege of extending the hardship and deprivations of industrial conflict to areas not directly involved, nor could such a privilege be squared with the basic policy of the statute to minimize industrial strife and interruptions to commerce.[26]

Chairman Herzog, dissenting, said:

. . . in this context, the majority errs in adhering to the view that this temporary lockout, motivated by a desire to counteract a union-directed stoppage rather than by an intent to interfere with concerted activity, constituted a violation of the amended Act.

Here the parties had reached an impasse, and it was the Union which took the initiative in selecting the particular weapons of economic combat. The Employers did no more than defend themselves with commensurate weapons; they refrained from using the ultimate, and to my mind unlawful, instrument of discharge. I am unwilling to infer a wish to destroy from an attempt to resist, to do battle, and to win.[27]

In another case, the Board held that an employer violated section 8 (a) (3) by refusing to reopen his plant after a strike and by assigning elsewhere the work ordinarily performed by the strikers.[28] The Board had found from the evidence that opposition to the striking union, rather than the alleged economic reasons and difficulties, was the cause of the employer's action. However, the Board in this case also held that the employer was justified on the day of the strike in transferring urgently needed work to another plant for completion and in dismissing nonstriking employees insufficient in number to continue operations.

g. Other Forms of Discrimination

The most common form of unlawful discrimination is outright discharge of employees who have engaged in protected employee activities.[29] In addition, a "constructive" discharge occurs when an employer, for discriminatory reasons, induces or forces an employee to resign by assigning him to undesirable work. Thus, in one case, the Board found that the transfer of an employee, because he had

---

[26] *Davis Furniture,* cited above.

[27] *Davis Furniture,* cited above.

[28] *Wallick & Schwalm Co.,* 95 NLRB 1262.

[29] See for instance, *Mooresville Mills,* 99 NLRB No. 96; *Meyer & Welch,* 96 NLRB 236; *Reeder Motor Co,* 96 NLRB 831; *Calera Mining Co.,* 97 NLRB 950, Chairman Herzog dissenting.

filed a grievance, from the night shift to the day shift was unlawful, and that his later resignation constituted a discriminatory discharge where he resigned because the transfer prevented him from completing his G. I. training course.[30] Similarly, an employee with 20 years of service was held to have been unlawfully compelled to quit when, because he had engaged in organizational activities, he was transferred to work for which he was physically unfit because of a hernia operation.[31] In another case, the Board sustained the trial examiner's conclusion that the continued harassment of a long-time employee because of her preelection organizing activites was the cause of her ultimate resignation and constituted a constructive discharge.[32]

Other forms of violations of section 8 (a) (3) during the past year included the layoff of employees for discriminatory reasons,[33] and the refusal to reemploy laid-off employees for like reasons;[34] demotion and transfer of union employees to less desirable jobs, assigning them to split shifts, and effecting other unfavorable changes in their working hours.[35] In one case, an employee was denied stock privileges to which employees with 25 years of service were entitled, because the employee participated in a strike during his twenty-fifth service year.[36]

Discrimination, in order to violate section 8 (a) (3), need not be directed against persons who are presently working for the employer. Thus the Board, with court approval, has consistently held that an employer cannot lawfully reject applicants for employment because of of their union membership[37] or their former union activities.[38]

h. Rights of Supervisors

Section 2 (3) of the Act specifically excludes supervisors from the class of employees who are entitled to the Act's protection. During the past year, the Board had to determine whether this statutory exemption applies to applicants for supervisory positions or whether such applicants are protected by the prohibitions of section 8 (a) (3) against discrimination.[39] A majority of the Board held in this case that

when Congress amended the Act to exclude supervisors from the definition of the term "employee," it thereby denied to those seeking and to those holding

---

[30] *Todd Shipyards Corp*, 98 NLRB 814

[31] Roxboro Cotton Mills, 97 NLRB 1359

[32] *Saxe-Glassman Shoe Corp*, 97 NLRB 332

[33] *American Bottling Co*, 99 NLRB No 59, *Cashman Auto Co*, 98 NLRB 832; *Stratford Furniture Corp*, 96 NLRB 1031

[34] *Mac Smith Garment Co*, 97 NLRB 842

[35] *Advertising Company, Inc*, 97 NLRB 604; *S S Coachman and Sons*, 99 NLRB No 102

[36] *United Shoe Machinery Corp*, 96 NLRB 1309

[37] *Akin Products Co.*, 99 NLRB No 39

[38] *Textile Machine Works*, 96 NLRB 1333, *Saxe-Glassman Shoe Corp*, 97 NLRB 332

[39] *Pacific American Shipowners Association*, 98 NLRB 582, Member Murdock dissenting

supervisory jobs the protection of Section 8 (a) (3). To hold that the protection of this extends to the former but not to the latter would be to undo at the very threshold of the relationship the exempt status accorded to supervisors by Congress. For it would result in the congressional regulation of the very act of recruitment of such supervisory personnel.

The Board made it clear that this construction of the statutory exemption of supervisors is not prejudicial to the right of rank-and-file employees to be considered for promotion on a nondiscriminatory basis, and that an employer's refusal to promote an employee to a supervisory position because of his participation in protected activities would clearly violate section 8 (a) (3). However, the Board unanimously held that an applicant for a nonsupervisory job is protected against discrimination even though he was previously employed in a supervisory capacity by the same employer.

4. Discrimination for Filing Charges or Testifying

Section 8 (a) (4) 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. In two cases in which this section was invoked during the past year a violation was found.

In one case, the Board adopted the trial examiner's finding that the complaining employee was refused reinstatement to her former job because she had filed charges against the employer alleging that her discharge was discriminatory.[1] In the second case, the complaining employee was discharged during the course of the hearing in which he testified against the employer.[2]

5. Refusal To Bargain in Good Faith

The act requires that an employer bargain in good faith with the representative selected by a majority of employees in a unit appropriate for collective bargaining. Section 8 (a) (5) makes it an unfair labor practice for an employer to refuse to do so.

a. Majority Status of Representative

To prove a violation of section 8 (a) (5), it must first be shown that the union was the statutory representative of an appropriate unit of the employees for whom it sought to bargain. Thus, it must either appear that, at the time of the employer's alleged refusal to bargain, a

[1] *Mooresville Mills*, 99 NLRB No 96.
[2] *Meyer & Welch, Inc*, 96 NLRB 236

valid Board certificate of the union's majority status was outstanding,[1] or other evidence must be submitted which shows that a majority [2] of the employees in the unit had actually designated the union as their representative. Such evidence is usually in the form of union-authorization cards.[3] It is sufficient that such cards designate the union as representative of the signing employee—they need not be evidence of membership [4] or even binding applications for membership.[5] In determining the complaining union's majority, authorization cards may be counted without complete signature identification if it is shown that the cards were received from the employees in question.[6] And union-application cards have been counted even though it was alleged that the applying employees signed up only because of the union's possibly incorrect statement that it already had a majority.[7] In the Board's opinion, "the testimony of a signer as to his subjective state of mind at the time of signing cannot operate to overcome the effect of his overt action in having signed."

The majority status of a certified union ordinarily is presumed to continue for 1 year in the absence of special or unusual circumstances. The Board has stated:

> In the interest of industrial stability, this Board has long held that, absent unusual circumstances, the majority status of a certified union is presumed to continue for 1 year from the date of the certification. In practical effect this means two things: (1) That the *fact* of the union's majority during the certification year is established by the certificate, without more, and can be rebutted only by a showing of unusual circumstances; and (2) that during the certification year an employer cannot, absent unusual circumstances, lawfully predicate a refusal to bargain upon a doubt as to the union's majority, even though that doubt is raised in good faith.[8] [Footnotes omitted.]

In applying this rule, the Board has held that an employer's refusal to bargain during the certification year could not be excused on the ground that a petition for the union's decertification had been filed,[9] or that a majority of the employees in the unit had signed a "petition" repudiating the union.[10] Nor was the union's failure after a strike to request resumption of negotiations for 4 months held sufficient to overcome the presumption of the union's continuing majority status.[11] In

---

[1] *North Carolina Granite Corporation*, 98 NLRB 1197.

[2] See *Eaton Brothers Corp.*, 98 NLRB 464, where the Board rejected the trial examiner's conclusion that "a scant majority of one" was insufficient evidence that the union had a clear majority.

[3] See, for instance, *John H. Barr Marketing Co.*, 96 NLRB 875.

[4] *Stafford Operating Company*, 96 NLRB 1217.

[5] *Geigy Company, Inc*, 99 NLRB No. 126.

[6] *Dolores, Inc.*, 98 NLRB 550.

[7] *E. H. Sargent and Co.*, 99 NLRB No. 156.

[8] *Celanese Corp. of America*, 95 NLRB 664, Members Houston and Murdock dissenting in other respects. See also *L. L. Majure Transport Co.*, 95 NLRB 311.

[9] *Poole Foundry and Machine Co.*, 95 NLRB 34; enforced 192 F. 2d 740 (C. A. 4).

[10] *L. L. Majure Transport Co.*, 95 NLRB 311; *Mid-Continent Petroleum Corp.*, 99 NLRB No. 40 (repudiation by letter).

[11] *Shannon & Simpson Casket Co*, 99 NLRB No. 62.

this same case, the Board rejected the employer's contention that certain changes in the employer's operations sufficiently affected the union's majority status to justify a refusal to bargain. Similarly, in a case in which an employer in a seasonal industry claimed that it was under no obligation to bargain during a period when the employees were not actually working, the Board held:

> [O]nce employees have designated their bargaining representative in accordance with the Act, recognition of that representative during the certification year is not a matter which an employer may or may not grant when and as he chooses.[12]

In still another case,[13] the Board adopted the trial examiner's conclusion that the bona fide transfer of the employer's plant did not destroy the effectiveness of the union's previous certification. The examiner said:

> [A] certification has been held to continue, and the presumption of the Union's majority within the certification year has been held valid, even as to a bona fide transferee. The theory of the cases so holding is that the certification is not limited merely to the particular employer operating the business at the time of its issuance, but runs with the "employing industry." [14]

The continuation of a union's majority status will be similarly presumed after the issuance of a Board order requiring the employer to bargain with the union or after the voluntary settlement of refusal-to-bargain charges.[15]

In the case of a union whose certificate has run for more than 1 year, or whose majority status was never certified, the employer's refusal to bargain is not unlawful if it is based on his good faith belief that the union no longer represents a majority of his employees. A majority of the Board stated the applicable principles in the following language:

> [A]fter the first year of the certificate has elapsed, though the certificate still creates a presumption as to the fact of majority status by the union, the presumption is at that point *rebuttable* even in the absence of unusual circumstances. Competent evidence may be introduced to demonstrate that, in fact, the union did not represent a majority of the employees at the time of the alleged refusal to bargain.[16]

The majority further ruled that

> A direct corollary of this proposition is that after the certificate is a year old, as in cases where there is no certificate, the employer can, without violating the

---

[12] *Wade & Paxton,* 96 NLRB 650

[13] *Krantz Wire & Mfg. Co.,* 97 NLRB 971.

[14] The trial examiner, in support of his conclusions, cited the following cases: *Howell Chevrolet Co.,* 95 NLRB 410; *Squirrel Brand Co.,* 96 NLRB 179.

[15] *Poole Foundry and Machine Co.,* 95 NLRB 34.

[16] *Celanese Corp. of America,* 95 NLRB 664.

Act, refuse to bargain with a union on the ground that it doubts the union's majority, provided that the doubt is in *good* faith.[17] [Footnotes omitted.]

As to the question of an employer's good faith, the majority pointed out that while "the totality of all the circumstances involved in the particular case" must be considered, good faith will not be found unless there was "some reasonable ground for believing that the union had lost its majority status since its certification." Moreover, good faith will not be found if the issue of the union's majority was raised by the employer "in a context of illegal antiunion activities, or other conduct by the employer aimed at causing disaffection from the union or indicating that the employer was merely seeking to gain time in which to undermine the union."

Applying these principles, the majority in the *Celanese* case found that the employer's refusal to bargain was motivated by a good faith doubt as to the union's majority and consequently was not unlawful. Noting that the employer had engaged in no conduct inconsistent with good faith, the Board's opinion also considered it significant that, when the employer refused to bargain, its labor complement had been reduced and the entire composition of the bargaining unit had been changed following an economic strike; a substantial number of the employees in the unit were not members of the union when the strike began; and, upon the termination of the strike, the work force consisted to a large extent of strike replacements and strikers who had crossed the picket line to return to work. The majority opinion noted that the employer had twice been advised by the union that its members would not cross the picket lines.[18] Finally, the majority observed that while under different circumstances the employer's failure to ask the Board to resolve the majority issue in an election might have been evidence of bad faith, it did not have this significance in the circumstances of the present case.

In a later case involving an uncertified union,[19] the Board similarly held that the employer's refusal to bargain was lawful. The Board noted that the employer had bargained in good faith to an impasse and had reasonable grounds for believing that the union lost its ma-

---

[17] Members Houston and Murdock, on the other hand, were of the opinion that, while the majority status of a certified union becomes subject to challenge after a year, the Board must nevertheless determine whether the circumstances relied on by the challenging employer are sufficient to rebut the still operative presumption of the union's status, and that the good faith of the employer in questioning the union's majority is immaterial

[18] The majority observed, however, that, standing alone, the abandonment of an unsuccessful strike would not necessarily establish disavowal of the striking union, because employees may well abandon a strike for wholly unrelated personal reasons

[19] *Old Line Life Insurance Co , of America*, 96 NLRB 499

jority during the ensuing economic strike, when more than half of the strikers were lawfully replaced.[20]

An employer who entertains a bona fide doubt as to the majority status of a union which seeks to bargain on behalf of his employees may insist that the union prove its majority in a Board-conducted election. However, if the insistence on an election is motivated not by a legitimate doubt as to the union's status but by a desire to forestall collective bargaining, the employer's refusal to enter into negotiations violates section 8 (a) (5) if the union in fact has a majority in the bargaining unit.[21]

The Board has consistently held that the commission of other unfair labor practices immediately preceding, or at the time of, a refusal to bargain precludes a finding that the employer's refusal was based on a good faith doubt regarding the union's majority. Thus, the Board found an unlawful refusal to bargain where, upon receipt of the union's request for recognition, the employer promptly embarked on an antiunion campaign, discharging an employee because of his union membership and activity, interrogating other employees, threatening them with reprisals if they joined the union or selected it as their representative, and promising benefits if they rejected the union.[22] In another case, a panel majority similarly held that the employer's insistence on a Board election clearly was not motivated by any good faith doubt of the union's majority, but by a desire to gain time within which to destroy any majority that the union might have had.[23] Here, again, the employer questioned employees regarding their union adherence, threatened them with reprisals, held out promises if they abandoned the current strike, and refused unconditionally to deal with union officials or to reemploy strikers.[24]

The Board has also continued to hold that an employer cannot legally refuse to bargain with a union whose loss of majority is attributable to the employer's own unfair labor practices. Thus, a refusal to bargain could not be excused on the basis of resignations from the union which the employer had brought about by economic concessions following direct dealings with the employees, in violation of the em-

---

[20] Members Houston and Murdock in view of their dissent in the *Celanese* case (footnote 17), noted that the case was distinguishable because there the union's certification gave rise to a presumption of its continued majority which had not been rebutted, and because, in their opinion, the majority issue in the *Celanese* case was not raised in good faith

[21] *Beaver Machine & Tool Co*, 97 NLRB 33 See also Sixteenth Annual Report, p 190 *The Jackson Press, Inc*, 96 NLRB 897 Unlike Member Reynolds, who dissented in this respect, the panel majority held that the union's failure to offer proof of its majority by other means was immaterial since such an offer obviously would have been a futile gesture

[22] *Howell Chevrolet Co*, 95 NLRB 410 See also *Squirrel Brand Co*, 96 NLRB 179

[23] *The Jackson Press, Inc*, *supra*, Member Reynolds dissenting

[24] But see *Beaver Machine & Tool Co, Inc*, 97 NLRB 33 where the Board held that the circumstances did not justify a finding that the employer's request for an election was made in bad faith, although the employer had given support to a favored employee organization and had warned an employee not to talk about another union

ployer's duty to bargain with their representative.[25] The employer contended in this case that the employees were dissatisfied with the union and had revoked its authority before their demands were met. The Board said:

> If a recently selected bargaining representative is to be divested of its authority, we believe it reasonable to require that the withdrawals of such authority be evidenced by clear and unambiguous conduct and with the degree of certainty required to establish the original designation, for surely the necessary standards of proof in both situations should be the same.

An employer likewise cannot legally refuse to bargain with a union which has lost its majority in the bargaining unit by reason of the discriminatory discharge of employees.[26] And where a union has lost its majority following the employer's unlawful refusal to bargain, the loss of majority will be attributed to the employer's conduct[27] and cannot be asserted by him as a defense to a bargaining order.[28]

However, where the bargaining agent's loss of majority was not caused by the employer's unfair labor practices but was solely the result of replacements and defections during an unsuccessful economic strike, the employer's subsequent refusal to bargain was held lawful.[29]

b. Appropriate Unit

An employer is not obligated under the act to bargain with a union unless it seeks to bargain for employees in an appropriate unit.[30] Consequently, the request of a union to bargain for a unit which is clearly inappropriate need not be honored.[31] However, as in the cases involving the question of the bargaining agent's majority status, the employer cannot legally refuse to bargain in the absence of a good faith doubt regarding the appropriateness of the unit specified in the union's bargaining request.[32]

c. The Request To Bargain

Although a union may enjoy majority status in an appropriate unit, the employer's obligation to bargain does not normally become

---

[25] *Reeder Motor Co.*, 96 NLRB 831 See also *Top Mode Mfg. Co.*, 97 NLRB 1273

[26] *Stafford Operating Co.*, 96 NLRB 1217. See also *John H. Barr Marketing Co*, 96 NLRB 875.

[27] *Gittlin Bag Co*, 95 NLRB 1159.

[28] See *Franks Brothers Co* v. *N. L R. B.*, 321 U S. 702.

[29] *Harcourt and Co., Inc*, 98 NLRB 892, Member Styles dissenting on other grounds. But see *John H. Barr Marketing Co*, 96 NLRB 875, where an employer's refusal to accept the unconditional offer of economic strikers to return to their jobs as a group, prior to the hiring of replacements, was held to fix their status as employees and to establish the union's majority status.

[30] For a discussion as to what constitutes a unit appropriate for bargaining purposes, see pp. 55–93.

[31] See, for instance, *International Broadcasting Corp.* (*KWKH*), 99 NLRB No 25, Members Houston and Styles dissenting.

[32] See *Krimm Lumber Co.*, 97 NLRB 1574; *Graham County Electric Cooperative, Inc.*, 96 NLRB 684. Cf. *International Broadcasting Corp.*, 99 NLRB No. 25.

operative until a "clear and unequivocal" request to bargain is made by the majority representative.[33]

The request to bargain need not be formal, nor does it have to be made in any particular manner. It is sufficient that the employer is clearly informed of the employees' desire to enter into bargaining negotiations through their designated bargaining agent. Thus, a letter advising the employer that the "Union stands ready to negotiate a written agreement with [the employer] at a time and place that is most convenient to [the employer]" was held to be a clear request to bargain.[34] And a union's telegraphic request that the employer meet with it concerning wages, was held a sufficient request where the employer had previously been notified of the union's majority status.[35]

However, a letter merely requesting an employer to agree "to a date and place of meeting for the purpose of discussions relative to certification . . . by the [Board]" was held not to be a clear and unequivocal request to bargain on which a finding of refusal to bargain could be predicated.[36] Nor was a union's casual inquiry at a grievance meeting why the employer refused to rehire the complaining employee held a clear request to bargain concerning the reinstatement of the employee.[37]

While the duty to enter into negotiations with the known majority representative of the employees does not arise until an appropriate bargaining request has been made, the employer nevertheless may not ignore that known representative and deal with the employees directly until such a request is received. The Board held:

> Once a union has been designated as a statutory representative and an employer is put on notice of the union's majority status, the Act not only imposes upon him the affirmative duty to bargain collectively upon request but requires him to abstain from subverting the designated representative by direct dealings with individual employees. Moreover, . . . the obligation to treat with no one other than the known designated representative is applicable even though there is no specific request by the representative to bargain.[38]

d. Extent of the Duty To Bargain

The employer's duty to negotiate with the majority representative of his employees is specifically defined in section 8 (d) of the act. That section provides that "to bargain collectively is the performance

[33] *Wafford Cabinet Co.*, 95 NLRB 1407

[34] *Louisville Container Corp*, 99 NLRB No. 10. See also the intermediate report in *Stafford Operating Co.*, 96 NLRB 1217.

[35] *John H. Barr Marketing Co*, 96 NLRB 875.

[36] *Wafford Cabinet Co.*, 95 NLRB 1407. See also *Eaton Brothers Corp.*, 98 NLRB 464, where the Board sustained a trial examiner's finding that a union's request for an interim agreement, whereby the employer would agree to a consent election to be conducted by the Board and to refrain from certain conduct proscribed by the act, was not a request to bargain but an effort to secure a speedy determination of the union's majority status.

[37] *Globe-Union, Inc.*, 97 NLRB 1026.

[38] *Reeder Motor Co.*, 96 NLRB 831.

of the mutual obligation of the employer and the representative to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment." However, section 8 (d) also provides that the obligation to bargain "does not compel either party to agree to a proposal or require the making of a concession." [39]

The duty to bargain is a continuing duty which is not suspended by the filing of unfair labor practice charges.[40] Nor is an employer relieved of his bargaining obligation during a lawful strike.[41] For, the Board has observed, quoting a court, "[i]f in the presence of a strike an employer could avoid the obligation to bargain by declaring further efforts to be useless, the Act would largely fail of its purposes." [42] And in one case the Board held that the temporary cessation of operations in a seasonal industry did not entitle the employer to refuse to bargain concerning the reopening of the plant, and the terms and conditions on which it should be reopened.[43]

(1) Subject Matter of Bargaining

The act requires employers to bargain with the representative of their employees "with respect to wages, hours, and other terms and conditions of employment." [44] As in previous years, the Board was again called upon to determine whether a variety of subjects came within this area of mandatory bargaining.

One such case presented the question of whether a year-end or Christmas bonus, which the employer had granted regularly over a period of 12 years, constituted wages, or whether the bonus was a gift regarding which the employer did not have to bargain with the union.[45] A majority of the Board held the bonus in question constituted an integral part of the employer's wage structure and was therefore a bargainable matter. The Board observed that the regularity of bonus payments over a long period justified an expectation that the payments would be continued as part of the employees' wages. Moreover, the Board held, the sharp reduction in the bonus after the negotiation of a retirement plan indicated that the employer had

---

[39] See *Harcourt and Co.*, 98 NLRB 892; *Reed & Prince Mfg Co.*, 96 NLRB 680.

[40] *Jones Furniture Mfg. Co, Inc*, 98 NLRB 1302. *I. B. S. Mfg Co*, 96 NLRB 1263, *Union Mfg Co*, 95 NLRB 792

[41] *United States Cold Storage Corp*, 96 NLRB 1108. See also *Pecheur Lozenge Co., Inc*, 98 NLRB 496; *National Gas Co*, 99 NLRB No 44

[42] *N L R. B v Reed & Prince Mfg Co*, 118 F 2d 874, 885 (C A 1), cert. denied 313 U S. 595.

[43] *Wade & Paxton*, 96 NLRB 650

[44] Sec 8 (d) See also sec. 9 (a).

[45] *Niles-Bement-Pond Co*, 97 NLRB 165, Member Murdock dissenting Enforced, November 10, 1952 (C A 2), 31 LRRM 2057

considered the bonus as a wage enhancement which was partly supplanted by the new retirement plan. The majority opinion concluded:

> Of course an employer is free to make a genuine Christmas gift to his employees The realities of the industrial world establish, however, that a year-end bonus which has become part of the employees' wage expectance, though it may be paid at Christmas and therefore carry with it the Christmas spirit of giving, amounts fundamentally to deferred compensation for services performed during the preceding year. We are convinced, therefore, that the policy of the Act to encourage collective bargaining in the interest of industrial peace is best served by requiring an employer to negotiate on the subject matter of such a bonus. The Christmas spirit, as we conceive it, does not stop short of the bargaining table, for bargaining in good faith is in itself a continuing effort to achieve good will between an employer and his employees [Footnotes omitted.]

In another case, the Board reaffirmed its position that company housing and the rental to be charged therefor are proper subjects of collective bargaining, where such housing is an integral part of the employment relationship.[46] The Board in this case rejected the employer's contention that it was not required to bargain regarding its housing units because no more than a landlord-tenant relationship was involved. The Board gave weight to the following facts: The company's housing units were regarded as plant facilities and were expressly reserved for employee occupancy; subleasing to anyone not employed by the company was prohibited; the lease authorized the company to withhold from wages, the rental and utility service charges; occupancy was conditioned on the tenant's continued employment and could be terminated upon 1 day's notice after the tenant ceased to work for the employer. The fact that only a portion of the employees lived in company houses was unimportant, the Board said, because "the act vests in a bargaining representative the authority to bargain for *each and all* of the employees in an appropriate unit, and correspondingly requires an employer to bargain on matters that affect only a portion of the employees in the unit, regardless of what that portion may be."[47]

Other matters held to be legitimate subjects of bargaining included the granting of stock bonuses to employees;[48] the reemployment of employees displaced by the discontinuance of a department;[49] and contract provisions for the checkoff of union dues.[50]

(2) Effect of Contract—Waiver—Impasse

Generally, the employer's duty to bargain continues even after negotiations with the union have resulted in a contract. However, this

[46] *Bemis Bro. Bag Co*, 96 NLRB 728. See also Sixteenth Annual Report, p. 195.
[47] See *Weyerhaeuser Timber Co.*, 87 NLRB 672, 674 (1949)
[48] *United Shoe Machinery Corp., Inc*, 96 NLRB 1309.
[49] *National Gas Co.*, 99 NLRB No 44
[50] *Reed & Prince Mfg. Co.*, 96 NLRB 850, Member Reynolds dissenting, found that the employer had bargained in good faith

continuing duty to negotiate does not extend to matters covered by the contract or at least fully discussed during the negotiations,[51] or matters regarding which the bargaining representative has clearly and unambiguously waived[52] its right to negotiate during the contract term. In one case, the Board dismissed charges that the employer unlawfully refused to bargain on the complaining union's demand for a union-shop arrangement, because the union's current contract contained an express written waiver releasing the employer from the obligation to bargain on the subject of union security.[53] However, in another case, the Board declined to find that the complaining union had contractually waived its right to obtain data necessary to the effective administration of its contract.[54] In the Board's opinion, the union could not be held to have intended to waive this right by agreeing to a contract clause requiring the employer to furnish certain information other than the requested data, or by a further clause stating that "This agreement contains the entire agreement between the parties and no matters shall be considered which are covered by the written provisions stated herein." Nor may the mere omission from a current contract of a controverted matter be considered a waiver by the union of its right to bargain on the particular subject, the Board held in another case.[55]

However, the Board has also held that, in the face of a genuine impasse,[56] the parties are not required to "engage in futile bargaining."[57] But once the impasse is broken by a strike, for instance, the employer's duty to bargain is the same as before the impasse.[58]

e. Individual Bargaining and Unilateral Action

"Once a union has been designated as a statutory representative and an employer is put on notice of the union's majority status, the Act not only imposes on him the affirmative duty to bargain collectively upon request but requires him to abstain from subverting the designated representative by direct dealings with individual employees."[59] At such a time, the employer is likewise required to refrain from unilaterally granting the employees concessions or making changes in their conditions of employment in disregard of the em-

[51] See Sixteenth Annual Report, p. 196.
[52] See Sixteenth Annual Report, p. 197.
[53] *Phelps Dodge Cooper Products Corp.*, 96 NLRB 982.
[54] *Leland-Gifford Co.*, 95 NLRB 1306.
[55] *Bemis Bro. Bag Co*, 96 NLRB 728.
[56] For the extent to which an employer may act unilaterally during an impasse, see pp. 167–168.
[57] *United States Cold Storage Corp*, 96 NLRB 1108; *Harcourt and Company, Inc.*, 98 NLRB 892.
[58] *United States Cold Storage Corp.*, 96 NLRB 1108.
[59] *Reeder Motor Co.*, 96 NLRB 831.

ployee's exclusive representative.[60] Applying these general principles, the Board found during the past year that employers violated their bargaining duty under section 8 (a) (5) by: Inviting employees to deal directly with management as to grievances,[61] negotiating with a group of employees and granting their demands,[62] unilaterally establishing and announcing piecework rates, and putting into effect a sick benefit plan, a vacation program, and a general wage increase.[63]

Section 8 (a) (5) was held similarly violated by employers who, without consultation with the employees' representative, granted general wage increases;[64] changed job descriptions and revised the rate of pay for certain employees;[65] changed production standards;[66] and revised year-end bonus payments.[67]

However, direct negotiations with employees and unilateral employer action in matters subject to collective bargaining have been held not to be illegal where the employer's action was clearly not motivated by a desire to circumvent the union and to undermine its authority. Thus, the granting of concessions after direct negotiations with employees was held proper where the employer did not take action until he was assured by the employees that the union approved of the procedure, and where the union did not object to the negotiations which it knew were in progress.[68] Similarly, no violation of section 8 (a) (5) was found where an employer negotiated directly with strikers who had taken the initiative in arranging for a meeting to settle the differences which had caused the strike.[69] The meeting in this case was attended by the union's officers and members of the bargaining committee, so that the employer had reason to believe that it was dealing with the union.[70]

In one case, the Board dismissed refusal-to-bargain charges based on the employer's unilateral change in a contract piece rate applicable to a particular employee.[71] The Board held that the occurrence

---

[60] See, for instance, *Top Mode Mfg. Co.*, 97 NLRB 1273.

[61] *Union Mfg Co.*, 95 NLRB 792.

[62] *Reeder Motor Co*, 96 NLRB 831.

[63] *Top Mode Mfg. Co.*, 97 NLRB 1273.

[64] *Shannon & Simpson Casket Co.*, 99 NLRB No. 62; see also *Stafford Operating Co.*, 96 NLRB 1217.

[65] *Continental Oil Co.*, 95 NLRB 358.

[66] *I. B. S Mfg. Co.*, 96 NLRB 1263.

[67] *Niles-Bement-Pond Co.*, 97 NLRB 165.

[68] *Leader News Co, Inc*, 98 NLRB 119.

[69] *Harcourt and Co., Inc.*, 98 NLRB 892 (panel majority, Member Styles dissenting).

[70] See also *Wood Mfg Co*, 95 NLRB 633, Member Houston dissenting, where a Board majority held that, while an employer violated section 8 (a) (1) by granting a wage increase without the union's consent, he did not also violate section 8 (a) (5) since the union had twice failed to appear at scheduled bargaining conferences. And see *L. L. Majure Transport Co.*, 95 NLRB 311, where the Board held that the granting of certain wage and vacation concessions did not constitute a refusal to bargain when the union had been notified of the proposed changes. However, the Board in this case pointed out that the employer's determination to make changes immediately after the union conceded the breakdown in negotiations indicated that the employer did not bargain in good faith.

[71] *Crown Zellerbach Corp.*, 95 NLRB 753.

did not justify the issuance of a bargaining order, because the employer's conduct apparently was not "part of a conscious campaign . . . to undermine the authority and prestige of the Union . . . or to evade the [employer's] obligation to recognize and deal with the Union." Thus, the Board observed, the employer discussed the matter with the union immediately after it protested; in the past, similar isolated disputes were amicably settled between the employer and the union. Moreover, the union filed charges without having made an attempt to utilize the contractual grievance and arbitration procedures which were available for the handling of matters involving interpretation and administration of the union's contract. As to the failure of the parties to resort to contractual procedures, the Board said:

> Indeed, the Board has frequently stated that the stability of labor relations which the statute seeks to accomplish through the encouragement of the collective bargaining process ultimately depends upon the channelization of the collective bargaining relationship within the procedures of a collective bargaining agreement. By encouraging the utilization of such procedures in this case, we believe that statutory policy will best be effectuated. Affirmative Board action would on the other hand put the Board in the position of policing collective bargaining agreements, a role we are unwilling to assume.[72]

However, in dismissing the refusal-to-bargain charge, the Board stated that it was not determining whether the employer's conduct would, under other circumstances, warrant the issuance of a remedial order.

(1) Effect of Impasse in Bargaining

While an employer may not undercut the representative of the employees by making unilateral changes in the conditions of employment, such changes have been held permissible in some situations in which employer and union bargained to an impasse with no immediate prospect of agreement on the terms of a contract. However, the impasse rule does not apply if the changes effected by the employer have never been the subject of discussion during the preceding bargaining conferences.[73] Nor does it apply where the impasse is the result of the employer's bad faith rather than genuine bargaining negotiations.[74] The Board has also made it clear that the employer's right to make available to employees economic benefits at a time when negotiations regarding them are deadlocked may not be exercised in a manner which might tend to disparage the bargaining agent or to undermine its

---

[72] See also the intermediate report affirmed in *Globe-Union, Inc.*, 97 NLRB 1026, where the trial examiner held that unilateral action not inconsistent with the terms of a collective bargaining agreement did not violate the act.

[73] *I. B. S. Mfg Co*, 96 NLRB 1263

[74] *Reed & Prince Mfg. Co.*, 96 NLRB 850, Member Reynolds dissenting as to the employer's bad faith in bargaining, *I. B S Mfg Co*, 96 NLRB 1263.

prestige and authority. Thus, the Board observed that, even in the event of a bona fide impasse, it was improper for an employer to announce a disputed wage increase in such a way that the union could not in any way share the credit for it.[75]

In one case in which an employer sought to justify unilateral action on the ground of an impasse, the Board found that no actual impasse existed at the time.[76] Here, the employer had advised the union of its intention to grant a number of merit increases and was in turn informed of the union's protest and its desire to discuss the problem. Without replying, the employer subsequently granted the increases. Under these circumstances, the Board said, no impasse existed on the issue of merit increases and the employer's unilateral action was a violation of its duty to bargain and had the effect of undermining the union.

f. Imposing Improper Conditions

The employer's statutory duty to bargain is violated if, as a condition of bargaining, he insists that the union forego some right guaranteed by the act. This principle was applied in a case in which the employer conditioned the resumption of negotiations, which had come to a halt when the union struck, on the abandonment of the strike.[77] A violation of section 8 (a) (5) was likewise found when an employer backed its demand for a performance bond by canceling a scheduled bargaining conference, and by refusing to continue negotiations until the union had complied with the employer's bond proposal.[78] Nor, the Board held in another case, was it proper for an employer to require that the union's bargaining agents be accompanied by a local committee of the employer's employees.[79] The Board pointed out that the condition imposed by the employer interfered with the employees' right to bargain through representatives of their own choosing and the correlative right of the duly elected bargaining representative to select the individuals who would act in its behalf, free from the employer's control.

However, it is not a violation of the act for an employer to offer a proposal that the bargaining representative waive some statutory right as a basis of discussion. Thus, the Board held in one case that the employer could properly bargain for the retention of contractual provisions permitting promotions without consultation with the union, and that it was likewise proper for the employer to meet the union's rejection of the proposal with a counterproposal that promotions

---

[75] *Reed & Prince Mfg. Co.*, cited above

[76] *Dealers Engine Rebuilders, Inc*, 95 NLRB 1009, enforced on this point C. A. 8, No. 14567, October 23, 1952.

[77] *Pecheur Lozenge Co.*, 98 NLRB 496

[78] *I. B S. Mfg. Co*, 96 NLRB 1263

[79] *Wade & Paxton*, 96 NLRB 650

should be made only after prior discussion with the union but without resort to arbitration, in case of dispute, as proposed by the union.[80]

g. Refusal To Furnish Information

An employer's duty to bargain includes the obligation to furnish the bargaining representative with sufficient information to enable it to bargain intelligently, to understand and discuss the issues raised by the employer in opposition to the union's demands, and to administer a contract. Thus, the Board held in one case that the employer was under a duty to supply the union with a list of employees in the bargaining unit indicating their individual wage rates and job classifications, since the requested information had a direct bearing on the question of wage in equities which was being considered.[81] The Board also held that the employer could not justify its refusal on the ground that it had previously furnished the union data of the same general type. This information, the Board observed, was insufficient for the purpose of current contract negotiations or for policing the administration of any resulting contract.

In another case, the Board found that an employer could not lawfully refuse to furnish information substantiating its claim that it was financially unable to grant the wage increase for which the union bargained.[82] And in one case, a majority of the Board held that the employer was bound to disclose information contained in a survey on which it relied, in asserting that its present salary rates equaled or exceeded rates paid for similar work by other employers.[83]

However, the Board again pointed out that the employer is not required to furnish information in the exact form requested by the bargaining representative, and that it is sufficient that the requested information is made available "in a manner not so burdensome or time-consuming as to impede the process of bargaining." [84] These standards were met, the Board said, where information, substantially identical with that requested by the union, had been furnished on a monthly basis, and where the employer offered to check the accuracy of the data already in the union's possession against its records.

---

[80] *Old Line Life Insurance Co. of America,* 96 NLRB 499. Compare the views of the Supreme Court in the *American National Insurance Co.* case, ch. VI, pp. 211–212.

[81] *Leland-Gifford Co.,* 95 NLRB 1306.

[82] *I. B. S. Mfg. Co.,* 96 NLRB 1263.

[83] *Westinghouse Electric Supply Co.,* 96 NLRB 407, Member Reynolds dissenting. Enforcement of the Board's order in this case was denied because of the court's view that the complaining union did not, in fact, actually request the particular information, 196 F. 2d 1012 (C A. 3).

[84] *Old Line Life Insurance Co. of America,* 96 NLRB 499.

h. Good Faith in Bargaining

The duty to bargain not only requires the employer to recognize and meet [85] with the statutory representative of his employees for the purpose of discussing proper subjects of collective bargaining but it also requires the employer to bargain in good faith, "with a sincere intent to reach an agreement." [86] As stated by the Board,

> Willingness to meet or merely meeting with a union does not satisfy the statutory obligation to bargain for . . . "the real question is whether or not the Respondent was dealing in good faith, or engaged in mere surface bargaining without any intent of concluding an agreement on a give-and-take basis." [87]

The Board's determination of the employer's good faith usually is the product of an appraisal of the employer's entire dealings with the bargaining representative. Thus, the Board's findings that an employer lacked the required good faith and was not honestly intent on coming to terms with the complaining union may be based on the manner in which the employer conducted negotiations, as well as conduct which itself constituted a direct rejection of the duty to bargain, such as refusals to negotiate or to furnish information on bargainable matters,[88] unilateral action,[89] or improper conditions on continued bargaining.[90] For instance, the Board held in one case that the employer's bad faith was clearly demonstrated where the negotiations were characterized by dilatory tactics such as delays and repeated postponements of bargaining conferences; by the employer's failure to make concrete proposals; his granting of individual merit increases while at the same time refusing to negotiate a general wage increase or a vacation plan in lieu thereof on the ground that no increase in expenses was possible at the time; and finally by the employer's refusal to continue any negotiations after the union filed unfair labor practice charges.[91] Similarly, the Board held that an employer could not be said to have bargained in good faith where it refused to incorporate existing conditions of employment in a written agreement, passively waited for the union to make all requests for bargaining meetings, limited the bargaining meetings to unreasonably short periods at considerable intervals of time, failed to submit counterproposals while turning down the union's offers, and granted a unilateral wage increase to its employees without previously bargaining with the union.[92]

---

[85] See *United States Cold Storage Co.*, 96 NLRB 1108.

[86] *Harcourt and Co.*, 98 NLRB 892, Member Styles dissenting

[87] *L. L. Majure Transport Co.*, 95 NLRB 311, quoting *Gay Paree Undergarment Company*, 91 NLRB 1363

[88] See p. 172.

[89] See p 168.

[90] See p. 171.

[91] *Dealers Engine Rebuilders, Inc.*, 95 NLRB 1009. Enforcement denied on this point C. A. 8, No. 14567, October 23, 1952. The court found that the employer had bargained in good faith to disagreement on only two points—a wage increase and paid vacations—then the employer declined to accept a union compromise of merely paid vacations.

[92] *Gagnon Plating and Mfg. Co.*, 97 NLRB 104.

In another case,[93] a majority of the Board found that a complete lack of good faith on the part of the employer was indicated by the following circumstances: Delay in scheduling the first meeting[94] and in furnishing wage and pension data; insistence on the presence of a stenotypist at bargaining sessions; unreasonable withholding of agreement on admittedly trivial matters, such as notice-posting facilities and the form of the recognition clause; hasty granting of a wage increase shortly after negotiations had broken down, without notice to the union or in any way permitting the union to share in the credit for the increase; and an outright refusal on legal grounds to bargain on the subject of checkoff. As to the employer's position on the checkoff, the Board opinion observed that "the requisites for good-faith bargaining cannot be found to exist when the lack of a legal requirement to bargain [on a bargainable subject] is uppermost in the Respondent's mind."

A failure to bargain in good faith was found in a case in which the employer had studiously avoided agreement on any point.[95] Here, understandings reached in negotiations with a representative with apparent authority to bind the employer were later repudiated by the employer's chief negotiator, who then declined to make tentative agreements, insisting that the union completely restate its proposal in an integrated document. In addition to requiring that negotiations begin anew, the employer's negotiator further prevented the possibility of early agreement by refusing to confine negotiations to disputed issues.[96] The Board in this case specifically rejected the employer's contention that the techniques employed were proper under contract law standards. The Board said:

> [T]he rules by which it is determined whether or not the parties have made a contract are not the rules by which it is determined whether or not parties have bargained in good faith. Nor is the obligation to bargain so circumscribed by the technical rules of contract law The obligation under the Act contemplates that the parties come to the bargaining table with a fair and open mind and a sincere desire and purpose to conclude an agreement on mutually satisfactory terms. Reliance upon the rules of contract law so as to forestall and avoid agreement does not satisfy that obligation.

The Board also held in another case that an employer demonstrated that it was intent on forestalling bargaining rather than coming to an agreement when it withdrew the plenary bargaining authority of its

---

[93] *Reed & Prince Mfg Co*, 96 NLRB 850, Member Reynolds dissenting

[94] The Board majority noted that the employer's good faith in delaying negotiations "may be tested by considering whether it would have acted in a similar manner in the usual conduct of its business negotiations"

[95] *Shannon & Simpson Casket Co.*, 99 NLRB No 62

[96] Compare *Harcourt and Co, Inc*, 98 NLRB 892, Member Styles dissenting, where a panel majority held that an employer's conduct was not evidence of bad faith bargaining, "particularly when viewed in the light of the Union's own method of [piecemeal] bargaining."

agent after more than 18 months, and disavowed an agreement that had been reached without adequate explanation and without offering any counterproposals or a suggestion of the areas in which disagreement still existed.[97]

An employer's lack of good faith may likewise be apparent from the nature of its counterproposals to the union's demands. Thus, the Board observed, in one case, that the employer's steadfast rejection of the union's proposal and insistence on terms which in effect "amounted to a formal negation of the collective bargaining principle" clearly was evidence of bad faith.[98] Here, the proposed contract denied the union any measure of union security; prohibited the presence of a job steward on the employer's premises; denied employees the right to discuss union affairs at any time on the employer's premises; denied the establishment of a grievance procedure, reserving to the employer complete authority "to promulgate rules to govern the activities of its employees"; precluded the establishment of a seniority system; retained the right for the employer to increase or decrease wages unilaterally; and denied employees the right to recognize picket lines. The Board pointed out that while the employer could have removed the stigma of bad faith by engaging in the "give and take" of collective bargaining regarding its proposals,[99] it steadfastly refused to make a single change.

i. Effect of Other Unfair Labor Practices

Refusal-to-bargain cases often present a situation where a breakdown in bargaining negotiations was partly the result of employer conduct which constituted a violation of one or more of the other prohibitions of section 8 (a). In this type of case, the Board has at times held that such violations were not only a further indication that the employer was not bargaining in good faith,[1] but that the particular conduct was itself a direct, independent violation of section 8 (a) (5).[2] However, in one case, a panel majority of the Board pointed out that interference with employee rights under section 8 (a) (1), (2), (3), and (4) while the employees' representative seeks to bargain is not automatically also a violation of section 8 (a) (5).[3]

---

[97] *Gittlin Bag Co*, 95 NLRB 1159

[98] *L L Majure Transport Co*, 95 NLRB 311

[99] Compare *Old Line Life Insurance Co of America*, 96 NLRB 499 And see the Supreme Court's views in the *American National Insurance Co* case, ch VI pp 211–212

[1] See, for instance *Reed & Prince Mfg Co*, 96 NLRB 850, Member Reynolds dissenting

[2] See, for instance, *Reeder Motor Co*, 96 NLRB 831 See also the intermediate reports in *Saxe-Glassman Shoe Corp*, 97 NLRB 332 where the establishment and support of an "inside" union in violation of Section 8 (a) (2) was held also a violation of Section 8 (a) (5); in *Whiting Lumber Co*, 97 NLRB 265, involving a lockout in violation of section 8 (a) (3), and in *East Texas Steel Castings Co*, 99 NLRB No 162, involving a discriminatory discharge of a union officer for requesting bargaining on new piece rates

[3] *Harcourt and Co*, 98 NLRB 892, Member Styles dissenting

The majority in this case held that, although the employer clearly violated section 8 (a) (1) by conferring with its older employees as to the position taken by the union and by suggesting that the replacement of the union's president would facilitate negotiations, those actions did not amount to a refusal to bargain because, under the circumstances, they could not be interpreted as an attempt to bypass the bargaining representative and to negotiate directly with the employees. In the opinion of the majority, the situation was thus distinguishable from those cases in which similar conduct was found to be violative of section 8 (a) (5). Here, the majority opinion observed, no direct employer-employee negotiation or bargaining took place and no action was taken which was intended or reasonably calculated to destroy the union's majority or to undermine its authority.

j. Bargaining With a Noncomplying Union

On May 14, 1951, the Supreme Court in the *Highland Park* case[4] ruled that parent federations, such as the C. I. O. and A. F. L., are labor organizations which must comply with the filing and affidavit requirements of section 9 (f), (g), and (h), before their affiliates may utilize the processes of the Board. In order to offset the invalidating effect of the decision on Board certifications issued in favor of C. I. O. and A. F. L. unions before their parent organizations came into compliance, Congress amended the act in October 1951, by adding section 18 which provides that

> No petition entertained, no investigation made, no election held, and no certification issued . . ., under any of the provisions of section 9 . . ., shall be invalid by reason of the failure of the Congress of Industrial Organizations to have complied with the requirements of section 9 (f), (g), or (h) . . . prior to December 22, 1949, or by reason of the failure of the American Federation of Labor to have complied with the provisions of section 9 (f), (g), or (h) . . . prior to November 7, 1947: *Provided*, That no liability shall be imposed under any provision of this Act upon any person for failure to honor any election or certificate referred to above, prior to the effective date of this amendment: . . .

Applying these provisions, the Board in a number of cases during the past year dismissed refusal-to-bargain charges because the complaining union's parent was not in compliance at the time of its certification[5] or during the investigation of its petition for certification.[6] Moreover, an employer was held exonerated from refusing to bargain with the certified affiliate of a noncomplying parent before

---

[4] *N. L. R B.* v. *Highland Park Mfg. Co.*, 341 U S 322.

[5] *Union Bus Terminal of Dallas, Inc*, 97 NLRB 206; *The Advertiser Co.*, 97 NLRB 604; *Morrison Milling Co.*, 97 NLRB 875; *MacSmith Garment Co.*, 97 NLRB 842; *The Bowling Green Rubber Co.*, 97 NLRB 1148; *Denison Cotton Mills Co.*, 97 NLRB 1191; *U. S. Gypsum Co.*, 97 NLRB 889, amending 94 NLRB 112

[6] *Reynolds & Manley Lumber Co.*, 97 NLRB 188; *American Twine & Fabric Corp*, 97 NLRB 868.

the effective date of section 18, even though the affiliate, at the hearing on the complaint, demonstrated that it had had majority status almost a month before the election on which its certification was based.[7] The Board said

> True, the Respondent never questioned the Union's majority status, so there would have been no impediment to a refusal-to-bargain finding, were it not for the invalidity of the Board election upon whose results the Respondent then relied and from which this proceeding stemmed. Yet we cannot discover in the congressional language any license for the Board to impose "liability" in the face of its own invalid certification, even though Union's majority status at the time of the alleged refusal to bargain could now be proved independently of that certification.

In one case involving section 18, the Board also dismissed that part of the complaint which alleged that a unilateral wage increase granted by the employer after the union's certification was not only a refusal to bargain but also an independent violation of section 8 (a) (1).[8] The Board pointed out that dismissal of the allegation was required because the employer's unilateral action, occurring after the union's certification, constituted a "failure to honor" the certificate within the meaning of section 18.

The Board also had occasion during the past year to restate its views regarding the circumstances under which an employer may legally refuse to bargain with a union at a time when its officers have not filed the anti-Communist affidavits required by section 9 (h). The occasion arose when reexamination of the compliance status of a certified union, with which an employer had been orderd to bargain, showed that some of the union's officers had not filed affidavits at the time of the representation proceeding.[9] The employer throughout had taken the position that it was not required to honor the union's certification because the union was Communist-dominated. Vacating its earlier bargaining order, the Board held that its inherently defective certification of the union could not "confer on the union the right of later recourse to the Board or, conversely, expose the Employer to an unfair labor practice finding for refusing to honor that certification." The employer's position, the Board pointed out, was comparable to that which a majority of the Board in the *New Jersey Carpet* case[10] had held would constitute a proper defense to refusal-to-bargain charges.

---

[7] *The Advertiser Co., Inc.*, 97 NLRB 604

[8] *The Bowling Green Rubber Co.*, 97 NLRB 1148.

[9] *Sunbeam Corp.*, 98 NLRB 525.

[10] See *New Jersey Carpet Mills, Inc.*, 92 NLRB 604 (1950), and Chairman Herzog's concurring opinion therein.

k. Bargaining Not Required During Slowdown

The Board ruled unanimously in a case decided after the close of the fiscal year that an employer may lawfully refuse to bargain with his employees' union during the period of a slowdown called by the union.[11] The employer refused to bargain only during the period when the slowdown was actually in effect. It was the first time this question had come to the Board.

The Board held that the employer's normal duty to bargain was suspended for the duration of the slowdown, because the union's calling of the slowdown constituted such "an absence of fair dealing" as to preclude testing the employer's own good faith. The Board termed the slowdown "a harassing tactic irreconcilable with the Act's requirement of reasoned discussion in a background of balanced bargaining relations upon which good faith bargaining must rest."

The Board said further:

> The vice of the slowdown derives in part from the attempted dictation by employees, through this conduct, of their own terms of employment They are accepting compensation from their employer without giving him a regular return of work done

The Board had held in a prior decision that a slowdown is not concerted activity protected by the act, and that therefore employees may be lawfully discharged for engaging in one.[12]

---

[11] *Phelps Dodge Copper Products Corp*, 101 NLRB No 103 (November 1952)
[12] *Elk Lumber Co*, 91 NLRB 333 (1950)

B. Unfair Labor Practices of Unions

The types of conduct by labor organizations which the amended act forbids as unfair labor practices are listed in subsection (b) of section 8. This section also prohibits agents of labor organizations from engaging in such practices. It does not place any prohibitions upon individual employees except when they act as agents of a labor organization. However, an individual loses his status as an employee if he engages in a strike before the expiration of the 60-day waiting period required by section 8 (d).

In general, a labor organization, like an employer, is required to bargain in good faith whenever it is the representative of a majority of employees in a group appropriate for bargaining.[1] Also, the act forbids a labor organization from restraining or coercing employees in the exercise of their right to engage in concerted activities directed toward self-organization or collective bargaining, or their right to refrain from such activities except under a valid union shop.[2] In section 8 (a), the act outlaws the closed shop and employment practices which give preference on the basis of union membership or lack of it, except under a valid union shop. In section 8 (b), a labor organization is forbidden "to cause or attempt to cause" an employer to engage in such discriminatory employment practices.[3]

Another major provision of this section forbids a union from inducing or encouraging employees of a neutral employer to engage in a secondary strike or boycott where an object is to compel the neutral employer to cease doing business with another employer.[4] The act also forbids a union from encouraging such a secondary strike or boycott for the purpose of compelling an employer to recognize a union which has not been certified by the Board as bargaining representative.[5] Another provision of section 8 (b) (4) prohibits a union from inducing employees to strke to compel their employer to recognize one union as their bargaining agent when the Board has certified another union.[6] Jurisdictional strikes in connection with disputes between unions over the assignment of work also are forbidden by this subsection.[7]

The Board's rulings on these and other unfair labor practice provisions applicable to labor organizations or their agents are discussed in the following sections of this chapter.

---

[1] Sec 8 (b) (3)
[2] Sec 8 (b) (1) (A)
[3] Sec 8 (b) (2)
[4] Sec 8 (b) (4) (A)
[5] Sec 8 (b) (4) (B)
[6] Sec 8 (b) (4) (C)
[7] Sec 8 (b) (4) (D)

1. Restraint or Coercion of Employees

Section 8 (b) (1) (A) makes it an unfair labor practice for a labor organization or its agents "to restrain or coerce employees in the exercise of the rights guaranteed in section 7." Section 7 guarantees employees the right to engage in concerted activities directed toward self-organization or collective bargaining, and also the right to refrain from such activities except under a lawful union shop.

The Board during the past year again had occasion to point out that for union conduct to come into conflict with section 8 (b) (1) (A) it must be directed against *employees*.[1] The case in which the question arose involved picketing and threats of economic action to compel an employer to consent to an illegal union-security arrangement. While holding that this conduct constituted an unlawful attempt to cause the employer to discriminate against employees within the meaning of section 8 (b) (2), the Board declined to find that the conduct also constituted restraint or coercion in violation of section 8 (b) (1) (A) because it was directed against the *employer* and not against employees.[2]

a. Strike Against Decertification

In one case, the Board was called upon to determine whether a strike to induce dissident employees to withdraw their petition for the decertification of the incumbent bargaining agent unlawfully restrained and coerced employees.[3] The Board found that a strike for this purpose was not unlawful in itself. The Board adopted rationale of the trial examiner's conclusion that the union's fundamental purpose in calling the strike was to preserve its bargaining status, and the union's right to take action for that purpose was protected by section 7 equally as much as the right of employees to file a decertification petition and to abstain from union membership and activity. If the strike were held to have unlawfully restrained employees in the exercise of that right, the Board held, any strike for recognition would similarly violate section 8 (b) (1) (A), and Congress, in amending the act in 1947, expressed no intention to outlaw any primary recognition strikes except those called in the face of a Board certification of another union, prohibited by section 8 (b) (4) (C).

b. Violence and Threats of Violence

Violence and threats for which a union is responsible in connection with strike and picket line activities also violate this section. Types

---

[1] Compare Sixteenth Annual Report, p 206.

[2] *Medford Building and Construction Trades Council (Kogap Lumber Industries)*, 96 NLRB 165.

[3] *Painters' District Council No. 6 (The Higbee Company)*, 97 NLRB 654.

of conduct for which unions and their agents were held responsible under section 8 (b) (1) (A) included assaults on and threats of bodily harm to nonstrikers and damaging their automobiles, in two cases;[4] and mass invasions of coal mining properties and assaults on police officers in the presence of employees in another case.[5]

c. Threats of Loss of Employment

Open or implied threats by unions or their agents to employees that they may lose their jobs or employment opportunities were held to constitute illegal restraint or coercion in a number of cases. Thus, the Board again held that the adoption or retention of illegal union-security provisions in a collective bargaining agreement is unlawful, even though the illegal provisions are not intended to be and have in fact not been enforced.[6] In one case, the Board said:

> . . an unlawful [closed-shop] provision serves no less as a restraint on employees' right to refrain from joining an organization than if the parties intend to enforce it where, as here, there is no evidence that the employees were informed that the closed shop clause, which theretofore had been in effect, would no longer be operative.[7]

Applying the same principle in another case, the Board held that a violation of section 8 (b) (1) (A) was nevertheless present, because the contracting parties permitted the clause to remain in effect.[8] The clause in this case was put into effect more than 6 months before the filing of charges.[9]

The sending of a "blacklist" of employees by a union to another union was also held to constitute unlawful restraint and coercion.[10] The list sent by the respondent union named certain former members accused of having deserted the union during a strike and of having attempted to organize a rival union. The letter accompanying the list carried the implied suggestion that the other union deny the named individuals clearance for employment by concerns with which it had contracts providing for the hiring only of union members. The Board found that several on the list were denied employment because of this union's

---

[4] *United Mine Workers of America, District 31 (L. E Cleghorn)*, 95 NLRB 546, enforced July 18, 1952, (C A. 4). *Essex County and Vicinity, District Council of Carpenters (Fairmount Construction Company)*, 95 NLRB 969.

[5] *United Mine Workers of America, District 2 (Mercury Mining and Construction Corporation)*, 96 NLRB 1389

[6] *Utah Construction Co*, 95 NLRB 196, see also *Pacific American Shipowners Association*, 98 NLRB 582, *Paul W Speer*, 98 NLRB 212, and *Local 57 Operating Engineers (Gammino Construction Company)*, 97 NLRB 386 See also Sixteenth Annual Report, pp 208, 209

[7] *Port Chester Electrical Construction Corporation*, 97 NLRB 354

[8] *Paul W Speer*, see footnote 6

[9] See discussion of 6-month limitation on charges at pp 199–204

[10] *Pacific American Shipowners Association*, 98 NLRB 582 Member Murdock, dissenting, was of the opinion that the sending of the blacklist was part of the union's unlawful conduct in seeking to enforce an illegal preferential hiring agreement rather than an independent violation of section 8 (b) (1) (A).

refusal to give them clearance. Finding that section 8 (b) (1) (A) was clearly violated, the Board said:

Section 7 of the Act guaranteed to those named in the blacklist the right to refrain from supporting the Respondent Union's 1948 strike activities, and to assist, instead, in the organizational activities of a labor organization of their choosing. As already found, several of those individuals were deprived of employment as a result of the intervention on April 11 by the Respondent Union, because, having exercised the freedom of choice which Section 7 protects, they had fallen into disfavor with the Respondent Union. The rejection of their employment applications because of the Respondent Union's conduct made it unmistakably plain to the employees in question, and to the others named in the blacklist, that they must either regain good standing in the Respondent Union or forego opportunity for employment. . . .

In one case, employees, who had signed a petition in connection with efforts to collect back wages under the Fair Labor Standards Act, were told by a union representative to have their names removed from the petition unless "you want to lose your job" and "before it is too late." [11] Declining to interpret the statements merely as a "prediction" of the action that the employer might take, the Board found that they were intended, and understood by the employees to whom they were addressed, as a threat of job loss. The Board ruled this was a violation of 8 (b) (1) (A). The Board said further:

[W]hen these remarks are considered in the context of the union-security clause then in effect in the contract between the Union and the Association, their implication is clear The clause provided that a member could be discharged on union notification to the Association that the member was not in good standing. An employee might reasonably believe that the Union could affect adversely his job security by such notification. But regardless of the effect of this clause, Hill's statements could have been intended only as a veiled threat, and we construe them to fall within the restraint and coercion prohibited by Section 8 (b) (1) (A) of the Act.

The Board held in another case that a union which had a discriminatory hiring arrangement with the employer independently violated this section (1) by notifying certain employees that they could not work without work permits from the union, and (2) by advising another employee that the local to which he belonged would restrict its members to work other than the work for which he had had a permit.[12] Likewise, a threat to employees who were delinquent in their dues that unless they paid certain amounts of money in excess of the fees and dues which may be required under the union-security provisions of section 8 (a) (3), was found to violate this section.[13]

---

[11] *Salt River Valley Water Users Association,* 99 NLRB No 129.
[12] *Mundet Cork Corporation,* 96 NLRB 1142.
[13] *Eclipse Lumber Company, Inc.,* 95 NLRB 464.

d. Discrimination

Union conduct forbidden by section 8 (b) (2) which results in the discriminatory treatment of an employee by his employer is generally held also to constitute unlawful coercion and restraint under 8 (b) (1) (A). This is because such conduct tends to force employees to acquire or maintain union membership, or to participate in concerted action when they may not be required legally to do so.[14] This occurs when a union either seeks to compel compliance with membership requirements and union rules in the absence of a valid union-security agreement, or enforces valid union-security provisions in an illegal fashion.

Thus, violations of this section were found in cases in which: An employee's name was removed from the union's national assignment list resulting in his failure to obtain employment to which he would otherwise have been entitled.[15] A union struck from its bulletin board the name of a nonmember employee, thereby preventing him from exchanging his work-tour assignment with another employee and receiving the benefit of a pay differential in accordance with the employer's established practice.[16] A union caused the discharge of a newly hired employee by refusing him a "work order" on the ground that he was not a paid-up union member.[17] A union which obtained the discharge of a member who failed to attend a union meeting called for the purpose of airing certain grievances.[18]

Discrimination against employees resulting from the enforcement of illegal hiring arrangements and practices has been consistently held to constitute unlawful restraint and coercion prohibited by the act. Thus, a union was found to have violated section 8 (b) (1) (A), as well as 8 (b) (2), by being party to a strike settlement agreement under which a shipping company gave absolute preference to union members in the post-strike hiring of ship's personnel, contrary to the prevailing maritime practices and custom which entitled all strikers to be redispatched to their prestrike jobs.[19] The Board held that an intent to discriminate against dissident strikers was shown also by the blacklisting of the particular strikers, the denial to them of the use of the union's hiring hall, and the failure to make a good faith effort to locate strikers whose dispatch the company ostensibly requested.

---

[14] The case involving violations of both section 8 (b) (1) (A) and section 8 (b (2) are more fully discussed at pp. 185–189.

[15] *Alaska Steamship Company,* 98 NLRB 22

[16] *Southwestern Bell Telephone Company,* 97 NLRB 79.

[17] *Schweiger Construction Company,* 97 NLRB 1407 For other cases in which discharges caused by unions on account of nonmembership were found to have violated section 8 (b) (1) (A), see *White Oak Park,* 98 NLRB 376; and *Yonker & Pettijohn,* 96 NLRB 118.

[18] *Hunkin-Conkey,* 95 NLRB 433.

[19] *Pacific American Shipowners Association,* 98 NLRB 582.

In another maritime case, a similar violation of section 8 (b) (1) (A) was found in the refusal of the union's hiring hall to dispatch longshoremen who had lost their membership privileges for nonpayment of union fines.[20]

Discriminatory hiring practices in the construction industry were likewise held to have resulted in violations of section 8 (b) (1) (A), in cases where job applicants on construction projects failed to obtain employment after being referred to unions which issued clearances of work permits only to their own members.[21]

As heretofore, the Board has continued to hold that the successful demand of a union for the discharge of employees for nonmembership violates both section 8 (b) (2) and section 8 (b) (1) (A), when the demand was made pursuant to union-security agreements which did not conform to the requirements of section 8 (a) (3).[22]

Restraint and coercion violating section 8 (b) (1) (A) also result when the contracting union and employer cooperate in the illegal application of valid union-security provisions. Such a violation was found in a case in which union-security provisions were applied retroactively to bring about the discharge of employees for nonpayment of dues applicable to a period preceding the legal effective date of the provisions.[23] Similarly, a violation was found where a union-security clause was enforced against employees because they failed to pay sums which could not be made a condition of union membership, such as fines or payments not uniformly required of all applicants for membership.[24] A majority of the Board also held that a union violated both section 8 (b) (2) and section 8 (b) (1) (A) by invoking its union-shop agreement to cause the discharge of an employee who failed to tender his initiation fee and dues during the statutory 30-day grace period, because the union had previously made it clear that payment of these amounts would be accepted only if accompanied by payment of a fine for "dual unionism."[25] Similarly, a violation also was found in a case in which a union had caused the discharge of an

---

[20] *International Longshoremen's & Warehousemen's Union (Waterfront Employers of Washington)*, 98 NLRB 284

[21] See *Sesco Contractors*, 98 NLRB 824; *Paul W Speer*, 98 NLRB 212, *Local 57, Operating Engineers, (Gammino Construction Company)*, 97 NLRB 386; *Mundet Cork Corporation*, 96 NLRB 1142; *Engineers Limited Pipeline Co*, 95 NLRB 176; *Del E Webb Construction Company*, 95 NLRB 75 (In the last-mentioned case, the Board's order was set aside on review because of the court's disagreement with the Board's factual conclusions; see *Webb Construction Co v N L R B*, 196 F 2d 841 (C A 8), discussed at p 230.

[22] See e. g, *Mundet Cork Corporation*, 96 NLRB 1142; *Al Massera, Inc*, 97 NLRB 712; *Stupaloff Ceramic & Manufacturing Co.*, 98 NLRB 664.

[23] *Monsanto Chemical Co*, 97 NLRB 517 · *Eclipse Lumber Co, Inc*, 95 NLRB 464, see also *Kingston Cake Co, Inc*, 97 NLRB 1445

[24] *Eclipse Lumber Company, Inc*, 95 NLRB 464

[25] *Westinghouse Electric Corp. (Sunnyvale Plant)*, 96 NLRB 522 Members Murdock and Styles, dissenting, took the view that a renewal of the employee's tender of initiation fee and dues *during* the 30-day period was necessary to protect him against discharge.

employee, who was an officer of the union, because he refused to sign a non-Communist affidavit in order to assist a rival complying union.[26] The employee's purpose was to prevent the union which expelled him from achieving compliance which would enable it to obtain a place on the ballot in an election sought by the rival union. The Board said: "This ground, however understandable and laudable standing by itself, remains one *other* than the failure to tender dues which Congress has specifically provided shall be the *sole* defense under the amended statute. We therefore have no choice but to hold that the Respondent Union violated Section 8 (b) (2) and 8 (b) (1) (A) of the Act. . . ."

e. Discriminatory Membership Rules

In one case, the Board held that the imposition by a union of discriminatory initiation fees based on length of service violated not only section 8 (b) (5) but also constituted restraint and coercion within section 8 (b) (1) (A).[27] In this case, employees with more than a year's service were required to pay a higher fee in order to obtain membership. The union contended that, under the terms of the proviso to section 8 (b) (1) (A), it was free to make its own membership rules. The Board rejected this defense, pointing out that the union rules proviso preserves only the right to prescribe rules for the "acquisition or retention" of union membership but does not sanction the imposition of a discriminatory condition of employment which otherwise violates the act.

2. Causing or Attempting To Cause Illegal Discrimination

Section 8 (b) (2) forbids a union or its agents "to cause or attempt to cause" an employer to discriminate against employees in terms or conditions of employment to encourage or discourage membership in a labor organization. However, this section permits a union to obtain the discharge of an employee who fails to tender the union initiation fees and dues uniformly required under a legal union-shop agreement.

In one case, the General Counsel took the position that section 8 (b) (2) contains two separate proscriptions and prohibits a union from causing employer discrimination, as well as from discriminating itself against employees "in ways that affect the hire, tenure, and conditions of employment" irrespective of any correlative employer action.[1] Consequently, the General Counsel urged, section 8 (b) (2) was violated by a union which sought to penalize dissident members

---

[26] *Kingston Cake Co., Inc.*, 97 NLRB 1445 (on remand).
[27] *Local 153, UAW, CIO (Stacker)*, 99 NLRB No. 166.
[1] *Pacific American Shipowners Association*, 98 NLRB 582.

by placing them on a blacklist which it forwarded to its sister union. The Board, however, ruled that both the language and the legislative history of section 8 (b) (2) precluded this construction, and that the section must be taken to prohibit only "causing or attempting to cause" employer discrimination, but not union discrimination independent of an employer. The Board concluded, therefore, that since the union to which the blacklist was sent did not occupy the position of an employer as to those blacklisted, or the agent of such an employer, the sending of the list could not be regarded as a violation of section 8 (b) (2).[2]

While section 8 (b) (2) is expressly directed against inducing employer discrimination which violates section 8 (a) (3), the Board has held consistently that an 8 (b) (2) finding may be made even though the employer involved has not been joined as a party to the proceeding and has not been found to have violated section 8 (a) (3).[3]

a. Causing Discrimination

The cases in which unions were found to have actually caused discrimination, for the most part, involved the enforcement of illegal hiring agreements or practices.[4] The Board has consistently taken the position that a union which is a party to such an agreement must be held to have caused any discrimination which results from its enforcement.[5] And if an employer rejects workers who, for discriminatory reasons, have not been cleared or given work permits by the union as required under the agreement, the union will be held to have violated section 8 (b) (2) even though it did not specifically request the employer to deny them employment.[6]

Other cases in which unions were found to have caused unlawful discrimination involved situations in which employers acquiesced in the union's demand to discharge or suspend employees not in good standing with the union even though no valid agreement existed requiring such action.[7] The Board observed in one case that a union which causes the discharge of employees because of their nonmembership

---

[2] The Board agreed, however, that the union's action in this respect constituted restraint and coercion within the meaning of section 8 (b) (1) (A)

[3] *United Electrical Radio and Machine Workers of America, Local 622 (UE) (Stupakoff Ceramic & Manufacturing Company)*, 98 NLRB 664 See Sixteenth Annual Report p. 217. See also *N. L. R B v Radio Officers' Union*, 196 F. 2d 960, enforcing 93 NLRB 1523.

[4] See *Pacific American Shipowners Association*, 98 NLRB 582; *Utah Construction Co.*, 95 NLRB 196; *Schweiger Construction Company*, 97 NLRB 1407; *White Oak Park*, 98 NLRB 376; *Paul W. Speer*, 98 NLRB 212; *Int'l Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 621*, 98 NLRB 824

[5] *Utah Construction Co*, 95 NLRB 196; *Mundet Cork Corporation*, 96 NLRB 1142.

[6] See cases in preceding footnote.

[7] *Engineers Limited Pipeline Company*, 95 NLRB 176; *Mundet Cork Corporation*, 96 NLRB 1142; *United Electrical Radio & Machine Workers of America, Local 1412 (Gardner Electric Manufacturing Company)*, 95 NLRB 391; *Alaska Steamship Company*, 98 NLRB 22; and *Southwestern Bell Telephone Co.*, 97 NLRB 79.

may be found to have violated section 8 (b) (2), even though the General Counsel did not allege the nonexistence of a valid union-security agreement.[8] The burden in such a case is on the respondent, the Board said, to plead the existence of such a contract and that the discharges were made pursuant to it.

In the absence of an agreement, or a specific request, that the employer discriminate against nonunion employees, the Board must determine whether the union charged with a violation of section 8 (b) (2) has in fact caused the alleged discrimination. In one case,[9] where an employee was discharged for initiating concerted action[10] to collect back wages allegedly due by the employer under the Fair Labor Standards Act, the Board rejected the General Counsel's argument that the union had caused the discrimination. The Board held that liability was not established by merely showing that the union's business agent advised the employer that the employee's action did not represent the policy of the union and was not condoned by it.

b. "Attempts" To Cause Discrimination

Section 8 (b) (2) prohibits a union not only from actually causing employers to discriminate against employees but also from attempting to do so.

The Board has continued to hold that the execution of an illegal union-security agreement by a union, with the intention that the illegal provisions be enforced, is an unlawful attempt to cause the contracting employer to violate section 8 (a) (3), because it creates conditions which may result in future discrimination.[11] The fact that the illegal agreement is oral rather than written is immaterial.[12] Section 8 (b) (2) is likewise violated where a union insists on the incorporation of an illegal union-security clause in a contract and enforces its demand with threatened and actual strike action.[13] The Board pointed out in one case that the union's picketing activities in support of its illegal demands were not protected by the free speech guarantees of section 8 (c) or the Constitution, regardless of whether or not the picketing had also had a lawful objective.[14]

---

[8] *Construction and General Laborer's Union, Local 320, (Yonker and Pettijohn)*, 96 NLRB 118.

[9] *Salt River Valley Water Users Association,* 99 NLRB No. 129.

[10] As to the protected nature of the employee's activity, see p 137

[11] *Local 57, International Union of Operating Engineers (M. A. Gammino Construction Co.)*, 97 NLRB 386; *Utah Construction Co*, 95 NLRB 196. See also Sixteenth Annual Report, p. 216 For union-security agreements which were held illegal, see pp. 147–153.

[12] See *Del E. Webb Construction Co.*, 95 NLRB 75. Reversed on review because of the court's disagreement with the Board's factual conclusions, 196 F. 2d 841 (C. A. 8).

[13] *Essex County and Vicinity District Council of Carpenters, AFL (Fairmount Construction Company)*, 95 NLRB 969; *Medford Building and Construction Trades Council (Kogap Lumber Industries)*, 96 NLRB 165.

[14] *Medford Building and Construction Trades Council (Kogap Lumber Industries)*, 96 NLRB 165.

However, the retention in a contract of unlawful union-security provisions which the parties neither intended to enforce, nor actually did enforce, was held not to constitute a violation of either section 8 (a) (3) by the employer or of section 8 (b) (2) by the contracting union, because no discriminatory conditions of employment were actually created.[15]

c. Discrimination Under Valid Union-Security Agreements

The act permits employers and labor organizations to make union-shop agreements within the limits of the provisions of section 8 (a) (3). However, employees may not be discriminated against under the terms of such an agreement, except for "failure to tender the periodic dues and the initiation fees uniformly required" as a condition of union membership. A union which causes an employer to discharge an employee for any other reason violates the express provisions of section 8 (b) (2). Violations of this kind were found in a number of cases during the past year.

In one case, a union obtained the discharge of an employee who failed to achieve membership in good standing by paying all back dues and a fine, in addition to the regular initiation fee and the current month's periodic dues.[16] This, the Board found, constituted a violation of section 8 (b) (2) in two respects. First, neither the back dues nor the fine required of the employee as a condition of membership in good standing were "periodic dues" or initiation fees the payment of which could be enforced under section 8 (b) (2). Second, the union had permitted other members to settle their delinquencies with a fixed sum rather than the total amount of their back dues. Thus, the Board pointed out, the union caused the employer to violate section 8 (a) (3) by discharging an employee to whom membership in good standing was not available on the same terms generally applicable to other members.[17] Similarly, the Board held that section 8 (b) (2) was violated by a union which requested the discharge of a member ostensibly because he failed to tender dues and initiation fees, when in reality the employee could not have reacquired membership in good standing without first paying a fine.[18]

---

[15] *Port Chester Electrical Construction Corporation*, 97 NLRB 354, Member Reynolds dissenting. The Board did, however, find that the retention of this unlawful provision in the contract was a violation of section 8 (b) (1) (A)

[16] *Eclipse Lumber Company, Inc*, 95 NLRB 464

[17] However, the Board in one case again pointed out that section 8 (a) (3) and section 8 (b) (2) of the act do not prohibit a labor organization holding a union-security agreement to charge different initiation fees and periodic dues provided they are based on a reasonable classification which is not discriminatory. See *Food Machinery and Chemical Corp*, 99 NLRB No. 167.

[18] *Westinghouse Electric Corporation (Sunnyvale Plant)*, 96 NLRB 522

In another case, a union was found in violation for causing the discharge of a member for failure to attend a union meeting.[19] In another case, the Board held that under section 8 (b) (2) a union could not lawfully obtain the discharge of an employee to whom it denied membership because of his failure to sign a non-Communist affidavit.[20] The Board pointed out that the union's ground, however understandable, was one *other* than the failure to tender his initiation fee or dues, the sole defense available to the union under the act.

On two occasions, the Board reaffirmed its position that an employee, in order to be protected against discharge under a valid union-shop agreement, is not required to tender uniform initiation fees and dues, if it is clearly shown that the union would not have accepted payment except upon the employee's prior compliance with a discriminatory condition such as the payment of a fine or other charges.[21]

The Board has also continued to hold that a union-security agreement, though valid, may not be enforced retroactively for the purpose of collecting union dues which accrued at a time when no union-security agreement was in existence.[22]

3. Refusal To Bargain

Section 8 (b) (3) makes it an unfair labor practice for a labor organization or its agents to refuse to bargain collectively with an employer when it is the representative of a majority of a group of his employees which is appropriate for bargaining.

This section was held violated by a union which insisted that the employer enter into a contract incorporating an illegal closed-shop provision, and which enforced its demand with a strike threat and finally with a work stoppage.[1]

4. Illegal Secondary Strikes and Boycotts

The act's restrictions against secondary strikes and boycotts are contained in subsections A and B of section 8 (b) (4). Subsection A con-

---

[19] *Hunkin-Conkey Construction Co*, 95 NLRB 433.

[20] *Kingston Cake Company, Inc.*, 97 NLRB 1445.

[21] *Westinghouse Electric Corporation, (Sunnyvale Plant)*, 96 NLRB 522. [Members Murdock and Styles, dissenting, took the view that a renewal of the employee's tender during the 30-day escape period is necessary to protect him against discharge *Eclipse Lumber Co., Inc*, 95 NLRB 464.

Compare the cases in which the Board has similarly held that a union which enforces a discriminatory hiring agreement is not exonerated from liability under section 8 (b) (2) because employees who failed to secure employment had not applied for clearance by the union because, due to their standing with the union, such an application would have been a futile gesture. See *Pacific American Shipowners Association*, 98 NLRB 582, and *Waterfront Employers of Washington*, 98 NLRB 284.

[22] *Monsanto Chemical Company*, 97 NLRB 517. *Eclipse Lumber Company, Inc.*, 95 NLRB 464

[1] *Essex County and Vicinity District Council of Carpenters, AFL (Fairmount Construction Company)*, 95 NLRB 969.

tains the general prohibitions against such strikes and boycotts. Subsection B forbids a strike or boycott action at the plant of one employer for the purpose of forcing another employer to recognize or bargain with the representative of the latter employer's employees unless that employee is refusing to recognize a valid certification. Specifically, in both subsections, a union or its agent is forbidden to engage in such strikes or boycotts, or "to induce or encourage employees" to engage in them. The Board has usually designated the employer with whom the union has its primary dispute, or from which recognition is sought, as the primary employer. The employer, whose employees the union is alleged to have induced or encouraged to engage in secondary action, is generally termed the secondary or neutral employer.

Drawing the line between outlawed secondary activity and permissible primary action presented difficult problems in several cases. In the *Joliet Contractors* case, the Board dealt for the first time with the question of whether a union's refusal to furnish employees constitutes either a "strike," or an inducement of employees to strike or boycott within the meaning of section 8 (b) (4) (A).[1] The Board held unanimously that the union's refusal to furnish glaziers to members of the Joliet Contractors Association because of their use of preglazed windows and doors was not violative of section 8 (b) (4) (A). The Board held that such a refusal to furnish workers did not constitute a "strike" within the meaning of the act, nor constitute inducement and encouragement of employees as contemplated by section 8 (b) (4) (A). On the first point, the Board said:

> The General Counsel and the charging parties urge us either to construe the words "engage . . . in a strike" so as to encompass a union's refusal to furnish workers or to construe "induce or encourage . . . employees . . . in the course of their employment . . ." so as to include workers sought by an employer. Section 501 (2) of the Act defines "strike" as a "concerted stoppage of work by employees . . . and any other concerted slow-down or other concerted interruption of operations by employees." The broadest definition of strike includes "quitting work" or a "stoppage of work." Men cannot quit before they are hired; they cannot stop work before they start. We reject, therefore, the contention that the alleged refusal to furnish employees should be construed as a strike.

With respect to the issue of inducement or encouragement, the Board said:

> The gist of the argument is that all glazing work in the Joliet area is performed by a group of "employees" regularly working for a group of employers, and mov-

[1] *Glaziers Union Local 27 (Joliet Contractors Association)*, 99 NLRB No. 146, Members Houston and Murdock dissenting in part The Board had originally dismissed the complaint on the ground that it would not effectuate the policies of the act to assert jurisdiction. *Glaziers Union Local 27 (Joliet Contractors Association)*, 90 NLRB 542, Member Reynolds dissenting, with Chairman Herzog joining him on a motion for reconsideration. The court of appeals, however, found that the Board should assert jurisdiction and remanded the case to the Board for further proceedings *Joliet Contractors Association v. N. L. R. B.*, 193 F. 2d 833 (C. A 7).

ing from job to job as glazing work is available, and that " 'the course of employment' of a given glazier is his intermittent work for the several contractors he regularly serves. . . ." Assuming, *arguendo*, that the glaziers who work in the Joliet area are employees within the meaning of Section 2 (3) of the Act, there is no evidence that the Respondent Union induced or encouraged their "refusals," other than by the existence of bylaws As more fully discussed below, the Union's bylaws, standing alone, cannot constitute inducement and encouragement within the meaning of Section 8 (b) (4) of the Act. In any event, the words "in the course of their employment," in our opinion, remove this particular activity from the ambit of Section 8 (b) (4) (A)'s prohibitions. The alleged inducement here was not in the course of employment of any of the glaziers, but occurred before they accepted employment. We cannot construe "in the course of their employment" to include employment by several unrelated employers for varying periods, with no continuity or assurance of renewal at any definite period or time. (Footnote omitted.)

Also, in this case, the union's bylaws prohibited members from working for any firm or contractor unless all glazing work were done on the very site of the construction or repair job and only union members were then utilized for such work. The Board held that the bylaws were not in themselves illegal, because they had the clearly legitimate purpose of providing as much work as possible for glaziers in the area and did not prohibit working for a "secondary employer." Nor were the bylaws converted into a violation by the mere fact that the union used them illegally on one occasion.

The Board held also that the union did not violate section 8 (b) (4) (A) by the alleged inducement and encouragement of only *one* employee. This ruling reaffirmed the Board's earlier holding in the *Gould and Preisner* case [2] that the words "concerted" and "employees in the course of their employment" in section 8 (b) (4) require that more than a single employee be involved in order that a violation may be found.

However, a Board majority [3] found a violation of section 8 (b) (4) (A) in this case on the following facts: Three glaziers employed by a subcontractor putting plate glass windows in a store notified the union that they had seen some preglazed sash on the second floor of the building, which was under construction. An agent of the union told them: "You know the conditions of the job and you know the union rules. Do what is right." The glaziers then refused to do the work.

The Board ruled that in the context, including the existence of the union rules, the union agent's response was calculated to induce the employees to cease work. The majority found that an object of this conduct was to cause the glazing subcontractor to cease doing business

[2] *Denver Building and Construction Trades Council,* 82 NLRB 1195; affirmed 341 U. S. 675 (reversing 186 F 2d 326 (C A, D. C.)).

[3] Members Houston and Murdock dissented on the ground that this was lawful primary action.

with the building contractor because of the preglazed slash on the job, and that the union's conduct fell squarely within the 8 (b) (4) (A) prohibition.

In another case, a majority of the Board held that a delay of 5 minutes in beginning work, under the circumstances was not a strike within the meaning of the act, and did not support a finding that the union involved violated section 8 (b) (4) (A) and (B).[4] The brief stoppage in this case occurred at the start of work on a construction job when a union agent called out that the union's dispute with one subcontractor on the job was "not settled yet." On hearing this, the contractor agreed to the agent's request for a delay in starting work to afford an opportunity to settle the dispute. The Board held that this stoppage was a lawful attempt by the union to enlist an employer's assistance.

But in the *Acousti Engineering* case,[5] the Board found that the respondent union had engaged in a strike in violation of section 8 (b) (4) (A) and (B) by pulling its members off a secondary employer's work project. The Board considered it unimportant that the union did not resort to picketing or the usual appeals for the cooperation of other employees.

One case was remanded to the Board by a court of appeals [6] to determine whether or not picketing originally found by the Board to be illegal secondary activity would still be held so under criteria established by the Board later in the *Moore Drydock* case.[7] Involved was the question of whether the remanded case came within the Board's doctrine applicable to a primary labor dispute with a "roving situs." Under this doctrine, the Board holds that a union, in a dispute with a truck operator or other employer whose business in effect moves from place to place, may picket at the premises of another employer under certain limited conditions. In the remanded case, certain retail stores were picketed by an uncertified union which was seeking recognition of a primary employer who rented trucks and supplied delivery services to the stores. The Board found that the union's conduct was not primary picketing that would be lawful under the

---

[4] *Local Union No 50 (Clyde M Furr)*, 98 NLRB 1288, Chairman Herzog and Member Peterson dissenting

[5] *Wood, Wire and Metal Lathers, Local 284 (Accusti Engineering Co)* 97 NLRB 574

[6] *Service Trade Chauffeurs Local 145, Teamsters (Howland Dry Goods Co)*, 97 NLRB 123 See also prior decision, 85 NLRB 1037 (1949), remanded in part 191 F 2d 65 (C A 2).

[7] *Sailors' Union of the Pacific (Moore Drydock Co)* 92 NLRB 547 (1950), Members Reynolds and Murdock dissenting Sixteenth Annual Report, p 226 The Board held in this case that picketing a secondary employer's premises would be considered lawful primary picketing if four conditions were met (1) The picketing is strictly limited to times when the *situs* of dispute is located on the secondary employer's premises (2) at the time of the picketing the primary employer is engaged in its normal business at the *situs;* (3) the picketing is limited to places reasonably close to the location of the *situs;* and (4) the picketing discloses clearly that the dispute is with the primary employer.

Moore Drydock doctrine, because the picketing was not limited strictly to times when the primary employer's trucks were on store premises nor to times when the primary employer was engaged in its normal business there. Furthermore, the picketing was irregular and not related to, nor limited to, the arrival or departure of the primary employer's trucks. At least once a picket sign referred to a dispute with the picketed store. The Board therefore affirmed its original finding that the union had violated section 8 (b) (4) (A) and (B).

In another case,[8] the question of whether picketing was protected under the *Moore Drydock* doctrine depended on whether the union, while picketing at the secondary employer's premises, clearly disclosed that its dispute was not with that employer but with the primary employer, who was engaged in a work project on the secondary employer's premises. Holding that the picketing activities were secondary and violated section 8 (b) (4) (A) and (B), the Board noted that there was no "deliberate attempt" to confine picketing to the primary employer, and that no attempt had been made to avoid interference with other work in progress on the secondary premises. The Board further noted the following facts in this case: The union had made no request for the secondary employer's permission to place its picket line inside the secondary premises. The primary employer maintained two regular places of business which could be (and in fact were being) picketed. While the pickets carried signs referring only to the primary employer, they informed employees of third parties, who attempted to cross the picket line, that they were "21 years of age" and should "use [their] own judgment." One union official had told a trucking supervisor, in the presence of drivers about to deliver certain goods to the secondary employer, that these goods were permitted to cross the picket line only because they were in transit before the picketing started.

5. Strike for Recognition Against Certification

Section 8 (b) (4) (C) prohibits a union from engaging in strike or boycott activity in order to force an employer to recognize or bargain with one labor organization as the representative of his employees when another labor organization has been certified by the Board as the representative of such employees.

Only one case involving this section was decided during the past year. The charging union in this case had been certified as representative of an automobile dealer's employees, and the respondent union, while engaging in a campaign to organize the employees of this company and other dealers in the industry, picketed the company's

[8] *Boilermakers Lodge No. 92 (Richfield Oil Corp.)*, 95 NLRB 1191

premises.[1] During the period of the picketing, employees of other employers, making deliveries or attempting to perform services on the company's premises, were turned back at the picket line. The trial examiner had found that the picketing induced employees of other employers to engage in a concerted refusal to handle commodities or perform services for the company. But the Board, affirming the finding of an 8 (b) (4) (C) violation, held that it was immaterial whether or not the picketing exerted such secondary as well as primary pressures on the employer or whether it was successful. The Board said:

> It is sufficient that the picketing, as we find, necessarily constituted an inducement and encouragement to the employees of the Company to engage in a strike or other concerted refusal to perform services for their employer. Section 8 (b) (4) (C) forbids the inducement or encouragement of employees of *any* employer to engage in the proscribed conduct, an object thereof being to force *any* employer to recognize or bargain with a union in the face of prior certification of another union. Accordingly, the inducement in this case of employees of the Company to engage in primary strike to force the Company to bargain with Respondent [Union] falls within the interdiction of Section 8 (b) (4) (C).

The Board further found that the union's demand for recognition by the company was implicit in its picketing activities.

6. Jurisdictional Disputes Under 8 (b) (4) (D)

Section 8 (b) (4) (D) forbids a labor organization to engage in a so-called "jurisdictional dispute" over the assignment of work tasks. In the language of the statute, a labor organization is forbidden

> to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is: . . . (D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or closs, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work.

An unfair labor practice charge under this section must be handled differently than a charge alleging any other type of unfair labor practice. Section 10 (k) requires that the parties to such a "jurisdictional dispute" be given a period of 10 days, after notice of the filing of charges with the Board, to adjust their dispute. If at the end of this time, they are unable to "submit to the Board satisfactory evidence that they had adjusted or agreed upon methods for the voluntary adjustment of the dispute," the Board then is empowered to make a determination of the dispute in the case. Section 10 (k) further

[1] *International Brotherhood of Teamsters (Union Chevrolet Company)*, 96 NLRB 957

provides that "upon compliance by the parties to the dispute with the decision of the Board, or upon such voluntary adjustment of the dispute, such charge shall be dismissed." A complaint alleging violation of section 8 (b) (4) (D) may issue only when there is a failure to comply with the Board's determination of dispute. When a charge under this section has been filed, and the statutory 10-day period has expired without adjustment, the Board will then determine whether the alleged dispute is properly before it. The Board has administratively adopted the rule that a dispute will be determined under section 10 (k) only on a showing that there is "reasonable cause to believe" that section 8 (b) (4) (D) has been violated.[1]

During the past year, hearings were held in six cases pursuant to section 10 (k).[2] In three of these cases, the Board issued a determination of dispute, finding in each instance that the union against which charges were filed was not entitled to the work in question and could not lawfully require the employer to assign the work to its members rather than to the employer's own employees who were members of another union.[3] As in prior cases, the Board held in each instance that the employer had a right to assign work free of pressure from a union which had no contract with the employer, no members among its employees, and no rights by any outstanding Board certification or order affecting the disputed work.

In the remaining three cases the Board held that it was without authority to make a determination of the dispute, because the parties had voluntarily adjusted the dispute or had agreed upon methods for such voluntary adjustment. Thus, in the *Manhattan Construction* case,[4] all the parties to the dispute had previously made an agreement to refer all controversies over work assignment to the National Joint Board for Settlement of Jurisdictional Disputes, Building and Construction Industry, for settlement. The Board held that such agreement constituted "satisfactory evidence," as required by section 10 (k), that at the time the charge was filed the parties had "agreed upon methods for the voluntary adjustment of the dispute," regardless of whether or not the dispute had actually been adjusted. The Board likewise dismissed section 10 (k) proceedings in a case where the parties had agreed to submit their disputes to the business agents of the local unions involved for binding determination, and had in fact submitted their dispute.[5] In another case, where the employer had an

---

[1] See Sixteenth Annual Report, p 229, 231.

[2] No complaints under section 8 (b) (4) (D) were adjudicated during the past year

[3] *Broadcast Engineers and Technicians (Teleprompter)*, 95 NLRB 1470, *United Brotherhood of Carpenters Local 581 (Collard)*, 98 NLRB 346; *Operating Engineers Local 17 (Empire State Painting and Waterproofing Co)*, 99 NLRB No 168.

[4] *Carpenters Local 943 (Manhattan Construction Co)*, 96 NLRB 1045, petition for review dismissed, 198 F. 2d 320 (C. A 10).

[5] *Teamsters Local No 236 (Traylor)*, 97 NLRB 1003, Member Murdock dissenting as to existence of dispute.

agreement with a local union defining the extent of its territorial jurisdiction, and where the contracting local had recognized the right of a sister local to perform the disputed work, the Board dismissed the jurisdictional dispute proceeding.[6]

In the last two cases, the Board held that the employer's failure to comply with the determination of the dispute pursuant to the agreement was immaterial as far as its own authority to determine the dispute was concerned. The Board said in one case:

> The proviso to Section 10 (k) . . . applies equally to adjustment *or* agreement upon a method for adjustment. Moreover, to hold that the Company's refusal to abide by the determination of the dispute, made pursuant to the agreed upon method for adjustment, also nullified the agreement upon a method for adjustment would be to condone and sanction the Company's breach of that agreement. This would tend to discourage and render worthless the making of such agreements, contrary to the statutory purpose to encourage the voluntary adjustment of jurisdictional disputes. In effect, such a holding would permit a party to breach such an agreement with impunity because the determination of the dispute pursuant to the agreement was unfavorable to it, and then to have recourse to this Board for another determination of the dispute which might be favorable to it. In our opinion, this would stimulate abuse of the Board's processes.[7]

On the other hand, the Board held that it was not precluded from determining a dispute in a case in which an industry-labor "joint board" had been induced to accept jurisdiction over the dispute but without any prior agreement, and where the joint board's decision was not accepted by all the parties and had only limited application.[8]

7. Excessive or Discriminatory Fees for Union Membership

Section 8 (b) (5) makes it an unfair labor practice for a union, under a valid union shop, to charge a fee for membership "in an amount which the Board finds excessive or discriminatory under all the circumstances." The section states further that, "in making such a finding, the Board shall consider, among other relevant factors, the practices and customs of labor organizations in the particular industry, and the wages currently paid to the employees affected."

Violations of this section were alleged in two cases which came before the Board during the past year.[1] Applying established principles,[2] the Board held in the *Stacker* case that a union's imposition

---

[6] *Warehousemen, Local 636, AFL (Roy Stone Transfer Corp.)*, 99 NLRB No. 111.

[7] *Teamsters Local No. 236 (Traylor), supra.*

[8] *Operating Engineers Local 17 (Empire State Painting and Waterproofing Co.)*, 99 NLRB No. 168. See also *United Brotherhood of Carpenters Local 581 (Collard)*, 98 NLRB 346, where the Board similarly held that a 10 (k) determination was not barred by a joint board's decision which was not binding on the parties concerned.

[1] *Local 153, International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, UAW–CIO (Richard Stacker)*, 99 NLRB No. 166; *Food Machinery & Chemical Corporation*, 99 NLRB No. 167.

[2] *Ferro Stamping and Manufacturing Company*, 93 NLRB 1459. See Sixteenth Annual Report, p. 232.

of a $15 initiation fee on employees with more than a year's service while requiring only a $5 fee of employees with less service, was discriminatory under section 8 (b) (5). The union was ordered to reimburse employees from whom the higher fee was exacted. The Board again held that the imposition of disparate fees may violate section 8 (b) (5) even though the larger fee required is not also excessive. The Board thus specifically rejected the union's contention that the phrase "excessive or discriminatory under all the circumstances" must be read to mean "excessive." The Board based its finding that the fee was discriminatory upon the inference that the larger fee was imposed because the employees against whom it was assessed had exercised their statutory right to refrain from joining the union earlier. This inference in the Board's opinion was justified because the union did not show that the discriminatory fee was offset by additional benefits but, in fact, admitted that its dual fee system was intended to induce employees to become members sooner.

The Board in this case also noted the effect which must be given the statutory requirement that the practices and customs of labor organizations in the particular industry be considered in determining whether a given fee is discriminatory. Rejecting the trial examiner's conclusion that the requirement applies only to the prohibition against excessive fees, the Board further observed that in either case a union's past practices and customs were only to be considered but were not intended to be given controlling weight. Insofar as the practices relied on by the union were concerned, the Board noted that those practices were substantially different from the ones involved in the case and, under all the circumstances, could not preclude the Board from finding that the union violated section 8 (b) (5).

In the *Food Machinery* case, a majority of the Board [3] held that the union's imposition of a $60 reimbursement fee on a former member of a sister union was not unlawfully discriminatory, although first-time applicants for membership in the union were required to pay an initiation fee of only $30. Pointing out that the earlier *Ferro Stamping* and *Stacker* cases recognized that section 8 (b) (5) does not prohibit unions from charging different, nonexcessive, fees when they are based on a reasonable classification, the majority held that the disparate treatment of employees in the *Food Machinery* case had such a basis and was not shown to have been intended to penalize the complaining employee because he refrained from membership in an affiliate at a time when he was not obligated to join it. The majority held that "Congress did not intend the Board to find labor organizations in violation of the law, where, as here, following well-settled

[3] Chairman Herzog and Board Member Houston dissenting

practice,[4] they have done no more than to establish a different, but fairly reasonable, classification of former members as distinguished from new applicants." The opinion said further:

In our opinion a contrary interpretation is unnecessarily harsh and is required neither by the spirit nor the literal language of that section. As indicated above, we do not have the question before us whether the fees required by the Respondent Union were excessive. We find only that the Respondent Union did not *per se* violate the Act by according former members special consideration in setting their reinstatement fee, whether that fee was greater or less than the initiation fee required of new or other reasonable classifications of applicants. The burden was on the General Counsel to prove not only that the fee charged Bauer was disparate, but that it was discriminatory in its application. Under all the circumstances, set forth above, we find that he has failed to carry this burden. (Footnote omitted.)[5]

8. Union Responsibility for Unfair Labor Practices

In determining the responsibility of labor organizations for unfair labor practices under section 8 (b), the Board continues to apply the rules of agency first outlined in the *Sunset Line and Twine* case.[1]

In one case, for instance, the Board approved a trial examiner's conclusion that a union was chargeable with all the acts of a business representative whom it had authorized to conduct a strike, under the rule that a principal is responsible for the acts of his agent which are within the scope of the latter's authority.[2] Thus, the Board held, the local union could not escape liability for the assault of a picket on a dissident union member, because the picket, while not expressly authorized to do so, had acted in conformity with a pattern of conduct established by the business representative. In the same case, the Board also agreed that the local's district council also was responsible for the picket line misconduct. The Board particularly noted that under the constitution governing the local and its district council all strikes were to be "under the supervision" of the council, and that the council had in fact delegated authority to supervise the local's strike to the business representative. Having done so, the Board held it immaterial that the representative was not normally authorized to act as agent for the district council.

In two other cases, parent organizations were similarly held to be jointly liable for unlawful conduct immediately committed by their affilates. Thus, in attributing the illegal hiring practice of a local

[4] The majority made it clear, however, that the union's former practice, while entitled to consideration, could not be given controlling weight under the rule of the *Stacker* case.

[5] Chairman Herzog and Member Houston, in their dissent, took the view that the principle of the *Ferro* case was applicable because the reinstatement fee in question was in effect a penalty for the complaining employee's failure to maintain membership in an affiliate at a time when he could legally refrain from such membership.

[1] 79 NLRB 1487; see Fourteenth Annual Report, pp. 104, 106, and Fifteenth Annual Report, pp. 152, 154.

[2] *Painters District Council No. 6 (The Higher Company)*, 97 NLRB 654.

construction workers' union to its Building Trades Council[3] the Board said:

Although the evidence in the record does not show that the Respondent Council affirmatively participated in the illegal practices involving Esparza, it does show that it executed the agreement providing for the establishment and enforcement by the Respondent Union of such practices Moreover, the record shows that one of the prinicipal functions of the Respondent Council was to coordinate the activities of its constituent locals and to establish uniform terms and conditions of employment. Therefore, when the Council pursuing its normal functions executed the illegal agreement, it necessarily contemplated that its affiliates would give effect to the illegal union-security provisions, precisely as the Respondent Union did with respect to Esparza. In these circumstances, we regard the relationship between the Council and each affiliate as that of cosponsors of the illegal agreement and practices. Such cosponsorship, under well-established legal and equitable principles, carriers with it the responsibility of joint participants in a common enterprise for one another's acts performed in furtherance of the enterprise.[4]

An international union and its local also were held jointly liable for the discriminatory acts of a hiring hall, notwithstanding the international's delegation to the local of its contractual powers with respect to the hiring hall and the absence of evidence indicating that the international knew or ratified the particular acts in question.[5] The Board pointed out that the discriminatory conduct of the hiring hall reflected the application of unlawful union-security agreements which the international had made for its own benefit, as well as the local's, and which it had the over-all power to administer.

C. The 6-Month Limitation on Charges

Section 10 (b) of the act, dealing with the filing and disposition of unfair labor practice charges, contains a proviso that

No complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made.

The Board, with court approval, has interpreted this proviso as a statute of limitations intended to fix the time within which unfair labor practice charges must be filed and served, and to extinguish liability for unfair practices committed more than 6 months before charges are filed.[1]

However, the Board has consistently taken the position that it is not precluded from making an unfair labor practice finding on the basis

---

[3] *Paul W Speer,* 98 NLRB 212

[4] The Board cited its earlier similar holding in *Osterink Construction Company,* 82 NLRB 228.

[5] *Waterfront Employers of Washington,* 98 NLRB 284.

[1] See Sixteenth Annual Report, pp 236, 272–273.

of conduct which commenced prior to the statutory 6-month period, if the unlawful conduct continued during that period. Thus, the Board held that a complaint was not invalid because it alleged that the employer unlawfully refused to bargain "at all times" since a date more than 6 months prior to the filing and service of charges.[2] The Board noted that the complaint alleged an unfair labor practice of a continuous nature which existed *on and after* a date 6 months prior to the filing and service of charges and therefore furnished a proper basis for finding a violation of the act.[3]

Similarly, the Board again held the continued enforcement of an illegal union-security agreement during the statutory period could properly be found to constitute an unfair labor practice, although the execution of the illegal contract occurred more than 6 months before the filing of charges and therefore could not also be made the basis of such a finding.[4] Nor, in the Board's opinion, was an unfair labor practice finding relating to the execution and enforcement of an illegal union-security agreement during the 6-month period precluded because the agreement had been orally affirmed before that time.[5] For, the Board held, "irrespective of whether a 'cause of action' may have previously arisen because of oral agreement to the clauses found unlawful, it is clear that a new 'cause of action' arose when the inclusion of such clauses in the completed contract was formally ratified and sanctioned."

In a case involving employer assistance to a union in violation of section 8 (a) (2), the Board affirmed the trial examiner's finding that while the unlawful conduct began more than 6 months before the filing of charges, it continued thereafter and could therefore properly be found to constitute an unfair labor practice.[6]

It was contended in one case that a violation of section 8 (a) (3) could not be predicated on timely charges that the employer refused to reemploy certain strikers as new employees, because the individuals involved had failed to file charges regarding their discharge by the employer more than 6 months earlier.[7] In rejecting the contention, the Board said

The fallacy of this contention is apparent on the face of the complaint, for nowhere therein is it alleged that these terminations are statutory violations for which a remedy is sought. The gravamen of the complaint is clearly denoted as the unlawful refusal by the Respondent to *employ* the discriminatees following

---

[2] *Gagnon Plating and Mfg. Co*, 97 NLRB 104.

[3] To the same effect, *Leland-Gifford Co*, 96 NLRB 1306; *White Construction and Engineering Co.*, 97 NLRB 1082

[4] *Paul W. Speer*, 98 NLRB 212.

[5] *International Longshoremen's Local 19 (Waterfront Employers of Washington)*, 98 NLRB 284, as amended at 101 NLRB No. 151; see also notice to show cause at 101 NLRB No 53

[6] *Beaver Machine & Tool Co*, 97 NLRB 33.

[7] *Textile Machine Works, Inc*, 96 NLRB 1333.

their applications for employment in *1948* and thereafter. The discriminatory conduct thereby alleged constitutes a separate and independent violation of the Act distinct from any unlawful conduct which may have been implicit in the earlier terminations of employment. Thus, the view advanced by the Respondent that the discriminatees are now barred from the relief presently sought because the right to remedy the Respondent's past violations was permitted to lapse by their failure to file a timely charge is without logical support. The Act imposes upon the Respondent a continuing duty to refrain from discriminating with regard to the hire of employees, and this obligation to the discriminatees was not lessened or removed by their failure to remedy a past violation. Were we to permit the Respondent's approach to prevail, we would thereby license the Respondent permanently to continue blacklisting the discriminatees with impunity. Neither the Act nor its legislative history sanctions such a result.[8]

In another case, the Board held that the limitations of section 10 (b) did not apply to charges of discrimination against unfair labor practice strikers, although the unfair labor practices which caused the strike occurred more than 6 months before charges were filed. The Board pointed out that the rule of the *Greenville Cotton Oil* case[9] on which the employer relied, was not applicable because, unlike that case, separate timely charges regarding the unfair labor practices which caused the strike were filed and were sustained in another proceeding both by the Board and the reviewing court.

However, in several cases, the Board found that conduct which originated before the 6-month period did not in fact continue thereafter and therefore could not be the basis of a complaint. Thus, a majority of the Board held in one case that the employer's discontinuance, prior to the statutory period, of its semiannual wage review policy, regardless of motive for the change, could not be found to violate section 8 (a) (1).[10] The majority held that the employer's failure to modify or rescind its action during the 6-month limitation period could not be regarded as a continuing violation. Similarly, the Board held that an employer's refusal to admit an employee to membership in an employer-supported organization was not a continuing violation for the purpose of section 10 (b).[11] And in another case, the Board declined to base a finding of violation of 8 (a) (1) on the employer's request that employees who voted for union representation strike their names from a stock purchase agreement, because the request was made more than 6 months before charges were filed.[12]

The Board has continued to apply the rule that evidence of conduct which antedates the charges by more than 6 months may nevertheless

---

[8] Compare the views expressed by the court in the *Pennwoven* and *Childs Co.* cases involving similar facts ch VII, p 251

[9] *Greenville Cotton Oil Co*, 92 NLRB 1033, enforced, 197 F 2d 326 (C A 5); Sixteenth Annual Report, pp 236, 237.

[10] *Bonwit Teller, Inc*, 96 NLRB 608 Members Houston and Styles dissenting on this point; Member Reynolds dissenting on other points.

[11] *United Shoe Machinery Corp*, 96 NLRB 1309.

[12] *Coal Creek Coal Co.*, 97 NLRB 14.

be received as background evidence and may be considered to clarify, or show the meaning of, the specific conduct alleged as an unfair labor practice.[13]

1. Matters Not Alleged in Original Charge

In computing the 6-month period under section 10 (b), the date of the original charge, rather than the date of later amended charges, is controlling.[1] Thus, the Board has consistently held that an unfair labor practice finding may be based upon any conduct which occurred within a 6-month period before the filing of a charge that the act has been violated, although the charge does not specifically set forth the particular conduct, provided the complaint in the case alleges the conduct as an unfair labor practice.[2]

A similar rule was applied in a case in which discrimination charges filed by one employee were timely while the separate charges of another employee, who claimed discrimination by the same employer, were not filed until after the 6-month period.[3] The Board held that the timely charges filed by one claimant provided a sufficient basis for the litigation of the discrimination by the same employer against the second claimant. In another case, the charges filed in two consolidated cases against an employer were held sufficient under section 10 (b) to support each of the unfair labor practice allegations of the complaint.[4]

The function of a charge is merely to set in motion the investigative machinery of the act and therefore need not specify each unfair labor practice to be litigated and alleged in the complaint, the Board and courts have held consistently. All that is required by section 10 (b), the Board said in one case, is that the unfair labor practice findings should be upon conduct which occurred within the 6-month period before the filing and service of the initial charges.[5]

2. Service of Charges

Section 10 (b) requires that charges must both be filed and served on the proper parties not later than 6 months after the occurrence

---

[13] *I. B S. Mfg Co.*, 96 NLRB 1263; *Textile Machine Works, Inc.*, 96 NLRB 1333; *Gagnon Plating and Manufacturing Co.*, 97 NLRB 104; *H. M. Thayer Co*, 99 NLRB No. 165.

[1] See *United States Gypsum Co*, 97 NLRB 884, *Nina Dye Works Co., Inc*, 95 NLRB 824.

[2] See *I. B. S. Mfg. Co.*, 96 NLRB 1263, and cases cited there. See also *The Chesapeake and Potomac Telephone Co. of West Virginia*, 98 NLRB 1122, and the intermediate reports in *Beaver Machine & Tool Co., Inc*, 97 NLRB 33, and *Westinghouse Electric Supply Co.*, 96 NLRB 407

[3] *International Longshoremen's Local 19 (Waterfront Employers of Washington)*, 98 NLRB 284.

[4] *Pecheur Lozenge Co*, 98 NLRB 496.

[5] *Pacific American Shipowners Association*, 98 NLRB 582 Accord: *The Hunkin-Conkey Construction Co*, 95 NLRB 433; *Celanese Corp. of America*, 95 NLRB 664; *Westinghouse Electric Corp. (Sunnyvale Plant)*, 96 NLRB 522; *Modern Motors, Inc.*, 96 NLRB 964; *H. N Thayer Co.*, 99 NLRB No. 165

of the conduct alleged to violate the act. In giving effect to this provision, the Board in one case dismissed a complaint as to respondents who were not served with a copy of the charges against them until more than 6 months following the conduct alleged in the charge.[1] In another case, where certain parties were not named as respondents in the original charge, but only in the amended charge, the Board upheld the trial examiner who limited his findings of violations by these parties to their conduct during the 6-month period immediately before the service of the charges on them.[2]

The Board has held that, in each case, the 6-month limitation period must be determined by the date of filing or service of the charge, whichever is the later.[3]

3. Effect of Withdrawal or Settlement of Charges

In one case, the Board had to determine whether a timely charge which had been withdrawn could be reinstated so as to relate back to the time of the filing and service of the original charge, for the purpose of computing the 6-month limitation period.[1] A majority of the Board concluded that the charge, which had been withdrawn intentionally [2] with approval of the regional director, could not be validly reinstated. The Board said:

> The practical effect, and doubtless the intended effect, of the proviso to Section 10 (b) is that, absent the existence of a properly served charge on file, a party is assured that on any given day his liability under the Act is extinguished for any activities occurring more than 6 months before.
>
> The charge in this case was filed and served on May 16, 1949, making the Respondent liable for its activities occurring after November 16, 1948, but freeing the Respondent of liability for acts preceding that date. While this charge remained on file, November 16 remained the cutoff date. However, when on September 7, 1949, the Regional Director notified the parties that he had approved the withdrawal of the charge by the charging party, the situation changed. We believe that on that date, or on any date thereafter on which a charge was not on file, Respondent had the right under the statute to be assured that it would not be held liable for activities occurring more than 6 months ago. Hence, when, on October 5, 1949, no charge was on file, the Respondent's liability for McManus' discharge, 6 months earlier, was extinguished by operation of law. To permit the October 17 reinstatement of the charge to revive that liability would amount to circumvention of the proviso to Section 10 (b). [Footnotes omitted.]

---

[1] *White Oak Park,* 98 NLRB 376.

[2] *UMW District 31 (L. E. Cleghorn),* 95 NLRB 546.

[3] *Olin Industries, Inc ,* 97 NLRB 130 ·

[1] *Olin Industries, Inc , Winchester Repeating Arms Co Division,* 97 NLRB 130, Member Houston dissenting.

[2] The majority noted that the reinstatement in any event did not come within the rule of *Bentley Lumber Co ,* 83 NLRB 803, enfd 180 F. 2d 727 (C A. 5), because there the charge was mistakenly withdrawn through the error of a Board agent and not that of a party.

As to the effect of a settlement of unfair labor practices alleged in a timely charge, a majority of the Board expressed the view that section 10 (b) would not preclude its reactivating the original charges upon a showing of post-settlement violations.[3] However, the Board majority declined to follow this course because the complaining party delayed filing its amended charges until 9 months after the alleged violations of the settlement agreement. The Board said:

> It is not only salutary policy to protect parties to a settlement agreement against violations of the agreement, but it is equally desirable to encourage settlement agreements A party charged with violations of the Act would be discouraged from entering into such an agreement if we were to hold that such charges may be reactivated regardless of how long a charging party waits after the occurrence of alleged post-settlement violations before bringing them to the Board's attention. In the instant case, the Union waited for more than 9 months to do so, and nothing appears in the record to explain or mitigate that delay. After due consideration of the Board's policies discussed above, and mindful of the intent of Congress, in adding Section 10 (b) to the original Act, to discourage unreasonable delays in filing charges, we find that, under the circumstances presented here, the original charges should not have been reactivated or amended, nor a complaint issued thereon. Accordingly, we shall dismiss the complaint in its entirety. [Footnotes omitted.]

D. Remedial Orders

When the board finds that any person charged in a complaint has engaged in unfair labor practices, the Board is empowered by section 10 (c) to issue an order requiring such person to "cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act." This applies to both employers and labor organizations or the agents of either.

The purpose of the Board's order therefore is remedial—to undo the effect of the unfair labor practices and to direct such action as will dissipate the unwholesome effect of violations of the act. The means to remedy such unfair labor practices is a matter in which the Board has broad discretion.[1] The Board ordinarily frames its orders on patterns generally appropriate to each general type of unfair labor practice, but the Board may vary the remedy in order to fit it more precisely to the needs of a particular case. Thus, in one case, a Board majority [2] ordered an employer to bargain with a union which had lost its majority status as a result of the employer's unfair labor practices, even though a differently constituted majority in the same case [3]

---

[3] *Moffett (Invo Lumber Co.)*, 98 NLRB 984, Member Houston dissenting.

[1] *International Longshoremen's Local 19 (Waterfront Employers of Washington)*, 98 NLRB 284

[2] Chairman Herzog dissenting

[3] Members Styles and Houston dissenting.

absolved the employer from a refusal-to-bargain charge.[4] The majority opinion in this case noted that "while the Board's bargaining orders have generally been predicated o na finding that a Respondent had unlawfully refused to bargain, the Act does not preclude the Board from issuing such an order to remedy unfair labor practices other than those prescribed by Section 8 (a) (5)."[5] The majority found that because the employer's violations of section 8 (a) (1) and (3) precluded the union from achieving certification through a free election, this order to bargain was necessary to restore the union its previously enjoyed status of exclusive representative and to prevent the employer from profiting by its own wrongful conduct.

In one case, where the employer was found to have violated section 8 (a) (1) and (5) of the act, the Board ordered that certain unfair labor practice strikers who were still on strike at the time of the hearing be offered reinstatement when they applied for their jobs.[6]

1. The Scope of Orders

In those cases where the record reveals an attitude of such general hostility to the purposes of the act as to indicate a likelihood that further violations may be committed in the future, the Board ordinarily issues a broad order, enjoining the employer or the union from infringing "in any manner" on the employees' rights as guaranteed in section 7.[1] The Board may also otherwise broaden the scope of its order where the circumstances of a particular case warrant it.[2]

Conversely, in those situations where the element of general hostility is lacking, the Board ordinarily limits its order to directing

---

[4] *International Broadcasting Corp* (*KWKH*), 99 NLRB No 25

[5] The Board found precedent for such an order in *D H Holmes Co, Ltd* v *N. L R B*, 179 F. 2d 876 (C A 5), where the court, although reversing the Board's finding that the employer had violated section 8 (a) (5) of the act, nevertheless affirmed the Board's bargaining order as a means of remedying the employer's violations of section 8 (a) (1).

[6] *City Packing Co*, 98 NLRB 1261.

[1] *Utah Construction Co*, 95 NLRB 196, *Calcasieu Paper Co, Inc*, 99 NLRB No. 122; *Pacific American Shipowners Ass'n*, 98 NLRB 582

[2] Examples: *Port Chester Electrical Corp*, 97 NLRB 354, where the Board ordered an employer to cease and desist from continuing to include an unlawful union-security clause in a contract not only with the respondent union but also with any other labor organization, and similarly ordered the union to cease and desist from including such a clause in contracts not only with the respondent employer, but also with any other employer *F H McGraw and Co*, 99 NLRB No 116, where a respondent union and employer were ordered to cease giving effect to an unlawful union-security provision in a Nation-wide contract at any of the employer's construction projects, even though the evidence in the instant proceeding was confined to only one project. *UMW District 2, (Mercury Mining and Construction Corp)*, 96 NLRB 1389, where the Board, after having determined that the union's unlawful methods were part of a general campaign, issued a cease-and-desist order against violations *everywhere* within the union's territorial jurisdiction although the union committed certain acts of restraint and coercion against employees of only four employers in one of its districts To justify such an order, the Board noted, "it is not necessary that we determine that the evidence here established . . . the existence of a 'planned program' by the Respondents to extend their unlawful techniques to all other nonunion mines [within its] jurisdiction,"

the employer or union to cease and desist from the particular unfair labor practice found and from any like or related conduct.[3]

In cases where the Board finds that the parties entered into a contract which contained an illegal union-security agreement, the Board ordinarily limits its order in this respect to requiring that the parties cease giving effect to the unlawful union-security provision, and refrain from executing agreements in the future containing union-security provisions except as authorized by the act.[4] Only in those cases where, in addition to the unlawful union-security provision, the Board finds that the employer has also violated section 8 (a) (2) of the act, will the Board issue a broad order requiring the parties to set aside the entire contract.[5]

Also, in some cases, it is necessary to determine who should assume the responsibility for specific violations and remedy the unfair labor practices found by the Board. In one case, the Board found that, under the circumstances of this case, it could not include the majority of the members of an employer association in its remedial order. However, the Board concluded that it would not fully effectuate the purposes of the act to include only three members in its order. The Board, therefore, directed the association, which was also a respondent in the case, to invoke such powers as it might have as to each member of the association to insure their cooperation in the objectives of the order.[6] The Board in this case also ordered the employer association to notify a joint employer-union group, which administered the hiring hall, as to the steps taken to comply with the Board's order, and to furnish all employees suffering discrimination with copies of the notices.

A successor organization also may be liable for unfair labor practices committed by its predecessor. Thus, the Board, in one case, ordered an employer association which came into existence *after* the unfair practices had been committed, to remedy the unfair labor practices of its predecessor. The Board did not attribute the violations to the successor organization, but found such an order appropriate because the successor organization had assumed the rights, prop-

---

[3] *Krantz Wire & Mfg Co*, 97 NLRB 971, where the trial examiner recommended, and the Board adopted, the issuance of a limited order, because the employer's violation was based largely upon its lack of understanding of successor employers' legal obligations toward a union, rather than on any opposition to the objectives of the act. *Pacific American Shipowners Ass'n*, 98 NLRB 582

[4] *Utah Construction Co.*, 95 NLRB 196.

[5] *Pacific American Shipowners Association*, 98 NLRB 582; cf. *International Longshoremen's Local 19 (Waterfront Employers of Washington)*, 98 NLRB 284, where, despite the employer's violation of section 8 (a) (2), the Board did not order the setting aside of the entire contract or withdrawal of recognition, because no party excepted to the trial examiner's failure so to recommend and the General Counsel affirmatively requested the Board not to expand the scope of the order.

[6] *International Longshoremen's Local 19 (Waterfront Employers of Washington)*, 98 NLRB 284

erties, debts, and liabilities of its predecessor which had committed the violation.[7]

Similarly, in another case, the Board held both an employer and the corporation to which he purportedly transferred his business jointly and severally responsible for compliance with the Board's order.[8] The Board noted in this case that the corporation was not in the position of a purchaser without notice of the employer's unfair labor practices, and therefore could not escape the obligation of eradicating the effects thereof.

2. Types of Remedies

One function of a remedial order is to restore the parties in a given case to the status which they enjoyed, or would have enjoyed, if no unfair labor practices had been committed. In the case of discrimination against employees, the Board ordinarily achieves this result by ordering the reinstatement of the employee suffering discrimination to the same or substantially similar position he held prior to the discrimination. Where, however, the number of jobs available is for some reason insufficient to permit the reinstatement of all discriminatees, the Board ordinarily orders the employer to place those remaining on a preferential hiring list.[1] In one case, the Board declined to order the employer to offer the discriminatee a higher position to which, absent the discrimination, he might have been promoted through the operation of union rules. The Board held that a finding that the discriminatee would have attained such a position involved "too much speculation as to a series of contingent events to be a proper finding for us to make."[2]

In a case where at least one of the discriminatees had been inducted into the Armed Forces since his discriminatory discharge, the Board ordered the employer to notify any such discriminatees that it would offer them reinstatement upon application made within 90 days of their discharge from the Armed Forces.[3]

Nor is the Board bound, in framing an order, by the wishes of an individual who may benefit by the order. Because the act is designed to vindicate a public policy rather than private rights, the desires of individuals cannot be allowed to block the public purpose behind the Board's orders.[4] Thus the Board, in one case, included certain employees in its reimbursement order, notwithstanding that these em-

---

[7] *Pacific American Shipowners Association,* 98 NLRB 582.

[8] *Krimm Lumber Co*, 97 NLRB 1574.

[1] *The Jackson Press,* 96 NLRB 897 ;*Mundet Cork Corp.,* 96 NLRB 1142.

[2] *Alaska Steamship Co*, 98 NLRB 22. But see *Underwood Machinery Co*, 95 NLRB 1386, where the Board included in its back-pay computation the amount a discriminatee would have received by reason of promotion which he would have received but for his discharge.

[3] *Stationers Corp.,* 96 NLRB 196.

[4] *Wood Mfg. Co.,* 95 NLRB 633.

ployees had requested the removal of their names from the complaint and had specifically stated that they did not seek any back pay.[5] Similarly, the Board held in another case that the issuance of an order was not precluded either by the fact that the discriminatee did not desire reinstatement or by the fact that the amount of his back pay was fixed in a settlement agreement.[6] The Board found that it is in the Board's discretion to determine what effect, if any, should be given to a settlement of unfair labor practice charges by the parties.[7] Nor is a case rendered moot by the termination of the illegal practices. In such cases the issuance of a remedial order is necessary to dissipate the effects of the unfair practices and to prevent the recurrence of similar unlawful conduct in the future.[8]

The Board continues to require employers and unions found in violation to post notices, announcing to the employees that they will cease such violations and refrain from future violations. The notices also usually state what affirmative action the party found in violation has taken to remedy its unfair labor practices, ordinarily listing the names of employees receiving back pay or reinstatement. The Board commonly requires that such notices be kept in plain view for 60 days. Employers customarily are required to post notices in their offices, factory, or other business establishment in places where notices to employees are ordinarily posted. A union is usually required to post notices in its meeting hall or offices where notices to members are ordinarily posted.

But in order to reach employees where special circumstances prevail, the Board may vary these requirements. Thus, in one case involving a construction project, the Board, taking notice of the intermittent nature of the employer's operations and the possibility that the project at which the violations occurred may already have been completed, ordered the employer to post notices at all construction projects currently operating in the area in which the unfair labor practices were committed.[9] Similarly the Board, in another case involving a building contractor, ordered the employer to post compliance notices at any project it may commence in that State within 6 months from the date in which compliance with the Board's order begins.[10]

An employer who violated the act by, among other things, sending individual letters to unfair labor practice strikers soliciting their return, was ordered to mail to each such striker a copy of the compliance notice.[11]

---

[5] *Ibid.*

[6] Since no reinstatement was desired, the Board made no provision therefor in its order.

[7] *Robinson Aviation, Inc.*, 99 NLRB No 46.

[8] *Medford Building and Construction Trades Council (Kogap Lumber Industries)*, 96 NLRB 165.

[9] *Utah Construction Co.*, 95 NLRB 196.

[10] *J. R. Cantrall Co.*, 96 NLRB 786.

[11] *Reed & Prince Mfg. Co*, 96 NLRB 850.

Where the employer's operations are seasonal in nature, the Board ordinarily orders the employer to post the notices while the plant is in full operation.[12]

In addition, unions usually are required to furnish signed copies of their notices to the Board's regional director to be posted in the employer's plant or office, if the employer is willing.[13]

3. Back Pay

Where an employer is found to have discriminated against an employee, the Board ordinarily orders the employer to make the employee whole for any loss of earnings he has suffered as a result of the discrimination.[1]

The same remedy is applied when a union and an employer are found to have been jointly responsible for the discrimination, except that the union and the employer are ordered "jointly and severally" to make up the employee's financial loss.[2] The Board does not attempt to determine the amount which each should pay and reserves the right to hold either liable for the full amount, although it does not collect twice in any case.[3] Also, because the union has no control over the reinstatement of the employee, the Board ordinarily permits the union to terminate its back-pay liability by giving notice to the employer and to the employee that it withdraws any objection to the employee's full reinstatement.[4]

The Board also continues to follow its established practice of not awarding back pay between the date of the intermediate report and the Board's order in cases where the Board reverses a trial examiner's dismissal of a complaint.[5] However, a mere delay in the issuance of an intermediate report does not preclude back pay for such period.[6] In two cases, the trial examiner found only the em-

---

[12] *Wade & Paxton,* 96 NLRB 650

[13] *Mundet Cork Corp*, 96 NLRB 1142, *Utah Construction Co*, 95 NLRB 196, *United Mine Workers, District 31,* 95 NLRB 546

[1] See *F. W. Woolworth,* 90 NLRB 289 (1950); Fifteenth Annual Report, pp 155, 156

[2] *News Syndicate Co.,* 95 NLRB 1098, *The Eclipse Lumber Co*, 95 NLRB 464, *Utah Construction Co*, 95 NLRB 196; *Mundet Cork Corp*, 96 NLRB 1142

[3] See *Acme Mattress Co*, 91 NLRB 1010, discussed in Sixteenth Annual Report, pp 242, 243.

[4] *Mundet Cork Corp*, 96 NLRB 1142; *News Syndicate Co*, 95 NLRB 1098; *The Eclipse Lumber Co*, 95 NLRB 464 See also *International Longshoremen's Local 19 (Waterfront Employers of Washington)*, 98 NLRB 284, where an employers' association was permitted to terminate its own liability for the accrual of back pay due discriminatees by giving notice that it would cease to authorize the discriminatory exercise of hiring power by the respondent union's hiring hall dispatchers

[5] *Wood Mfg. Co*, 95 NLRB 633, *Westinghouse Electric Supply Co*, 96 NLRB 407; *Aikin Products Co.,* 99 NLRB No 39. See also *Union Bus Terminal of Dallas, Inc*, 98 NLRB 458, where, contrary to its original decision, the Board found discrimination in a supplemental decision The back pay was awarded for the period between the date of the original and the supplemental decision.

[6] *Arkport Dairies, Inc*, 95 NLRB 1342. In the same case the Board also ruled that a 9-month lapse between the filing of the charge and the issuance of the complaint does not preclude back pay for such period

ployer liable for the discriminatory treatment of an employee, but the Board found that both the employer and the union were responsible. In these cases, the Board ordered the employer to assume full liability for back pay accruing to the discriminatee during the period from the date of the intermediate report to the date of the Board's order. The Board reasoned that the trial examiner's failure to find the union liable for the discrimination deprived the union of the opportunity, which it otherwise would have had, of terminating its back-pay liability during that period.[7]

But the fact that an employer has not been joined as a party to a discrimination proceeding does not preclude the Board from finding a violation against a respondent union.[8] In such cases, however, the Board is limited in the direct remedial action which it can order. The Board obviously cannot order the union to reinstate the employee in his job, because such an action is beyond the union's power and lies only with the employer, who is not a respondent in the case. The Board, therefore, adopts the remedy which it employs in cases involving both employer and union, and orders the union to notify the employer and the employee that it withdraws any objection to his full reinstatement, and to make the discriminatee whole for any loss of pay he may have suffered.[9]

In cases where the Board finds that employees were required illegally to pay union dues or fees, the Board ordinarily orders a refund of the amounts illegally charged.[10]

4. Other Remedies

In one case, an employee who the Board found had been illegally discharged died while the case was pending before the Board. Before the illegal discharge, the employee had been covered by an insurance policy paid for by the employer, but upon his discharge the employer canceled the policy. After reopening the record of the case at the request of the administrator of the employee's estate, the Board ordered the employer to make whole the employee's personal representative "and any other person or persons who, if Belch [the employee] had not been wrongfully discharged, would have been entitled upon his death, to such bonuses, emoluments, and insurance or other death benefits, for any deprivation or loss in respect of such benefits as they may have suffered by reason of his discharge."[1]

---

[7] *Utah Construction Co*, 95 NLRB 196; *The Eclipse Lumber Co*, 95 NLRB 464.

[8] *United Electrical, Radio and Machine Workers Local 622 (UE)*, 98 NLRB 664.

[9] *Ibid.* See also *Westinghouse Electric Corp*, 96 NLRB 522, where the Board adopted a similar remedy after it dismissed the complaint against the employer. For a more detailed discussion of this problem see Sixteenth Annual Report, pp 243, 244

[10] *Local 153, UAW (CIO)*, 99 NLRB No 166; *The Eclipse Lumber Co.*, 95 NLRB 464

[1] *Coca-Cola Bottling Co. of Asheville, N C*, 97 NLRB 151. The decision cited as precedent the Board's similar order in *Revlon Products Corp.*, 48 NLRB 1202 (1943), enforced 144 F. 2d 88 (C. A. 2).

VI

Supreme Court Rulings

THE SUPREME COURT reviewed only one case involving the validity of a Board order during fiscal 1952.[1] This case presented issues relating to the employer's duty to bargain under section 8 (a) (5) of the act.[2]

The basis of the portion of the bargaining order which the Court reviewed[3] was the Board's finding that the employer had adamantly insisted upon a "management prerogative" clause in which the employer reserved to itself the exclusive right to determine unilaterally such matters as working rules, shift schedules, lunch periods, as well as other terms and conditions of employment. The Board had concluded that the employer's insistence on the prerogative clause was a refusal to bargain in violation of section 8 (a) (5), apart from any question of the employer's good faith.

A six-member majority of the Supreme Court, however, viewed the employer's insistence on the prerogative clause as merely a move to counterbalance the union's demand for an arbitration clause. Such a move, in the majority's opinion, was proper so long as it was made in good faith. Noting that the Board did not find bad faith on the part of the employer in this respect, the majority adopted the

---

[1] *N. L R. B* v. *American National Insurance Co*, 343 U S 395.

[2] The Board participated as *amicus curiae* in one case before the Supreme Court where the petitioning union raised questions regarding the application of the jurisdictional disputes provisions of sections 303 (a) (4), 8 (b) (4) (D), and 10 (k) of the Labor Management Relations Act. *International Longshoremen's Union* v. *Juneau Spruce Corp.*, 342 U. S 857 The union here contended that it could not be held in damages under section 303 (a) (4) because of a jurisdictional strike which occurred before the Board had determined in a section 10 (k) proceeding that the union was not entitled to the work which it claimed for its members. The Board asked the Court in its brief to reject the union's contention insofar as it urged that a jurisdictional strike does not violate section 8 (b) (4) (D) unless it has been preceded by a Board determination of the underlying work assignment dispute adverse to the striking union The Court did not rule on the narrow issue thus presented but disposed of the union's contention on the ground that section 10 (k) merely imposes certain limitations on the Board's administrative power to proceed with an unfair labor practice proceeding under section 8 (b) (4) (D) and that the provisions of the section have no counterpart in section 303 (a) (4) which provides an additional independent remedy for the private redress of jurisdictional strikes.

[3] The Court was not called upon to pass on the part of the Board's order which the lower court had enforced (187 F. 2d 307 (C. A. 5)) and which was predicated on the employer's unilateral change of working conditions while negotiations with the bargaining representative were pending.

lower court's conclusion that the employer had, in fact, bargained regarding management prerogatives as it was required to do under section 8 (a) (5).

On the other hand, the dissenting members of the Court,[4] agreeing with the Board, interpreted the insistence on the prerogative clause as an illegal demand that the union waive its right to bargain on certain matters within the area of mandatory bargaining as a condition precedent to negotiations on other matters regarding which the employer was legally bound to bargain under the act.

[4] Justices Minton, Black, and Douglas

VII

Enforcement Litigation

THE volume of the Board's enforcement litigation during fiscal 1952 exceeded that of any prior year in Board's history. In the course of this litigation, the courts of appeals reviewed orders in 136 cases, as compared with 87 cases during the preceding year. In one case, an order was reviewed by the Supreme Court.[1] The results of this litigation during the past year, and during the Board's entire existence, are summarized in the following table:

Results of Litigation for Enforcement or Review of Board Orders, July 1, 1951, to June 30, 1952, and July 5, 1935, to June 30, 1952

Results	July 1, 1951, to June 30, 1952		July 5, 1935, to June 30, 1952	
	Number	Percent	Number	Percent
Cases decided by United States courts of appeals	136	100.0	1,096	100.0
Board orders enforced in full	73	53.7	654	59.7
Board orders enforced with modification	21	15.4	246	22.4
Remanded to Board	5	3.7	23	2.1
Board orders partially enforced and partially remanded	3	2.2	3	.3
Board orders set aside	*26	19.1	157	14.3
Board orders set aside because of noncompliance with sec. 9 (h)—by complaining union's parent federation	8	5.9	13	1.2

*Two of these cases, in which the complaint had been dismissed, were remanded to the Board for further proceedings.

[1] The Supreme Court case is discussed in the preceding chapter.

228330—53——15

Results of Litigation for Enforcement or Review of Board Orders, July 1, 1951, to June 30, 1952, and July 5, 1935, to June 30, 1952—Continued

Results	July 1, 1951, to June 30, 1952		July 5, 1935, to June 30, 1952	
	Number	Percent	Number	Percent
Cases considered by the United States Supreme Court	1	100.0	75	100.0
Board orders enforced in full			53	70.7
Board orders enforced with modification			11	14.7
Board orders set aside	1	100.0	6	8.0
Remanded to Board			1	1.3
Remanded to court of appeals			3	4.0
Board's request for remand or modification of enforcement order denied			1	1.3

The cases submitted for decision by the courts of appeals presented many novel factual and legal problems on which the application of various provisions of the act depended. The court's disposition of each of the issues involved is discussed below under appropriate headings. The cases dealing with conventional legal and evidentiary questions are listed at the end of this chapter.

1. Jurisdiction of the Board

In a comparatively large number of cases enforcement of orders was resisted on the ground that the enterprises involved were not subject to the Board's jurisdiction. In addition, the Board's exercise of its discretion in the matter of jurisdiction was also challenged in several cases. In all but two of these cases the Board's determinations were upheld by the courts.[2]

a. Enterprises Subject to the Act

One group of cases was concerned with retail establishments primarily engaged in the local distribution of products under franchises from manufacturers operating on a national scale. In the case of automotive sales and service agencies, the courts agreed that the act

[2] In one case (*N. L. R. B. v. International Union, UAW*, 194 F. 2d 698 (C. A. 7)), the court had occasion to reiterate the principle that the Board's jurisdiction to prevent unfair labor practices defined in the Act is exclusive and cannot be displaced by arbitration or State agency proceedings.

clearly applied even though the activities of the particular business may have been wholly intrastate.[3] Thus, in the *Conover* and companion cases, the test applied by the court was that a cessation of the employer's business would affect not only the movement of automobiles into the State but also the interstate activities of the manufacturers whose production schedule is geared to the needs of their dealers. Furthermore, the court in *Conover* observed:

> The fact that these dealers are only one of many and that the repercussions of a work stoppage in their business would have relatively little impact on the total flow of the manufacturers' interstate activities is not fatal to jurisdiction. "Appropriate for judgment is the fact that the immediate situation is representative of many others throughout the country, the total incidence of which if left unchecked may well become far reaching in its harm to Commerce." [4]

The court concluded:

> To deny jurisdiction of the Board would allow thousands of retailers of new automobiles to engage in unfair labor practices with impunity. The "total incidence" of such unfair labor practices if left unchecked would not only substantially interfere with the free flow of commerce, but would conceivably bring to a complete standstill the interstate transactions of one of the Nation's greatest industries.

Applying these principles again in the *Davis Motor* case, the same court also held that the dealer who operated under a nonexclusive franchise was no less subject to the Board's jurisdiction than the dealer with an exclusive franchise. For, the court declared, it "is not difficult to foretell that the unfair labor practices of this dealer, if left unchecked, would spread to all other dealers in the same area with consequent far reaching harmful effects on interstate commerce as in the case of the exclusive dealers." Adopting the same reasoning, the Court of Appeals for the First Circuit in the *Ken Rose Motors* and *Somerville Buick* cases likewise held that the Board had properly assumed jurisdiction over local automotive dealers who operated respectively under Ford and General Motors franchises. As noted by the court, such franchises as the "Ford Sales Agreement" conform to a Nation-wide pattern and tie dealers into an integrated distribution system which affects commerce.[5]

In the case of a soft drink dealer, whose product was manufactured and sold locally, the court similarly held that the Board's jurisdiction

---

[3] *N. L. R. B.* v. *Conover Motor Co*; *N. L. R. B.* v *Phelps Brothers Service*; *N. L. R. B.* v *Strang Garage Co*, 192 F. 2d 779 (C. A. 10); *N. L. R. B.* v *Davis Motors*, 192 F. 2d 782 (C. A. 10), *N. L. R. B.* v *Ken Rose Motors, Inc*, 193 F. 2d 769 (C. A. 1); *N. L. R. B.* v. *Somerville Buick, Inc*, 194 F. 2d 56 (C. A. 1).

[4] Quoting *Polish National Alliance* v *N. L. R. B.*, 322 U. S. 643, 648.

[5] See also *N. L. R. B.* v. *Wentworth Bus Lines and Wentworth Sales Co.*, 191 F. 2d 849 (C. A. 1), where the court, without elaboration, upheld the Board's jurisdiction over a jointly owned transportation business and automotive sales agency. The latter was operated under a Chrysler Corporation franchise.

was indicated not only by the employer's out-of-State purchases of raw materials, but also by the fact that he was one of a number of franchised manufacturers who marketed the same product under a nationally advertised trade-mark.[6] A bakery concern, operating locally, was also found subject to the act because, in addition to its importation into the State of substantial amounts of raw materials, it was affiliated with an interstate bakery chain and marketed its products under the parent corporation's copyrighted and nationally advertised trade name.[7]

In another group of cases,[8] involving employment relations on construction projects, the Board's jurisdiction was affirmed primarily on the authority of the Supreme Court's recent decision in the *Denver Building Council* case.[9]

The reasoning of the *Denver* case was also relied on by the court in upholding the Board's jurisdiction over a public utility supplying water in the city of El Dorado, Arkansas.[10] While noting that the company was 1 of approximately 30 commonly owned water companies operating in 11 States, the court held that the out-of-State purchases of supplies by the company was the controlling factor rather than the company's structural integration with affiliates in other States.

Judicial affirmance of the Board's jurisdiction in some instances was based, at least in part, on the fact that the employer involved serviced interstate enterprises. Thus, in the case of a manufacturer and distributor of ice, the court noted that the company through 3 of its 11 Florida plants furnished ice for the refrigeration of produce shipments over interstate railroads.[11] In two cases in which the applicability of the act to local bus operations was upheld,[12] the Board had likewise given weight to the fact that the transportation lines

---

[6] *N. L. R. B.* v. *Seven-Up Bottling Co. of Miami, Inc.*, 196 F. 2d 424 (C. A. 5).

[7] *Collins Baking Co.* v. *N. L. R. B.*, 193 F. 2d 483 (C. A. 5).

The Board's jurisdiction over the intrastate operations of an interstate restaurant chain, and over a stone mining and manufacturing business, was also affirmed in *N. L. R. B.* v. *Childs Co.*, 195 F. 2d 617 (C. A. 2), and *N. L. R. B.* v. *Peerless Quarries*, 193 F. 2d 419 (C. A. 10). In each case, jurisdiction was primarily found on the conventional basis of substantial out-of-State purchases and sales of the respective concerns.

[8] *N. L. R. B.* v. *Ozark Dam Constructors*, 190 F. 2d 222 (C. A. 8); *Webb Construction Co.* v. *N. L. R. B.*, 196 F. 2d 841 (C. A. 8), reversed on other grounds *N. L. R. B.* v. *McKee and Co.*, 196 F. 2d 636 (C. A. 5); *N. L. R. B.* v. *Fry Roofing Co.*, 193 F. 2d 324 (C. A. 9).

[9] *N. L. R. B.* v. *Denver Building and Construction Trades Council*, 341 U. S. 675, see Sixteenth Annual Report, p. 250.

[10] *N. L. R. B.* v. *Eldorado Water Co.*, 195 F. 2d 950 (C. A. 8).

[11] *N. L. R. B.* v. *Royal Palm Ice Co.*, 193 F. 2d 569 (C. A. 5).

[12] *N. L. R. B.* v. *Wentworth Bus Lines, Inc.*, 191 F. 2d 849 (C. A. 1), see footnote 5, above; *N. L. R. B.* v. *Arquillo, d/b/a DeLuxe Motor Stages*, 196 F. 2d 499 (C. A. 6).

involved served either particular interstate businesses or highly industrialized areas.[13]

In one case involving a department store, the court affirmed the Board's jurisdiction solely on the basis of the store's interstate purchases, amounting in 1 year to some $300,000.[14] In view of the extent of these purchases, the court held that the store's operations sufficiently affected commerce and precluded the application of the *de minimis* doctrine.[15]

b. Discretion of the Board

The question of whether the Board, on policy grounds, may decline to act in cases which as a matter of law would come under its jurisdiction, was again raised in several instances during the past year.[16] In each case, the existence of this discretion was affirmed in principle.[17] Two of these cases presented the further question of the extent to which the Board may be bound by its own prior policy decision not to take jurisdiction over a certain type of industry. Thus, in the *Star Beef* case, the employer contended that because the Board in the past had declined to assert jurisdiction over similar meat packers, it could not now apply a different policy retroactively. The court said:

> The simple answer to this is that the Board had jurisdiction all the time *National Labor Relations Board* v *Jones & Laughlin*, 301 U. S. 1 The Board's exercise of discretion here does not enlarge or exceed its jurisdiction so as to prejudice this respondent since the acts complained of, if proved, would violate the Act and redress can be procured under it.

The court then held[18] that the Board is not precluded from asserting jurisdiction over an employer because it previously had declined to process cases involving similarly situated employers. In any event, the court concluded, the employer here failed to show that the Board

---

[13] Service to interstate businesses was also a factor in a case in which the Board was upheld in assuming jurisdiction over a transport company whose primary business was the intrastate transportation of interstate shipments of petroleum products. *N L. R B* v *Smith Transport Co*, 193 F 2d 142 (C A 5). The Board's order in this case was set aside on evidentiary grounds

[14] *Katz, d/b/a Lee's Department Store*, 196 F 2d 411 (C A. 9)

[15] The court, therefore, did not pass upon the question whether the Board could properly determine its jurisdiction on the basis of the interstate purchases of the employer group of which the company was a member and which bargained jointly with the members' employees as a unit. Cf *Leonard, et al, d/b/a Davis Furniture Co.*, 197 F. 2d 435 (C A. 9), where the court observed that the Board's jurisdiction rested on the group interstate operations of the employers involved

[16] For cases in which the issue was first extensively litigated, see Sixteenth Annual Report, pp 256, 257

[17] *Katz, d/b/a Lee's Department Store* v *N L R B*, 196 F 2d 411 (C. A. 9), *N L. R. B.* v *Kobritz, d/b/a Star Beef Co*, 193 F 2d 8 (C A 1), *N. L. R. B.* v. *Atkinson Co.*, 195 F. 2d 141 (C A 9), *Joliet Contractors Association* v *N L R B.*, 193 F 2d 833 (C. A. 7)

[18] Citing *N L R B* v *Baltimore Transit Co*, 140 F. 2d 51 (C. A 4), cert. denied 321 U. S. 795.

had in fact followed the rigid policy of declining jurisdiction over meat packers which the employer asserted it had followed.

In the *Atkinson* case, the court acknowledged the Board's "undoubted right" to adopt a policy regarding the exercise of jurisdiction in a particular industry and subsequently to change the announced policy. However, the court was of the opinion that a policy change, such as the assertion of jurisdiction over construction companies, should not be given retroactive effect by requiring reinstatement and back pay of an employer who discriminated against an employee under a closed-shop arrangement made before the 1947 amendment of the act at a time when the Board uniformly abstained from applying the act to the construction industry. However, the court made it clear that the Board, having asserted jurisdiction in the exercise of its revised policy, it could properly issue a cease-and-desist order which operated prospectively.[19]

In the *Joliet Contractors* case, the Board had declined jurisdiction upon finding that the secondary boycott activities alleged in the complaint immediately affected only certain general contractors and glazing subcontractors whose operations were essentially local and did not substantially affect commerce. In remanding the case to the Board for further proceedings, the court (one judge dissenting) held that, in determining whether or not to assert jurisdiction in the case, the Board should have measured the commerce impact on the basis of the aggregate operations of those engaged in the building and construction industry in the area to the extent that those operations might be affected by the union's attempts to compel discontinuance of the use of preglazed sash. When so measured, the effect upon the pertinent activities on commerce, in the court's opinion, was such that the Board could not decline jurisdiction on the ground of its insubstantiality. Judge Kerner, dissenting, was of the view, however, that the factual and policy determinations underlying the dismissal order were well within the Board's discretion.

2. Persons Entitled to the Benefits of the Act

In one case, the Board had found that the employer violated section 8 (a) (4) by refusing employment to an applicant who had instituted a representation proceeding and given testimony in it during his prior employment with the employer as a supervisor. The court agreed with the Board's conclusion that the applicant was an "employee" within

[19] However, enforcement of the cease-and-desist provision of the order was denied since, in the court's opinion, the case had become moot.

the meaning of the act and was protected against discrimination.[20] The court pointed out that the term "employee" as defined in section 2 (3) expressly includes "any employee" and is not limited to "the employees of a particular employer" except where the act explicitly states otherwise. The court concluded that, because the act thus protects members of the working class generally and section 8 (a) (4) contains no contrary limitations, the applicant against whom the employer discriminated was entitled to the relief granted by the Board.[21]

In two cases, enforcement of reinstatement and back-pay orders depended upon the validity of the Board's finding that the beneficiaries of the order were not supervisory employees who are not excluded from protection of the act.[22] Enforcing the Board's order in the *Red Star* case, the the court held that the discriminatee's title of "night superintendent" was not sufficient to bring him within the definition of section 2 (11) when, in fact, he did not possess one or more of the supervisory attributes enumerated in that section.[23] The court specifically noted that all managerial decisions were made for the discriminatee, and not by him, and that any other employee in the plant could have qualified for the night superintendent's job on the sole basis of seniority.

In the *West Texas* case, the court likewise sustained the Board's finding that the employer did not establish the alleged supervisory status of one of the employees against whom it had discriminated. In holding that the employee was a nonsupervisory machinist, the court implicitly agreed with the Board that the employee's infrequent assignment to work as shift engineer was not conclusive even if the job were held to be of a supervisory nature.[24]

3. Protected Employee Activities

The question of whether activities engaged in by employees were protected by section 7 of the act arose in a number of cases in which the Board had found discrimination in violation of section 8 (a) (3).

---

[20] *John Hancock Life Insurance Co* v *N. L R B*, 191 F 2d 483 (C. A D C) The applicant had been discharged as a supervisor after the representation he had filed was dismissed He then applied for rank-and-file employment for which he was qualified, but the employer rejected his application The unfair practice found was not his discharge but the rejection of the application for rank-and-file employment

[21] The Board directed the employer to offer employment to the complainant and to reimburse him for loss of pay suffered because of the discrimination.

[22] *Red Star Express Lines, Inc* v *N L. R B*, 196 F. 2d 78 (C. A 2), *West Texas Utilities Co* v *N L R B*, 195 F. 2d 519 (C A 5)

[23] For applications of the statutory standards in cases not involving the right of the particular employees to affirmative relief see *Stokely Foods, Inc*, 193 F. 2d 736 (C A. 5); and *N L R B* v. *Chautauqua Hardware Corp*, 192 F. 2d 492 (C. A 2).

[24] The nonsupervisory status of the employee was also indicated by the fact, noted by the court, that shortly before the employee's discharge the employer offered to change his classification to foreman with a slight increase in pay but without any change in his duties.

One of these cases concerned the right of an employee to refuse to cross a picket line.[25] The court in this case accepted the general proposition that the refusal of an employee to cross a picket line of a union other than his own, at a plant other than that of his employer, is an exercise of his right under section 7 to assist labor organizations and to engage in concerted activities for the purpose of mutual aid or protection. The court said:

> Such a refusal to cross a picket line is habitual with union workers . . . it is frequently of assistance to the labor organization whose picket line is respected, and it is in a broad but very real sense directed to mutual aid or protection.

However, the court (one judge dissenting) further held that this right is not an unlimited one and it is not protected if exercised by an employee during working hours. In the majority's opinion, the question was governed by the *Republic Aviation* case [26] where the Supreme Court approved the Board's rule that an employer may enforce reasonable nondiscriminatory prohobitions against union activities during working time.[27] Under this rule, the majority concluded, it was not a violation of section 8 (a) (3) for the employer to discharge an employee whose refusal to cross another union's picket line occurred in connection with his regular duties [28] and resulted in their partial nonperformance.[29] On the other hand Judge Clark, dissenting, took the view that the majority's rigid reliance on the *Republic Aviation* case was out of harmony with the congressional intent to protect the employee's right to refuse to cross a picket line, an intent clearly expressed in the exception to the prohibitions in section 8 (b) (4). The issue is now pending before the Supreme Court which granted the Board's petition for certiorari.

In another case,[30] the court upheld the Board's conclusion that a union official who reported to fellow employees on a conference in the Board's regional office was clearly engaged in a protected activity for which he could not lawfully be discharged even though the employer may have believed that the employee misstated the facts. The court said: "if the conduct giving rise to the employer's mistaken belief is itself protected activity, then the employer's erroneous observations cannot justify the discharge."

But a spontaneous work stoppage by employees when given notice

---

[25] *N L R B v Rockaway News Supply Co, Inc*, 197 F 2d 111 (C A 2), affirmed by the Supreme Court No 318 (March 9, 1953)

[26] *Republic Aviation Corp v N L R B*, 324 U S 793, 798.

[27] See *Peyton Packing Company*, 49 NLRB 823, 843

[28] The facts and the Board's conclusions in the case are discussed at p 139

[29] In this respect, the Board's decision pointed out that the employer could have requested the employee to elect whether to perform all his duties or, as a striker, to vacate his job entirely

[30] *Cusano, d/b/a American Shuffleboard Co*, 190 F 2d 898 (C. A 3).

that they would be laid off at the end of their shift, less than 3 hours away, was held by another court not to be concerted activity protected by the act.[31] The Board had concluded that, while the work stoppage could not immediately secure longer layoff notices for the participants, it was nevertheless activity for mutual aid or protection in that it constituted a protest against similar short notices in the future. However, the court took the view that the work stoppage, in the absence of a pending dispute concerning the length of layoff notices, had no relation to present or future "collective bargaining or other mutual aid or protection," and consequently section 8 (a) (3) was not violated when the employer refused to reinstate the employees who had walked out.[32]

In one group of cases, the validity of the Board's order under attack depended upon whether or not employee activities, basically within the purview of section 7, lost the statutory protection because of their purpose, or because of the manner in which they were carried on. Thus, in the *American Shuffleboard* case, the employer sought to justify the discharge of employees on the ground that the strike in which they engaged was unlawful because its purposes were (1) to bring about the reinstatement of a fellow employee terminated by the employer for legitimate reasons; and (2) to protest against the postponement of a representation election erroneously believed by the strikers to be attributable to the employer.[33] Rejecting the employer's defense, the court held that the fact that the employees' action may have been unjustified or unwarranted did not render the strike unlawful so as to remove the strikers from the act's protection. Similarly, the court in the *Globe Wireless* case held that, by striking in protest against the discharge for good cause of a fellow worker, the complaining employees clearly engaged in concerted activity for "mutual aid

[31] *N L R B* v *Jamestown Veneer and Plywood Corp*, 194 F 2d 192 (C A 2)

[32] In *N L R B* v *Warner Brothers Pictures, Inc*, 191 F 2d 217 (C A 9), the Board had directed the reinstatement of a number of strikers whom the employer refused to reemploy This group of employees supported a strike called by a union engaged in a jurisdictional dispute with their own bargaining representative The Board found that a settlement agreement accepted by the parties to the dispute and the employer entitled both primary and sympathy strikers to return to their jobs. Consequently, the Board found it unnecessary to pass upon the alleged illegality of the strike, because under established principles the strike settlement was equivalent to a condonation of any alleged illegality However, the court interpreted the settlement agreement as not covering the sympathy strikers Observing that the employer was contractually bound to hire only members in good standing with the majority representative of the group, and observing further that the action of the group was a "wildcat" strike, the court held that the sympathy strikers were subject to discharge. Thus, the court determined that the minority activity was unprotected without affording the Board an opportunity to determine the question in the first instance Cf *N L R B* v *Kingston Cake Co*, 191 F 2d 563 (C A 3)

For the court's views regarding the status under section 7 of an employee-sponsored consumer boycott, see the discussion of the *Hoover* case, pp 222–223

[33] *Cusano, d/b/a American Shuffleboard Co.* v *N L R. B*, 190 F 2d 898 (C A 3)

and protection" within the meaning of section 7.[34] The court agreed with the Board that, although the employer could validly replace the strikers because the strike was an economic one not caused by unfair labor practices, the employer violated section 8 (a) (3) by discharging the strikers before they were replaced.

Another case presented the question of whether employees were protected in conducting a consumer boycott to compel continued recognition of a union which had long represented them when a representation petition by a rival union was on file with the Board.[35] The employer suspended and subsequently discharged the union representatives he deemed responsible for the boycott. Concluding that the boycott activities came within the protection of section 7, the Board held that by disciplining the participants the employer violated the antidiscrimination provisions of section 8 (a) (3). The Board thereby rejected the employer's contention that the union's boycott activities were unprotected because they were aimed at causing the employer to violate an obligation imposed by law within the meaning of the Board's decision in the *American News*[36] and *Thompson Products*[37] cases. The employer asserted that had it acceded to the union's demand for recognition, it would have committed an unfair labor practice as indicated by the *Midwest Piping* case[38] where the Board had held that it was unlawful for an employer to grant exclusive recognition to a union while an unresolved question of representation raised by a representation petition of a rival union was pending before the Board. Overruling these contentions the Board pointed out that the denial of protection to the employees in the *American News* and *Thompson Products* cases was based on the fact that the employers there could not have complied with the employees' demands without actually violating the law. Thus, in *American News*, the granting of a wage increase would have conflicted with existing Federal statutes, and in *Thompson Products*, the recognition demanded would have had to be granted contrary to the outstanding Board certification of another union. This element of certainty of violation, in the Board's view, was not present here, where the recognition sought might be legal when granted because of the possible withdrawal or dismissal of the rival representation petition. Because of these substantial uncertainties, the Board declined to extend the principles applied in *American News* and *Thompson Products* to deprive the

[34] *N L R B* v *Globe Wireless, Ltd*, 193 F 2d 748 (C A 9)

[35] *Hoover Co* v *N L R B*, 191 F 2d 380 (C A 6)

[36] *The American News Co, Inc*, 55 NLRB 1302.

[37] *Thompson Products, Inc*, 70 NLRB 13; 72 NLRB 886

[38] *Midwest Piping & Supply Co, Inc*, 63 NLRB 689, see Fifteenth Annual Report, pp. 188, 189

employees of their protection under the act. In the Board's opinion, it was immaterial that the petitioning union in the *Hoover* case was ultimately certified, because the boycotting union had, in fact, abandoned its request for recognition before the Board certified the other union. Consequently, the Board found, there was at no time occasion for the application of the *Thompson* rule.

The court, however, declined to consider the boycott activities of the Hoover employees as protected. In the court's view, the employees' conduct was unlawful in the same sense as the activities of the employees in the *Thompson* case. Nor did the court believe that the evidence sufficiently supported the Board's finding that the Hoover employees had effectively abandoned their demands for recognition before the petitioning union's certification. Finally, while recognizing the statutory right of an employee to engage in concerted activities for mutual aid and protection which "may be highly prejudicial to his employer, and results in his customers' refusal to deal with him," the court was of the view that employees are not protected against discharge if they engage in boycotting the product of their present employer.

However, the court enforced the Board's back-pay and reinstatement order in favor of those employees who had effectively disassociated themselves from the boycott activities, as requested by the employer as a condition to their reinstatement.

Another case involving a similar issue was remanded by another court for the Board to determine whether certain union activities which led to the discharge of an employee were in fact intended to enforce demands for the union's recognition as exclusive bargaining representative of the employees whom another union claimed to represent in a petition pending before the Board.[40] The court reserved ruling on the question whether in the presence of such a purpose the union's action was unprotected under the doctrine of the *Hoover* case.

In two cases, the Court of Appeals for the Second Circuit had occasion to hold that lawful concerted employee activities do not lose the protection of section 7 because they are intended to support a union which has failed to comply with the filing and affidavit requirements of the act.[41] The court observed that, since an employer is not forbidden to voluntarily recognize and deal with a noncomplying union, employees are protected in their right to engage in concerted activity to compel such recognition.

---

[40] *N. L. R. B.* v. *Electronics Equipment Co.*, 194 F. 2d 650 (C. A. 2).

[41] *N. L. R. B.* v. *Pratt Read & Co., Inc.*, 191 F. 2d 1006; *N. L. R. B.* v. *Electronics Equipment Co.*, 194 F. 2d 650.

4. Employer Unfair Labor Practices

Insofar as enforcement of Board orders depended upon the validity of the Board's unfair labor practice findings, the court's inquiry in most cases was limited to the question of the sufficiency of the evidence on which the Board relied. However, in some instances, the courts were called upon to review the Board's conclusion that the facts as found satisfied the definition of a particular unfair labor practice set out in the several subsections of section 8 (a) of the act. The more important of these cases are discussed in the following sections.

a. Interrogation

In the great majority of the numerous cases involving questioning of employees regarding their union sympathies or membership, their participation in organizational activities, or their voting intentions in a pending Board election, the courts continued to sustain the Board's conclusion that such interrogation in the circumstances invaded the rights of employees guaranteed in section 7 of the act, and thus violated section 8 (a) (1) of the act.[42] These cases thus recognize the validity of the Board's holding that such interrogation tends to prevent employees from enjoying their full organizational freedom which the act guarantees.[43] On the other hand, in three cases in which enforcement of the Board's order was denied, one of the several findings rejected was that the employer's interrogation of employees violated section 8 (a) (1).[44]

In the *Tennessee Coach* case, where the court held that there was not sufficient evidence that the employer unlawfully discriminated against employees or otherwise interfered with their rights under the act, the court was of the opinion that the statements and questions addressed to the rank and file by supervisors were in the nature of personal views and friendly conversation which did not permit an inference of coercive employer tactics. In the *Atlas* case, the court, having found no sufficient factual basis for the Board's bargaining order, also held that

---

[42] First Circuit *Ken Rose Motors*, 193 F. 2d 769; *Somerville Buick*, 194 F. 2d 56; *Williams Lumber*, 195 F 2d 669, see also *Star Beef*, 193 F 2d 8 Second Circuit · *Chautauqua Hardware*, 192 F 2d 492 Third Circuit *Pennwoven*, 194 F. 2d 221 Fourth Circuit *Carolina Mills*, 190 F 2d 675 Fifth Circuit *Cen-Tennial Cotton*, 193 F. 2d 502, *Olin Industries*, 191 F 2d 613, 192 F 2d 799, *Shell Oil*, 196 F 2d 637, *Southern Furniture*, 194 F 2d 59, *Stokely Foods*, 193 F 2d 736, *Tampa Times*, 193 F. 2d 582 · see also *Nabors*, 196 F 2d 272. Seventh Circuit *Deena Products*, 195 F 2d 330. Eighth Circuit. *Coca Cola*, 195 F 2d 955. Ninth Circuit *State Center Warehouse*, 193 F 2d 156 Tenth Circuit · *Law & Son*, 192 F 2d 236

[43] The specific reasons upon which the Board's conclusion is based are fully set out in *Standard-Coosa-Thatcher*, 85 NLRB 1358, see Fifteenth Annual Report, pp 94, 96

[44] *N. L. R B* v *Tennessee Coach Co*, 191 F 2d 546 (C. A 6), *Atlas Life Insurance Co* v *N. L R B*, 195 F. 2d 136 (C A 10); *N L R B* v *Arthur Winer, Inc*, 194 F 2d 370 (C. A. 7), cert den, 344 U S 819.

the employer's statements and interrogation, on which the Board relied, occurred in the noncontroversial atmosphere of a small plant and could not be characterized as unlawful interference with employee rights. The denial of enforcement in the *Winer* case was the result of the court's rejection of (1) the evidentiary basis of the Board's finding of discrimination against two employees, and (2) the Board's conclusion that employees were coerced in the exercise of their statutory right by repeated questioning regarding their union sympathies and by a request for, and acceptance of, a report on a union meeting. In the court's view, neither interrogation nor surveillance of this kind may be found coercive in the absence of accompanying promises of benefits, threats or reprisals, or other hostile acts on the part of the employer.[45]

In two cases, the Board had found that the use of application blanks requiring prospective employees to disclose their union affiliation was a form of interrogation which intruded unlawfully upon the domain reserved to employees by section 7.[46] While the Board's conclusion was approved as a general proposition in both cases, the court in the *Ozark Dam* case was of the view that the employer could not be held to have violated the Act in the absence of a clear showing that the application blank in question had in fact been used in a prohibited manner.

b. Employer Rules Against Union Activities

The principle that rules prohibiting all union activities on the employer's premises constitutes unlawful interference with the right of employees to organize was the basis of several orders reviewed by the courts during the past year. Discriminatory enforcement of an otherwise valid rule was involved in one case.[47]

The *Bonwit Teller* case involved these circumstances: At the time of an organizing campaign in anticipation of a Board election, Bonwit Teller had in effect a general no-solicitation rule which it sought to enforce to keep all union organizers away from the store both during working time and while employees were off duty. While

[45] In *N L R. B* v *Montgomery Ward & Co*, 192 F 2d 160, the Second Circuit (Chase, circuit judge, and Goddard and Dimock, district judges) also held that inquiries regarding current union activity and expressions of dislike of the union did not violate section 8 (a) (1) in the absence of threats of retaliation or promises of reward. However, in view of the contemporary decision by a different panel (Swan, chief judge, and Clark and Frank, circuit judges) in the *Chautauqua Hardware* case (see footnote 42, above), the Board believes that the latter rather than the former case represents the court's position The *Chautauqua* case was cited by the Fifth Circuit in condemning interrogation in the *Stokely Foods* case (see footnote 42, above).

[46] *N L. R B* v. *Cen-Tennial Cotton Gin Co.*, 193 F. 2d 502 (C A. 5), *N L R B.* v *Ozark Dam Constructors*, 190 F 2d 222 (C A. 8).

[47] *Bonwit Teller, Inc.* v *N L R. B.*, 197 F 2d 640 (C A. 2)

activity on behalf of the union was thus impeded, the employer, a few days before the election, arranged for an employee meeting on its selling floor one-half hour before normal closing time. Bonwit Teller's president then delivered a speech in the course of which he urged the assembled employees to vote against the union, indicating that the semiannual routine wage revisions would be made after the Board election. In view of the employer's antiunion propaganda accompanied by the enforcement of its no-solicitation rule to prevent prounion activity, the union's vice president requested that he be given an opportunity to address Bonwit Teller's employees likewise during working hours at some time prior to the election.

The court agreed that Bonwit Teller unlawfully interfered with the organizational rights of its employees when it declined to relax its no-solicitation rule to the extent of permitting the union's representative to reply to the employer's speech under similar conditions.[48] As to the company's no-solicitation rule, the court reiterated the principle laid down by the Supreme Court in *Republic Aviation*,[49] that, generally, union solicitation may not be prohibited during nonworking time. The court pointed out that this applies regardless of whether or not solicitation away from the plant would be ineffective, the reason being that "the place of work has been recognized to be the most effective place for the communication of information and opinion concerning unionization." Nevertheless, the court continued, the exception to the rule established in *May Department Stores*[50] permitted Bonwit Teller to prohibit all solicitation within the store's selling areas during both working and nonworking hours. But, having done so, Bonwit Teller could not itself campaign against the union on the same premises to which the union was denied access, because to permit such action would give an employer opposed to unionization an advantage which would seriously interfere with the employees' opportunity to organize, the court held.[51]

In another case, the court upheld the Board's finding that the employer could not excuse the discharge of several employees on the ground that they solicited union membership during their lunch

[48] The court was of the view that neither the speech to the assembled employees nor the statements of certain supervisors were coercive in themselves as found by the Board

[49] *Republic Aviation Corp* v *N L R B*, 324 U S 793

[50] See *May Department Stores Co*, 59 NLRB 976, 981. enforced 154 F 2d 533 (C A 8), certiorari denied 329 U S 725

[51] Inasmuch as the court held that Bonwit Teller's violation of the act consisted of the discriminatory application of its no-solicitation rule, it declined to enforce the Board's order which required the employer to desist from making antiunion speeches during working hours without granting the reasonable request of the union concerned to reply under similar conditions. Concluding that if the employer abandoned its no-solicitation rule it need not accord such an opportunity, the court remanded the case to the Board for the purpose of rephrasing its order

and rest periods in violation of a plant rule prohibiting solicitation on company time and property without permission.[52] The employer had contended that the employees remained subject to plant rules during those periods because they were paid time. The court held that the proper distinction for the purpose of prohibitions against union activity was between working and nonworking time rather than between paid and unpaid time. Otherwise, the court concluded, employers intent upon interfering with unionization would be encouraged to achieve their objective by allocating wages or salaries and company time over the entire workweek, thus eliminating union activities at practically all convenient times.

The Board's finding in another case that an employer unlawfully infringed on employee rights by promulgating a rule prohibiting organizational activity on company property *at all times*, was likewise upheld.[53] However, the court modified the Board's direction that the employer refrain from issuing or enforcing rules against union activities on the employee's own time by inserting a clause to the effect that solicitation need not be permitted in certain danger areas. In the Board's opinion, the employer had not sufficiently shown the need for such a limitation.[54]

c. Discrimination

While in most cases involving orders based on violations of the antidiscrimination provisions of the act review was confined to the sufficiency of the evidence, in some instances questions of general importance in the administration of those provisions were presented.

(1) The Union-Security Proviso

In a number of cases the validity of the Board's finding that employees had been subjected to unlawful discrimination turned on whether the employer's action was protected by the proviso to section 8 (a) (3) which, under specified circumstances, permits discrimination pursuant to a valid union-security agreement. These cases presented issues concerning the effect of the execution of an illegal union-security agreement, as well as concerning the legality and actual existence of such agreements at the time of the discrimination against particular employees.

The Board's conclusion that the mere execution by an employer of

---

[52] *Olin Industries, Inc.* v. *N L R B*, 191 F 2d 613 (C A 5), certiorari denied, 343 U S 919

[53] *N L R. B* v. *Kentucky Utilities Co*, 191 F. 2d 858 (C. A. 6)

[54] Denying enforcement in *Ohio Associated Telephone Co* v *N L R B*, the court declined to adopt the Board's conclusion that certain sporadic warnings by supervisors against union discussions on company property constituted unlawful interference

a union-security agreement which does not conform to statutory requirements itself constitutes a violation of section 8 (a) (3) was expressly sustained in two instances.[55] In the *Red Star* case, the court, observing that "the existence of such an [illegal] agreement without more tends to encourage membership in a labor organization," went on to say:

> The individual employee is forced to risk discharge if he defies the contract by refusing to become a member of the union It is no answer to say that the Act gives him a remedy in the event that he is discharged. The Act requires that the employee shall have freedom of choice, and any form of interference with that choice is forbidden.

Claims that illegal union-security clauses had been deferred were involved in two cases.[56] In both, the court upheld the Board's finding that the deferral clauses were not sufficiently specific to prevent the clauses having a coercive effect upon the employees. In *Red Star*, when the Act was amended in 1947, the contracting parties agreed to an addendum to the effect "that all [previously adopted] clauses that are affected by the law shall be considered null and void but . . . that when and if such clauses are declared legal, they shall immediately . . . be considered in full force and effect." The court concurred in the Board's view that the addendum was insufficient to suspend effectively the union-security provisions which had in fact become illegal. In the court's language

> [T]he question is not only whether under principles of contract law the addendum would contractually negative the illegal union security clauses, but whether it would have the effect of preventing the coercion that would otherwise follow from the renewal of earlier agreements. The Board found it would not have such an effect "because it fails to specify which, *if any*, clauses were to be suspended." In our opinion the Board was entitled to adopt this view as a matter of sound policy and reasonable interpretation The vague language of the addendum would not help the ordinary employee to understand that the union security clause was no longer binding. The parties themselves were unable to determine which parts of the contract were affected by the Taft-Hartley Act Employees certainly could not be expected to understand the scope of such a proviso even if it had been communicated to them, as it was not. (Footnote omitted)

In *Gaynor News*, the court similarly held that union-security provisions adopted in 1948, without observing the statutory formalities

---

[55] *Red Star Express Lines* v *N L R B*, 196 F. 2d 78 (C. A 2), *Katz, d/b/a Lee's Department Store*, 196 F 2d 411 (C A 9)

[56] *Red Star*, cited above, and *N L R. B* v *Gaynor News Co, Inc*, 197 F 2d 719 While sustaining the Board's factual and legal conclusions in *Gaynor*, the court was of the opinion that the particular circumstances of the case did not require the complete suspension of contract and bargaining relations between the employer and the union as directed by the Board's order The court noted that if the employer should nevertheless engage in any further discriminatory practices, the employer would then become subject to contempt proceedings for violating the court's decree enforcing the remaining provisions of the Board's order,

then in effect, had not been made inoperative by the addition of a clause providing that should "any provision of this agreement . . . be in conflict with federal or state law . . . then such provision shall continue in effect only to the extent permitted." The court held that this provision also lacked the specificity required to defer application of illegal union-security provisions effectively.

The question of whether the employer charged with unlawful discrimination could invoke an existing union-security agreement as a valid defense in one case depended upon whether the contracting union was in fact the majority representative of employees in an appropriate unit as required by the union-shop proviso of section 8 (a) (3).[57] Sustaining the conclusion that the union lacked this qualification, the court approved the Board's policy not to recognize a union as the exclusive representative of a work force which at the time is rapidly expanding and momentarily constitutes only a small fraction of the anticipated total force.

In another case,[58] the court upheld the Board's finding that the employer had failed to establish the existence of a valid closed-shop agreement[59] to which it was a party. The discharge of a number of employees, under pressure from the union claiming to have such an agreement, was therefore held discriminatory under section 8 (a) (3). The union involved was a building trades council affiliated with the AFL. The builder had previously made a valid contract with the council that only members of the council would be used in the erection of the building. The builder's authority from the owner did not extend to the installation of the machinery, but he nevertheless made a supplementary agreement with the Council that only members of the council would be hired for the installation of the machinery as well. This was done without knowledge or prior authorization of the owner. The court rejected the contention made by the owner and the council that the later discharge by the owner of certain persons from machinery installation jobs because of their nonmembership in the council was justified under the builder's supplementary agreement, because the agreement, having been made without prior authorization from or knowledge of the owner, was not binding on the owner. The court also rejected the contention that by discharging the persons in question, the owner ratified the supplementary agreement, since in making the discharges, the owner acted neither pursuant to the agreement nor with the requisite knowledge of the agreement

[57] *N L R B v. Guy F Atkinson Co*, 195 F 2d 141 The grounds upon which the court declined to enforce the Board's order are discussed at pp 217–218

[58] *N L R B v Fry Roofing Co*, 193 F 2d 324 (C A 9)

[59] Since the alleged agreement antedated the Taft-Hartley Act, a discharge under it would have been valid under the savings provision of sec 102.

on which a ratification in law depends, but only in response to the economic pressure exerted by the council.[60]

In one case [61] the court rejected the Board's finding that the hiring hall arrangement between the respondent employer and union was illegal and, on the employer's part,[62] violated section 8 (a) (3) of the act. The Board inferred from the evidence that the employer had obligated itself to hire only union members referred to it by the union. In the Board's opinion, with which the court agreed, such an agreement, if existent, establishes a closed shop, a form of union security not permitted by the proviso of section 8 (a) (3). According to the court, however, the employer did not agree to hire only union labor, but retained its freedom to hire workmen other than those referred by the union. Consequently, the court held that the hiring hall arrangement was a legal one within the rule announced by the Board in the *American Pipe* case.[63]

In two of the cases in which employers asserted contractual obligations in defense of allegedly discriminatory discharges, the Board had found that, although the union-security agreements relied on had been made prior to the effective date of the amended act, they were not protected by the savings provision of section 102 because they were "renewed or extended" thereafter.[64] In the *Katz* case, the court agreed that section 102 did not protect the employer because, while the original agreement specifically provided for its reopening for the purpose of wage renegotiation as well as extension of the term of the contract, the parties did not observe the reopening date but later executed a new agreement to take effect upon the impending expiration of the old one. This, the court held, resulted in a renewal or extension of the preamendment agreement and prevented the employer from invoking the protection of section 102.

On the other hand, the same court in the *Clara-Val* case rejected the Board's view that the preamendment contract in question had been automatically renewed. In the court's opinion, the contract clause providing that the agreement "shall continue without expiration date" until expressly terminated or modified by the parties within a fixed period from its anniversary date, was not in the nature of an automatic renewal clause. Therefore, the court concluded, in the absence of notice of termination or modification, the contract was not

---

[60] The court also rejected the owner's claim of immunity on the ground that it acted pursuant to economic pressure, and reaffirmed the established proposition that economic pressure is not a defense to the commission of an unfair labor practice

[61] *Webb Construction Co* v *N L R B*, 196 F 2d 841 (C A 8)

[62] The Board s conclusions as to the union's alleged unfair labor practices See pp 149–150.

[63] *American Pipe and Steel Corp*, 93 NLRB 362.

[64] *Katz, d/b/a Lee's Department Store*, 196 F 2d 411 (C A 9), *N L R B* v *Clara-Val Packing Co*, 191 F 2d 556 (C A 9).

"renewed," but simply "continued" for the period specified in the contract. This construction, the court believed, was required by the legislative history of section 102, which disclosed no intent to limit its protection to any particular period in the case of contracts of indefinite duration. Conversely, the Board had concluded that the legislative history clearly indicated the congressional purpose to require the adjustment of antecedent union-security agreements to the requirements of the amended act at the earliest regular date for modification provided in the contract.

In one case in which a union-security agreement was held invalid because it had not been authorized by vote of the employees as then required by section 8 (a) (3),[65] the employer contended that the agreement could be validly enforced immediately upon receipt of the results of the authorization election held in accordance with statutory requirements. The court, however, sustained the Board's conclusion that the former requirement of section 8 (a) (3) must be strictly construed, which would require Board certification of the election results before effect may be given to a union-security agreement. The court agreed that in a union-shop authorization proceeding under section 9 (e), just as in a representation proceeding under section 9 (c),[66] the conclusive act is the Board's certification rather than the election.[67]

(2) Discrimination for Giving Testimony in Board Proceedings

The question of the scope of section 8 (a) (4) [68] was presented in a case in which the Board had found that the employer unlawfully refused to hire an employee because he had given testimony in a representation proceeding.[69] The employer challenged the Board's finding on the ground that the denial of employment to an applicant is not a form of discrimination prohibited by section 8 (a) (4). Reject-

---

[65] *N. L R B* v. *Kingston Cake Co*, 191 F. 2d 563 (C A. 3) See also *N L R. B* v *Gaynor News Co*, 197 F 2d 719 (C A 2) *Katz d/b/a Lee's Department Store,* 196 F. 2d 411 (C A 9)

Section 8 (a) (3) has since been amended by Public Law 189 (1951) so as to eliminate the authorization election requirement and to substitute as a condition certification by the Board that the contracting union had filed the information and affidavits specified in section 9 (f), (g), and (h)

[66] See *Inland Empire District Council* v *Millis,* 325 U S 697, 707.

[67] Insofar as the employer discharged an employee while the union-security agreement was still unauthorized, the court held that the reinstatement of the employee as directed by the Board was not a proper remedy. The court observed that the reinstatement order was based solely on the fact that the discharge occurred about 1 week before the employee became technically subject to discharge upon the certification of the union's union-shop authority The court, therefore, remanded the case to the Board to determine whether there were other grounds upon which it could be found that the discharge was discriminatory within the meaning of section 8 (a) (3).

[68] Section 8 (a) (4) prohibits discrimination against employees because of the filing of unfair labor practice charges or giving testimony under the act

[69] *John Hancock Mutual Life Insurance Co* v. *N. L R. B.,* 191 F 2d 483 (C A 4).

ing the employer's contentions, the court held not only that an applicant is an "employee" for the purpose of section 8 (a) (4) but also that the refusal to hire an applicant is within the statutory prohibition according to which an employer may not "discharge or otherwise discriminate" for the reasons specified. The court pointed out that the difference in the language of section 8 (a) (3) and section 8 (a) (4) required a conclusion directly opposed to that urged by the employer. Thus, according to the court, the omission in section 8 (a) (4) of an express reference to discrimination "in regard to hire or tenure of employment" must be taken as indicating Congress' intent to make section 8 (a) (4) even more embracing than section 8 (a) (3) and to extend its prohibitions to all forms of discrimination rather than to limit them to discharge and lesser forms of discrimination as contended by the employer. The court said:

> Such breadth of statutory language is consistent only with an intention to prevent the Board's channels of information from being dried up by employer intimidation of prospective complainants and witnesses With such a purpose in mind, it is inconceivable that Congress would have restricted its condemnation only to certain "means" for accomplishing discriminations which would strike at the heart of Board processes. Indeed, Congress demonstrated it had no such narrow interest in mind by employing the broadest language it could find.

Moreover, the court continued, the employer's construction of section 8 (a) (4) would not only "license the vicious practice of blacklisting" but also would "thwart the administration of the Act itself by ignoring the ever present threat of such intimidation."

(3) Benefits Based on Union Membership

In one case in which the court sustained the Board's conclusion that section 8 (a) (3) was violated, the employer had granted its union employees retroactive wage increases and vacation pay while withholding identical benefits from other employees on the sole ground that they were not union members.[70] The employer's primary defense was that no discrimination was involved because the action complained of was not intended to, and did not in fact, encourage membership in the union within the meaning of section 8 (a) (3). Insisting that the Board failed to show such encouragement, the employer argued that the complaining employees had unsuccessfully sought admission to the union and that any subsequent action on the part of the employer could not have further encouraged the employees to seek membership. Each of these contentions, in support of which the employer cited the Third Circuit's decision in the *Reliable Newspaper* case,[71] was rejected

[70] *N L R B.* v. *Gaynor News Co*, 197 F 2d 719 (C. A 2).

[71] *N L. R B.* v *Reliable Newspaper Delivery, Inc*, 187 F 2d 547, Sixteenth Annual Report, pp 263, 264

by the court. Insofar as section 8 (a) (3) is aimed at encouragement or discouragement of union membership, the court pointed out that this statutory requirement is satisfied if the conduct involved "tends to encourage or discourage" such membership.[72] No showing of actual encouragement was therefore necessary, the court concluded.[73]

On the facts, the court distinguished the *Reliable* case where the Third Circuit had held that discriminatory advantages in favor of members of a minority union, which bargained for members only and was closed to the employer's other employees, could not have had the effect of encouraging union membership. Here, the court noted, the union was the exclusive bargaining representative of all employees in the plant and therefore could not lawfully bargain for special benefits for its members only. Viewing the granting of such benefits by the employer in this light, the court said:

> Discriminatory conduct, such as that practiced here, is inherently conducive to increased union membership In this respect, there can be little doubt that it "encourages" union membership, by increasing the number of workers who would like to join and/or their quantum of desire. It may well be that the union, for reasons of its own, does not want new members at the time of the employer's violations and will reject all applicants. But the fact remains that these rejected applicants have been, and will continue to be, "encouraged," by the discriminatory benefits, in their desire for membership. This backlog of desire may well, as the Board argues, result in action by nonmembers to "seek to break down membership barriers by any one of a number of steps, ranging from bribery to legal action." A union's internal politics are by no means static; changes in union entrance rules may come at any time. If and when the barriers are let down, among the new and now successful applicants will almost surely be large groups of workers previously "encouraged" by the employer's illegal discrimination We do not believe that, if the union-encouraging effect of discriminatory treatment is not felt immediately, the employer must be allowed to escape altogether If there is a reasonable likelihood that the effects may be felt years later, then a reasonable interpretation of the Act demands that the employer be deemed a violator. To this extent, we find ourselves in disagreement with the *Reliable* case, and do not hesitate in holding the action here violative of both § 8 (a) (1) and (3).[74]

---

[72] The court cited *Republic Aviation Corp* v *N L R B*, 324 U S 793, 800

[73] But see *N L R B* v *International Brotherhood of Teamsters*, 196 F 2d 1 (C A 8), certiorari granted, — U S —, a case arising under section 8 (b) (2) in which the court held that there was insufficient evidence to support the Board's conclusion that the respondent union had caused the employer to discriminate against an employee in a manner which encouraged or discouraged union membership While conceding that the union's action in causing the employer to reduce the seniority of a dues-delinquent member contravened section 8 (b) (2), the court declined to find that the discrimination was such as to be prohibited by section 8 (a) (3) In the court's opinion, it was not sufficient that "theoretically," the discrimination had the effect of encouraging or discouraging union membership

[74] Compare *Webb Construction Co* v *N L R B*, 196 F 2d 841, where the court expressed the view that a hiring hall arrangement (not found to have existed), whereby only union members were to be hired, might be held to encourage union membership in the sense of encouraging present members to retain their membership.

In another case before the Second Circuit, the question of whether discrimination against an employee encouraged or discouraged union membership within section 8 (a) (3) arose in connection with a complaint that the respondent union had caused the discrimination in violation of section 8 (b) (2).[75] The court in this case sustained the Board's conclusion that membership in the respondent union was encouraged in the statutory sense when the employer rejected an employee to whom the union had refused clearance, not because of nonmembership but because of his failure to fulfill other membership obligations.

(4) Lockouts of Nonstriking Employees

The question of whether under given circumstances employees may lawfully be locked out as a countermeasure to a strike was the central issue before the court in two cases in which employers sought review of the Board's finding that they violated section 8 (a) (3).[76]

The situations which gave rise to the issue in each case were substantially similar. In the course of contract negotiations with an employer association, and after an impasse, the joint representative of the employees involved took strike action against one of the employers in order to press the union's economic demands. Following this action, the employer members of the association which were not immediately affected by the strike reacted by locking out their employees.

The Board, in the *Morand* case, held that what the Trial Examiner had termed a "lockout" was in fact a discharge which was illegal in the same sense as the discharge of the employees of the struck employer in that its purpose was to retaliate against protected concerted activity.[77] The Board rejected the contention that the discharge of the nonstriking employees should not be viewed as a measure of reprisal against the striking union, but as "a purely defensive" measure against the union's piecemeal strike strategy with which each association member was threatened. In the Board's opinion, "the Act does not permit a discharge to reduce, by anticipatory action, the effectiveness of an expected strike by a labor organization."[78]

---

[75] *N L R B* v *Radio Officers' Union,* 196 F. 2d 960—Compare the *Teamsters* case discussed in footnote 73, above.

[76] *Morand Brothers Beverage Co* v *N L. R B*, 190 F. 2d 576 (C A. 7), *Leonard, et al, d/b/a Davis Furniture Co*, 197 F 2d 435 (C A 9) The Board's findings and conclusions in the two cases are discussed in the Sixteenth Annual Report, at pp 176, 178

[77] The court sustained the Board's order to the extent that it was based on the discharge of the strikers by the struck employer.

[78] For the disposition of other defenses advanced by the employer group, see p 235.

The court agreed that the discharge of the nonstrikers would have been unlawful, but held that the mere temporary withholding of employment for the duration of the strike would not necessarily be unlawful. Because the record left it in doubt as to whether the employees other than those of the struck employer had in fact been discharged, the court remanded the case to the Board to determine (1) whether the particular employers intended to terminate their employees permanently or temporarily; and (2) if intended to be temporary, whether the employers' action would have constituted interference with protected employee activities, or a legitimate resort to "economic remedies." [79]

In the *Davis Furniture* case, the Board similarly found that members of an employer association locked out their employees after one association member was struck by the employees' group bargaining representative while contract negotiations were in progress. In the Board's view of the evidence, the lockout was an unlawful act of reprisal designed to punish the employees for authorizing and supporting the strike against one member of the group, and therefore constituted a violation of section 8 (a) (3). However, the court held that the evidence indicated that the employers used the temporary lockout "as counter-economic power" to that of the strike in which the union had engaged. Noting the views of the Seventh Circuit in the *Morand* case regarding nonretaliatory lockouts, the court remanded the *Davis* case in order that the Board might determine in the first instance whether the lockout, when not viewed as a reprisal, was nevertheless illegal.[80]

d. The Duty to Bargain

The Board's views concerning several aspects of the employer's duty to bargain, as defined in section 8 (d), were affirmed in a case in the Second Circuit.[81] In this case, the complaining union had requested a reopening of wage negotiations in accordance with the provisions of its current contract. In the two ensuing conferences, the employer de-

[79] The court also directed the Board to reconsider whether, in case of the permanent termination of the employees concerned, the back-pay remedy provided in the order tended to effectuate the policies of the act

[80] On June 30, 1952, the Board handed down its supplemental decision in the *Morand* case (99 NLRB No 55), holding unanimously that the evidence adduced at the original and supplemental hearings indicated the employers' intent to sever the employment relationship of their employees permanently, in violation of section 8 (a) (3) A majority of the Board also held, that even if a temporary lockout had been intended, the act would nevertheless have been violated (1) because the lockout was intended not merely to break the existing bargaining impasse but to penalize the employees for striking and threatening to strike, and (2) because in the opinion of the Board majority the lockout, regardless of its purpose, was not privileged For a discussion of the Board's reasoning see pp 154–157

[81] *N. L R. B v Jacobs Mfg. Co.*, 196 F. 2d 680

clared itself financially unable to grant a wage increase and refused to substantiate its assertion with appropriate data. When the union also raised the question of pensions, the employer refused to discuss the question on the ground that it was not required to do so during the life of the current contract. Subsequent requests for a further meeting were denied, accompanied by a request that the union submit new proposals in writing to be answered by letter if the employer so chose.

One issue thus presented for court decision for the first time was the question of whether or not section 8 (d) relieves an employer of his obligation to bargain, during the term of a contract, on matters neither covered by the contract nor discussed in precontract negotiations. In agreement with the Board, the court rejected the employer's argument that section 8 (d) [82] requires bargaining during a contract term only as to subjects expressly reserved for further negotiations in a reopening clause. The court said:

> We . . agree with the Board that § 8 (d) cannot fairly be given such a broad effect. The purpose of this provision is, apparently, to give stability to agreements governing industrial relations. But the exception thus created necessarily conflicts with the general purpose of the Act, which is to require employers to bargain as to employee demands whenever made to the end that industrial disputes may be resolved peacefully without resort to drastic measures likely to have an injurious effect upon commerce, and the general purpose should be given effect to the extent there is no contrary provision. Since the language chosen to describe this exception is precise and explicit, "terms and conditions contained in a contract for a fixed period," we do not think it relieves an employer of the duty to bargain as to subjects which were neither discussed nor embodied in any of the terms and conditions of the contract.

The court made it clear, however, that the case did not require it to pass upon "the effect, if any, on the duty to bargain, of mere previous discussion of a subject without putting any terms and conditions as to it into the contract."

Regarding the employer's contention that it was not required to negotiate further after all the issues had been fully explored in the two meetings with the union, the court pointed out that it was for the Board to decide whether a bona fide impasse had been reached in fact. The court agreed with the Board's conclusion that bargaining did not come to a halt because of such an impasse, but rather as a result of the employer's position that negotiations on wages would be futile because financially impossible and because of its outright refusal to discuss other subjects. The court said:

---

[82] The part of section 8 (d) relevant here provides that the statutory definition of the duty to bargain " shall not be construed as requiring either party to discuss or agree to any modification of the terms and conditions contained in a contract for a fixed period, if such modification is to become effective before such terms and conditions can be reopened under the provisions of the contract "

Collective bargaining in compliance with the statute requires more than virtual insistence upon a prejudgment that no agreement could be reached by means of a discussion Section 8 (d) of the Act defines "collective bargaining" as the "obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith." This means cooperation in the give and take of personal conferences with a willingness to let ultimate decision follow a fair opportunity for the presentation of pertinent facts and arguments. This affirmative obligation was not satisfied by merely inviting the union to submit written offers for a settlement, nor by the bare assertion of a conclusion made upon facts undisclosed and unavailable to the union which was not acceptable without a presentation of sufficient underlying facts to show, at least, that the conclusion was reached in good faith.

The court also upheld the Board's conclusion that the employer's refusal to furnish the union any information regarding its alleged financial inability to meet wage demands was itself an unlawful refusal to bargain in good faith.[83] The court noted that while section 8 (d) does not impose a duty on the employer to produce proof that he is right as to what he can, or cannot, afford to do, he may be required to produce any relevant information which may indicate his good faith in maintaining that he cannot afford to comply with the union's demands.[84]

In another case, enforcement of the Board's bargaining order was granted on the basis of the rule that an employer has not fulfilled his statutory duty to bargaining by merely negotiating, if it is shown that the employer did not intend in good faith to reach an agreement.[85] There, the employer had given his attorney plenary bargaining authority for more than a year and a half. But when an accord was finally reached between the attorney and the union, he withdrew the attorney's authority without explanation, counterproposals, or indication as to remaining areas of disagreement. Moreover, when the union filed charges, the employer asserted that it was no longer obliged to bargain because the union had lost its majority.[86] These circumstances, the court held, indicated clearly that the employer was not bargaining in good faith but was engaged in mere trifling.

The courts have continued to apply the Supreme Court rule[87] that

---

[83] The court held that the situation was governed by the rule announced during the preceding year in *N L R B v Yauman & Erbe Mfg Co*, 187 F 2d 947, Sixteenth Annual Report, p 264

[84] In *Westinghouse Electric Supply Co v N L R B*, 196 F 2d 1012, the Board's finding that the employer unlawfully refused to furnish comparative wage data was set aside because of the court's view that the evidence did not sufficiently establish that the union requested the particular information

[85] *N L R B v Gittlin Bag Co*, 196 F. 2d 158 (C A 4)

[86] In *N L R B v Mayer*, 196 F 2d 286 (C A 5) the part of the Board's order directing the employer to bargain with the complaining union was set aside because of the court's belief that defections from the union which resulted in the loss of its majority were not attributable to the employer's unfair labor practices as found by the Board

[87] *Franks Brothers Co v N L R B*, 321 U S 702

once the majority status of a union is established, stability in industrial relations requires that the employer bargain with the union for a reasonable period regardless of any asserted loss of its majority.[88]

In the *Sanson Hosiery* case, the employer repudiated a collective bargaining agreement with the certified representative of its employees when some of them filed a decertification petition. And after the dismissal of the petition by the Board, because of the existing contract, the employer refused to deal further with the union, again asserting its doubt as to the union's majority, and insisting on a redetermination of the latter's status by the Board. The Court of Appeals for the Fifth Circuit sustained the Board's view that filing of the decertification petition by the employees did not relieve the employer of the duty to bargain. The court further pointed out that the determination of whether the union had lost its bargaining status was not for the employer but for the Board "upon orderly statutory procedure," and that "meanwhile, it is the employer's duty to deal with the duly certified union."

In another case, the Fourth Circuit held the employer had a duty to bargain after the employer, in a Board-approved settlement agreement had recognized and agreed to negotiate with the union in return for the latter's withdrawal of its refusal-to-bargain charges.[89] In this case, the employer declined to honor its agreement, when some 3½ months later, a large proportion of the employees involved filed a petition for the union's decertification. The employer continued to resist the union's bargaining efforts after the Board had dismissed the decertification petition because employer and union were "entitled to a reasonable time within which to effectuate the provisions of the settlement agreement . . . free from rival claims and petitions."

The court sustained the Board's conclusion that the employer's continued refusal to bargain violated section 8 (a) (5) because the bargaining provision of the settlement agreement had the same effect as the corresponding provisions of a bargaining order, and must be given a reasonable time to operate, irrespective of any possible or proved loss of union majority during such a period. The court also agreed that 3½ months were not such a reasonable period. The court pointed out that the effect given the settlement agreement by the Board was necessary both for the purpose of the bargaining relations involved,[90] and because of the general importance of settlement agreements in the administration of the act.[91]

---

[88] *N. L. R. B.* v. *Kress & Co.*, 194 F. 2d 444 (C. A. 6); *N. L. R. B.* v. *Sanson Hosiery Mills, Inc.*, 195 F. 2d 350 (C. A. 5), cert. denied, 344 U. S. 863.

[89] *Poole Foundry and Machine Co.* v. *N. L. R. B.*, 192 F. 2d 740.

[90] The court cited *Franks Brothers Co.* v. *N. L. R. B.*, 321 U. S. 702, 705–706.

[91] The court's views regarding the importance of settlement agreements in the administration of the act are further discussed at p. 254.

5. Union Unfair Labor Practices

Interpreting section 8 (b), which makes labor organizations liable for the acts of their agents, the Seventh Circuit[92] pointed out that unions, the same as employers, are bound by whatever is done by their agents in the actual or apparent scope of their authority. Thus, the court held, an international union was responsible for the unlawful discharge of an employee which had been requested by the international's representative as a condition to the termination of a current strike and the execution of a contract. As noted by the court, the representative had been held out as the international's negotiator and the employer had not been advised of any limitations on his authority to impart to the company the terms and conditions upon which the international would execute a contract and terminate the strike. The court also held that the international's local which participated in the contract negotiations through its negotiating committee was similarly liable for the discharge. The court observed that the committee which had been authorized to negotiate for an agreement had permitted the international's representative to act as its spokesman, and had acquiesced in the latter's demand for the discharge as the price for the consummation of the contract and the termination of the strike.

a. Restraint and Coercion of Employees

One of the cases under section 8 (b) (1) (A) in which the Board sought enforcement involved the question of the general scope of that section.[93] Agreeing with the Board, the court rejected the contention that section 8 (b) (1) (A), like section 8 (a) (1), is a general prohibition covering all the unfair labor practices specified in the other subdivisions of section 8 (b). The Board had pointed out that section 8 (b) (1) (A) envisages practices directed against employees, whereas most of the other prohibitions of section 8 (b) concern union practices directed against employers.[94]

The same case also involved the application of the proviso to section 8 (b) (1) (A) which preserves "the right of a labor organization

[92] *N. L R. B.* v. *Acme Mattress Co., Inc*, 192 F 2d 524

[93] *American Newspaper Publishers Ass'n.* v. *N L R B*, 193 F 2d 782. Certiorari granted in other respects, 344 U S. 812.

[94] In those cases in which the court sustained the Board's finding that both section 8 (b) (2) and 8 (b) (1) (A) were violated where unions unlawfully caused discrimination against employees (*N L. R. B* v. *International Union, UAW,* 194 F. 2d 698 (C A 7); *Red Star Express Lines* v *N L R B*, 196 F 2d 78 (C. A 2); *N. L R B.* v. *Electric Auto Lite Co.,* 196 F 2d 500 (C. A. 6), certiorari denied 344 U. S. 823), the Board's finding was based on the conclusion that such conduct independently has a coercive and restraining effect, and not on the theory that a violation of section 8 (b) (2) *derivatively* violates section 8 (b) (1) (A).

to prescribe its own rules with respect to the acquisition or retention of membership therein." The complaining employer had contended that this proviso did not leave the union free to threaten to expel members under its intraunion rules for their failure to cooperate in its bargaining policies. Expulsion from membership, the employer argued, would entail economic losses and the threatened employees were therefore unlawfully restrained from exercising their right to refrain from participating in concerted activities. Sustaining the Board's interpretation of the proviso, the court held that the proviso was clearly intended to exempt union membership rules from the prohibitions of section 8 (b) (1) (A) and to permit a labor organization to expel members for any reason and in any manner prescribed by its rules. The court considered it significant that, while the Board had so interpreted the proviso over a long period, Congress did not see fit to amend section 8 (b) (1) (A) so as to indicate that a broader interpretation of the proviso was desired.

In another case, the respondent union had refused clearance to a member whom it had suspended for "bumping" a fellow union man and for his failure to cooperate with the union in maintaining a hiring hall arrangement.[95] The Board found this was unlawful restraint and coercion. The court agreed that, since the union's contract with the employer involved did not provide for a hiring hall,[96] the union's attempt to coerce the complaining employee to conform to an illegal hiring practice was clearly violative of section 8 (b) (1) (A). The court also agreed that, while the employee was required to maintain good standing with the union in order to be cleared for a job,[97] the union's refusal to grant clearance after the employee's expulsion was not proper because the union's expulsion procedure had not been followed. The court rejected the contention that neither the Board nor the court could inquire into the validity of the expulsion. Where rights under the act are involved, the court said, "there is as much reason to review the grounds for the suspension of a union member as to review an employer's asserted reasons for discharging an employee."

In another case, the court held that the Board had correctly found a violation of section 8 (b) (1) (A) where union agents persuaded nonunion applicants to forego present employment in return for a promise of quick entry into the union, when such bargains were made

[95] *N L R B v Radio Officers' Union,* 196 F 2d 960 (C A 2) · certiorari granted 344 U S 852

[96] The contract was made before the effective date of the amended act and the hiring hall provision asserted by the union would have been valid had it existed

[97] The Board found that the contract to which the employee was subject contained a preferential hiring clause which was validly entered into before the effective date of the amended act.

against a background of threatened strikes if the nonunion men refused.[98]

b. Restraint and Coercion of Employers

In the *ANPA* case, the court also upheld the Board's finding that the respondent union violated the provisions of section 8 (b) (1) (B) which prohibit a labor organization from coercing "an employer in the selection of his representatives for the puraposes of . . . the adjustment of grievances."[99] Here the union, as part of a plan to maintain illegal closed-shop conditions, threatened to strike unless the employer agreed to hire only union foremen. These foremen had authority to hire, fire, and maintain shop discipline and were to represent the employer in the first instance in grievance claims. Since the foremen were thus management representatives for the purpose of the adjustment of grievances, the court held that the union's action came clearly within the prohibition of section 8 (b) (1) (B).

c. Causing or Attempting to Cause Discrimination

In several cases involving 8 (b) (2) complaints, the court affirmed certain general principles which the Board had established in administering section 8 (b) (2). Thus, the Second Circuit, on two occasions, upheld the Board's conclusion that it is not precluded from finding that a union has caused a violation of section 8 (a) (3), within the meaning of section 8 (b) (2), although the employer involved has not been joined in the proceeding and has not been found to have committed an unfair labor practice in violation of section 8 (a) (3).[1] Consequently, the court held in the *Newspaper Deliverers* case that, in a case where a complaint has issued against both union and employer, the Board's power to proceed against a union under 8 (b) (2) is not lost because the Board in its discretion has settled the complaint against the employer.

In the *American Newspaper Publishers* case,[2] the Seventh Circuit adopted the Board's view, approved by the Second Circuit,[3] that

---

[98] *N. L R B* v. *Newspaper and Mail Deliverers' Union,* 192 F 2d 654 (C A 3). See also *N L R B* v. *United Mine Workers,* 195 F 2d 961 (C A 6), where the Board's 8 (b) (1) (A) finding, which was likewise sustained, was based on the mass invasion of certain nonunion mines by from 1,000 to 2,500 union members for the purpose of forcing the mine employees to join their ranks and to adopt their contract policies

[99] *American Newspaper Publishers Ass'n* v *N. L R. B.,* 193 F. 2d 782; certiorari granted in other respects, 344 U S 812

[1] *N. L R B* v *Newspaper and Mail Deliverers' Union,* 192 F. 2d 654, *N L R B* v *Radio Officers' Union,* 196 F 2d 960 The court cited the Board's decision in *National Union of Marine Cooks,* 92 NLRB 877.

[2] Cited in footnote 99, above

[3] *N L R B* v *National Maritime Union,* 175 F 2d 686, 689, certiorari denied 338 U S. 954, 339 U S. 926.

section 8 (b) (2) may not be construed to limit the finding of a violation only to cases where the union's conduct is directed against particular employees or applicants for employment. The court held that the Board could properly find that the respondent union's insistence, on threat of strike, that the employer maintain illegal closed-shop conditions was an attempt to cause employer discrimination in violation of section 8 (b) (2).

In harmony with this principle, the Second Circuit in another case [4] upheld the Board's conclusion that a union which enters into an illegal union-security agreement thereby causes the employer to violate section 8 (a) (3) because the mere existence of such an agreement creates discriminatory conditions of employment and exposes employees subject to the contract to the risk of discharge for nonmembership in the contracting union.[5]

Enforcement was granted in one case, where the Board had found that the union illegally caused the discharge of an employee for failure to pay union dues which accrued at a time when no valid union-security agreement was in effect.[6] The court noted that since the retroactive application of union-security provisions by an employer constitutes illegal discrimination,[7] section 8 (b) (2) is necessarily violated if a union causes such discrimination. And the Sixth Circuit, without opinion, enforced an order in a case in which the Board found that a union violated section 8 (b) (2) by enforcing its union-security agreement against an employee who had failed to pay fines imposed for his nonattendance at union meetings.[8] Such fines, in the Board's opinion, were not "periodic dues [or] initiation fees uniformly required" for the nonpayment of which employees subject to a valid union-security agreement may be discharged at the request of their union. The Board in this case had also held that the union could not properly divert dues regularly checked off from the employee's pay to the payment of fines and then suspend him for arrears in his dues.[9]

---

[4] *Red Star Express Lines* v *N L. R B*, 196 F 2d 78

[5] To the same effect on this point *Webb Construction Co.* v *N. L. R. B*, 196 F. 2d 841 (C A 8) The Board's order was set aside in this case because of the court's view that in fact no illegal union-security agreement had been entered into and no discrimination had been practiced by the respondents

[6] *N L R. B.* v *International Union, UAW*, 194 F 2d 698 (C A 7).

[7] The court cited *Colonie Fibre Co, Inc.* v. *N L R B*, 163 F. 2d 65 (C. A. 2).

[8] *N L. R B.* v. *Electric Auto-Lite Co.*, 196 F. 2d 500, certiorari denied 344 U. S. 823.

[9] For cases in which 8 (b) (2) orders based on illegal discriminatory hiring practices were enforced, see *N L. R. B* v *Newspaper and Mail Deliverers' Union*, 192 F. 2d 654 (C A 2), *American Newspaper Publishers Ass'n* v *N L R. B*; 193 F 2d 782 (C. A. 7), certiorari granted in other respects, 344 U S 812, *N L R. B* v. *Radio Officers' Union*, 196 F. 2d 960 (C. A. 2)

In *N L R B* v *International Brotherhood of Teamsters*, 196 F 2d 1 (C A 8). the court set aside the Board's finding that the discriminatory reduction of an employee's seniority standing at the instance of the respondent union violated section 8 (b) (2) In the court's opinion, the concededly discriminatory action under the circumstances could not

d. Refusal to Bargain

In the *American Newspaper Publishers* case,[10] the court sustained the Board's finding that the union had failed to bargain in good faith as required by section 8 (b) (3). The court noted that, as found by the Board, the union began negotiations with a fixed determination to adhere to the "no contract" policy dictated by its international which reserved to the union the right to impose unilaterally its conditions of employment. Section 8 (d), the court held, while not compelling the parties "to agree to a proposal or require the making of a concession," afforded no defense to the union. The court said: "This provision does not mean that either party may comply with the duty to bargain by entering into and participating in negotiations with a fixed and determined purpose of avoiding the making of an agreement."

e. Secondary Boycotts

The Board's interpretation of the secondary boycott provisions in section 8 (b) (4) received judicial approval in three cases during the past year. In the *Service Trade Chauffeurs* case, the central issue was the extent to which section 8 (b) (4) protects neutral or "secondary" employers where union action is directed against a "primary" employer whose business has a roving situs and, in the court's words, "travelling about on wheels, rolls up to the secondary employer's door or onto his premises."[11] The court recognized that if unions were held to be prohibited from picketing the primary employer in such situations because of possible injury to the secondary employer, they would be deprived of a powerful weapon which Congress intended to preserve. The court also noted that the Supreme Court in *International Rice Milling*[12] had indicated that a union does not violate section 8 (b) (4) if it inflicts on a secondary employer harm which is merely incidental to a traditionally lawful primary strike. Whether, in the case of a roving primary employer, union action is "primary" and whether injury resulting to neutral employers is "incidental," must be determined, the court said, on the basis of the sound principles laid down by the Board in the *Sailors' Union* (*Moore Drydock*) case.[13] Accordingly, picketing on the premises of a secondary employer is permissible if

---

have had the effect of encouraging or discouraging union membership and therefore could not have constituted a violation of section 8 (a) (3). Thus, the court held, an essential prerequisite to the Board's 8 (b) (2) finding was lacking The Board's petition for certiorari has been granted by the Supreme Court, 344 U S. 853.

[10] 193 F 2d 782.

[11] *N L. R B* v *Service Trade Chauffeurs, Local 145,* 191 F 2d 65 (C A 2)

[12] *N L. R B* v *International Rice Milling Co*, 341 U S 665, 671

[13] *Sailors' Union of the Pacific,* 92 NLRB 547.

(a) The picketing is strictly limited to times when the situs of dispute is located on the secondary employer's premises; (b) at the time of the picketing the primary employer is engaged in its normal business at the situs; (c) the picketing is limited to places reasonably close to the location of the situs; and (d) the picketing discloses clearly that the dispute is with the primary employer

Since these rules had not yet been announced at the time of the Board's decision in the *Service Trade* case, the court remanded that case to the Board for the purpose of determining whether upon application of these rules the union could be found to have violated section 8 (b) (4) by picketing at the premises of some of the primary employer's customers.[14] The court agreed that under such circumstances picketing is not unlawful even if it induces employees of neutral employers to refuse to cross the picket line because of their habitual unwillingness to do so. "Such effects are within the realm of the 'incidental,'" the court said. Nor, the court concluded, does such picketing become unlawful if it deters the neutral employer's customers because section 8 (b) (4) prohibits only the inducement of work stoppages on the part of employees for secondary boycott purposes. The court enforced the Board's order to the extent that it was based on the union's picketing of a warehouse where no truck operated by the primary employer and none of his employees were present.

In *Conway's Express*,[15] the same court sustained the Board's dismissal of 8 (b) (4) (A) charges[16] based on the following facts: The complaining employer was engaged in a joint venture with a transportation concern to which it leased trucking equipment as needed from time to time. The employer also supplied drivers for leased trucks and was contractually obligated to the respondent union to hire only its members for all trucking operations.[17] When the employer breached this agreement, the union struck and the employer then discontinued the joint venture with the transportation company. The court agreed that the strike against Conway was primary action intended to force Conway to abide by its agreement with the union. The fact that the strike brought about the cancellation of the equipment lease arrangement with another company, in the court's view, did not convert it into a secondary strike, because this consequence was but a by-product of Conway's own local labor difficulties.

---

[14] Upon reexamination of the situation, the Board subsequently again concluded that the union's picketing activities at the premises of the secondary employers were not limited either in situs or in time to the trucks of the primary employer and therefore came within the prohibition of section 8 (b) (4) 97 NLRB 123

[15] *Rabouin, d/b/a Conway's Express* v *N L R B*, 195 F 2d 906 (C A 2)

[16] The Board's finding that the union involved had violated section 8 (b) (1) (A) and 8 (b) (3) was not challenged and was therefore not reviewed by the court

[17] The court upheld the Board's finding that the contract in question was validly entered into before the effective date of the amended act and subsequently remained in force by virtue of the savings provisions of section 102

Insofar as the striking union had brought pressure on neutral employers to stop accepting Conway's shipments, the court pointed out that no violation of section 8 (b) (4) (A) was involved, because the union's requests had been addressed directly to the *employers* and no *employees* had been induced to cease work in order to accomplish the desired objective. The fact that the union's demands to the employers carried with them an implicit threat to strike was not controlling for, as the court said, the legislative history of section 8 (b) (4) (A) clearly indicates that this section as finally enacted was not intended to outlaw such strike threats (as distinguished from strikes) against third parties. The court also sustained the Board's view that the refusal of other truckers, under their "hot cargo" agreements with the union, to handle Conway's shipments while the strike was in progress could not be attributed to the union's unfair labor practices. "Consent in advance to honor a hot cargo clause is not the product of the union's 'forcing or requiring any employer . . . to cease doing business with any other person,' " the court concluded.[18]

f. Featherbedding

The provisions of section 8 (b) (6) which prohibits so-called featherbedding practices were involved in three cases before the courts of appeals. The Board's interpretation of these provisions was upheld in two cases,[19] and reversed in a third case.[20] The pertinent questions presented in the *ANPA* and *Gamble* cases are now awaiting decision by the Supreme Court. The Board has taken the position that Congress did not intend in section 8 (b) (6) to outlaw all types of "featherbedding," but was concerned only with demands for payment for work not actually to be performed. Thus, the Board held in the *ANPA* case that the practice of setting "bogus" (that is, type not intended to be used) in the printing industry was not in conflict with section 8 (b) (6). Here, regular composing room employees during some of their time reproduced so-called matrices prepared elsewhere although the reproductions ordinarily were not used and were destroyed. The Board likened the payment for "bogus" work to payment for certain idle periods within the employment relation such as vacation or rest

[18] In *N. L. R. B* v *Denver Building Trades Council,* 193 F. 2d 421 (C. A. 10), the court enforced the Board's order against a union whose representative had urged the employees of certain subcontractors on an installation project not to handle the product of a nonunion employer with whom the union had a dispute. The court here pointed out that the inducement or encouragement of employees of a neutral employer to cease work is a violation of section 8 (b) (4) regardless of whether or not the union's efforts to accomplish its objective fail.

[19] *American Newspaper Publishers Ass'n.* v. *N. L. R. B* , 193 F. 2d 782 (C. A. 7) ; *Rabouin, d/b/a Conway's Express* v. *N. L. R. B.,* 195 F. 2d 906 (C. A. 2).

[20] *Gamble Enterprises, Inc* v. *N. L. R. B.,* 196 F. 2d 61 (C A. 6)

periods, which constituted a part of the total consideration paid to the employees for *all* the services actually rendered by them, and which, in the debates in the Senate, were expressly shown to be excluded from the purview of section 8 (b) (6). The court, on the other hand, in agreeing with the Board's conclusion, gave decisive weight to the fact that the reproduction work, although useless to the employer, nevertheless involved the performance of work and, hence, payment for it was not an "exaction for services not performed or not to be performed," within the meaning of section 8 (b) (6).

In *Conway's Express*, the court, citing the *ANPA* case, likewise approved the Board's application of the "actual performance" test. Here, an employer who, in violation of valid contractual obligations, hired a nonunion man, was required by the contracting union to pay an amount equal to the nonunion men's wage to the union member who was entitled to the job under the contract. The court observed that, as long as work was done, the prohibition of section 8 (b) (6) did not apply even though the services were not performed by the person in whose behalf payment was sought and who was wrongfully denied the work under the contract.

In the *Gamble* case, the Board applied the same reasoning to a situation where a theatre was required to hire a local orchestra whenever it employed a traveling "name band." Here, again, the actual performance of work was contemplated and the respondent union at no time suggested that local musicians be paid for not working. However, the court took the view that this factor was not controlling and that the requirement that the theatre pay for services it did not want or need constituted an unlawful exaction within the meaning of section 8 (b) (6).

6. Remedial Orders

In the great majority of the cases in which the Board's unfair labor practice findings were upheld, the reviewing court enforced in full the remedial provisions which in the Board's opinion were necessary to effectuate the policies of the act.

In one case, where an employer had refused to furnish the complaining union information in support of its alleged financial inability to grant a wage increase, the court specifically affirmed the Board's power to direct that the employer produce whatever relevant information it has to substantiate its claim that it cannot afford to comply with the union's demands.[21]

The courts also reaffirmed that the Board unquestionably has power under section 10 (c) to impose joint and several back-pay liability on

[21] *N. L. R. B.* v. *Jacobs Mfg. Co.*, 196 F. 2d 680 (C. A. 2).

an employer and a union which jointly brought about the discriminatory treatment of employees.[22]

One case before the Fifth Circuit involved the Board's recently established practice[23] to compute back pay on a "quarterly"—3-month—basis rather than on the basis of the losses sustained by employees during the entire period of the discrimination against them. In the Board's view, this change in method was necessary to make the employee whole for the unfair labor practice against him by preventing the offending employer from withholding reinstatement while the employee involved receives higher pay from another employer and the offending employer's back-pay liability is thereby reduced. The Board's action was further motivated by its experience that employees faced with the prospect of steadily diminishing back pay frequently waive their reinstatement rights in order to toll the running of back pay and preserve the amount then owing. The court in the *Seven-Up* case, however, declined to sanction the Board's new formula because, in its opinion, it did not appear that the employees concerned would not be made whole under the Board's former practice.[24] The Supreme Court reversed this ruling.

In one case, the court held that the circumstances did not justify that part of the Board's order which prohibited the employer from giving effect to its entire collective-bargaining contract because it contained an illegal union-security clause or entering into similar contracts or recognizing the union involved until it had been certified by the Board.[25] However, the dissenting member of the court strongly urged that the court's action was "an unjustifiable interference with the power of the Board to exercise its sound discretion."[26]

7. Determination of Bargaining Representatives

In several cases, enforcement of bargaining orders was resisted on the ground of alleged defects in the representation proceeding in which the Board had determined the complaining union's majority status and the bargaining unit. The issues raised by the employers

---

[22] *N. L. R. B.* v. *Newspaper and Mail Deliverers' Union,* 192 F. 2d 654 (C. A. 2); *N. L. R. B.* v. *Acme Mattress Co., Inc*, 192 F. 2d 524 (C. A. 7).

[23] See *Woolworth Company,* 90 NLRB 289 (1950).

[24] *N. L. R. B.* v. *Seven-Up Bottling Co.,* 196 F. 2d 424 (C. A 5), reversed — U S. —, No. 217, January 12, 1953.

[25] *N. L. R. B.* v. *Gaynor News Co., Inc.,* 197 F. 2d 719 (C. A. 2).

[26] For other cases in which certain provisions of the Board's order were stricken because of the court's view that they were not appropriate under the circumstances, see *Coca-Cola Bottling Co* v. *N. L. R. B.,* 195 F 2d 955 (C. A. 8); *N. L. R. B.* v. *Deena Products Co.,* 195 F. 2d 330 (C. A. 7); *N. L. R. B.* v. *Kentucky Utilities Co.,* 191 F. 2d 858 (C. A. 6); *N. L. R. B.* v. *Montgomery Ward & Co., Inc.,* 192 F. 2d 160 (C. A. 2); *Shell Oil Co.* v. *N. L. R. B*, 196 F 2d 637 (C. A. 5).

concerned the manner in which the elections directed by the Board were conducted, and the appropriateness of the Board's unit determination.

a. Majority Determinations

In the *Kress* case, the court rejected the employer's objection to the time and place of the election by which the Board had determined the complaining union's majority status.[27] Sustaining the Board's view that these were matters entirely within its discretion, the court held that, in accordance with an early Supreme Court precedent,[28] "[T]he control of the election proceeding and the determination of of the steps necessary to conduct that election fairly were matters which Congress entrusted to the Board alone." The court also noted that the employer was not in a position to attack the validity of the election procedure because its own noncooperative and hostile attitude, and its refusal to permit the election to be held on its premises, were responsible for the difficulties under which the election was held.

In one case, the court sustained the employer's contention that the election on which the complaining union was certified should have been set aside because of the presence of a union official within the voting area.[29] The Board had found that the union representative's alleged conduct would have been subject to criticism and would have been corrected had the employer brought it to the attention of the election officials at the time. However, in the light of its experience in conducting elections, the Board was of the view that the union representative's actions were of a character which could not have affected a free choice in the election and were therefore insufficient to justify the setting aside of the election.

b. Unit Determinations

In the cases in which the employer challenged the Board's unit determination in defense of its refusal to bargain, the courts again affirmed the Board's broad discretion in this matter and the limited power of the courts to intervene only if the Board should exercise its discretion in an arbitrary and unreasonable manner.[30]

In the *Williams Lumber* case, the court approved the Board's determination that a single unit was appropriate for the employees of

---

[27] *N. L. R. B.* v. *Kress & Co.*, 194 F. 2d 444 (C. A. 6).

[28] *N L R. B.* v. *Waterman S. S. Co*, 309 U. S. 206, 216 (1940).

[29] *Southwestern Electric Service Co.* v. *N. L. R. B.*, 194 F. 2d 929, (C. A. 5).

[30] *N. L. R. B.* v. *Williams Lumber Co.*, 195 F. 2d 669 (C. A. 4), cert. denied 344 U. S. 834; *N. L. R. B.* v. *Somerville Buick, Inc.*, 194 F. 2d 56 (C. A. 1); *N. L. R. B.* v. *Kress Co.*, 194 F. 2d 444 (C. A. 6).

two commonly owned lumber manufacturing companies. As noted by the court, the Board had based its finding in the representation case on the close proximity of the two plants, the joint use of equipment, the common over-all management, as well as the joint employment of some employees within the unit. The court also agreed that the single unit did not subsequently become inappropriate because of the relocation of one of the plants to a site some three-quarters of a mile away. This change in operations, the court said, was immaterial because the two plants continued to have a "unity of interest, common control, dependent operations, sameness in character of work and unity in labor relations."

In the *Somerville Buick* case, the court held that it was clearly within the Board's power to order the employer to bargain with a unit of all of its repair service and maintenance employees. The Board had pointed out that in other cases, involving similar operations and the same unions, identical units were found appropriate because of the functional coherence, interdependence, and community of interest among the employees. This factor, the court concluded, was an important element in assessing the appropriateness of the unit in the present case.

In another case, the court approved the Board's policy of considering a unit inappropriate for bargaining purposes if the initial work force in the unit is not representative of the employer's contemplated total work force.[31] The court held that the Board's expanding unit doctrine was reasonable "and well calculated to preserve the principle of majority rule."

8. The 6-Month Limitation on Charges

In a number of cases the validity of the Board's order was challenged on the ground that the Board did not properly apply the provisions of section 10 (b) according to which the Board may issue a complaint only where a charge has been filed and served within 6 months after the commission of the alleged unfair labor practices. In those instances in which the respondent parties objected that the amended charge on which the complaint was based was not filed and served until after the expiration of the 6-month period, the courts uniformly held that the Board's order was valid under the doctrine that the amendments related back to the original charge.[32] Thus, the Third Circuit in the *American Shuffleboard* case rejected the contention that the Board's complaint was invalid because, in accordance

[31] *N. L. R. B.* v *Atkinson Co.*, 195 F. 2d 141 (C A 9), reversed on other grounds.

[32] See *Kansas Milling Co.* v. *N. L. R. B*, 185 F. 2d 413 (C. A 10), Sixteenth Annual Report, p. 272.

with the amended charge, it alleged 8 (a) (3) discrimination against an employee for his union and other concerted activities, whereas the timely original charge had only alleged 8 (a) (1) discrimination for union activities.[33] The court observed that both charges related to the discharge of a specified employee and the slight change in legal theory in the amended charge was immaterial for the purpose of the validity of the complaint.

Similarly, the First Circuit in the *Star Beef* case [34] held without merit the employer's argument that the Board's order was not properly supported by a charge filed and served within the 6-month period. Here, the complaining union's timely second amended charge alleged 8 (a) (1), (3), and (5) violations, while the later third amended charge and the original complaint omitted the 8 (a) (5) allegation. The complaint was then amended at the hearing so as to reincorporate 8 (a) (5) charges, duly affording the employer an opportunity to meet them. Rejecting the contention that the filing of the third amended charge amounted to a withdrawal of the second amended charge,[35] the court held that the Board's order was thus actually based on specific timely charges. Moreover, the court observed that each of the amended charges related to the same factual situation as the original charge and, under the rule of the *Shuffleboard* case, were therefore sufficient to support the Board's order.

Citing *American Shuffleboard* and *Star Beef*, the Second Circuit reiterated in a later case that the doctrine of "relation back" is to be liberally applied so as "to give the Board wide leeway for prosecuting offenses unearthed by its investigatory machinery, set in motion by the original charge." [36] Consequently, the court concluded, timely charges that an employer violated section 8 (a) (1) and section 8 (a) (3) by discriminating against a named employee could properly be enlarged by allegations that the employer similarly discriminated against other employees and that the employer's conduct also violated section 8 (a) (2) because under the circumstances, it had the effect of encouraging union membership.

The same rule was applied by the Fifth Circuit in a case in which a second amended charge, filed after the 6-month period, omitted the allegation of certain violations specified in the previous timely charges,[37] as well as in another case in which the amended charge that

[33] *Cusano, d/b/a American Shuffleboard Co.* v. *N. L. R. B.*, 190 F. 2d 898.

[34] *N. L. R. B.* v. *Kobritz, d/b/a Star Beef Co*, 193 F. 2d 8.

[35] See p. 254

[36] *N. L. R. B.* v. *Gaynor News Co., Inc*, 197 F. 2d 719, modified in other respects. Company's petition for certiorari pending.

[37] *N. L. R. B.* v. *Royal Palm Ice Co*, 193 F. 2d 569.

was challenged merely carried forward and amplified the original charge.[38]

The courts, during the past year, reaffirmed the rule that the 6-month limitation does not apply to charges filed and served before the effective date of the amended act,[39] and that the particular provisions of section 10 (b) do not require that the Board's complaint be issued within 6 months from the date of the alleged unfair labor practices.[40]

In two cases, the court agreed that section 10 (b) does not operate to bar the Board from remedying the continued enforcement of an illegal union-security agreement where the agreement itself was entered into more than 6 months prior to the filing and service of the charges.[41] As pointed out in the *Gaynor News* case, as long as such an agreement is kept in force, the contracting party commits a continuing offense which prevents the 6-month limitation period from beginning to run.

Enforcement of reinstatement and back-pay orders was resisted in two cases on the ground that, contrary to the Board's conclusion, the discrimination on which the orders were based did not occur within the statutory 6-month period. Conceding that the original discrimination against the complaining employees—an unlawful refusal to reinstate strikers in one case,[42] and the discharge of an employee under an illegal union-security agreement in the other case[43]—had occurred more than 6 months before the charges were filed, the Board in both cases had predicated its orders on the employer's subsequent unlawful refusal, within the 6-month period, to honor the complaining employees' application for new employment. The court in each case, however, construed the employees' written request for employment as a claim for reinstatement to their positions prior to the original discrimination which was barred by the 6-month statute of limitations.

The Board's dismissal of a complaint was upheld in a case[44] in which the complaining union's charge alleged that, more than 6 months earlier, the employer had unlawfully refused to bargain, and that during the ensuing strike the strikers were replaced and were refused reinstatement. The charge further alleged that, within the statutory 6-month period, the employer again refused to reinstate the strikers

---

[38] *N. L. R. B.* v. *Greenville Cotton Oil Co.*, 197 F. 2d 326. See also *Stokely Foods, Inc.* v. *N. L. R. B.*, 193 F. 2d 736.

[39] *Olin Industries, Inc.* v. *N. L. R. B.*, 191 F. 2d 613 (C. A. 5).

[40] *N. L. R. B.* v. *Kobritz, d/b/a Star Beef Co.*, 193 F. 2d 8 (C. A. 1).

[41] *Katz, d/b/a Lee's Department Store* v. *N. L. R. B.*, 196 F. 2d 411 (C. A. 9); *N. L. R. B.* v. *Gaynor News Co.*, see footnote 36.

[42] *N. L. R. B.* v. *Pennwoven, Inc.*, 194 F. 2d 521 (C. A. 3).

[43] *N. L. R. B.* v. *Childs Co.*, 195 F. 2d 617 (C. A. 2).

[44] *American Federation of Grain Millers* v. *N. L. R. B.*, 197 F. 2d 451 (C. A. 5).

or to negotiate with the union regarding their reinstatement.[45] The court agreed with the conclusion that since the union's charge was untimely as to the employer's refusal to bargain, section 10 (b) precluded the Board from finding that the refusal was an unfair labor practice and that the strike which followed was an unfair labor practice strike. The court likewise agreed that under the circumstances the strikers must be regarded as having been lawfully replaced and as not being entitled to reinstatement while no vacancies existed. As found by the Board, the court also held that the replacement of strikers resulted in the loss of the union's majority status before the statutory cutoff date so that the employer's subsequent refusal to negotiate with the union was not a violation of section 8 (a) (5).[46]

9. Affidavit Requirements

The Board's administration and interpretation of the non-Communist affidavit requirements of section 9 (h) was put in issue in a number of enforcement cases. One of the principal questions raised concerned the time when the union filing the charge must be in compliance in order to empower the Board to issue a complaint thereon. Several other cases involved the so-called "fronting" issue, i. e., whether the persons filing the charges were so intimately identified in interest with the noncomplying union as, in effect, to render the charge filed by them as vulnerable as if it had been filed by the noncomplying union.

As to the critical time at which compliance is required, the Board has consistently held that a charging union must be in compliance with section 9 (f), (g), and (h) when the complaint is issued, rather than when the union files the charge.[47] The Board has held that this is dictated not only by the language of the law but by the legislative history and the purpose of this section. However, the Ninth Circuit held that compliance is required when the charge is filed.[48] The Supreme Court unanimously reversed this ruling and upheld the Board's position.[49]

---

[45] The Board's finding that the employer's conduct during the 6-month period violated section 8 (a) (1) was sustained and the Board's cease-and-desist order based on this violation was enforced by the court.

[46] The court, as had the Board, rejected the union's contention that the employer's duty to bargain was a continuing obligation which renewed itself each day after the first refusal, without another request, and that the employer's initial refusal set in motion a continuing tort.

[47] See *Dant & Russell, Ltd.*, 95 NLRB 252; *Southern Fruit Distributors*, 80 NLRB 1283; *H. & H. Manufacturing Co.*, 87 NLRB 1373.

[48] *N. L. R. B.* v. *Dant, et al, d/b/a Dant & Russell*, 195 F. 2d 299.

[49] No. 92, February 2, 1953. See also Nos. 459 and 460, same/day, for reversals in two subsequent cases in which the Third and Fifth Circuits also decided the issue adverse to the Board. *N. L. R. B.* v. *Nina Dye Works*, 198 F. 2d 362 (C. A. 3), July 24, 1952; *N. L. R. B.* v. *American Thread Co.*, 198 F 2d 137 (C A 5), July 31, 1952.

Enforcement was granted in three cases in which exception was taken to the Board's issuance of the complaint on the basis of charges which had been filed by individual employees with the assistance of noncomplying unions.[50] In the *Rawleigh* case, the court pointed out that it could not be inferred that the union involved "became a party to the proceeding or was entitled to any measure of relief therein because the individual complainants were members of the Union; because the Union, or its attorney advised, counseled, and assisted in the preparation and filing of the charges or in the prosecution thereof, or because a Union official broadcast the statement that 'the [Union] intends to right the cause of these employees all the way.'"[51] The *Rawleigh* case was cited in *Globe Wireless* where the court similarly concluded that individual employees are not disqualified from filing charges because of the assistance or direction of a noncomplying union. And in *Southern Furniture*, the Fifth Circuit also rejected a contention that the charges filed by an employee on behalf of himself and other employees who had suffered discrimination were invalid because a noncomplying union was in a position to benefit from an order against the employer. The court pointed out that the only connection the employees covered by the charges had with the union was their application for membership, and that there was no substantial evidence that the charging employee was fronting for the union. On the other hand, the same court declined to enforce the Board's order in the *Happ Brothers* case,[52] because in its opinion the individual who filed charges alleging discrimination against herself and other employees had acted not as an individual but as president of and as a "front" for a noncomplying union. The court cited the *Alside* case[53] in which the Sixth Circuit had denied enforcement of the Board's order on similar grounds.

In one case, the court reaffirmed the rule that in a complaint case the Board's General Counsel need not prove the complaining union's compliance with the filing and affidavit requirements of section 9 (f), (g), and (h), and that compliance will be presumed by the court in the absence of an affirmative showing to the contrary.[54]

---

[50] *Rawleigh Company* v *N. L R B.*, 190 F. 2d 832 (C. A. 7); *Southern Furniture Mfg. Co.* v. *N. L. R. B.*, 194 F. 2d 59 (C. A. 5); *Globe Wireless, Ltd.*, 193 F. 2d 748 (C. A. 9).

[51] However, the court eliminated from the cease-and-desist and notice provisions of the Board's order specific reference to the union.

[52] *N. L. R. B.* v. *Happ Brothers Co., Inc.*, 196 F. 2d 195.

[53] *N. L. R. B.* v. *Alside, Inc.*, 192 F. 2d 678.

[54] *Law and Son* v. *N. L. R. B.*, 192 F. 2d 236 (C. A. 10). See also Sixteenth Annual Report, pp. 273–274.

10. Procedural Problems

In a case in which a bargaining order was enforced, the Fourth Circuit had occasion to pass upon the effect which must be given to Board-approved agreements for the settlement of unfair labor practice charges.[55] In this case, the charging union pursuant to a settlement agreement had withdrawn its prior charge alleging that the employer had refused to bargain in return for the employer's undertaking to recognize and deal with it as the representative of the employer's workers. Thereafter, the employer refused to honor its agreement on the ground that it doubted the union's majority. The court agreed with the Board that such refusal was a violation of the act. Like the Board, the court held that the employer under the settlement was bound to bargain with the union for at least a reasonable time without questioning the union's representative status.[56]

The court emphasized the wide use and general importance of settlement agreements in the administration of the act. These agreements, the court said, manifest an administrative determination by the Board that some remedial action is necessary to safeguard the public interests protected by the act, and represent an undertaking by the parties charged with a violation of the act to carry out promptly the remedial action set out in the agreement in order to avoid the trouble and expense of litigation. The court said:

> While not an admission of past liability, a settlement agreement does constitute a basis for future liability and the parties recognize a status thereby fixed. Thus, for example, a settlement agreement providing for reinstatement of employees fixes their eligibility to vote in a Board election, and a settlement providing for the disestablishment of a dominated union necessarily affects its right to appear on a ballot. An entire structure or course of future labor relationships may well be bottomed upon the binding effect of a status fixed by the terms of a settlement agreement. If a settlement agreement is to have real force, it would seem that a reasonable time must be afforded in which a status fixed by the agreement is to operate. Otherwise, settlement agreements might indeed have little practical effect as an amicable and judicious means to expeditious disposal of disputes arising under the terms of the Act.

In another case, the court was faced with the contention that by filing an amended charge the charging party had in fact withdrawn its previous charge so that the Board's complaint could not incorporate allegations set out in the first charge which were *not set out* in the second.[57] Rejecting this contention, the court noted that the first charge could not be regarded as having been withdrawn because the regional director with whom it was filed had not consented to its with-

---

[55] *Poole Foundry and Machine Co.* v. *N. L. R. B.*, 192 F. 2d 740.

[56] See p 238.

[57] *N. L. R B.* v. *Kobritz, d/b/a Star Beef Co*, 193 F. 2d 8 (C A 1).

drawal as required by the Board's Rules and Regulations,[58] and because the Board's subsequent "notice of hearing" indicated that the Board considered both the first and second charge as being before it.

In one case, the court upheld the Board's ruling that a litigant before the Board is not entitled to take pretrial depositions of complaining witnesses in the absence of any provision in the act authorizing such a discovery procedure.[59] The court further observed that the respondent in the case was not denied a subpoena where necessary to procure the presence at the hearing of witnesses whom it wished to examine.

11. Contempt Proceedings

The Board's petitions for adjudication in contempt for violations of outstanding enforcement decrees were granted in three cases, and denied in three cases, during the past year. In another case, the court deferred adjudication pending the taking of testimony by an examiner.[60] In another case,[61] the Fifth Circuit ordered a hearing on a petition alleging that the employer's refusal to bargain in good faith with the union violated the court's broad cease-and-desist order against interference with the employees' rights under section 7 of the act. Thereafter, an order requiring the employer to bargain was entered by the court upon consent of the employer. In two other cases, contempt charges were settled during the course of the proceedings by full compliance with the decrees.[62]

In *Israel Putnam Mills*,[63] the employer was held in civil contempt because of its continued failure to bargain with the representative of its employees in violation of the court's decree.[64] The court noted that, following entry of its decree, the employer was properly requested by the complaining union to enter into contract negotiations; that the employer consented to meet only after much procrastination and then simply took its former position that it was financially unable to make any changes in existing working conditions. The court also noted that the employer even refused to bargain as to nonmonetary matters. This, the court held, was a clear violation of the employer's duty to bargain in good faith, a duty which "is not satisfied by merely meeting with union representatives to inform them that

[58] Sec. 102.9.

[59] *N. L. R. B.* v. *Globe Wireless, Ltd*, 193 F. 2d 748 (C. A. 9).

[60] *N. L. R. B.* v. *Red Arrow Freight Lines*, 193 F. 2d 979 (C. A 5).

[61] *N. L. R. B.* v. *J. E. Stone Lumber Co.*; unreported

[62] *N. L. R. B.* v. *National Maritime Union of America*, enfg. op. 175 F. 2d 686 (C. A. 2), contempt proceedings unreported; *N. L. R. B.* v. *Monumental Peak Logging Co.*, unreported.

[63] *N. L. R. B.* v. *Israel Putnam Mills, Inc.*, 197 F. 2d 116 (C. A. 2).

[64] The court had granted the Board's motion for summary enforcement of the underlying bargaining order which was entered without objection on the part of the employer.

the employer cannot or will not change its position." The court directed the offending parties to purge themselves of their contempt within 30 days and to report to the court the steps taken by them. Decision on the charge of criminal contempt was held in abeyance by the court pending the employer's report.

In the *Newspaper and Mail Deliverers'* case,[65] the Board's petition for the adjudication of the respondent union both in civil and criminal contempt was the result of the union's persistent refusal to comply with a decree which required the union to post notices in specified places advising the employees concerned, in substance, that the union would not interfere with their rights under section 7 of the act by causing their employer to discriminate against them under an illegal union-security agreement. The court there held that because the union and its president had "knowingly, and wilfully and intentionally" refused to comply with the decree, they were guilty of both civil and criminal contempt. In order to purge themselves of their civil contempt, the union and its officers, in addition to the posting of the required notices, were directed to pay to the Board the sum of $200 for expenses incurred in connection with the contempt proceeding, and to pay the costs of the transcript of the hearing before the court. For their criminal contempt, the union and its president were fined $10,000 and $2,000 respectively.

In *Carter Lumber*,[66] the employer was held in civil contempt for failure to comply with a reinstatement and back-pay order which had been summarily enforced by the court. Proceedings for criminal contempt were held in abeyance in order to afford the employer an opportunity to purge itself of its civil contempt.

In *Reed & Prince*, the Board's petition for a contempt adjudication based on the employer's refusal to bargain was denied because of the peculiar circumstances of the case. The court's decree to which the contempt charges related was issued in 1941 and affirmatively directed Reed & Prince to bargain with Steel Workers Organizing Committee (SWOC), the representative of its employees at that time, and to reinstate and reimburse certain employees who had been discriminatorily discharged. The decree also required the employer to cease and desist from the specified unfair labor practices, as well as from in any other manner interfering with the statutory rights of its employees. In 1942, Reed & Prince was held in contempt for its failure to comply with the back-pay provisions of the decree. Later, the United Steel Workers (USW), successor to the SWOC, which was certified by the Board as representative of the company's em-

[65] *N. L. R. B.* v. *Essex County News Co. and Newspaper and Mail Deliverers' Union*, October 3, 1951 (C. A. 3), 28 LRRM 2634.

[66] *N. L. R. B.* v. *Carter Lumber Co.*, October 30, 1951 (C. A. 9).

ployees, charged that Reed & Prince refused to bargain with it. These charges led to a new unfair labor practice proceeding and a new Board order directing Reed & Prince to bargain with USW as required by section 8 (a) (5). The employer questioned the validity of this order. The Board then took the view that since the company's renewed refusal to bargain was in violation of the outstanding court decree, the purposes of the act would be better served by the company's adjudication in contempt before taking any steps to enforce the more recent bargaining order. In support of this procedure, the Board pointed out to the court that if, in the case of new unfair labor practices by a party subject to a decree, the Board were required to proceed by way of a proceeding under section 10 of the act, followed by a petition for enforcement, an old offender could never be brought to account for contumacy of an earlier court decree. As to the company's refusal to bargain with USW, the Board urged that, even if the employer did not thereby violate the court's order to bargain with SWOC, the employer's refusal did violate the broad cease-and-desist provisions of that decree and that a contempt adjudication was, therefore, proper. However, the court was of the opinion that under the circumstances of the case contempt proceedings against the company were not in order, since the employer's refusal to bargain had already been the subject of a new unfair labor practice proceeding culminating in an order which the Board could ask the court to enforce. The court also noted that the employer's recent refusal to bargain with USW was referable to a new certification and was thus unrelated to the 1941 decree. Nevertheless, the court made it clear that, under different circumstances, new unfair labor practices of a party subject to a decree might support a contempt petition if such practices violated the general cease-and-desist provisions of the decree. The court also pointed out that the mere fact that its *Reed & Prince* decree was 11 years old did not impair its efficacy as a continuing injunction. Thus, the court concluded, if upon the Board's petition for enforcement of its second bargaining order it should appear that the company wilfully and deliberately refused to bargain as alleged, the court would be free to institute criminal contempt proceedings for violation of its 1941 decree.

In the *Norfolk Shipbuilding* [67] and *Aldora Mills* [68] cases, where the Board's petition was likewise based on refusal-to-bargain charges, the courts declined to find the respondents in contempt of court. In *Norfolk Shipbuilding*, the Board argued that, notwithstanding the outstanding bargaining decree, the employer had failed to negotiate

[67] *N. L R. B.* v. *Norfolk Shipbuilding and Drydock Corp.*, 195 F. 2d 632 (C. A. 4).
[68] *N. L. R. B.* v. *Aldora Mills*, 197 F. 2d 265 (C. A. 5).

with the complaining union in good faith. This, in the Board's opinion, was indicated by dilatory tactics, unilateral changes in working conditions, and by the company's insistence on far-reaching management functions and no-strike clauses. The court, however, was of the view that the acts relied on by the Board were not sufficiently shown to have been committed in bad faith so as to justify contempt proceedings. But the court observed that its denial of the Board's petition did not relieve the employer of its duty to bargain and that it continued to be subject to punishment for contempt if it should thereafter violate its obligations under the decree. In *Aldora Mills*, the court likewise held that there was no probable cause to believe that the employer was in fact guilty of contempt. The court here held that, while its decree directed the employer to bargain with the complaining union, the employer acted in good faith in declining to do so after it became apparent that the employees no longer wished to be represented by the union.

VIII

Injunction Litigation

SECTION 10 (j) and (l) of the amended act provide for injunctive relief in the United States district courts on the petition of the Board to halt conduct alleged to constitute an unfair labor practice.

Section 10 (j) confers discretion on the Board to petition for an injunction against any type of conduct, by either an employer or a union, which is alleged to constitute an unfair practice forbidden by the act. Such injunctive relief may be sought upon issuance of a formal complaint in the case by the General Counsel. On the Board's petition, the court may then grant "such temporary relief or restraining order as it deems just and proper."

Section 10 (l) requires that an injunction be sought in a United States district court against a labor organization charged with a violation of section 8 (b) (4) (A), (B), or (C),[1] whenever the General Counsel's investigation reveals "reasonable cause to believe that such charge is true and that a complaint should issue." The court is given discretion to grant "such injunctive relief or temporary restraining order as it deems just and proper." Section 10 (l) also provides for the issuance of a temporary restraining order without prior notice to the respondent party upon an allegation that "substantial and irreparable injury to the charging party will be unavoidable" unless immediate relief is granted. Such an *ex parte* restraining order may not be effective for more than 5 days. In addition, section 10 (l) provides that its procedures shall be used in seeking an injunction against a labor organization charged with engaging in a jurisdictional strike under section 8 (b) (4) (D), "in situations where such relief is appropriate."

During the past year the Board exercised its discretion to petition for a section 10 (j) injunction on three occasions, once against a labor organization, once against an employer, and once against employers and a labor organization. The relief requested was granted in two cases during the year and in the third case shortly after the close of the year.

---

[1] These sections contain the act's prohibitions against secondary strikes and boycotts, certain types of sympathy strikes, and strikes or boycotts against a Board certification of representatives.

Under the mandatory provisions of section 10 (1), injunctions were requested in 18 cases. Eleven of these cases involved secondary action believed to violate the provisions of section 8 (b) (4) (A) and (B). One case involved both secondary action and primary action allegedly initiated in disregard of a Board certification in violation of section 8 (b) (4) (C). One request was based on secondary action as well as conduct alleged to violate the jurisdictional dispute provisions of section 8 (b) (4) (D), while another case involved conduct alleged to violate section 8 (b) (4) (A), (C), and (D). In 3 cases, the request for an injunction was based entirely on alleged violations of section 8 (b) (4) (C), and in one case the asserted conduct involved section 8 (b) (4) (D) only. In 5 of the 18 cases in which mandatory applications for injunctions were filed, relief was granted by the court; 3 petitions were denied; and 2 petitions were withdrawn. The remaining 8 cases were retained on the court's docket, the alleged unfair practices having been discontinued. Subsequently 1 of these cases was settled and 3 were withdrawn.

The following table summarizes the proceedings instituted and the action taken by the courts in cases under these sections:

Summary of Injunction Litigation Under Sec. 10 (j) and (1) [1]
July 1, 1951, to June 30, 1952

	Number of cases instituted	Number of applications granted	Number of applications denied	Cases settled, inactive, pending, etc.
Proceedings under sec. 10 (j):				
(a) Against unions	1	1	0	
(b) Against employers	1	[2] 1	0	
(c) Against unions and employers	1	1	0	
Proceedings under sec. 10 (1)	18	[3] 5	3	1 settled. 5 withdrawn.[4] 4 inactive.[5]
Total	21	8	3	10

[1] Injunctive actions during the fiscal year are listed in table 17, appendix B, pp. 300–301.

[2] Injunction granted after close of year.

[3] In 1 of these cases the injunction issued after the close of the year. In 3 cases, temporary restraining orders were granted and subsequently extended or replaced by temporary injunctions.

[4] 3 of these cases were retained on the court's docket without hearing until the charge was withdrawn.

[5] Retained on the court's docket without hearing, the alleged unfair labor practices having been discontinued.

1. Injunctions Under Section 10 (j)

Injunctive relief following the issuance of an unfair labor practice complaint was requested and granted in one case for the purpose of preventing a maritime union and certain maritime employers from continuing, during the pendency of the unfair labor practice proceeding, discriminatory hiring practices which appeared to violate section 8 (b) (1) (A) and (2) on the part of the union, and section 8 (a) (1) and (3) on the part of the employers. These practices were resulting in interruptions to ship sailings and hindering the processing of a petition under section 9 of the act to determine the representative of the employees involved.[2]

In another case, relief in the form of a temporary restraining order was obtained against a union charged in the Board's complaint with attempting to force certain employers to agree to contract provisions which violated section 8 (b) (1) (A), 8 (b) (2), and 8 (b) (3) of the act.[3] The case involved the Puerto Rican affiliate of the International Longshoremen's Association which was engaged in an island-wide stevedore strike against members of the Puerto Rico Steamship Association for the purpose of compelling the association members, among other things, to contract to pay retroactive wages directly to the union rather than to the employees. This was alleged in the complaint to be an illegal contract demand prohibited by section 302 of the act, which restricts the payments which lawfully may be made by an employer to a bargaining representative. After the union abandoned its unlawful demands, an agreement was reached by the parties and the strike was ended. The restraining order then was dissolved and the injunction proceeding dismissed without prejudice at the request of the General Counsel.

Shortly after the close of the year, a temporary injunction was granted in a case in which the court found reasonable support for the Board's complaint that the employer was unlawfully refusing to bargain with a certified union and assisting a rival union. The employer was accused of bargaining with the rival union in the face of a Board certification of the other union as the employees' representative, by facilitating the checkoff of dues for the rival union, and by assisting it in securing signatures to petitions repudiating the incumbent union.[4] The court granted the injunction "to prevent a serious failure of enforcement of important provisions of the Act and of the public policy

---

[2] *Brown* v. *Marine Cooks and Stewards*, 104 F Supp 685 (D C., No Cal)

[3] *Cosentino* v *International Longshoremen's Association*, February 6, 1952 (D. C , P R . Civ No 6472).

[4] *Madden* v. *Cargill, Incorporated*, 30 LRRM 2459 (D C , No Ill)

thereof, and for the purpose of avoiding substantial, immediate and irreparable injury to such policy."

a. General Principles

The granting of the relief on the Board's petitions under section 10 (j) was accompanied by a detailed opinion only in the *Marine Cooks* case.[5] Here, the court summarized certain principles by which the granting of temporary relief is controlled as follows:

> A preliminary injunction is not predicated upon an anticipated determination of issues of fact which may be involved. The determining criteria is [sic] 1—whether the Board had reasonable cause to believe that the charges of unfair labor practices were true, 2—that injunctive relief is just and proper under the facts in evidence. As to the first factor, the test is whether a reasonable person would believe the facts to constitute a violation of the law. The facts are not required to be sufficient to constitute such violation, or to establish that the charges are true. A prima facie case, or a probability of violation, is all that is required.

b. Need and Scope of Relief

The court's determination of the form of relief which is considered necessary in the *Marine Cooks* case was based on acts of retaliation against dissident members of the respondent union who had formed a committee to oppose what they considered subversive forces in union leadership, and who had participated in rival union activity. Apparently in order to suppress these activities, the Marine Cooks' union refused to grant the use of its hiring hall and to issue work assignment slips to dissident members. This in turn deprived the latter of their regular opportunities to obtain employment with employer members of Pacific Maritime Association (PMA) who refused to assign them to ships because of lack of clearance by the union. The court noted that the PMA employers were fully aware of the discriminatory nature of the union's purposes, which were in conflict with the act as well as with the no-discrimination provisions of the contract itself. The court concluded that the need for the relief asked by the Board was amply supported by the apparent discrimination against employees who had incurred the union's disfavor by engaging in activities which the union disapproved but which were expressly protected by the act. For, the court said, while the union could discipline members for violation of its rules, it was unlawful under section 8 (b) (2)[6] for it to bring about their discharge or prevent their reemployment.

---

[5] Cited in footnote 2

[6] For discriminatory hiring practices held violative of section 8 (b) (2) and section 8 (a) (3), by the Board and courts, see pp. 147–153, 185–189, 227–235 and 241–243.

Regarding the relief required under the circumstances, the court pointed out that according to the evidence many violations over a number of months had been committed under a plan which resulted in serious losses to the complaining employees and which undoubtedly deterred others from exercising their rights under the act because of fear of similar reprisals. In view of the urgency, the court held that its power to grant "appropriate temporary relief" necessarily included the power to include in its injunction not only preventive but also mandatory provisions to the extent that they were suitable or necessary to restore the preexisting status of the complainants. Accordingly, the court's injunction directed that those employees who were clearly entitled to reinstatement be restored to their jobs and, where necessary, be issued assignment slips by the union. On the other hand, the restoration of complainants whose exact rights depended upon unresolved issues of law and fact was left to be determined by the Board. The general provisions of the injunction, in sum, prohibited the respondent union from restraining and coercing employees or prospective employees from exercising their statutory organizational rights and from causing or attempting to cause any PMA member from unlawfully discriminating against such employees.[7] The order specifically enjoined the union from (1) unlawfully preventing employees from utilizing its hiring halls, by violence, threats, or other means; (2) discriminating against employees in their registration and the issuance of assignment slips to them; (3) from enforcing its rules so as to affect the employment of both members and nonmembers; and (4) from forcing members or nonmembers to abandon their jobs by violence, threats, or other means. The respondent employers also were generaly enjoined from interfering with the self-organizational rights of employees or prospective employees, and from discriminating against them for the purpose of encouraging membership in Marine Cooks' union or discouraging membership in other unions by refusing to employ or reassign persons to whom the Marine Cooks' Union had unlawfully refused clearance. The union was directed also to post a copy of the court's judgment at its headquarters, hiring hall, and branch offices, and to deliver a copy thereof to each port agent, patrolman, or business agent, and to delegates on ships operated by PMA members, to be posted in appropriate places. The employers involved were similarly directed to post copies of the judgment in their shore offices and aboard their ships.

[7] For the text of the injunction, see the court's "judgment" of January 23, 1952.

2. Injunctions Under Section 10 (l)

The Board's mandatory applications for temporary relief were granted in five cases and denied in three cases, involving allegations of secondary boycotts or other conduct prohibited by section 8 (b) (4). The court's ruling in each case was the result of its views regarding the presence of the statutory prerequisites; that is, a showing that there was reasonable cause to believe that the particular provisions of the act were violated and that the relief requested was appropriate under the circumstances.[8]

a. Conduct Enjoined

Two cases in which relief was granted arose in Puerto Rico. In the first of these cases, the charges filed with the Board alleged that the respondent union, during an economic dispute with a local radio station, brought secondary pressure on the station's advertising customers and program sponsors to force them to withdraw their business.[9] The acts of which the employers complained consisted of picketing and other activities by which the union induced the employees of water-front employers to refuse to handle goods consigned to or shipped by the radio station's customers. The court found that the union's alleged activities were sufficiently established, that their apparent intent was to cause water-front employers to cease doing business with the radio station's customers and in turn cause the latter to cease doing business with the station, and that the union's object was thus in conflict with the prohibitions of section 8 (b) (4) (A). The unions were therefore enjoined from continuing the conduct with which they were charged pending final adjudication of the complaint by the Board.

The second Puerto Rico case, in which the Board's request for temporary relief was granted after the close of the fiscal year, involved activities of the Longshoremen's union and its affiliates, which were directed against a sugar manufacturer.[10] The unions were charged with violating the secondary boycott provisions of section 8 (b) (4) (A), the prohibitions of section 8 (b) (4) (C) against strike action to obtain recognition in spite of the certification of another union, and the provisions of section 8 (b) (4) (D) regarding jurisdictional strikes. The pertinent facts shown to the satisfaction of the court

---

[8] For a discussion of the general principles applied by the courts in granting injunctive relief, see Fourteenth Annual Report, pp 138, 142; Fifteenth Annual Report, pp. 201, 204.

[9] *Consentino* v. *Gremio de Prensa and International Longshoremen's Association* (*El Mundo*), decided Nov. 23, 1951, D C., Puerto Rico, Civil No. 6398.

[10] *Consentino* v. *District Council of Ports of Puerto Rico, International Longshoremen's Association, AFL, et al.* (*Central Roig Refining Co.*), 107 F. Supp. 235 (D. C., Puerto Rico).

were that members of the respondent unions called and presided over an authorized meeting of the certified bargaining representative of the complaining company's employees. In the course of this meeting, a sham election of "new officers," was held. When the company refused to deal with the "new officers" and continued to recognize the regular officers of the certified union, the ILA and its affiliates picketed the company's sugar plant. ILA members employed by steamship and stevedoring companies boycotted the company's sugar at the docks, refusing to load the sugar aboard ships for export. In addition, ILA members prevented unloading by the trucker who hauled the company's sugar to the docks, claiming that the unloading work should be given to ILA members rather than the trucker's employees, although the truck employees had done this work for years. These facts, the court held, were sufficient to support the belief that the sections of the act cited by the Board had been violated and, therefore, entitled the Board to temporary relief. The court pointed out that the issuance of an injunction was necessary in the public interest because the union's interference with water-front operations endangered the island's entire economic existence, because of Puerto Rico's dependency on maritime commerce.

The Board's application for an injunction under section 10 (1) was granted in another case on the basis of charges that the respondent union, in furtherance of its dispute with a bakery concern, engaged in picketing for the purpose of inducing the employees of certain manufacturers not to make deliveries to the bakery's retail customers.[11] The union's conduct, if ultimately established, amounted to a violation of section 8 (b) (4) (A) because its purpose was to force neutral employers to cease doing business with the employer in controversy with the union.

A strike and picketing activities of a minority union were enjoined in one case because the union's apparent object was to obtain recognition and thus disrupt the bargaining relationship between the complaining employer and the certified representative of its employees.[12] This object is expressly prohibited by section 8 (b) (4) (C) of the act.

A temporary restraining order also was issued in a case where the respondent union was charged with violating the work assignment

[11] *LeBaron* v. *Bakery Drivers Local Union No. 276 (Capital Service, Inc.)*, 30 LRRM 2279 (D. C., So. Calif.). In a companion case, *N. L. R. B.* v. *Capital Service, Inc.*, June 2, 1952 (D. C., So. Calif.), the court enjoined the company from enforcing or availing itself of the benefits of an injunction issued by a State court against the same picketing. See ch. 18, p. 273. The company's appeal in this case is now pending before the Eighth Circuit Court of Appeals.

[12] *Getreu* v. *District 50, United Mine Workers (National Cylinder)*, 30 LRRM 2048 (D. C., E. Tenn.).

dispute provisions of section 8 (b) (4) (D).[13] The evidence showed that the union involved induced employees to strike for the purpose of forcing the complaining employer to assign to its members, rather than to other employees, work connected with the installation and operation of floating cranes for the United States Navy. However, in view of the union's statement that it was not presently pursuing the conduct with which it was charged, the court stayed its order "during such time * * * that respondents * * * refrain from engaging in" their illegal conduct.

b. Denial of Injunction

In three cases in which unions were charged with secondary boycott activities, the injunctive relief requested by the Board was denied.

One of these cases turned on the court's disagreement with the General Counsel's conclusion that the respondent union's activities constituted a secondary boycott within the meaning of section 8 (b) (4) (A).[14] The record before the court showed that an employer member of a heating contractors' association was contractually obligated to the respondent union to install only heating equipment produced by manufacturers who employed the union's members. When the contractor continued to install equipment manufactured by the complaining employer, who did not employ the union's members, the union instructed its members to refuse to handle such equipment. This forced the contractor to suspend the installation of the complaining employer's product and prevented the latter from doing business with members of the heating contractors' association. Conceding that the situation thus brought about by the union literally came within the provisions of section 8 (b) (4) (A), the court took the view that it did not amount to a secondary boycott under that section as judicially construed. Such a boycott, in the court's opinion, could have been found to exist only if it had been shown that the respondent union had a dispute with the complaining employer. Here, the court stated, the only dispute shown was between the union and the contractor against whom the work stoppage was directed because of his failure to abide by their contract. The effects of this dispute on the complaining employer's business, in the court's opinion, was incidental and did not justify the conclusion that section 8 (b) (4) (A) was violated.

---

[13] *Brown* v. *Pacific Coast District Metal Trades Council, et al.* (*McDowell*), June 25, 1952 (D. C., N. Calif, No. 31625).

[14] *Douds* v. *Sheet Metal Workers Local 28* (*Ferro-Co.*), 101 F. Supp. 273 (D. C., E. N. Y.), motion for reconsideration denied, 101 F. Supp. 970.

In another case, the court denied the Board's petition because it believed that the status quo could be maintained without the relief requested by the Board.[15] The charges before the Board were based on secondary boycott activities directed against the importation of Canadian shingles which did not bear a union label. The court denied the injunction on the ground that the public interest did not presently require it, the importation of such shingles having just begun, only a small number of employees being affected, and no interruption of business activities or employment having been shown.

In the third case, the denial of relief was the result of the court's conclusion that there was not sufficient basis for a belief that the respondent union had violated the secondary boycott provisions of the act.[16]

---

[15] *Graham* v. *Washington-Oregon Shingle Weavers District Council, et al.* (*Sound Shingle*), April 28, 1952 (D. C., W. Wash., No. 3056).

[16] *Shore* v. *Local 636, Teamsters* (*Roy Stone Transfer*), December 17, 1951 (D. C., W. Pa., Civ. No. 9866).

IX

Miscellaneous Litigation

BESIDES the customary litigation for the purpose of enforcing Board orders and proceedings for injunctions under section 10 (j) and (l) during the past year, the Board was also compelled to institute or resist other court actions in order to protect its processes.

1. Suits to Enjoin or Compel Board Action

Court review of actions taken by the Board in determining bargaining representatives under section 9 of the act was asked in several cases. The courts uniformly reaffirmed the principle that representation proceedings before the Board are reviewable only in connection with an unfair labor practice proceeding under section 10, and that the general equity powers of the courts cannot be invoked, at least where the steps taken by the Board under section 9 do not substantially affect the constitutional rights of the parties.[1]

Thus, the Sixth Circuit Court of Appeals dismissed, for want of jurisdiction, an employer's petition to restrain the Board from setting aside a representation election in which the participating union was defeated.[2] The employer in this case contended (1) that, since the Board had already held the election, the relief sought could not be denied on the ground that it would delay the representation proceeding before the Board; (2) that the Board's action in setting aside the election was reviewable at the instance of the employer and employees involved, in view of section 9 (c) (3) of the amended act which prohibits the Board from holding more than one valid election during any 12-month period; and (3) that the Administrative Procedure Act affirmatively empowered the court to intervene. The court rejected the first two contentions on the ground that the act, as construed by the courts both before and after its amendment, limits judicial review of all actions in representation proceedings to the type of review afforded by section 10. As to the effect of section 9 (c) (3) of the amended act, the court observed that those provisions deal only with prior *valid* elections and therefore have no application where an

[1] See *A. F. of L* v *N. L. R. B.*, 308 U. S. 401; *Fay* v. *Douds*, 172 F. 2d 720 (C A. 2), Fifteenth Annual Report, p. 149, Sixteenth Annual Report, p. 287.

[2] *Timken-Detroit Axle Co.* v. *N. L. R. B.*, 197 F. 2d 512 (C. A. 6).

invalid election is set aside. Moreover, the court held, section 9 (c) (3) only limits the powers to the Board and confers no rights on the employer. Finally, the court held without merit the employer's contention that, while the Administrative Procedure Act did not provide for judicial review of elections themselves, it made review available where a union loses an election and the Board sets it aside and orders a new one. No such exception can be read into the act, the court concluded.

In another case, the Fifth Circuit Court of Appeals was asked by an employer to reverse the judgment of the U. S. District Court for Eastern Louisiana dismissing a suit to set aside a Board certification and to restrain the regional director from giving effect to it.[3] Sustaining the lower court's dismissal, the court of appeals reaffirmed the view it had expressed in the early days of the Wagner Act,[4] that the U. S. district courts are without jurisdiction to entertain suits to enjoin Board action in representation proceedings. The Fifth Circuit rejected the employer's argument that, because its constitutional rights were at issue, its suit could not be dismissed on jurisdictional grounds under the rules applied by the Second Circuit in *Fay* v. *Douds*,[5] and by the District Court for the Southern District of New York in the *Worthington* case.[6] Noting that the *Fay* case was not in point and indicating its disagreement with the views expressed in the *Worthington* case, the Fifth Circuit pointed out that the employer had an adequate legal remedy under the act and that therefore was not in danger of being deprived of constitutional rights without a judicial hearing.

In three cases, applications for district court intervention in representation matters were denied because of the court's conclusion that no substantial constitutional issues had been raised and that the complaining parties were, therefore, limited to the remedies provided by the act.[7]

In the *Housewright* case, the court granted the Board's motion to dismiss a complaint in which a union sought reversal of a regional director's refusal to grant a formal hearing on objections to his rulings under a consent election agreement. The court's action was predicated on its conclusion (1) that Congress clearly did not intend to vest the U. S. district courts with power to interfere with representation pro-

---

[3] *Volney Felt Mills* v. *LeBus*, 197 F. 2d 497 (C A. 5).

[4] *Bradley Lumber Co.* v. *N. L. R. B.*, 84 F. 2d 97 (1936).

[5] *Fay* v. *Douds*, 172 F 2d 720 (Fourteenth Annual Report, pp 149, 150).

[6] *Worthington Pump and Machinery Corp.*, 97 F Supp. 656 (Sixteenth Annual Report, pp. 286, 287).

[7] *Housewright* v. *Hull*, 194 F. Supp. 234 (D. C No Ohio); *Mechanics Society* v. *Schauffler*, 103 F. Supp. 130 (D C. E, Pa); *International Printing Pressmen* v. *Herzog*, April 28, 1952, Civ. No. 1251–52 (D. C D. C.).

ceedings whenever one of the parties was in disagreement with the action of the Board or its regional director, and (2) that the complaining union had not raised any substantial constitutional issues which might entitle it to invoke the court's equity jurisdiction. The court noted that the union had voluntarily entered into a consent election agreement under the Board's Rules and Regulations, which expressly provided that the regional director's rulings on all questions as to the election and the method of investigating objections shall be final. Under these circumstances, the court held, the refusal of the regional director to grant a formal hearing on the union's objections did not constitute a violation of any constitutional rights.

In the *Mechanics* case, the complaining unions requested that the Board's regional director be enjoined from complying with a direction of election in a proceeding in which the Board had found an appropriate unit different from that agreed upon by the parties. The union asserted that in the absence of the agreement reached at the hearing they would have introduced evidence regarding the appropriateness of the unit, and that the change in the unit by the Board after agreement deprived the complainants of their right to a hearing under section 9 (c) and of due process in violation of the fifth amendment of the Constitution. Denying the requested relief, the court held that the unions' complaint did not present a substantial constitutional question but merely raised the legal issue whether the Board's unit determination was proper. This question, the court said, could only be reviewed by a court of appeals in a proceeding under section 10 (e) or (f) of the act, the Federal district courts being without jurisdiction to review Board action in representation proceedings.

In the *Printing Pressmen* case, the court, on similar grounds, granted the Board's motion for a summary judgment denying injunctive relief to the complaining unions. Here an international union and its local, which had collective bargaining contracts with certain employers, lost an election to a rival union. Both the incumbent local and the newly elected union were identified as "Union No. 415." The complaining unions, asserting that their constitutional rights had been violated, requested a mandatory injunction directing the Board to withdraw its certification of the newly elected union, to hold a new election, and to require the new union to select a new name omitting the words "Union No. 415." The complainants also asked that the representation proceeding before the Board be invalidated and that their collective bargaining contracts be declared in full force and effect. The court held, however, that the issues thus presented did not

involve any constitutional questions so that the court was without jurisdiction to grant the relief sought.[8]

In *Camp* v. *Herzog*,[9] an attorney requested the U. S. District Court for the District of Columbia to set aside an order of the Board suspending him from practicing before the Board for a period of 2 years because of his unprovoked assault on a Board attorney during a hearing.[10] Granting the relief, the court expressed the view that, while the Board unquestionably had power to prescribe rules for the admission or enrollment of persons to practice before it, it was without authority to disbar an attorney in the absence of an existing rule limiting the right to represent litigants before the Board to such persons as are admitted or enrolled. The court observed that, until the adoption of such a rule, the only sanction which the Board could impose was the exclusion of an attorney from the hearing for contemptuous conduct, as provided by the Board's Rules and Regulations. Subsequently, on motion of the Board for modification of the opinion, the court made it clear that it did not intend to require the Board both to promulgate a rule for the suspension of permanent exclusion of practitioners before it, and also to maintain a register or roll of practitioners from which the name of an offender may be stricken. The court noted that the Board was free to regulate permission to practice before it by whatever means it found appropriate. The Board since then has amended its rules[11] so as to provide that "mis-

---

[8] See also *Operating Engineers Union* v. *Brown*, March 5, 1952 (D C, No. Cal.), 29 LRRM 2631, where the court granted the Board's motion to dissolve a three-judge district court which had been convened for the purpose of hearing the union's application for a preliminary injunction against the Board's regional director because of the union's claim that it had been denied due process and the equal protection of the law required by the fifth amendment. The union asserted that the representation procedures of the act, as administered by the Board, had unlawfully destroyed the union's right in certain collective bargaining contracts and had resulted in a denial to it, and other unions in the construction industry, of the benefit of Board certification The union asked that the regional director be enjoined from processing any other representation petitions until such time as the Board processes the petition filed by the complaining union These allegations were held not to present a substantial claim of repugnance of the act itself to the Constitution and were therefore considered insufficient to require consideration by a three-judge court

In *Reavis* v. *International Brotherhood of Electrical Workers*, December 18, 1951 (D. C., No. Tex.), 29 LRRM 2476, certain employees had obtained a State court injunction restraining their bargaining agent from further bargaining with the employer pending formal disposition of a petition for decertification of the union. After the removal of the case to the Federal district court, the Board intervened and requested successfully that the State court injunction be dissolved and the case dismissed because of the Board's exclusive jurisdiction over the subject matter of the suit.

[9] 104 F. Supp. 134.

[10] See *John L. Camp*, 96 NLRB 51. Previously, the district court declined to enjoin the Board from making an initial determination in the case (June 13, 1950; Fifteenth Annual Report, p. 213). The district court's judgment was affirmed by the Court of Appeals for the District of Columbia (190 F. 2d 675), Sixteenth Annual Report, p. 287.

[11] Section 102.44 (b), Rules and Regulations, Series 6, as amended, effective June 3, 1952, 17 F. R. 4982.

conduct of an aggravated character, when engaged in by an attorney or other representative of a party, shall be ground for suspension or disbarment by the Board from further practice before it after due notice and hearing."

2. Subpoena Litigation

During the past year, a court of appeals was for the first time faced with a request to review and set aside the refusal of a regional director to issue a *subpoena duces tecum* in the course of a preliminary investigation of unfair labor practice charges. The petitioning union, whose charges had been dismissed, applied for the subpoena in order to obtain evidence which might alter the regional director's dismissal. The regional director's rulings denying the subpoena and dismissing the charges were sustained by the General Counsel.

In dismissing the union's petition, the Fifth Circuit adopted the Board's argument that a refusal to issue a subpoena is not a final order within the meaning of section 10 (f) and therefore cannot be reviewed by a court of appeals. The Fifth Circuit agreed that the phrase "final order," as construed by the courts, refers only to a Board order dismissing or sustaining unfair labor practice charges in a proceeding under section 10 (b) and (c) of the act. The court likewise agreed that the refusal to issue a subpoena in the course of a preliminary investigation of unfair labor practice charges was no more a reviewable "final order" than the action of the General Counsel in refusing to issue an unfair labor practice complaint. For, as the Board had argued, if the dismissal of unfair labor practice charges by the General Counsel is to be regarded only as part of a preliminary informal investigation authorized by section 10 (b), the denial of a subpoena in the course of such an investigation necessarily is no more than a "mere incident" in the administrative investigation of unfair labor practice charges. The court also agreed with the further argument that action regarding a precomplaint subpoena is not subject to direct review under section 10 (f), because the issuance of a subpoena is not based on any formal proceeding and is not conditioned on prior notice, hearing, or findings of fact, all of which are essential prerequisites to a reviewable "final order."

In another case, the same court sustained the Board's appeal from the refusal of a U. S. district court to enforce a precomplaint *subpoena duces tecum.*[12] Contrary to the lower court, the court of appeals was of the view that the express provisions of section 11 of the act, supple-

[12] *N. L. R. B.* v. *Anchor Rome Mills,* 197 F. 2d 447 (C. A. 5), reversing 103 F. Supp. 44 (D. C., No. Ga.).

mented by the Board's Rules and Regulations, clearly authorized the Board to issue a subpoena in aid of the investigation of unfair labor practice charges before a complaint has issued. The court rejected the employer's contention that the procedure employed by the Board was in conflict with the provisions of the Administrative Procedure Act.[13]

3. Litigation Involving Jurisdiction

In two cases, the Board instituted proceedings in the Federal district courts for the purpose of protecting its processes against State action which, in the Board's opinion, encroached on the exclusive jurisdiction of the Board and the Federal courts under the act.

The district court to which the Board applied for relief in one case granted a preliminary injunction restraining an employer from enforcing a State court order prohibiting peaceful picketing activities which it held to be contrary to the State's public policy.[14] Simultaneously with its application for State court relief, the employer also filed charges with the Board alleging that the identical picketing activities violated the secondary boycott provisions of section 8 (b) (4) (A) of the National Labor Relations Act. Upon finding that there was reasonable cause to believe that the picketing union violated the act, the Board obtained an injunction in the U. S. district court as it was required to do by section 10 (1) of the act. In restraining enforcement of the State court order, the U. S. district court held that under the circumstances the Board and Federal courts clearly had exclusive primary jurisdiction to determine whether the union's picketing activities were in conflict with the prohibitions of the National Labor Relations Act, and that the State court's action constituted an improper encroachment on the Board's and the court's jurisdiction.

In another case, application was filed in the U. S. District Court for Southern New York for a preliminary injunction restraining the New York Labor Relations Board from acting on an unfair labor practice complaint against a taxicab company believed to be subject to the National Labor Relations Act. The court denied relief on the ground that the national Board's jurisdiction had not been sufficiently established.[15] The court also noted that the New York board had assumed jurisdiction in the case 2 years before the national Board took action, and was about to issue its order. This fact, according to

[13] For cases in which the Board's applications for the enforcement of its subpoenas were granted during the year, see *N. L. R. B.* v. *Grand Central Aircraft Co.*, October 29, 1951 (D. C. So. Cal), and *N. L. R. B.* v. *American Snuff Co.*, 196 F 2d 1019 (C. A. 6).

[14] *N. L. R. B.* v. *Capital Service Co.* (D. C., So. Calif.), June 2, 1952, 30 LRRM 2281.

[15] *N. L. R. B.* v. *New York State Labor Relations Board*, 99 F. Supp. 526.

the court, had to be given consideration even though the national Board's delay in taking action may have been justified, and even though the Government ordinarily may not be charged with laches of its agents.

In view of the New York agency's continued exercise of jurisdiction over taxicab companies subject to the national act, the Board subsequently applied to the court for a summary judgment restraining its encroachment on the national Board's domain. In passing on the application,[16] the court conceded that the Board as an administrative agency had the implied power to institute litigation for the purpose of protecting its exclusive jurisdiction. Nor was it necessary, in the court's opinion, that the Board's application be heard by a three-judge district court as contended by the defendant. However, withholding relief, the court pointed out that, as to one of the companies over which the national Board claimed jurisdiction, no justiciable controversy was presented since the New York board had merely undertaken to determine its jurisdiction in the case. In the court's opinion, a justiciable question regarding the national Board's jurisdiction could not arise until the State board threatened to determine the merits of the case. Moreover, the court pointed out that evidence had been offered regarding the company's interstate operations which the national Board had not yet had an opportunity to consider in the first place and which might affect its determination of the company's status under the act. As to the second company involved, the court held that the case presented such a close question as to whether the company's operations affected commerce within the meaning of the national act that the action should proceed to trial and should not be disposed of summarily.

4. Other Litigation

The Board in one case had to ask for court intervention to protect a back-pay claim against a bankrupt employer. This case arose when the referee in bankruptcy disallowed the Board's claim for back pay due certain persons under an unfair labor practice order issued and enforced as provided by the act. The referee's disallowance was based on his determination that the persons covered by the Board's order were not employees of the bankrupt; that, in any event, the claims of those persons had been compromised; and that the claims were not properly liquidated as required by the Bankruptcy Act.

The U. S. District Court for Massachusetts, however, held,[17] and the First Circuit Court of Appeals agreed,[18] that the referee's action

[16] *N. L. R B.* v. *New York State Labor Relations Board,* 106 F Supp 749 (July 1, 1952).
[17] In re *MacKenzie Coach Lines,* 100 F. Supp. 489
[18] *Nathanson, Trustee in Bankruptcy* v. *N. L. R. B ,* 194 F. 2d 248.

was improper and should be set aside. Both courts pointed out that the Board had exclusive jurisdiction to determine whether the bankrupt was the employer of the claimants, subject only to review by the court of appeals in an appropriate proceeding, and that the referee had no authority to rule on the question.

The court of appeals also agreed that the Board's order was a judgment which fixed the bankrupt's liability within the meaning of section 63 (a) (1) of the Bankruptcy Act, even though the exact amount of back pay due each claimant was still to be determined. The court held further that liquidation of the claim could only be made by the Board, and that it was therefore incumbent on the referee to allow the Board sufficient time to liquidate the claims. Noting that under the circumstances the Board had not had a sufficient opportunity to make its determination, the court of appeals approved the lower court's direction that the Board be allowed 2 months to fix the amount of the bankrupt's liability. As to the referee's contention that the back-pay question had been settled by the parties by agreement, both courts agreed that there was no sufficient showing that the alleged settlement agreement received the approval of the Board which was necessary to make it effective.

The ruling of the court of appeals, that the back-pay claim in question was provable by the Board and that computation of the amount of the award was to be referred to the Board, was approved by the Supreme Court on November 10, 1952.[19] However a majority of the Supreme Court [20] disagreed with the lower court's further conclusion that the Board's claim was entitled to priority under section 63 (a) (4) of the Bankruptcy Act as a debt owing to the United States.

[19] *Nathanson* v *N L R B*, 344 U S 25, November 10, 1952.

[20] Justices Jackson and Black dissenting.

X

Fiscal Statement

THE expenditures and obligations of the Board for fiscal year ended June 30, 1952, are as follows:

Salaries	$6,843,165
Travel	580,032
Transportation of things	14,650
Communication services	223,146
Rents and utility services	36,760
Printing and reproduction	225,629
Other contractual services	195,074
Services performed by other agencies	4,114
Supplies and materials	92,428
Equipment	40,333
Refunds, awards, and indemnities	325
Taxes and assessments	7,546
Grand total, obligations and expenditures for salaries and expenses	8,263,202

APPENDIX A

Definitions Of Types Of Cases Used In Tables

The following designations, used by the Board in numbering cases, will be used in the tables in appendix B to designate the various types of cases:

CA Cases

A charge of unfair labor practices against an employer under section 8 (a).

CB Cases

A charge of unfair labor practices against a union under section 8 (b) (1), (2), (3), (5), (6).

CC Cases

A charge of unfair labor practices against a union under section 8 (b) (4) (A), (B), (C).

CD Cases

A charge of unfair labor practices against a union under section 8 (b) (4) (D).

RC Cases

A petition by a labor organization or employees for certification of a representative for purposes of collective bargaining under section 9 (c) (1) (A) (i).

RM Cases

A petition by employer for certification of a representative for purposes of collective bargaining under section 9 (c) (1) (B).

RD Cases

A petition by employees under section 9 (c) (1) (A) (ii) asserting that the union previously certified or currently recognized by their employer as the bargaining representative, no longer represents a majority of the employees in the appropriate unit.

UA Cases

A petition by a labor organization under section 9 (e) (1) for a referendum to authorize it to make a contract requiring membership in such union as a condition of employment.

UD Cases

A petition by employees under section 9 (e) (2) asking for a referendum to rescind a bargaining agent's authority to make a union-shop contract under section 9 (e) (1).

C Cases

A charge of unfair labor practices against an employer under section 8 of the National Labor Relations Act, prior to amendment.

R Cases

A petition for certification of a representative for purposes of collective bargaining with an employer under section 9 of the National Labor Relations Act, prior to amendment.

228330—53——19

APPENDIX B

Statistical Tables for Fiscal Year 1952

The following tables present a detailed statistical record of the cases received and handled by the National Labor Relations Board during the fiscal year 1952.

Table 1.—Number of cases received, closed, and pending by identification of complainant or petitioner, fiscal year 1952

	Number of cases					
	Total	Identification of complainant or petitioner				Employers
		A. F. L. affiliates	C. I. O. affiliates	Unaffiliated unions	Individuals	
	All cases					
Cases pending July 1, 1951	6,375	2,790	1,592	574	1,128	291
Cases received July 1, 1951–June 30, 1952	17,697	8,849	4,613	1,250	2,056	929
Cases on docket July 1, 1951–June 30, 1952	24,072	11,639	6,205	1,824	3,184	1,220
Cases closed July 1, 1951–June 30, 1952	18,721	9,317	4,850	1,472	2,135	947
Cases pending June 30, 1952	5,351	2,322	1,355	352	1,049	273
	Unfair labor practice cases					
Cases pending July 1, 1951	3,001	883	685	211	1,049	173
Cases received July 1, 1951–June 30, 1952	5,454	1,823	1,159	365	1,653	454
Cases on docket July 1, 1951–June 30, 1952	8,455	2,706	1,844	576	2,702	627
Cases closed July 1, 1951–June 30, 1952	5,387	1,682	1,092	406	1,743	464
Cases pending June 30, 1952	3,068	1,024	752	170	959	163
	Representation cases					
Cases pending July 1, 1951	2,436	1,357	643	240	78	118
Cases received July 1, 1951–June 30, 1952	10,447	6,113	2,737	734	388	475
Cases on docket July 1, 1951–June 30, 1952	12,883	7,470	3,380	974	466	593
Cases closed July 1, 1951–June 30, 1952	10,603	6,172	2,777	792	379	483
Cases pending June 30, 1952	2,280	1,298	603	182	87	110
	Union-shop authorization cases [1]					
Cases pending July 1, 1951	938	550	264	123	[2] 1	----------
Cases received July 1, 1951–June 30, 1952 [1]	[3] 1,796	913	717	151	[2] 15	----------
Cases on docket July 1, 1951–June 30, 1952 [1]	2,734	1,463	981	274	[2] 16	----------
Cases closed July 1, 1951–June 30, 1952 [1]	2,731	1,463	981	274	[2] 13	----------
Cases pending June 30, 1952	[2] 3	0	0	0	[2] 3	----------

[1] The union-shop authorization poll was abolished by Public Law 189, signed by the President Oct. 22, 1951. However, the law still provides for deauthorization polls when appropriate.
[2] Union-shop deauthorization petitions (UD cases).
[3] Includes 15 union-shop deauthorization petitions.

Table 1A.—Unfair labor practice cases received, closed, and pending, by identification of complainant, fiscal year 1952

	Number of cases					
	Total	Identification of complainant				
		A. F. L. affiliates	C. I. O. affiliates	Unaffiliated unions	Individuals	Employers
	NLRA-C cases [1]					
Cases pending July 1, 1951	94	33	44	7	10	----------
Cases received July 1, 1951–June 30, 1952	----------	----------	----------	----------	----------	----------
Cases on docket July 1, 1951–June 30, 1952	94	33	44	7	10	----------
Cases closed July 1, 1951–June 30, 1952	43	13	20	1	9	----------
Cases pending June 30, 1952	51	20	24	6	1	----------
	CA cases [1]					
Cases pending July 1, 1951	2,370	825	628	191	726	----------
Cases received July 1, 1951–June 30, 1952	4,306	1,762	1,120	341	1,082	1
Cases on docket July 1, 1951–June 30, 1952	6,676	2,587	1,748	532	1,808	1
Cases closed July 1, 1951–June 30, 1952	4,232	1,618	1,048	378	1,188	0
Cases pending June 30, 1952	2,444	969	700	154	620	1
	CB cases [1]					
Cases pending July 1, 1951	467	22	13	13	311	108
Cases received July 1, 1951–June 30, 1952	846	54	38	19	558	177
Cases on docket July 1, 1951–June 30, 1952	1,313	76	51	32	869	285
Cases closed July 1, 1951–June 30, 1952	813	42	24	22	533	192
Cases pending June 30, 1952	500	34	27	10	336	93
	CC cases [1]					
Cases pending July 1, 1951	55	1	0	0	1	53
Cases received July 1, 1951–June 30, 1952	213	2	1	0	10	200
Cases on docket July 1, 1951–June 30, 1952	268	3	1	0	11	253
Cases closed July 1, 1951–June 30, 1952	219	2	0	0	10	207
Cases pending June 30, 1952	49	1	1	0	1	46
	CD cases [1]					
Cases pending July 1, 1951	15	2	0	0	1	12
Cases received July 1, 1951–June 30, 1952	89	5	0	5	3	76
Cases on docket July 1, 1951–June 30, 1952	104	7	0	5	4	88
Cases closed July 1, 1951–June 30, 1952	80	7	0	5	3	65
Cases pending June 30, 1952	24	0	0	0	1	23

[1] See p. 277 for definitions of types of cases.

Table 1B.—Representation cases received, closed, and pending, by identification of petitioner, fiscal year 1952

	Number of cases					
	Total	Identification of petitioner				
		A. F. L. affiliates	C. I. O. affiliates	Unaffiliated unions	Individuals	Employers
	RC cases [1]					
Cases pending July 1, 1951	2,240	1,357	642	240	1	----------
Cases received July 1, 1951–June 30, 1952	9,571	6,105	2,736	724	6	----------
Cases on docket July 1, 1951–June 30, 1952	11,811	7,462	3,378	964	7	----------
Cases closed July 1, 1951–June 30, 1952	9,728	6,166	2,775	782	5	----------
Cases pending June 30, 1952	2,083	1,296	603	182	2	----------
	RM cases [1]					
Cases pending July 1, 1951	118	----------	----------	----------	----------	118
Cases received July 1, 1951–June 30, 1952	474	----------	----------	----------	----------	474
Cases on docket July 1, 1951–June 30, 1952	592	----------	----------	----------	----------	592
Cases closed July 1, 1951–June 30, 1952	482	----------	----------	----------	----------	482
Cases pending June 30, 1952	110	----------	----------	----------	----------	110
	RD cases [1]					
Cases pending July 1, 1951	78	0	1	0	77	0
Cases received July 1, 1951–June 30, 1952	402	8	1	10	382	1
Cases on docket July 1, 1951–June 30, 1952	480	8	2	10	459	1
Cases closed July 1, 1951–June 30, 1952	393	6	2	10	374	1
Cases pending June 30, 1952	87	2	0	0	85	0

[1] See p. 277 for definitions of types of cases.

Table 2.—Types of unfair labor practices alleged in charges filed, fiscal year 1952

A. CHARGES FILED AGAINST EMPLOYERS UNDER SEC. 8 (a)

	Number of cases showing specific allegations	Percent of total cases		Number of cases showing specific allegations	Percent of total cases
Total cases	[1] [2] 4,306	[1] [2] 100 0			
8 (a) (1)	[2] 4,306	[2] 100 0	8 (a) (3)	2,972	69 0
8 (a) (2)	406	9 4	8 (a) (4)	62	1.4
			8 (a) (5)	1,226	28 5

B. CHARGES FILED AGAINST UNIONS UNDER SEC. 8 (b)

Total cases	[1] 1,148	[1] 100.0			
8 (b) (1)	668	58 2	8 (b) (4)	302	26 3
8 (b) (2)	675	58 8	8 (b) (5)	13	1 1
8 (b) (3)	105	9 1	8 (b) (6)	16	1.4

C. ANALYSIS OF 8 (b) (1) AND 8 (b) (4)

Total cases 8 (b) (1)	[1] 668	[1] 100 0	Total cases 8 (b) (4)	[1] 302	[1] 100 0
8 (b) (1) (A)	651	97 4	8 (b) (4) (A)	189	62.6
8 (b) (1) (B)	25	3 7	8 (b) (4) (B)	64	21.2
			8 (b) (4) (C)	26	8 6
			8 (b) (4) (D)	89	29 5

[1] A single case may include allegations of violations of more than one section of the act. Therefore, the total of the various allegations is more than the figure for total cases.

[2] An 8 (a) (1) is a general provision forbidding any type of employer interference with the rights of employees, guaranteed by the act, and therefore is included in all charges of employer unfair labor practices.

NOTE.—This table corresponds to the "recapitulation" of charges used in prior annual reports.

Table 3.—Remedial action taken in unfair labor practice cases closed, fiscal year 1952

A. BY EMPLOYERS [1]

	Total	By agreement of all parties	By board or court order
	Cases		
Notices posted	910	705	205
Recognition or other assistance withheld from employer-assisted union	94	67	27
Employer-dominated union disestablished	20	14	6
Workers placed on preferential hiring list	42	42	0
Collective bargaining begun	197	153	44
	Workers		
Workers offered reinstatement to job	1,801	1,173	628
Workers receiving back pay	2,734	[2] 1,255	[3] 1,479
Back-pay awards	$1,345,882	$507,090	$838,792

[1] In addition to the remedial action shown other forms of remedy were taken in 23 cases.
[2] Includes 38 workers who received back pay from both employer and union.
[3] Includes 25 workers who received back pay from both employer and union.

B. BY UNIONS [1]

	Cases		
Notices posted	203	128	75
Union to cease requiring employer to give it assistance	43	22	21
Notice of no objection to reinstatment of discharged employees	37	25	12
Collective bargaining begun	14	9	5
	Workers		
Workers receiving back pay	87	[2] 56	[3] 31
Back-pay awards	$23,910	$11,120	$12,790

[1] In addition to the remedial action shown other forms of remedy were taken in 22 cases.
[2] Includes 38 workers who received back pay from both employer and union.
[3] Includes 25 workers who received back pay from both employer and union.

Table 4.—Geographic distribution of unfair labor practice and representation cases received, fiscal year 1952

Division and State [1]	All cases	Unfair labor practice cases				Representation cases		
		CA [2]	CB [2]	CC [2]	CD [2]	RC [2]	RM [2]	RD [2]
New England	972	283	44	7	6	585	18	29
Maine	58	12	2	1	0	37	3	3
New Hampshire	50	19	1	0	0	28	0	2
Vermont	25	7	1	0	0	16	0	1
Massachusetts	505	151	28	4	0	301	9	12
Rhode Island	101	18	5	0	0	73	1	4
Connecticut	233	76	7	2	6	130	5	7
Middle Atlantic	3,398	921	250	62	27	1,936	140	62
New York	1,904	532	175	28	11	1,044	78	36
New Jersey	632	160	21	12	12	393	28	6
Pennsylvania	862	229	54	22	4	499	34	20
East North Central	3,474	864	174	35	18	2,168	95	120
Ohio	970	238	39	5	5	620	30	33
Indiana	534	125	49	8	7	314	16	15
Illinois	901	239	50	18	5	552	19	18
Michigan	669	173	24	2	1	410	24	35
Wisconsin	400	89	12	2	0	272	6	19
West North Central	1,426	280	52	11	11	1,009	29	34
Iowa	148	34	2	2	0	103	4	3
Minnesota	233	32	9	1	2	170	8	11
Missouri	713	148	37	8	9	484	15	12
North Dakota	66	9	0	0	0	57	0	0
South Dakota	13	3	0	0	0	10	0	0
Nebraska	108	26	0	0	0	81	0	1
Kansas	145	28	4	0	0	104	2	7
South Atlantic	1,285	466	45	13	4	699	26	32
Delaware	25	6	0	3	0	14	2	0
Maryland	166	49	12	4	0	93	3	5
District of Columbia	82	23	3	0	0	53	1	2
Virginia	144	56	5	2	1	72	2	6
West Virginia	130	30	11	2	2	72	8	5
North Carolina	228	133	2	0	0	85	2	6
South Carolina	68	23	0	0	0	43	0	2
Georgia	222	82	10	2	1	124	1	2
Florida	220	64	2	0	0	143	7	4
East South Central	755	204	32	27	1	443	29	19
Kentucky	193	50	8	2	0	123	6	4
Tennessee	257	71	6	7	0	152	14	7
Alabama	215	50	16	17	1	119	7	5
Mississippi	90	33	2	1	0	49	2	3
West South Central	1,188	346	40	6	4	724	37	31
Arkansas	166	56	3	1	0	98	4	4
Louisiana	229	70	12	2	0	124	14	7
Oklahoma	211	58	5	3	0	136	3	6
Texas	582	162	20	0	4	366	16	14
Mountain	730	173	27	11	1	472	23	23
Montana	48	13	3	1	0	26	4	1
Idaho	109	31	1	2	0	72	0	3
Wyoming	29	4	0	0	0	23	0	2
Colorado	221	64	10	0	0	134	4	9
New Mexico	140	19	8	1	0	109	1	2
Arizona	116	28	1	7	1	75	2	2
Utah	55	12	1	0	0	26	12	4
Nevada	12	2	3	0	0	7	0	0
Pacific	2,160	580	140	31	13	1,278	72	46
Washington	332	91	22	5	2	184	10	8
Oregon	295	82	14	6	2	174	12	5
California	1,543	407	104	20	9	920	50	33
Outlying areas	513	189	42	10	4	257	5	6
Alaska	33	21	7	1	0	3	1	0
Hawaii	64	12	1	1	0	47	2	1
Puerto Rico	416	156	34	8	4	207	2	5

[1] The States are grouped according to the method used by the Bureau of the Census, U. S. Department of Commerce. [2] See p. 277 for definitions of types of cases.

Table 5.—Industrial distribution of unfair labor practice and representation cases received, fiscal year 1952

Industrial group [1]	All cases	Unfair labor practice cases				Representation cases		
		CA [2]	CB [2]	CC [2]	CD [2]	RC [2]	RM [2]	RD [2]
Total	15,901	4,306	846	213	89	9,571	474	402
Manufacturing	10,039	2,822	385	76	25	6,184	280	267
Ordnance and accessories	116	24	4	0	1	86	1	0
Food and kindred products	1,441	406	74	17	2	872	41	29
Tobacco manufacturers	25	6	0	0	0	18	0	1
Textile-mill products	432	181	21	1	5	187	17	20
Apparel and other finished products made from fabrics and similar materials	420	169	28	8	0	182	23	10
Lumber and wood products	563	159	12	7	0	348	23	14
Furniture and fixtures	386	129	14	2	0	219	14	8
Paper and allied products	344	67	8	2	1	248	11	7
Printing, publishing, and allied industries	483	134	24	0	2	296	15	12
Chemicals and allied products	593	115	11	5	0	424	19	19
Products of petroleum and coal	214	60	7	7	0	118	5	17
Rubber products	97	28	6	0	0	57	3	3
Leather and leather products	146	52	4	0	0	83	5	2
Stone, clay, and glass products	398	105	14	2	1	258	7	11
Primary metal industries	633	160	28	3	4	411	11	16
Fabricated metal products (except machinery and transportation equipment)	891	239	26	7	1	574	24	20
Machinery (except electrical)	991	253	32	8	4	649	20	25
Electrical machinery, equipment, and supplies	669	190	31	2	1	418	12	15
Transportation equipment	656	175	30	3	2	418	9	19
Aircraft and parts	259	71	11	2	1	165	4	5
Ship and boat building and repairing	109	23	5	0	1	76	2	2
Automotive and other transportation equipment	288	81	14	1	0	177	3	12
Professional, scientific, and controlling instruments	138	42	1	0	1	83	6	5
Miscellaneous manufacturing	403	128	10	2	0	235	14	14
Agriculture, forestry, and fisheries	15	4	0	0	0	11	0	0
Mining	270	72	15	8	0	166	6	3
Metal Mining	90	9	2	1	0	78	0	0
Coal Mining	69	46	9	6	0	6	0	2
Crude petroleum and natural gas production	12	2	0	1	0	8	0	1
Nonmetallic mining and quarrying	99	15	4	0	0	74	6	0
Construction	728	195	172	36	41	274	6	4
Wholesale trade	1,182	265	47	14	3	740	77	36
Retail trade	1,570	390	42	37	3	1,011	54	33
Finance, insurance, and real estate	94	29	4	0	0	58	2	1
Transportation, communication, and other public utilities	1,460	391	143	37	17	793	39	40
Highway passenger transportation	128	47	12	2	0	53	6	8
Highway freight transportation	411	105	46	16	2	218	18	6
Water transportation	194	55	58	10	8	54	6	3
Warehousing and storage	145	17	4	2	0	115	2	5
Other transportation	35	17	1	0	0	16	0	1
Communication	353	97	15	6	6	216	6	7
Heat, light, power, water, and sanitary services	194	53	7	1	1	121	1	10
Services	543	138	38	5	0	334	10	18

[1] Source: Standard Industrial Classification, Division of Statistical Standards, U. S. Bureau of the Budget, Washington 1945.
[2] See p. 277 for definitions of types of cases

Table 6.—Formal actions taken, by number of cases, fiscal year 1952

Formal action taken	All cases	Unfair labor practice cases			Representation cases
		All C cases	CA cases [1]	Other C cases [1]	
Complaints and notices of hearing issued	699	699	581	118	----------
Notices of hearing issued	3,513	26	----------	26	3,487
Cases heard	3,133	535	442	93	2,598
Intermediate reports issued	435	435	366	69	----------
Decisions issued, total	2,973	490	395	95	2,483
Decisions and orders	408	408	[2] [3] 328	[4] 80	----------
Decisions and consent orders	82	82	67	15	----------
Elections directed	1,809	----------	----------	----------	1,809
Certifications and dismissals after stipulated elections	[5] 400	----------	----------	----------	[5] 400
Dismissals on record	274	----------	----------	----------	274

[1] See p. 277 for definitions of types of cases.
[2] Includes one N. L. R. A case
[3] Includes 35 cases decided by adoption of intermediate report in absence of exceptions.
[4] Includes 4 cases decided by adoption of intermediate report in absence of exceptions
[5] This figure is comprised mainly of stipulated elections certified by the Board from July 1, 1951, until December 15, 1951, at which time the Board delegated to its regional directors authority to issue certifications in stipulated elections Regional director certifications issued from December 15, 1951, through June 30, 1952, are not included in this figure.

Table 7.—Disposition of unfair labor practice cases closed, by stage and method, during fiscal year 1952

Stage and method	All C cases [1]		NLRA C cases [1]		CA cases [1]		Other C cases [1]	
	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed
Total number of cases closed	5,387	100 0	43	100 0	4,232	100 0	1,112	100 0
Before formal action, total	4,778	88 7	2	4 7	3,812	90 1	964	86 7
Adjusted	930		2		784		144	
Withdrawn	2,602		0		2,058		544	
Dismissed	1,235		0		964		271	
Closed otherwise	11		0		6		5	
After 10 (k)[2] notice of hearing, total	14	3					14	1.3
Before hearing	9						9	
Adjusted	3						3	
Withdrawn	6						6	
After hearing, withdrawn	1						1	
After decision and determination of dispute, withdrawn	2						2	
After decision and order quashing the notice of hearing	2						2	
After complaint, total	595	11 0	41	95 3	420	9 9	134	12 0
Before hearing	88	1 6	0	0	59	1 4	29	2 6
Adjusted	57		0		42		15	
Withdrawn	24		0		14		10	
Dismissed	7		0		3		4	
After hearing	73	1 3	0	0	55	1.3	18	1.6
Adjusted	17		0		16		1	
Compliance with intermediate report	44		0		30		14	
Withdrawn	[3] 6		0		[3] 4		[3] 2	
Dismissed	[4] 6		0		[4] 5		1	
After Board decision	242	4 5	6	13 9	190	4 5	46	4 1
Compliance, total	149		4		105		40	
Stipulated decision	3		0		2		1	
Contested decision	118		4		79		35	
Order adopting intermediate report in absence of exceptions	28		0		24		4	
Dismissed, total	77		0		71		6	
Contested decision	67		0		61		6	
Order adopting intermediate report in absence of exceptions	10		0		10		0	
Closed otherwise	[5] 16		2		[5] 14		0	
After court action	192	3 6	35	81 4	116	2 7	41	3 7
Compliance with consent decree	63		2		49		12	
Compliance with court order	98		25		50		23	
Dismissed	27		7		14		6	
Closed otherwise	[6] 4		1		[6] 3		0	

[1] See p 277 for definitions of types of cases.
[2] Applies to CD cases only.
[3] Includes 3 CA cases and 2 CB cases withdrawn after issuance of intermediate report.
[4] Includes 1 CA case dismissed after issuance of intermediate report.
[5] Includes 1 CA case closed after stipulated decision.
[6] Includes 1 CA case closed after consent decree

Table 8.—Disposition of representation cases closed, by stage and method, during fiscal year 1952

Stage and method	All R cases		RC cases [1]		RM cases [1]		RD cases [1]	
	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed
Total number of cases closed	10,603	100 0	9,728	100 0	482	100.0	393	100 0
Before formal action, total	7,590	71.6	6,949	71 4	361	74 9	280	71 2
Adjusted	4,728		4,544		145		39	
Consent election	3,945		3,809		99		37	
Stipulated election	657		626		29		2	
Recognition	126		109		17			
Withdrawn	[2] 2,226		[2] 1,953		135		138	
Dismissed	621		439		80		102	
Closed otherwise	15		13		1		1	
After formal action, total	3,013	28 4	2,779	28 6	121	25 1	113	28.8
Before hearing	650	6 1	583	6 0	37	7 7	30	7 7
Adjusted	345		325		13		7	
Consent election	233		221		6		6	
Stipulated election	103		98		4		1	
Recognition	[2] 9		[2] 6		3			
Withdrawn	282		248		16		18	
Dismissal	23		10		8		5	
After hearing	318	3 0	296	3 1	11	2 3	11	2.8
Adjusted	190		180		6		4	
Consent election	120		113		4		3	
Stipulated election	68		66		1		1	
Recognition	2		1		1			
Withdrawn	114		107		1		6	
Dismissal	14		9		4		1	
After Board decision	2,045	19 3	1,900	19 5	73	15 1	72	18 3
Board-ordered election	1,604		1,519		36		49	
Dismissal without election	290		232		37		21	
Withdrawn	[3] 137		[3] 136		0		1	
Stipulated election and post-election hearing and decision	14		13		0		1	

[1] See p. 277 for definitions of types of cases.
[2] Includes 1 RC case withdrawn after stipulated election.
[3] Includes 20 RC cases withdrawn after voided Board-ordered election.

Table 9.—Types of elections conducted during fiscal year 1952

Type of case	Total elections	Type of election		
		Consent [1]	Stipulated [2]	Board ordered [3]
All elections, total	6,866	4,319	839	1,708
Eligible voters, total	778,724	335,628	187,142	255,954
Valid votes, total	674,412	291,257	165,494	217,661
RC cases,[4] total	6,612	4,172	808	1,632
Eligible voters	746,817	314,934	180,566	251,317
Valid votes	647,371	274,063	159,548	213,760
RM cases,[4] total	153	98	27	28
Eligible voters	24,529	16,122	6,403	2,004
Valid votes	20,507	13,190	5,789	1,528
RD cases,[4] total	101	49	4	48
Eligible voters	7,378	4,572	173	2,633
Valid votes	6,534	4,004	157	2,373

[1] Consent elections are held upon the agreement of all parties concerned. Post-election rulings and certifications are made by the Regional Director.
[2] Stipulated elections are held upon agreement of all parties concerned, but provide for Board determination of objections to conduct of the election and challenges of persons seeking to vote. Until December 16, 1951, certifications in these elections were issued by the Board in Washington. On that date, the Board delegated to its regional directors authority to issue certifications in stipulated elections
[3] Board-ordered elections are held pursuant to an order of the Board. Post-election rulings on objections or challenged voters are made by the Board. Certifications are usually issued by the regional director.
[4] See p. 277 for definitions of types of cases.

Table 10.—Collective bargaining elections by affiliation of participating unions, fiscal year 1952

Union affiliation	Elections participated in			Employees involved (number eligible to vote)			Valid votes cast			
	Total	Won	Percent won	Total eligible	Employees in units selecting bargaining agent		Total	Percent of total eligible	Cast for the union	
					Number	Percent of total eligible			Number	Percent of total cast
Total elections	[1] 6,765	4,933	72 9	[1] 771,346	584,030	75 7	[1] 667,878	86 6	503,143	75 3
A. F. L.	4,650	3,075	66 1	462,873	243,242	52 6	394,035	85 1	203,552	51 7
C. I. O.	2,473	1,394	56 4	506,495	224,236	44 3	443,830	87.6	205,302	46 3
Unaffiliated	765	464	60 7	199,589	116,552	58 4	175,562	88 0	94,289	53 7

[1] Elections involving two or more unions of different affiliation are counted under each affiliation, but only once in the total. Therefore, the total is less than the sum of the figures for the three union groups.

Table 10A.—Outcome of collective bargaining elections by affiliation of participating unions, and number of employees in the units, fiscal year 1952

Affiliation of participating unions	Number of elections					Number of employees involved (number eligible to vote)				
	Total	in which representation rights were won by—			in which no representative was chosen	Total	in units in which representation rights were won by—			in units where no representative was chosen
		A. F. L. affiliates	C. I. O. affiliates	Unaffiliated unions			A. F. L. affiliates	C. I. O. affiliates	Unaffiliated unions	
Total	6,765	3,075	1,394	464	1,832	771,346	243,242	224,236	116,552	187,316
One-union elections										
A. F. L.	3,502	2,407			1,095	189,387	119,524			69,863
C. I. O.	1,574		1,026		548	164,841		87,433		77,408
Unaffiliated	351			286	65	22,671			17,851	4,820
Two-union elections										
A. F. L.—C. I. O.	651	300	282		69	196,948	86,965	92,037		17,946
A. F. L.—Unaffiliated	183	108		60	15	35,707	14,667		19,643	1,397
A. F. L.—A. F. L.	234	217			17	14,452	13,728			724
C. I. O.—Unaffiliated	167		65	89	13	113,464		38,050	65,954	9,460
C. I. O.—C. I. O.	5		4		1	298		227		71
Unaffiliated—Unaffiliated	13			13	0	1,427			1,427	
Three-union elections.										
A. F. L.—C. I. O.—Unaffiliated	35	17	6	9	3	13,931	2,289	5,011	3,534	3,097
A. F. L.—A. F. L.—A. F. L.	2	2			0	61	61			
A. F. L.—A. F. L.—C. I. O.	30	18	9		3	5,960	2,732	927		2,301
A. F. L.—A. F. L.—Unaffiliated	6	4		0	2	1,086	1,047			39
A. F. L.—C. I. O.—C. I. O.	2	1	1		0	108	54	54		
A. F. L.—Unaffiliated—Unaffiliated	1	0		1	0	60			60	
C. I. O.—C. I. O.—Unaffiliated	2		0	1	1	563			373	190
Unaffiliated—Unaffiliated—C. I. O.	3		1	2	0	5,209		497	4,712	
Four-union elections										
A. F. L.—C. I. O.—Unaffiliated—Unaffiliated	2	0	0	2	0	311			311	
A. F. L.—Unaffiliated—C. I. O.—C. I. O.	2	1	0	1	0	4,862	2,175		2,687	

Table 10B.—Voting in collective bargaining elections in which a representative was chosen, fiscal year 1952

Affiliation of participating unions	Employees eligible to vote	Total valid votes cast	Percent casting valid votes	Valid votes cast for winning union			Valid votes cast for losing union			Valid votes cast for no union
				A. F. L. affiliates	C. I. O. affiliates	Unaffiliated unions	A F L. affiliates	C. I O. affiliates	Unaffiliated unions	
Total	584,030	498,250	85 3	144,214	129,549	70,575	34,360	44,195	20,602	54,755
One-union elections:										
A. F. L.	119,524	96,361	80 6	76,222						20,139
C. I. O.	87,433	78,000	89. 2		56,095					21,905
Unaffiliated	17,851	15,765	88 3			12,338				3,427
Two-union elections:										
A. F. L.—C I. O.	179,002	151,350	84 6	47,599	50,598		23,103	24,189		5,861
A. F. L.—Unaffiliated	34,310	29,368	85 6	8,160		10,609	5,756		4,284	559
A. F. L.—A. F. L.	13,728	11,858	86 4	8,149			3,163			546
C. I. O.—Unaffiliated	104,004	91,266	87. 8		19,269	40,146		17,128	12,966	1,757
C. I. O.—C. I. O.	227	201	88 5		141			51		9
Unaffiliated—Unaffiliated	1,427	1,247	87 4			818			406	23
Three-union elections										
A. F. L.—C. I. O —Unaffiliated	10,834	9,564	88 3	1,137	2,678	1,780	1,501	824	1,257	387
A. F. L.—A. F. L.—A F L	61	56	91 8	38			16			2
A. F. L.—A. F L.—C I O	3,659	3,089	84 4	1,494	541		524	478		52
A. F. L.—A. F. L.—Unaffiliated	1,047	1,003	95 8	568			28		403	4
A. F. L.—C. I. O.—C. I. O	108	106	98. 1	32	32		7	34		1
A. F. L.—Unaffiliated—Unaffiliated	60	49	81. 7			39	9		1	0
C. I O.—C. I. O —Unaffiliated	373	349	93. 6			209		136		4
C. I O —Unaffiliated—Unaffiliated	5,209	4,455	85. 5		195	2,701		385	1,141	33
Four-union elections:										
A. F. L.—C. I. O —Unaffiliated—Unaffiliated	311	284	91. 3			207	13	18	44	2
A. F. L.—C. I. O.—C. I. O —Unaffiliated	4,862	3,879	79 8	815		1,728	240	952	100	44

Table 10C.—Voting in collective bargaining elections in which a representative was not chosen, fiscal year 1952

Affiliation of participating unions	Employees eligible to vote	Total valid vote cast	Percent casting valid votes	Valid votes cast for losing union			Valid votes cast for no union
				A. F. L affiliates	C. I O. affiliates	Unaffiliated unions	
Total	187,316	169,628	90.6	24,978	31,558	3,112	109,980
One-union elections.							
A. F. L.	69,863	63,071	90 3	21,441	----------	----------	41,630
C. I. O.	77,408	70,055	90.5	----------	25,513	----------	44,542
Unaffiliated	4,820	4,408	91.5	----------	----------	1,506	2,902
Two-union elections·							
A F. L.—C. I. O.	17,946	16,252	90 6	2,139	4,239	----------	9,874
A. F. L.—Unaffiliated	1,397	1,187	85 0	238	----------	113	836
A. F. L.—A. F. L.	724	649	89 6	284	----------	----------	365
C. I. O —Unaffiliated	9,460	8,862	93.7	----------	1,340	945	6,577
C. I O.—C. I O.	71	68	95.8	----------	24	----------	44
Three-union elections:							
A. F. L.—C. I. O.—Unaffiliated	3,097	2,653	85.7	110	322	529	1,692
A. F. L —A F L —C. I. O.	2,301	2,210	96.0	764	59	----------	1,387
A. F. L.—A. F. L —Unaffiliated	39	36	92.3	2	----------	15	19
C. I. O.—C. I. O.—Unaffiliated	190	177	93.2	----------	61	4	112

Table 11.—Decertification elections by affiliation of participating unions, fiscal year 1952

Union affiliation	Elections participated in					Employees involved in elections (number eligible to vote)					Valid votes cast			
	Total	Resulting in certification		Resulting in decertification		Total eligible	Resulting in certification		Resulting in decertification		Total	Percent of total eligible	Cast for the union	
		Number	Percent of total	Number	Percent of total		Number	Percent of total eligible	Number	Percent of total eligible			Number	Percent of total cast
Total elections	101	27	26 7	74	73 3	7,378	3,333	45.2	4,045	54 8	6,534	88 6	3,069	47.0
A. F. L.	61	14	23 0	47	77.0	2,801	432	15 4	2,369	84 6	2,538	90 6	940	37 0
C. I. O.	29	10	34 5	19	65 5	3,684	2,640	71.7	1,044	28 3	3,220	87.4	1,835	57 0
Unaffiliated	11	3	27 3	8	72 7	893	261	29.2	632	70.8	776	86.9	294	37.9

Table 11A.—Voting in decertification elections, fiscal year 1952

Union affiliation	Elections in which a representative was redesignated					Elections resulting in decertification				
	Employees eligible to vote	Total valid votes cast	Percent casting valid votes	Votes cast for winning union	Votes cast for no union	Employees eligible to vote	Total valid votes cast	Percent casting valid votes	Votes cast for losing union	Votes cast for no union
Total	3,333	2,937	88 1	1,862	1,075	4,045	3,597	88 9	1,207	2,390
A. F. L.	432	398	92.1	253	145	2,369	2,140	90.3	687	1,453
C. I. O.	2,640	2,313	87.6	1,466	847	1,044	907	86.9	369	538
Unaffiliated	261	226	86 6	143	83	632	550	87.0	151	333

Table 12.—Size of unit in collective bargaining and decertification elections conducted during fiscal year 1952

A. COLLECTIVE BARGAINING ELECTIONS

Size of unit (number of employees)	Number of elections	Percent of total	Elections in which representation rights were won by— A. F. L. affiliates		C. I. O. affiliates		Unaffiliated unions		Elections in which no representative was chosen	
			Number	Percent	Number	Percent	Number	Percent	Number	Percent
Total	6,765	100.0	3,075	100.0	1,394	100.0	464	100.0	1,832	100.0
1-9	1,486	22.0	933	30.3	164	11.8	61	13.1	328	17.9
10-19	1,196	17.7	623	20.3	188	13.5	76	16.4	309	16.9
20-29	812	12.0	360	11.7	175	12.6	53	11.4	224	12.2
30-39	545	8.0	237	7.7	120	8.6	37	8.0	151	8.2
40-49	395	5.8	152	4.9	100	7.2	21	4.5	122	6.7
50-59	293	4.3	122	4.0	83	6.0	15	3.2	73	4.0
60-69	232	3.4	85	2.8	62	4.5	15	3.2	70	3.8
70-79	171	2.5	52	1.7	50	3.6	17	3.7	52	2.8
80-89	141	2.1	44	1.4	41	2.9	10	2.2	46	2.5
90-99	133	2.0	41	1.3	42	3.0	12	2.6	38	2.1
100-149	445	6.6	148	4.8	117	8.4	39	8.4	141	7.7
150-199	211	3.1	71	2.3	59	4.2	16	3.5	65	3.6
200-299	263	3.9	73	2.4	74	5.3	29	6.3	87	4.7
300-399	122	1.8	38	1.2	29	2.1	12	2.6	43	2.3
400-499	95	1.4	29	.9	26	1.9	15	3.2	25	1.4
500-599	39	.6	7	.2	13	.9	4	.9	15	.8
600-799	47	.7	14	.5	16	1.1	7	1.5	10	.5
800-999	38	.6	14	.5	6	.4	8	1.7	10	.5
1,000-1,999	53	.8	18	.6	16	1.1	7	1.5	12	.7
2,000-2,999	26	.4	8	.3	5	.4	4	.9	9	.5
3,000-3,999	6	.1	1	(1)	3	.2	1	.2	1	.1
4,000-4,999	7	.1	3	.1	2	.1	2	.4	0	.0
5,000-9,999	2	(1)	0	.0	0	.0	1	.2	1	.1
10,000-14,999	4	.1	2	.1	1	.1	1	.2	0	.0
15,000-20,000	3	(1)	0	.0	2	.1	1	.2	0	.0

B. DECERTIFICATION ELECTIONS

Total	101	100.0	14	100.0	10	100.0	3	100.0	74	100.0
1-9	11	10.9	2	14.3	0	.0	0	0	9	12.2
10-19	20	19.8	4	28.6	1	10.0	0	0	15	20.3
20-29	14	13.8	0	0	1	10.0	0	.0	13	17.5
30-39	13	12.8	4	28.6	1	10.0	0	.0	8	10.8
40-49	11	10.9	3	21.4	0	0	0	.0	8	10.8
50-59	3	3.0	0	.0	1	10.0	0	.0	2	2.7
60-69	4	4.0	0	.0	0	0	1	33.4	3	4.1
70-79	4	4.0	0	.0	2	20.0	0	0	2	2.7
80-89	5	4.9	1	7.1	0	.0	1	33.3	3	4.1
90-99	2	2.0	0	0	0	.0	0	0	2	2.7
100-149	4	4.0	0	0	0	0	1	33.3	3	4.1
150-199	4	4.0	0	.0	0	0	0	0	4	5.4
200-299	2	2.0	0	.0	2	20.0	0	0	0	0
300-399	1	.9	0	.0	0	.0	0	0	1	1.3
400 and over	3	3.0	0	.0	2	20.0	0	.0	1	1.3

[1] Less than one-tenth of 1 percent.

Table 13.—Industrial distribution of collective bargaining elections, outcome, eligible voters, and valid votes cast, fiscal year 1952

Industrial group [1]	Number of elections					Eligible voters	Valid votes cast
	Total	in which representation rights were won by—			in which no representative was chosen		
		A F L. affiliates	C I O affiliates	Unaffiliated unions			
Total	6,765	3,075	1,394	464	1,832	771,346	667,878
Manufacturing	4,562	1,890	1,117	349	1,206	588,368	517,193
Ordnance and accessories	60	48	4	4	4	21,867	17,348
Food and kindred products	610	321	85	34	170	35,674	30,611
Tobacco manufactures	8	3	2	1	2	2,068	1,679
Textile-mill products	139	48	31	10	50	30,258	26,234
Apparel and other finished products made from fabrics and similar material	129	49	32	5	43	16,026	14,462
Lumber and wood products	262	102	75	6	79	17,438	15,382
Furniture and fixtures	145	49	56	4	36	12,311	11,097
Paper and allied products	207	118	28	14	47	20,717	17,399
Printing, publishing, and allied industries	217	106	41	20	50	7,637	6,852
Chemicals and allied products	303	112	77	29	85	32,585	29,281
Products of petroleum and coal	114	41	38	9	26	10,647	9,752
Rubber products	43	7	16	1	19	3,988	3,625
Leather and leather products	65	17	10	14	24	11,456	10,400
Stone, clay, and glass products	178	75	47	13	43	23,237	20,682
Primary metal industries	291	104	101	27	59	37,788	33,723
Fabricated metal products (except machinery and transportation equipment)	442	165	126	30	121	37,896	33,393
Machinery (except electrical)	514	211	116	44	143	86,696	78,971
Electrical machinery, equipment, and supplies	283	107	66	49	61	99,733	87,306
Transportation equipment	305	106	106	22	71	54,149	46,141
Aircraft and parts	112	42	35	8	27	24,020	21,353
Ship and boat building and repairing	47	25	10	3	9	7,510	5,776
Automotive and other transportation equipment	146	39	61	11	35	22,619	19,012
Professional, scientific, and controlling instruments	73	27	17	4	25	9,104	7,869
Miscellaneous manufacturing	174	74	43	9	48	17,093	14,986
Agriculture, forestry, and fisheries	4	4	0	0	0	188	173
Mining	116	57	24	14	21	13,996	13,046
Metal mining	57	27	12	11	7	10,673	10,091
Coal mining	6	3	1	1	1	234	216
Crude petroleum and natural gas production	9	1	4	0	4	420	388
Nonmetallic mining and quarrying	44	26	7	2	9	2,669	2,351
Construction	74	49	6	4	15	8,653	6,310
Wholesale trade	498	248	71	28	151	16,855	15,007
Retail trade	705	379	65	9	252	29,104	25,456
Finance, insurance, and real estate	45	19	4	4	18	11,976	11,317
Transportation, communication, and other public utilities	557	308	86	34	129	89,362	70,021
Highway passenger transportation	34	19	1	1	13	1,476	1,335
Highway freight transportation	127	81	2	5	39	2,552	2,202
Water transportation	27	12	7	3	5	887	768
Warehousing and storage	90	48	19	6	17	3,288	2,793
Other transportation	11	5	1	2	3	3,869	3,419
Communication	178	97	43	10	28	50,666	39,039
Heat, light, power, water, and sanitary services	90	46	13	7	24	26,624	20,465
Services	204	121	21	22	40	12,844	9,355

[1] Source: Standard Industrial Classification, Division of Statistical Standards, U. S. Bureau of the Budget, Washington, 1945.

Table 14.—Industrial distribution of decertification elections, outcome, eligible voters, and valid votes cast, fiscal year 1952

Industrial group [1]	Number of elections					Eligible voters	Valid votes cast
	Total	in which representation rights were won by—			in which employees voted to decertify		
		A. F. L affiliates	C I O affiliates	Unaffiliated unions			
Total	101	14	10	3	74	7,378	6,534
Manufacturing	74	10	9	1	54	5,767	5,099
Food and kindred products	6	0	0	0	6	238	217
Tobacco manufactures	1	0	0	0	1	119	82
Textile-mill products	7	0	3	0	4	2,444	2,101
Apparel and other finished products made from fabrics and similar materials	2	0	0	0	2	493	424
Lumber and wood products	3	1	1	0	1	145	136
Furniture and fixtures	1	0	0	0	1	7	7
Printing, publishing, and allied industries	5	2	0	0	3	128	124
Chemicals and allied products	6	0	1	0	5	113	106
Products of petroleum and coal	6	0	0	0	6	226	208
Leather and leather products	1	0	0	0	1	81	74
Stone, clay, and glass products	2	1	0	0	1	66	61
Primary metal industries	8	2	1	0	5	414	382
Fabricated metal products (except machinery and transportation equipment)	3	1	0	0	2	70	68
Machinery (except electrical)	11	0	3	0	8	727	683
Electrical machinery, equipment, and supplies	5	1	0	1	3	317	263
Transportation equipment	2	2	0	0	0	61	59
Automotive and other transportation equipment	2	2	0	0	0	61	59
Professional, scientific, and controlling instruments	2	0	0	0	2	38	33
Miscellaneous manufacturing	3	0	0	0	3	80	71
Mining	2	0	0	1	1	132	123
Coal mining	2	0	0	1	1	132	123
Wholesale trade	7	1	1	0	5	368	325
Retail trade	7	1	0	0	6	206	185
Finance, insurance, and real estate	2	0	0	0	2	637	582
Transportation, communication, and other public utilities	8	2	0	0	6	161	140
Highway passenger transportation	2	1	0	0	1	54	35
Highway freight transportation	1	1	0	0	0	10	10
Other transportation	1	0	0	0	1	14	14
Heat, light, power, water, and sanitary services	4	0	0	0	4	83	81
Services	1	0	0	1	0	107	80

[1] Source: Standard Industrial Classificatifion, Division of Statistical Standards, U. S. Bureau of the Budget, Washington, D. C. 1945

Table 15.—Geographic distribution of collective bargaining elections, outcome, eligible voters, and number of votes cast for participating unions, fiscal year 1952

Division and State [1]	Number of elections					Employees eligible to vote	Total valid votes cast	Valid votes cast for—				Employees in units choosing representation
	Total	in which representation rights were won by—			in which no representative was chosen			A. F. L. affiliates	C. I. O affiliates	Unaffiliated unions	No union	
		A. F. L. affiliates	C. I. O affiliates	Unaffiliated unions								
New England	437	195	76	36	130	67,110	58,169	12,146	19,808	9,560	16,655	45,736
Maine	34	19	0	2	13	2,813	2,595	1,020	237	31	1,307	1,302
New Hampshire	20	13	1	0	6	1,746	1,551	440	520	0	591	1,142
Vermont	8	1	2	3	2	1,313	1,168	134	313	209	512	776
Massachusetts	234	101	43	20	70	43,404	36,820	6,822	13,485	8,003	8,510	31,522
Rhode Island	45	24	9	2	10	2,675	2,451	702	1,009	126	614	2,018
Connecticut	96	37	21	9	29	15,159	13,584	3,028	4,244	1,191	5,121	8,976
Middle Atlantic	1,349	592	295	138	324	178,800	155,565	43,399	45,285	33,501	33,380	141,271
New York	692	309	134	81	168	91,881	78,633	18,609	18,261	23,509	18,254	71,980
New Jersey	293	130	63	27	73	42,041	37,494	15,127	12,114	4,100	6,153	34,511
Pennsylvania	364	153	98	30	83	44,878	39,438	9,663	14,910	5,892	8,973	34,780
East North Central	1,629	627	428	114	460	200,796	178,749	44,227	59,150	30,316	45,056	147,153
Ohio	452	137	129	44	142	61,336	54,878	10,774	17,545	13,423	13,136	43,441
Indiana	226	100	48	12	66	26,645	22,688	6,818	7,952	2,517	5,401	21,256
Illinois	391	184	66	29	112	54,464	48,216	15,207	16,888	8,559	7,562	45,425
Michigan	347	82	151	20	94	38,244	34,707	4,149	11,745	3,237	15,576	20,067
Wisconsin	213	124	34	9	46	20,107	18,260	7,279	5,020	2,580	3,381	16,964
West North Central	696	408	99	26	163	75,453	63,684	25,530	19,799	5,116	13,239	64,150
Iowa	74	37	12	3	22	9,944	8,786	2,263	2,379	645	3,499	4,734
Minnesota	130	71	29	5	25	12,017	10,422	5,339	1,745	515	2,823	11,315
Missouri	304	194	27	12	71	17,388	15,795	4,760	4,792	2,736	3,507	13,602
North Dakota	37	27	0	0	10	490	438	293	0	0	145	318
South Dakota	9	8	1	0	0	299	263	170	23	0	70	299
Nebraska	60	35	7	3	15	25,082	20,081	9,462	8,435	1,117	1,067	24,552
Kansas	82	36	23	3	20	10,233	7,899	3,243	2,425	103	2,128	9,330

South Atlantic	488	197	108	14	169	54,074	47,681	12,332	15,795	2,519	17,035	34,749
Delaware	11	6	3	0	2	2,963	2,622	927	1,070	117	508	2,585
Maryland	64	25	13	5	21	6,035	5,105	1,012	1,512	1,167	1,414	4,018
District of Columbia	40	25	6	1	8	1,312	1,215	628	163	9	415	846
Virginia	56	16	16	1	23	14,331	12,658	690	6,611	232	5,125	10,078
West Virginia	46	17	10	3	16	4,776	4,481	894	1,928	298	1,361	3,722
North Carolina	53	11	15	2	25	5,104	4,709	1,057	1,033	114	2,505	1,451
South Carolina	28	10	9	0	9	3,520	3,227	1,429	372	82	1,344	1,880
Georgia	87	35	20	1	31	7,131	5,839	2,467	1,427	170	1,775	5,239
Florida	103	52	16	1	34	8,902	7,825	3,228	1,679	330	2,588	4,930
East South Central	318	119	73	14	112	37,824	34,363	7,686	12,672	3,900	10,105	26,674
Kentucky	93	44	9	5	35	9,600	8,418	2,568	2,185	1,823	1,842	7,134
Tennessee	110	34	37	5	34	11,295	10,260	2,807	3,598	383	3,472	7,810
Alabama	79	22	25	2	30	12,345	11,396	1,451	5,566	1,642	2,737	9,579
Mississippi	36	19	2	2	13	4,584	4,289	860	1,323	52	2,054	2,151
West South Central	565	278	107	20	160	49,772	43,607	17,753	1	1,125	12,729	35,466
Arkansas	83	49	10	3	21	9,096	7,663	4,029	1,829	103	1,702	7,109
Louisiana	98	62	12	2	22	9,305	7,726	4,360	1,640	123	1,603	7,851
Oklahoma	93	44	14	1	34	9,504	8,627	2,542	2,464	171	3,450	5,156
Texas	291	123	71	14	83	21,867	19,591	6,822	6,067	728	5,974	15,350
Mountain	281	159	40	11	71	14,868	13,015	6,658	2,109	1,125	3,123	11,621
Montana	24	12	3	0	9	678	605	296	42	56	211	416
Idaho	40	22	7	4	7	1,911	1,592	811	159	173	449	1,327
Wyoming	9	2	3	0	4	516	487	52	204	113	118	357
Colorado	93	49	13	1	30	3,742	3,338	1,555	354	24	1,405	2,338
New Mexico	20	13	1	0	6	480	453	238	24	1	190	287
Arizona	67	41	10	5	11	6,580	5,788	3,233	1,284	724	547	6,008
Utah	25	18	2	1	4	797	656	388	33	34	201	724
Nevada	13	2	1	0	0	164	96	85	9	0	2	164
Pacific	820	428	145	39	208	81,177	64,146	31,565	17,241	4,326	11,014	68,332
Washington	96	60	12	4	20	5,516	4,558	2,695	566	305	992	4,602
Oregon	130	63	24	2	41	6,087	4,806	1,965	1,469	45	1,327	4,374
California	594	305	109	33	147	69,574	54,782	26,905	15,206	3,976	8,695	59,356
Outlying areas	182	72	23	52	35	11,472	8,899	2,256	1,443	2,801	2,399	8,878
Alaska	1	0	0	0	1	14	7	2	0	0	5	0
Hawaii	26	15	0	3	8	1,245	1,123	611	0	34	478	933
Puerto Rico	155	57	23	49	26	10,213	7,769	1,643	1,443	2,767	1,916	7,945

The States are grouped according to the method used by the Bureau of the Census, U. S Department of Commerce.

Table 16.—Geographic distribution of decertification elections, outcome, eligible voters, and number of votes cast for participating unions, fiscal year 1952

Division and State [1]	Number of elections					Employees eligible to vote	Total valid votes	Valid votes cast for—				Employees in units choosing representation
	Total	In which representation rights were won by—			In which employees voted to decertify			A F L. affiliates	C I O. affiliates	Unaffiliated unions	No union	
		A F L. affiliates	C I O affiliates	Unaffiliated unions								
New England	8	0	2	0	6	368	348	20	131	0	197	137
Maine	3	0	1	0	2	127	120	6	58	0	56	58
New Hampshire	0	0	0	0	0	0	0	0	0	0	0	0
Vermont	0	0	0	0	0	0	0	0	0	0	0	0
Massachusetts	2	0	0	0	2	47	42	0	16	0	26	0
Rhode Island	1	0	1	0	0	79	77	0	57	0	20	79
Connecticut	2	0	0	0	2	115	109	14	0	0	95	0
Middle Atlantic	14	1	0	1	12	676	601	76	88	38	399	96
New York	10	1	0	1	8	568	502	72	88	37	305	96
New Jersey	2	0	0	0	2	47	40	0	0	1	39	0
Pennsylvania	2	0	0	0	2	61	59	4	0	0	55	0
East North Central	28	5	4	1	18	1,698	1,531	260	338	156	777	699
Ohio	11	2	2	0	7	849	768	119	256	35	358	418
Indiana	2	0	0	0	2	122	105	28	0	0	77	0
Illinois	7	2	1	0	4	380	354	59	30	60	205	117
Michigan	4	0	1	1	2	158	123	0	15	61	47	121
Wisconsin	4	1	0	0	3	189	181	54	37	0	90	43
West North Central	14	2	1	1	10	628	578	107	146	49	276	360
Iowa	0	0	0	0	0	0	0	0	0	0	0	0
Minnesota	4	1	0	0	3	84	79	22	11	0	46	19
Missouri	4	0	1	0	3	261	234	1	135	0	98	215
North Dakota	1	0	0	1	0	88	86	0	0	49	37	88
South Dakota	0	0	0	0	0	0	0	0	0	0	0	0
Nebraska	0	0	0	0	0	0	0	0	0	0	0	0
Kansas	5	1	0	0	4	195	179	84	0	0	95	38

South Atlantic	9	2	2	0	5	2,796	2,439	286	984	25	1,144	1,943
Delaware	0	0	0	0	0	0	0	0	0	0	0	0
Maryland	1	0	0	0	1	546	498	192	0	0	306	0
District of Columbia	0	0	0	0	0	0	0	0	0	0	0	0
Virginia	1	0	0	0	1	68	61	0	0	15	46	0
West Virginia	2	0	0	0	2	52	44	0	0	10	34	0
North Carolina	3	0	2	0	1	2,087	1,793	69	984	0	740	1,900
South Carolina	1	1	0	0	0	33	33	19	0	0	14	33
Georgia	0	0	0	0	0	0	0	0	0	0	0	0
Florida	1	1	0	0	0	10	10	6	0	0	4	10
East South Central	6	0	0	0	6	351	289	22	94	0	173	0
Kentucky	4	0	0	0	4	86	83	22	0	0	61	0
Tennessee	1	0	0	0	1	146	124	0	61	0	63	0
Alabama	1	0	0	0	1	119	82	0	33	0	49	0
Mississippi	0	0	0	0	0	0	0	0	0	0	0	0
West South Central	6	0	1	0	5	397	341	96	19	0	226	23
Arkansas	1	0	0	0	1	306	260	89	0	0	171	0
Louisiana	3	0	0	0	3	63	55	7	4	0	44	0
Oklahoma	1	0	0	0	1	5	5	0	0	0	5	0
Texas	1	0	1	0	0	23	21	0	15	0	6	23
Mountain	2	0	0	0	2	31	27	3	0	0	24	0
Montana	0	0	0	0	0	0	0	0	0	0	0	0
Idaho	0	0	0	0	0	0	0	0	0	0	0	0
Wyoming	0	0	0	0	0	0	0	0	0	0	0	0
Colorado	0	0	0	0	0	0	0	0	0	0	0	0
New Mexico	0	0	0	0	0	0	0	0	0	0	0	0
Arizona	1	0	0	0	1	11	11	3	0	0	8	0
Utah	1	0	0	0	1	20	16	0	0	0	16	0
Nevada	0	0	0	0	0	0	0	0	0	0	0	0
Pacific	14	4	0	0	10	433	380	70	35	26	249	75
Washington	2	2	0	0	0	61	40	33	0	0	7	61
Oregon	1	1	0	0	0	8	8	5	0	0	3	8
California	11	1	0	0	10	364	332	32	35	26	239	6
Outlying areas	0	0	0	0	0	0	0	0	0	0	0	0
Alaska	0	0	0	0	0	0	0	0	0	0	0	0
Hawaii	0	0	0	0	0	0	0	0	0	0	0	0
Puerto Rico	0	0	0	0	0	0	0	0	0	0	0	0

[1]The States are grouped according to the method used by the Bureau of the Census, U. S. Department of Commerce.

Table 17.—Record of injunction petitions for under section 10 (j) and 10 (l) during fiscal year 1952 and those having some action in fiscal year 1952, although petitioned for in prior years

Case number	Union or company	Date petition for injunction filed	Type of petition	Temporary restraining order		Date temporary injunction granted	Date injunction denied	Date injunction proceedings withdrawn or dismissed	Date of Board decision and/or order
				Date issued	Date lifted				
21-CD-19	AFL-Los Angeles Building and Construction Trades Council, et al., (Westinghouse Electric Co.).	May 3, 1949	10 (l)			June 10, 1949		Dec. 5, 1951	May 11, 1951
5-CB-43, 44, 45, 46, 47.	Mine Workers & John L. Lewis (Southern Coal Producers Association).	Jan. 18, 1950	10 (j)			[3] Feb 11, 1950		Oct. 10, 1951	
16-CC-14	AFL-Meat Cutters & Butchers, Local 303 (Western, Inc.).	May 17, 1950	10 (l)				July 25, 1950	Dec. 12, 1951	Feb. 19, 1951
21-CC-92	AFL-Boilermakers Local 92 (Richfield Oil Corp.).	May 22, 1950	10 (l)			(2)		Sept. 6, 1951	Aug. 21, 1951
9-CC-31	United Construction Workers, UMWA (Kanawha Coal Operators Association).	July 5, 1950	10 (l)			July 27, 1950		Aug 13, 1951	June 29, 1951
17-CC-10	AFL-Meat Cutters & Butchers, Local 172 (Producers Produce Co.).	Aug. 17, 1950	10 (l)	Sept. 15, 1950	Sept. 19, 1950	Sept. 19, 1950		July 7, 1951	(1)
3-CC-19	AFL-Teamsters, Local 649 (Jamestown Builders Exchange, Inc).	Aug. 24, 1950	10 (l)			(2)		Nov. 16, 1951	Feb. 23, 1951
20-CD-17, 18	Longshoremen & Warehousemen & AFL-Sailors Union of the Pacific, (Pacific Maritime Association).	Jan. 5, 1951	10 (l)	Jan. 5, 1951	Jan. 9, 1951	Jan 30, 1951		Mar. 20, 1952	May 11, 1951
	Longshoremen & Warehousemen, Local 48	Jan. 6, 1951	10 (l)	Jan. 8, 1951	Mar. 15, 1951	Mar. 15, 1951		Mar. 24, 1952	May 11, 1951
	Longshoremen & Warehousemen, Local 13	Mar. 28, 1951	10 (l)			(2)		Apr. 25, 1952	May 11, 1951
2-CB-135, 145, 330, 373, 381.	Newspaper & Mail Deliverers Union of New York, (New York Times, Inc., et al).	Mar. 1, 1951	10 (j)			Apr. 10, 1951			[4] Aug. 14, 1951
14-CC-24	AFL-Electrical Workers, Local 1 (Carondelet Neon Sign Co.).	Apr. 16, 1951	10 (l)			(2)		Sept. 12, 1951	Aug. 6, 1951
2-CD-40	National Association of Broadcast Engineers & Technicians (Teleprompter Service Corp.).	Apr. 24, 1951	10 (l)			(2)			Aug 30, 1951
10-CC-24, 25	AFL-Lathers, Local 234 (Acousti Engineering Co.).	June 8, 1951	10 (l)			(2)		Jan 28, 1952	Dec 18, 1951
2-CA-1925, 1934 2-CB-628.	Anheuser-Busch, Inc , and AFL-Teamsters, Locals 153 & 843 (CIO-Brewery Workers).	June 12, 1951	10 (j)			Aug. 17, 1951		Jan. 17, 1952	Jan 4, 1952
21-CC-115	AFL-New Furniture & Appliance Drivers, Warehousemen & Helpers Union, Local 196 (Bigelow-Sanford Carpet Co., Inc.).	June 1, 1951	10 (l)			June 12, 1951		Dec. 19, 1951	Nov. 9, 1951
21-CC-114	AFL-Teamsters, Local 942 (Royden Ice Co).	June 18, 1951	10 (l)			(2)		Jan. 10, 1952	
17-CC-15	AFL-Teamsters, Local 41 (Union Chevrolet Co).	June 14, 1951	10 (l)			June 25, 1951		Dec. 14, 1951	Oct. 19, 1951

20-CA-523, 524, 567, 609, 610, 20-CB-171, 172, 184, 206, 207.	American President Lines Ltd., and Matson Navigation Co. (Individual) National Union of Marine Cooks & Stewards (Individual)	Aug. 28, 1951	10 (j)			Jan. 23, 1952			
24-CC-6	CIO-Sindicato de Trabajadores (South Porto Rico Sugar Co).	Aug. 29, 1951	10 (l)					Feb. 19, 1952	Jan. 11, 1952
6-CC-59	AFL-Teamsters, Local 397 (Mc Enery Co , et al).	Aug. 30, 1951	10 (l)			(2)		Dec. 24, 1951	(1)
19-CC-38	AFL-Carpenters, Local 2781 (Everette Plywood & Door Corp).	Sept. 5, 1951	10 (l)					Sept. 20, 1951	
2-CC-193	AFL-Sheet Metal Workers, Local 28 (Ferro-Co. Corp).	Sept. 12, 1951	10 (l)				Nov. 20, 1951		
6-CC-60, 6-CD-14.	AFL-Teamsters, Local 636, (Roy Stone Transfer Corp).	Sept. 14, 1951	10 (l)				Dec 17, 1951		
6-CC-61	AFL-Seafarers (Hammermill Paper Co)	Oct. 4, 1951	10 (l)			(2)			
10-CC-37	AFL-Carpenters, Local 50 (Clyde M. Furr)	Oct. 26, 1951	10 (l)			(2)		June 5, 1952	
2-CC-201	AFL-Teamsters, Local 814 (Montgomery Ward & Co.).	Nov. 8, 1951	10 (l)			(2)		Dec. 19, 1951	
24-CC-11, 12	AFL-Longshoremen (Puerto Rico Steamship Ass'n. et al).	Nov. 8, 1951	10 (l)	Nov. 14, 1951	Nov. 23, 1951	Nov. 23, 1951			
2-CC-202	CIO-Candy and Confectionery Employees Local 50 (Henry Heide, Inc).	Nov. 29, 1951	10 (l)			(2)		Feb. 16, 1952	
24-CB-40	AFL-Longshoremen, District Council of Ports of Puerto Rico (Puerto Rico Steamship Association)	Feb. 6, 1952	10 (j)	Feb. 6, 1952	Feb. 20, 1952			Feb. 20, 1952	
10-CC-49	Mine Workers, District 50 and Harry Livingston (National Cylinder Gas Co)	Mar. 12, 1952	10 (l)			April 11, 1952			
2-CC-215	AFL-Meat Cutters and Butchers, Local 342 (Atlas Canning Co)	Mar. 28, 1952	10 (l)			(2)			
19-CC-42	AFL-Carpenters (Sound Shingle Co.)	April 7, 1952	10 (l)				May 27, 1952		
21-CC-130	AFL-Teamsters, Local 276 (Capital Service, Inc.).	May 14, 1952	10 (l)			June 2, 1952			
35-CC-14	AFL-Teamsters, Local 135 (Motor Freight Carriers of Ind).	May 15, 1952	10 (l)			(2)			
2-CC-220	Mine Workers, District 50 (Nordan Plastics Corp).	May 19, 1952	10 (l)			(2)			
13-CA-1063	Cargill, Inc (CIO-Packinghouse Workers)	May 29, 1952	10 (j)						
24-CC-14, 15, 16; 24-CD-2, 3, 4	AFL-Longshoremen (Puerto Rico Steamship association, et al).	June 26, 1952	10 (l)						
20-CD-28	Pacific Coast Dist. Metal Trades Council (McDowell Company, Inc).	June 19, 1952	10 (l)	June 25, 1952					

[1] Dispute settled and proceeding discontinued.
[2] Because of suspension of unfair labor practice, case carried on inactive court docket only.
[3] Case retained on court docket for further proceedings if appropriate.
[4] In 2-CB-330, 373 only.

NOTE.—Discretionary injunction indicated by 10 (j); mandatory injunction indicated by 10 (l).

Table 18.—Record of final offer ballots conducted by N. L. R. B. under National Emergencies Provision of L. M. R. A., sec. 209 (b), August 22, 1947–June 30, 1952

Case No.	Companies and unions involved	Election date	Eligible voters	Votes in favor of accepting final offer	Votes against accepting final offer
I	Oak Ridge Maintenance Employees Dispute:				
10-X-1	Oak Ridge National Laboratory, Division of Carbide and Carbon Chemicals Corp., Oak Ridge, Tenn., and Atomic Trades & Labor Council (AFL)	June 2, 1948	877	26	771
II	Labor Disputes in the Maritime Industry of the United States				
2-X-1	Atlantic and Gulf Coast companies, unlicensed personnel, and National Maritime Union (CIO), National Marine Engineers' Beneficial Association (CIO), American Radio Association (CIO)		(1)		
8-X-1	International Harvester Co., Wisconsin Steel Division and National Maritime Union (CIO); Lake Tankers, Cleveland Tankers, Great Lakes Transportation Co., Nicholson Transit Co., Johnson Transportation Co; Ford Motor Co., Interstate Steamship Co., Inland Steel Co; Bethlehem Transportation Co; and National Maritime Union (CIO)	Aug. 28–Sept. 8, 1948[2]	61	25	2
20-X-1	Waterfront Employers Association, et al (Pacific Coast), and International Longshoremen's and Warehousemen's Union (then CIO)	Aug 30–31, 1948	26,965	(3)	
	Alaska Steamship Company, Northland Transportation Company, and Alaska Transportation Company and International Longshoremen's & Warehousemen's Union (then CIO)		(1)		
	Pacific American Shipowners Association, et al	Aug 31–Oct. 11, 1948			
	Employees represented by National Engineers Beneficial Association (CIO).				
	Offshore		1,538	189	199
	Coastwise		14	1	3
	Employees represented by Pacific Coast Marine Firemen, Oilers, (CIO)				
	Offshore		3,115	41	328
	Coastwise		26	0	0
	Employees represented by Marine Cooks and Stewards Union.				
	Offshore		4,097	65	121
	Coastwise		22	0	0
III	Atlantic Coast Longshoremen's Dispute				
2-X-2	Maritime Industry on the Atlantic Coast, and International Longshoremen's Association (AFL):				
	Deep Water Steamship Lines and Contracting Stevedores, Portland, Maine:				
	Longshoremen	Nov 5, 1948	400	10	139
	Checkers	do	25	0	7
	Boston Shipping Association, Inc.:				
	Longshoremen	do	2,975	42	1,198
	Checkers	do	220	8	163
	New York Shipping Association				
	Longshoremen	do	12,664	698	10,623
	Checkers	do	1,660	138	1,364
	Clerks	do	484	93	348
	Cargo Repairmen	do	130	3	101

	Philadelphia Marine Trade Association:				
	Longshoremen	do	2,900	75	2,361
	Checkers	do	250	17	167
	Clerks	do	60	4	34
	Maintenance Workers	do	150	0	96
	Steamship Trade Association of Baltimore, Inc.				
	Longshoremen	do	4,729	207	1,472
	Checkers	do	115	7	81
	Clerks	do	115	6	82
	Hampton Roads Maritime Association, Inc.				
	Longshoremen	do	1,408	51	853
	Checkers	do	76	3	45
	Clerks	do	67	3	40
IV	Copper and Nonferrous Metals Industry:				
	International Union of Mine, Mill & Smelter Workers, and 25 Companies involved:				
	17 Companies	(1)	(1)		
	8 Companies				
19-X-1	Federal Mining and Smelting Co. (Morning Mine), Wallace, Idaho	Nov. 20, 1951	268	184	14
	Bunker Hill and Sullivan Mining & Concentrating Co., Kellogg, Idaho		1,341	822	284
	Sunshine Mining Co., Kellogg, Idaho		385	242	59
	Sullivan Mining Co., Kellogg, Idaho		387	242	62
	American Zinc Lead & Smelting Co., Metaline, Wash		136	42	69
	Pend Oreille Mines & Metals Co., Metaline, Wash		167	74	15
	Howe Sound Co., Holden, Wash		257	164	32
20-X-2	U. S. Vanadium Co., Bishop, Calif		228	38	94
	Total		68,312	3,520	21,227

[1] No final offer ballot was conducted because dispute settled.
[2] Final offer ballot was conducted only among employees of International Harvester; dispute with other employees was settled.
[3] No ballots were cast.

APPENDIX C

Statistical Tables on Union-Shop Polls, 1947–51

The following tables present a detailed statistical record of the union-shop authorization cases received by the National Labor Relations Board during the period from August 22, 1947, to October 22, 1951, when a union-shop authorization vote was required as a prerequisite to making a valid union-shop agreement.

Table C–1.—Union-shop authorization cases received, closed, and pending, August 22, 1947–October 22, 1951

Fiscal year	Cases filed	Cases closed	Cases on docket	Cases pending end of period
Total	53,381	53,381		
1948 (Aug 22, 1947–June 30, 1948)	26,099	18,691	26,099	7,408
1949	12,182	18,880	19,590	710
1950	6,537	6,256	7,247	991
1951	6,782	6,836	7,773	937
1952 (July 1, 1951–Oct. 22, 1951)	1,781	2,718	2,718	0

Table C–2.—Disposition of union-shop authorization cases closed, by stage and method, August 22, 1947–October 22, 1951

Stage and method	Number of cases	Percent of cases closed
Total number of cases closed	53,381	100 0
Before formal action, total	52,585	98 5
Adjusted	46,145	86 5
Consent election, union shop authorized	42,135	79 0
Consent election, union shop not authorized	1,151	2 2
Stipulated election, union shop authorized	338	6
Stipulated election, union shop not authorized	14	(*)
Regional director directed election, union shop authorized	2,390	4 5
Regional director directed election, union shop not authorized	117	.2
Withdrawn	5,654	10 6
Dismissed	766	1.4
Otherwise	20	(*)
After formal action, total	78	.2
After notice of hearing	7	(*)
Consent election, union shop authorized	4	(*)
Withdrawn	3	(*)
After hearing held, withdrawn	2	(*)
After Board decision, dismissed	25	.1
After Board-ordered election, union shop authorized	27	.1
After regional director directed election and objections filed	17	(*)
Union shop authorized	10	(*)
Union shop not authorized	3	(*)
Withdrawn	2	(*)
Dismissed	2	(*)
Closed by public law 189	718	1.3

*Less than 0 1 percent

Table C–3.—Union-shop authorization cases in which formal action was taken, August 22, 1947–October 22, 1951

Formal action taken	Total	Fiscal year				
		[1] 1948	1949	1950	1951	[2] 1952
Notices of hearing issued	59	10	9	7	33	0
Cases heard	51	7	7	5	32	0
Decisions issued, total	1,167	498	383	51	188	47
Elections directed	31	3	11	4	9	4
Dismissals on record	23	0	0	1	22	0
Certifications and dismissals after stipulated elections	350	59	61	41	149	40
Certifications after regional director directed elections	760	433	311	5	8	3
Decisions on appeal [3]	3	3	0	0	0	0

[1] Aug 22, 1947–June 30, 1948.
[2] July 1, 1951–Oct. 22, 1951.
[3] These figures do not include cases in which the Board made rulings by letter to parties rather than by formal Board decision.

Table C–4.—Types of union-shop authorization polls conducted, August 22, 1947–October 22, 1951

Fiscal year	Total polls	Type of poll			
		Consent	Stipulated	Regional director directed	Board ordered
Total	46,146	43,224	360	2,534	28
1948 (Aug. 22, 1947–June 30, 1948)	17,958	17,177	69	711	1
1949	15,074	14,357	52	654	11
1950	5,589	5,102	44	438	5
1951	5,964	5,217	159	578	10
1952 (July 1, 1951–Oct. 22, 1951)	1,561	1,371	36	153	1

Table C–5.—Size of unit in union-shop authorization polls conducted, August 22, 1947–October 22, 1951

Size of unit (number of employees)	Number of polls	Percent of total	Size of unit (number of employees)	Number of polls	Percent of total
Total	46,146	100 0			
1 to 19	21,929	47 6	100 to 199	4,074	8 8
20 to 39	7,137	15 5	200 to 399	2,684	5 8
40 to 59	3,659	7 9	400 to 699	1,290	2 8
60 to 79	2,324	5 0	700 to 999	501	1.1
80 to 99	1,656	3 6	1000 and over	892	1.9

Table C–6.—Results of union-shop authorization polls conducted, August 22, 1947–October 22, 1951

Fiscal year	Number of polls					Employees eligible to vote	Total valid votes cast	Percent casting valid votes	Votes cast in favor of union shop by affiliation of petitioning union			Votes cast against union shop
	Total	Affiliation of union authorized to negotiate union shop			Union shop rejected				A. F. L.	C. I. O	Unaffiliated	
		A. F L.	C I. O	Unaffiliated								
Total	46, 146	30, 347	8, 017	6, 459	1, 323	6, 545, 001	5, 548, 982	84 8	2, 131, 977	2, 316, 693	624, 572	475, 740
1948 (Aug. 22, 1947–June 30, 1948)	17, 958	12, 820	2, 312	2, 469	357	1, 852, 333	1, 629, 330	88 0	838, 605	476, 358	220, 017	94, 350
1949	15, 074	10, 448	1, 979	2. 154	493	1, 733, 922	1, 471, 092	84 8	728, 227	475, 588	178, 014	89, 263
1950	5, 589	3, 230	1, 192	954	213	1, 072, 856	900, 807	84 0	251, 577	434, 131	119, 452	95, 647
1951	5, 964	3, 062	1, 976	721	205	1, 623, 375	1, 335, 683	82 3	253, 637	826, 269	84, 237	171, 540
1952 (July 1, 1951–Oct. 22, 1951)	1, 561	787	558	161	55	262, 515	212, 070	80 8	59, 931	104, 347	22, 852	24, 940

Table C–7.—Industrial distribution of union-shop authorization polls, outcome, eligible voters, and valid votes cast, August 22, 1947–October 22, 1951

Industrial group [1]	Number of polls				Union shop rejected	Employees eligible to vote	Total valid votes
	Total	Affiliation of union authorized to negotiate union-shop					
		A.F.L	C.I.O.	Unaffiliated unions			
Total	46,146	30,347	8,017	6,459	1,323	6,545,001	5,548,982
Manufacturing	30,271	18,035	7,073	4,473	690	5,458,995	4,645,107
Ordnance and accessories	13	8	2	3	0	5,839	5,052
Food and kindred products	6,222	4,851	689	505	177	570,328	486,524
Tobacco manufacturers	65	50	6	9	0	14,977	13,285
Textile-mill products	1,548	298	1,023	215	12	391,754	345,073
Apparel and other finished products made from fabrics and similar material	753	477	247	22	7	218,112	199,855
Lumber and wood products	2,129	1,457	573	32	67	170,927	144,687
Furniture and fixtures	1,131	886	154	65	26	92,911	81,368
Paper and allied products	1,299	1,030	167	84	18	226,236	198,533
Printing, publishing, and allied industries	1,746	1,357	181	172	36	95,029	83,235
Chemicals and allied products	1,214	838	237	112	27	123,524	104,787
Products of petroleum and coal	369	154	173	24	18	50,686	41,419
Rubber products	272	70	185	12	5	138,458	109,631
Leather and leather products	568	368	131	58	11	101,836	89,382
Stone, clay, and glass products	1,361	1,069	176	93	23	210,675	177,802
Primary metal industries	2,069	1,124	642	259	44	799,751	648,343
Fabricated metal products (except machinery and transportation equipment)	2,913	1,604	706	545	58	362,627	315,917
Machinery (except electrical)	2,936	699	806	1,362	69	506,889	437,762
Electrical machinery, equipment, and supplies	1,003	503	199	281	20	294,800	250,047
Transportation equipment	1,168	336	450	345	37	924,095	772,377
Aircraft and parts	137	31	39	58	9	107,872	90,393
Ship and boat building and repairing	211	110	54	39	8	55,924	45,232
Automotive and other transportation equipment	820	195	357	248	20	760,299	636,752
Professional, scientific, and controlling instruments	365	138	123	94	10	57,309	51,069
Miscellaneous manufacturing	1,127	718	203	181	25	102,232	88,959
Agriculture, forestry, and fisheries	5	4	0	1	0	64	58
Mining	332	160	108	54	10	44,859	36,681
Metal mining	90	12	65	10	3	28,218	23,497
Coal mining	31	4	2	25	0	982	872
Crude petroleum and natural gas production	35	13	17	1	4	6,511	4,620
Nonmetallic mining and quarrying	176	131	24	18	3	9,148	7,692
Construction	466	392	7	46	21	24,786	20,208
Wholesale trade	4,111	3,360	282	295	174	133,896	118,768
Retail trade	3,641	2,567	247	630	197	239,957	201,544
Finance, insurance, and real estate	1,546	1,508	14	16	8	30,882	26,347
Transportation, communication, and other public utilities	4,739	3,712	202	636	189	542,736	439,896
Highway passenger transportation	383	277	12	77	17	44,592	36,279
Highway freight transportation	2,062	1,688	17	258	99	85,270	72,655
Water transportation	181	117	29	27	8	21,376	16,663
Warehousing and storage	811	667	45	67	32	30,616	26,967
Other transportation	124	101	8	12	3	70,330	59,361
Communication	691	535	26	109	21	124,552	92,564
Heat, light, power, water, and sanitary service	487	327	65	86	9	166,000	135,401
Services	1,035	609	84	308	34	68,826	60,373

[1] Source: Standard Industrial Classification, Division of Statistical Standards, U. S. Bureau of the Budget, Washington, 1945.

Table C-8.—Geographic distribution of union-shop authorization polls, outcome, eligible voters, and valid votes cast, August 22, 1947–October 22, 1951

Division and State [1]	Number of polls					Employees eligible to vote	Number of valid votes cast				
	Total	Affiliation of union authorized to negotiate union-shop			Union-shop rejected		Total	In favor of union-shop by affiliation of petitioning union			Against union-shop
		A. F. L.	C. I. O.	Unaffiliated unions				A. F. L.	C. I. O.	Unaffiliated unions	
New England	3,874	2,416	891	482	85	556,468	479,282	172,851	208,586	58,734	39,111
Maine	233	163	33	32	5	46,849	39,792	17,399	16,060	3,752	2,581
New Hampshire	164	87	63	11	3	32,050	27,582	7,126	13,788	4,565	2,103
Vermont	103	52	32	6	13	12,575	10,854	3,581	4,727	1,642	904
Massachusetts	2,383	1,634	463	236	50	300,640	260,280	108,065	105,751	25,374	21,090
Rhode Island	389	117	122	142	8	69,930	60,394	10,805	28,655	15,597	5,337
Connecticut	602	363	178	55	6	94,424	80,380	25,875	39,605	7,804	7,096
Middle Atlantic	11,015	7,070	2,336	1,409	200	1,917,308	1,626,819	631,759	656,424	197,307	141,329
New York	6,058	4,312	960	691	95	802,854	698,103	374,774	191,107	85,037	47,185
New Jersey	1,679	820	545	291	23	327,880	276,051	81,491	126,498	47,496	20,566
Pennsylvania	3,278	1,938	831	427	82	786,574	652,665	175,494	338,819	64,774	73,578
East North Central	12,082	6,990	2,843	1,898	351	2,446,802	2,060,313	569,903	1,094,004	202,960	193,446
Ohio	3,292	1,928	802	464	98	647,877	539,449	144,533	278,818	52,906	63,192
Indiana	1,551	1,052	301	137	61	245,841	207,908	70,827	92,957	23,858	20,266
Illinois	3,387	2,104	410	796	77	454,980	384,798	181,706	91,442	74,490	37,160
Michigan	2,441	981	1,107	268	85	876,546	734,168	78,767	578,841	20,981	55,579
Wisconsin	1,411	925	223	233	30	221,558	193,990	94,070	51,946	30,725	17,249
West North Central	6,006	4,449	537	826	194	361,347	308,832	161,156	88,807	39,486	19,383
Iowa	0	0	0	0	0	0	0	0	0	0	0
Minnesota	1,583	1,097	166	260	60	115,022	98,111	46,812	34,572	10,269	6,458
Missouri	3,941	2,965	333	527	116	215,307	184,604	102,398	46,912	24,585	410,709
North Dakota	13	12	0	0	1	444	387	372	0	0	15
South Dakota	0	0	0	0	0	0	0	0	0	0	0
Nebraska	0	0	0	0	0	0	0	0	0	0	0
Kansas	469	375	38	39	17	30,574	25,730	11,574	7,323	4,632	2,201
South Atlantic	1,347	1,014	167	123	43	226,187	187,124	86,896	73,856	12,667	13,705
Delaware	65	41	17	4	3	6,453	5,515	1,712	2,873	495	435
Maryland	579	435	71	49	24	117,230	96,610	42,567	40,435	4,865	8,743
District of Columbia	377	311	3	52	11	26,839	21,046	13,973	105	5,932	1,036

Virginia	0	0	0	0	0	0	0	0	0	0	0
West Virginia	265	178	68	15	4	57,841	49,204	20,165	25,154	1,011	2,874
North Carolina	0	0	0	0	0	0	0	0	0	0	0
South Carolina	61	49	8	3	1	17,824	14,749	8,479	5,289	364	617
Georgia	0	0	0	0	0	0	0	0	0	0	0
Florida	0	0	0	0	0	0	0	0	0	0	0
East South Central	881	670	115	70	26	150,688	126,353	62,462	49,050	5,971	8,870
Kentucky	522	419	44	42	17	65,977	57,606	36,322	13,061	4,203	4,020
Tennessee	1	0	0	0	1	105	71	33	0	0	38
Alabama	283	193	58	27	5	70,054	56,461	20,660	30,294	1,736	3,771
Mississippi	75	58	13	1	3	14,552	12,215	5,447	5,695	32	1,041
West South Central	831	651	78	59	43	68,139	57,711	35,207	15,245	3,952	3,307
Arkansas	1	0	1	0	0	22	20	0	20	0	0
Louisiana	379	286	50	30	13	48,668	41,008	25,192	12,596	1,429	1,791
Oklahoma	448	363	26	29	30	19,390	16,627	10,003	2,592	2,523	1,509
Texas	3	2	1	0	0	59	56	12	37	0	7
Mountain	1,465	1,174	124	114	53	89,884	75,877	36,781	21,393	10,761	6,942
Montana	345	291	18	24	12	17,775	15,312	6,891	675	6,845	901
Idaho	147	115	13	13	6	9,574	7,426	3,666	2,201	519	1,040
Wyoming	40	25	10	3	2	1,419	1,249	580	434	126	109
Colorado	549	450	49	33	17	38,998	33,386	15,920	13,991	992	2,483
New Mexico	123	105	2	10	6	6,009	5,119	3,934	60	630	495
Arizona	0	0	0	0	0	0	0	0	0	0	0
Utah	236	175	28	25	8	15,095	12,534	5,343	3,853	1,500	1,838
Nevada	25	13	4	6	2	1,014	851	447	179	149	76
Pacific	8,234	5,787	903	1,235	309	685,380	593,921	364,743	107,538	74,977	46,663
Washington	1,660	1,174	164	271	51	153,517	135,275	84,427	19,646	21,314	9,888
Oregon	1,541	1,006	338	140	57	84,202	71,824	44,755	19,227	2,838	5,004
California	5,033	3,607	401	824	201	447,661	386,822	235,561	68,665	50,825	31,771
Outlying areas	411	126	23	243	19	42,798	32,750	10,219	1,790	17,757	2,984
Alaska	40	34	1	3	2	1,259	1,039	607	70	241	121
Hawaii	43	28	0	9	6	4,564	3,274	1,766	0	937	571
Puerto Rico	328	64	22	231	11	36,975	28,437	7,846	1,720	16,579	2,292

[1] The States are grouped according to the method used by the Bureau of the Census, U. S. Department of Commerce.

APPENDIX D

Text of Labor Management Relations Act, 1947, as Amended by Public Law 189, 1951

Key to Comparison

Portions of Title I which have been eliminated by Public Law 189 are enclosed by black brackets, provisions which have been added to Title I are in italics, and unchanged portions are shown in roman type.

[PUBLIC LAW 101—80TH CONGRESS]

[CHAPTER 120—1ST SESSION]

[H. R. 3020]

AN ACT

To amend the National Labor Relations Act, to provide additional facilities for the mediation of labor disputes affecting commerce, to equalize legal responsibilities of labor organizations and employers, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE AND DECLARATION OF POLICY

SECTION 1. (a) This Act may be cited as the "Labor Management Relations Act, 1947."

(b) Industrial strife which interferes with the normal flow of commerce and with the full production of articles and commodities for commerce, can be avoided or substantially minimized if employers, employees, and labor organizations each recognize under law one another's legitimate rights in their relations with each other, and above all, recognize under law that neither party has any right in its relations with any other to engage in acts or practices which jeopardize the public health, safety, or interest.

It is the purpose and policy of this Act, in order to promote the full flow of commerce, to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce.

TITLE I—AMENDMENT OF NATIONAL LABOR RELATIONS ACT

SEC. 101. The National Labor Relations Act is hereby amended to read as follows:

"FINDINGS AND POLICIES

"SECTION 1. The denial by some employers of the right of employees to organize and the refusal by some employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a)

impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

"The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

"Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

"Experience has further demonstrated that certain practices by some labor organizations, their officers, and members have the intent or the necessary effect of burdening or obstructing commerce by preventing the free flow of goods in such commerce through strikes and other forms of industrial unrest or through concerted activities which impair the interest of the public in the free flow of such commerce. The elimination of such practices is a necessary condition to the assurance of the rights herein guaranteed.

"It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

"DEFINITIONS

"SEC. 2. When used in this Act—

"(1) The term 'person' includes one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

"(2) The term 'employer' includes any person acting as an agent of an employer, directly or indirectly, but shall not include the United States or any wholly owned Government corporation, or any Federal Reserve Bank, or any State or political subdivision thereof, or any corporation or association operating a hospital, if no part of the net earnings inures to the benefit of any private shareholder or individual, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

"(3) The term 'employee' shall include any employee, and shall not be limited

to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any individual having the status of an independent contractor, or any individual employed as a supervisor, or any individual employed by an employer subject to the Railway Labor Act, as amended from time to time, or by any other person who is not an employer as herein defined.

"(4) The term 'representatives' includes any individual or labor organization.

"(5) The term 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

"(6) The term 'commerce' means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

"(7) The term 'affecting commerce' means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

"(8) The term 'unfair labor practice' means any unfair labor practice listed in section 8.

"(9) The term 'labor dispute' includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

"(10) The term 'National Labor Relations Board' means the National Labor Relations Board provided for in section 3 of this Act.

"(11) The term 'supervisor' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

"(12) The term 'professional employee' means—

"(a) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education

or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes; or

"(b) any employee, who (i) has completed the courses of specialized intellectual instruction and study described in clause (iv) of paragraph (a), and (ii) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in paragraph (a).

"(13) In determining whether any person is acting as an 'agent' of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

"NATIONAL LABOR RELATIONS BOARD

"SEC. 3. (a) The National Labor Relations Board (hereinafter called the 'Board') created by this Act prior to its amendment by the Labor Management Relations Act, 1947, is hereby continued as an agency of the United States, except that the Board shall consist of five instead of three members, appointed by the President by and with the advice and consent of the Senate. Of the two additional members so provided for, one shall be appointed for a term of five years and the other for a term of two years. Their successors, and the successors of the other members, shall be appointed for terms of five years each, excepting that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as Chairman of the Board. Any member of the Board may be removed by the President, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause.

"(b) The Board is authorized to delegate to any group of three or more members any or all of the powers which it may itself exercise. A vacancy in the Board shall not impair the right of the remaining members to exercise all of the powers of the Board, and three members of the Board shall, at all times, constitute a quorum of the Board, except that two members shall constitute a quorum of any group designated pursuant to the first sentence hereof. The Board shall have an official seal which shall be judicially noticed.

"(c) The Board shall at the close of each fiscal year make a report in writing to Congress and to the President stating in detail the cases it has heard, the decisions it has rendered, the names, salaries, and duties of all employees and officers in the employ or under the supervision of the Board, and an account of all moneys it has disbursed.

"(d) There shall be a General Counsel of the Board who shall be appointed by the President, by and with the advice and consent of the Senate, for a term of four years. The General Counsel of the Board shall exercise general supervision over all attorneys employed by the Board (other than trial examiners and legal assistants to Board members) and over the officers and employees in the regional offices. He shall have final authority, on behalf of the Board, in respect of the investigation of charges and issuance of complaints under section 10, and in respect of the prosecution of such complaints before the Board, and shall have such other duties as the Board may prescribe or as may be provided by law.

"SEC. 4. (a) Each member of the Board and the General Counsel of the Board shall receive a salary of $12,000 a year, shall be eligible for reappointment, and shall not engage in any other business, vocation, or employment. The Board shall appoint an executive secretary, and such attorneys, examiners, and regional directors, and such other employees as it may from time to time find necessary

for the proper performance of its duties. The Board may not employ any attorneys for the purpose of reviewing transcripts of hearings or preparing drafts of opinions except that any attorney employed for assignment as a legal assistant to any Board member may for such Board member review such transcripts and prepare such drafts. No trial examiner's report shall be reviewed, either before or after its publication, by any person other than a member of the Board or his legal assistant, and no trial examiner shall advise or consult with the Board with respect to exceptions taken to his findings, rulings, or recommendations. The Board may establish or utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys appointed under this section may, at the direction of the Board, appear for and represent the Board in any case in court. Nothing in this Act shall be construed to authorize the Board to appoint individuals for the purpose of conciliation or mediation, or for economic analysis.

"(b) All of the expenses of the Board, including all necessary traveling and subsistence expenses outside the District of Columbia incurred by the members or employees of the Board under its orders, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Board or by any individual it designates for that purpose.

"SEC. 5. The principal office of the Board shall be in the District of Columbia, but it may meet and exercise any or all of its powers at any other place. The Board may, by one or more of its members or by such agents or agencies as it may designate, prosecute any inquiry necessary to its functions in any part of the United States. A member who participates in such an inquiry shall not be disqualified from subsequently participating in a decision of the Board in the same case.

"SEC. 6. The Board shall have authority from time to time to make, amend, and rescind, in the manner prescribed by the Administrative Procedure Act, such rules and regulations as may be necessary to carry out the provisions of this Act.

"RIGHTS OF EMPLOYEES

"SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3).

"UNFAIR LABOR PRACTICES

"SEC. 8. (a) It shall be an unfair labor practice for an employer—

"(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

"(2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided*, That subject to rules and regulations made and published by the Board pursuant to section 6, an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay;

"(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in

any labor organization: *Provided*, That nothing in this Act, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in section 8 (a) of this Act as an unfair labor practice) to require as a condition of employemnt membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective-bargaining unit covered by such agreement when made; [and (ii) if, following the most recent election held as provided in section 9 (e) the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to authorize such labor organization to make such an agreement:] *and has at the time the agreement was made or within the preceding twelve months received from the Board a notice of compliance with sections 9 (f), (g), (h), and (ii) unless following an election held as provided in section 9 (e) within one year preceding the effective date of such agreement, the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement: Provided further*, That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

"(4) to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act;

"(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a).

"(b) It shall be an unfair labor practice for a labor organization or its agents—

"(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances;

"(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a) (3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

"(3) to refuse to bargain collectively with an employer, provided it is the representative of his employees subject to the provisions of section 9 (a);

"(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is: (A) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer,

or to cease doing business with any other person; (B) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9; (C) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 9; (D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work: *Provided*, That nothing contained in this subsection (b) shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this Act;

"(5) to require of employees covered by an agreement authorized under subsection (a) (3) the payment, as a condition precedent to becoming a member of such organization, of a fee in an amount which the Board finds excessive or discriminatory under all the circumstances. In making such a finding, the Board shall consider, among other relevant factors, the practices and customs of labor organizations in the particular industry, and the wages currently paid to the employees affected; and

"(6) to cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed.

"(c) The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit.

"(d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession: *Provided*, That where there is in effect a collective-bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification—

"(1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;

"(2) offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications;

"(3) notifies the Federal Mediation and Conciliation Service within thirty days after such notice of the existence of a dispute, and simultaneously therewith notifies any State or Territorial agency established to mediate and conciliate

disputes within the State or Territory where the dispute occurred, provided no agreement has been reached by that time; and

"(4) continues in full force and effect, without resorting to strike or lockout, all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later:

The duties imposed upon employers, employees, and labor organizations by paragraphs (2), (3), and (4) shall become inapplicable upon an intervening certification of the Board, under which the labor organization or individual, which is a party to the contract, has been superseded as or ceased to be the representative of the employees subject to the provisions of section 9 (a), and the duties so imposed shall not be construed as requiring either party to discuss or agree to any modification of the terms and conditions contained in a contract for a fixed period, if such modification is to become effective before such terms and conditions can be reopened under the provisions of the contract. Any employee who engages in a strike within the sixty-day period specified in this subsection shall lose his status as an employee of the employer engaged in the particular labor dispute, for the purposes of sections 8, 9, and 10 of this Act, as amended, but such loss of status for such employee shall terminate if and when he is reemployed by such employer.

"REPRESENTATIVES AND ELECTIONS

"SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: *Provided further*, That the bargaining representative has been given opportunity to be present at such adjustment.

"(b) The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof: *Provided*, That the Board shall not (1) decide that any unit is appropriate for such purposes if such unit includes both professional employees and employees who are not professional employees unless a majority of such professional employees vote for inclusion in such unit; or (2) decide that any craft unit is inappropriate for such purposes on the ground that a different unit has been established by a prior Board determination, unless a majority of the employees in the proposed craft unit vote against separate representation or (3) decide that any unit is appropriate for such purposes if it includes, together with other employees, any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises; but no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards.

"(c) (1) Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board—

"(A) by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a substantial number of employees (i) wish to be represented for collective bargaining and that their employer declines to recognize their representative as the representative defined in section 9 (a), or (ii) assert that the individual or labor organization, which has been certified or is being currently recognized by their employer as the bargaining representative, is no longer a representative as defined in section 9 (a); or

"(B) by an employer, alleging that one or more individuals or labor organizations have presented to him a claim to be recognized as the representative defined in section 9 (a);

the Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice. Such hearing may be conducted by an officer or employee of the regional office, who shall not make any recommendations with respect thereto. If the Board finds upon the record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof.

"(2) In determining whether or not a question of representation affecting commerce exists, the same regulations and rules of decision shall apply irrespective of the identity of the persons filing the petition or the kind of relief sought and in no case shall the Board deny a labor organization a place on the ballot by reason of an order with respect to such labor organization or its predecessor not issued in conformity with section 10 (c).

"(3) No election shall be directed in any bargaining unit or any subdivision within which, in the preceding twelve-month period, a valid election shall have been held. Employees on strike who are not entitled to reinstatement shall not be eligible to vote. In any election where none of the choices on the ballot receives a majority, a run-off shall be conducted, the ballot providing for a selection between the two choices receiving the largest and second largest number of valid votes cast in the election.

"(4) Nothing in this section shall be construed to prohibit the waiving of hearings by stipulation for the purpose of a consent election in conformity with regulations and rules of decision of the Board.

"(5) In determining whether a unit is appropriate for the purposes specified in subsection (b) the extent to which the employees have organized shall not be controlling.

"(d) Whenever an order of the Board made pursuant to section 10 (c) is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under section 10 (e) or 10 (f), and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

"(e) [(1) Upon the filing with the Board by a labor organization, which is the representative of employees as provided in section 9 (a), of a petition alleging that 30 per centum or more of the employees within a unit claimed to be appropriate for such purposes desire to authorize such labor organization to make an agreement with the employer of such employees requiring membership in such labor organization as a condition of employment in such unit, upon an appropriate

showing thereof the Board shall, if no question of representation exists, take a secret ballot of such employees, and shall certify the results thereof to such labor organization and to the employer.

"(2) Upon the filing with the Board, by 30 per centum or more of the employees in a bargaining unit covered by an agreement between their employer and a labor organization made pursuant to section 8 (a) (3) (ii), of a petition alleging they desire that such authority be rescinded, the Board shall take a secret ballot of the employees in such unit, and shall certify the results thereof to such labor organization and to the employer.]

"*(1) Upon the filing with the Board, by 30 per centum or more of the employees in a bargaining unit covered by an agreement between their employer and a labor organization made pursuant to section 8 (a) (3), of a petition alleging they desire that such authority be rescinded, the Board shall take a secret ballot of the employees in such unit and certify the results thereof to such labor organization and to the employer.*

[“(3)] *(2)* No election shall be conducted pursuant to this subsection in any bargaining unit or any subdivision within which, in the preceding twelve-month period, a valid election shall have been held.

"(f) No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, [no petition under section 9 (e) (1) shall be entertained,] and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, unless such labor organization and any national or international labor organization of which such labor organization is an affiliate or constituent unit (A) shall have prior thereto filed with the Secretary of Labor copies of its constitution and bylaws and a report, in such form as the Secretary may prescribe, showing—

"(1) the name of such labor organization and the address of its principal place of business;

"(2) the names, titles, and compensation and allowances of its three principal officers and of any of its other officers or agents whose aggregate compensation and allowances for the preceding year exceeded $5,000, and the amount of the compensation and allowances paid to each such officer or agent during such year;

"(3) the manner in which the officers and agents referred to in clause (2) were elected, appointed, or otherwise selected;

"(4) the initiation fee or fees which new members are required to pay on becoming members of such labor organization;

"(5) the regular dues or fees which members are required to pay in order to remain members in good standing of such labor organization;

"(6) a detailed statement of, or reference to provisions of its constitution and bylaws showing the procedure followed with respect to, (a) qualification for or restrictions on membership, (b) election of officers and stewards, (c) calling of regular and special meetings, (d) levying of assessments, (e) imposition of fines, (f) authorization for bargaining demands, (g) ratification of contract terms, (h) authorization for strikes, (i) authorization for disbursement of union funds, (j) audit of union financial transactions, (k) participation in insurance or other benefit plans, and (l) expulsion of members and the grounds therefor;

and (B) can show that prior thereto it has—

"(1) filed with the Secretary of Labor, in such form as the Secretary may prescribe, a report showing all of (a) its receipts of any kind and the sources of such receipts, (b) its total assets and liabilities as of the end of its last

fiscal year, (c) the disbursements made by it during such fiscal year, including the purposes for which made; and

"(2) furnished to all of the members of such labor organization copies of the financial report required by paragraph (1) hereof to be filed with the Secretary of Labor.

"(g) It shall be the obligation of all labor organizations to file annually with the Secretary of Labor, in such form as the Secretary of Labor may prescribe, reports bringing up to date the information required to be supplied in the initial filing by subsection (f) (A) of this section, and to file with the Secretary of Labor and furnish to its members annually financial reports in the form and manner prescribed in subsection (f) (B). No labor organization shall be eligible for certification under this section as the representative of any employees, [no petition under section 9 (e) (1) shall be entertained,] and no complaint shall issue under section 10 with respect to a charge filed by a labor organization unless it can show that it and any national or international labor organization of which it is an affiliate or constituent unit has complied with its obligation under this subsection.

"(h) No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, [no petition under section 9 (e) (1) shall be entertained,] and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, unless there is on file with the Board an affidavit executed contemporaneously or within the preceding twelve-month period by each officer of such labor organization and the officers of any national or international labor organization of which it is an affiliate or constituent unit that he is not a member of the Communist Party or affiliated with such party, and that he does not believe in, and is not a member of or supports any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods. The provisions of section 35 A of the Criminal Code shall be applicable in respect to such affidavits.

"PREVENTION OF UNFAIR LABOR PRACTICES

"SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise: *Provided*, That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency juridisction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this Act or has received a construction inconsistent therewith.

"(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint: *Provided*, That no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom

such charge is made, unless the person aggrieved thereby was prevented from filing such charge by reason of service in the armed forces, in which event the six-month period shall be computed from the day of his discharge. Any such complaint may be amended by the member, agent, or agency conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent, or agency conducting the hearing or the Board, any other person may be allowed to intervene in the said proceeding and to present testimony. Any such proceeding shall, so far as practicable, be conducted in accordance with the rules of evidence applicable in the district courts of the United States under the rules of civil procedure for the district courts of the United States, adopted by the Supreme Court of the United States pursuant to the Act of June 19, 1934 (U. S. C., title 28, secs. 723–B, 723–C).

"(c) The testimony taken by such member, agent, or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act: *Provided*, That where an order directs reinstatement of an employee, back pay may be required of the employer or labor organization, as the case may be, responsible for the discrimination suffered by him: *And provided further*, That in determining whether a complaint shall issue alleging a violation of section 8 (a) (1) or section 8 (a) (2), and in deciding such cases, the same regulations and rules of decision shall apply irrespective of whether or not the labor organization affected is affiliated with a labor organization national or international in scope. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If upon the preponderance of the testimony taken the Board shall not be of the opinion that the person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint. No order of the Board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any back pay, if such individual was suspended or discharged for cause. In case the evidence is presented before a member of the Board, or before an examiner or examiners thereof, such member, or such examiner or examiners, as the case may be, shall issue and cause to be served on the parties to the proceeding a proposed report, together with a recommended order, which shall be filed with the Board, and if no exceptions are filed within twenty days after service thereof upon such parties, or within such further period as the Board may authorize, such recommended order shall become the order of the Board and become effective as therein prescribed.

"(d) Until a transcript of the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

"(e) The Board shall have power to petition any circuit court of appeals of the United States (including the United States Court of Appeals for the District of

Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the District Court of the United States for the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceedings, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency the court may order such additional evidence to be taken before the Board, its members, agent, or agency, and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

"(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the United States Court of Appeals for the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the Board, including the pleading and testimony upon which the order complained of was entered, and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; the findings of the Board with respect to questions of fact it supported by sub-

stantial evidence on the record considered as a whole shall in like manner be conclusive.

"(g) The commencement of proceedings under subsection (e) or (f) of this section shall not, unless specifically ordered by the court, operate as a stay of the Board's order.

"(h) When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part an order on the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the Act entitled 'An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes', approved March 23, 1932 (U. S. C., Supp. VII, title 29, secs. 101–115).

"(i) Petitions filed under this Act shall be heard expeditiously, and if possible within ten days after they have been docketed.

"(j) The Board shall have power, upon issuance of a complaint as provided in subsection (b) charging that any person has engaged in or is engaging in an unfair labor practice, to petition any district court of the United States (including the District Court of the United States for the District of Columbia), within any district wherein the unfair labor practice in question is alleged to have occurred or wherein such person resides or transacts business, for appropriate temporary relief or restraining order. Upon the filing of any such petition the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper.

"(k) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) (D) of section 8 (b), the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen, unless, within ten days after notice that such charge has been filed, the parties to such dispute submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of the dispute. Upon compliance by the parties to the dispute with the decision of the Board or upon such voluntary adjustment of the dispute, such charge shall be dismissed.

"(l) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) (A), (B), or (C) of section 8 (b), the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, he shall, on behalf of the Board, petition any district court of the United States (including the District Court of the United States for the District of Columbia) within any district where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein such person resides or transacts business, for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law: *Provided further*, That no temporary restraining order shall be issued without notice unless a petition alleges that substantial and irreparable injury to the charging party will be unavoidable and such temporary restraining order shall be effective for no longer than five days and will become void at the expiration of such period. Upon filing of any such petition the courts shall cause notice thereof to be served upon

any person involved in the charge and such person, including the charging party, shall be given an opportunity to appear by counsel and present any relevant testimony: *Provided further*, That for the purposes of this subsection district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in promoting or protecting the interests of employee members. The service of legal process upon such officer or agent shall constitute service upon the labor organization and make such organization a party to the suit. In situations where such relief is appropriate the procedure specified herein shall apply to charges with respect to section 8 (b) (4) (D).

"INVESTIGATORY POWERS

"SEC. 11. For the purpose of all hearings and investigations, which, in the opinion of the Board, are necessary and proper for the exercise of the powers vested in it by section 9 and section 10—

"(1) The Board, or its duly authorized agents or agencies, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question. The Board, or any member thereof, shall upon application of any party to such proceedings, forthwith issue to such party subpenas requiring the attendance and testimony of witnesses or the production of any evidence in such proceeding or investigation requested in such application. Within five days after the service of a subpena on any person requiring the production of any evidence in his possession or under his control, such person may petition the Board to revoke, and the Board shall revoke, such subpena if in its opinion the evidence whose production is required does not relate to any matter under investigation, or any matter in question in such proceedings, or if in its opinion such subpena does not describe with sufficient particularity the evidence whose production is required. Any member of the Board, or any agent or agency designated by the Board for such purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. Such attendance of witnesses and the production of such evidence may be required from any place in the United States or any Territory or possession thereof, at any designated place of hearing.

"(2) In case of contumacy or refusal to obey a subpena issued to any person, any district court of the United States or the United States courts of any Territory or possession, or the District Court of the United States for the District of Columbia, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Board shall have jurisdiction to issue to such person an order requiring such person to appear before the Board, its member, agent, or agency, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

"(3) No person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to the subpena of the Board, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled,

after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

"(4) Complaints, orders, and other process and papers of the Board, its member, agent, or agency, may be served either personally or by registered mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return by the individual so serving the same setting forth the manner of such service shall be proof of the same, and the return post office receipt or telegraph receipt therefor when registered and mailed or telegraphed as aforesaid shall be proof of service of the same. Witnesses summoned before the Board, its member, agent, or agency, shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

"(5) All process of any court to which application may be made under this Act may be served in the judicial district wherein the defendant or other person required to be served resides or may be found.

"(6) The several departments and agencies of the Government, when directed by the President, shall furnish the Board, upon its request, all records, papers, and information in their possession relating to any matter before the Board.

"SEC. 12. Any person who shall willfully resist, prevent, impede, or interfere with any member of the Board or any of its agents or agencies in the performance of duties pursuant to this Act shall be punished by a fine of not more than $5,000 or by imprisonment for not more than one year, or both.

"LIMITATIONS

"SEC. 13. Nothing in this Act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right.

"SEC. 14. (a) Nothing herein shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization, but no employer subject to this Act shall be compelled to deem individuals defined herein as supervisors as employees for the purpose of any law, either national or local, relating to collective bargaining.

"(b) Nothing in this Act shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law.

"SEC. 15. Wherever the application of the provisions of section 272 of chapter 10 of the Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States', approved July 1, 1898, and Acts amendatory thereof and supplementary thereto (U. S. C., title 11, sec. 672), conflicts with the application of the provisions of this Act, this Act shall prevail: *Provided*, That in any situation where the provisions of this Act cannot be validly enforced, the provisions of such other Acts shall remain in full force and effect.

"SEC. 16. If any provision of this Act, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

"SEC. 17. This Act may be cited as the 'National Labor Relations Act'."

"SEC. 18. *No petition entertained, no investigation made, no election held, and*

no certification issued by the National Labor Relations Board, under any of the provisions of section 9 of the National Labor Relations Act, as amended, shall be invalid by reason of the failure of the Congress of Industrial Organizations to have complied with the requirements of section 9 (f), (g), or (h) of the aforesaid Act prior to December 22, 1949, or by reason of the failure of the American Federation of Labor to have complied with the provisions of section 9 (f), (g), or (h) of the aforesaid Act prior to November 7, 1947: Provided, That no liability shall be imposed under any provision of this Act upon any person for failure to honor any election or certificate referred to above, prior to the effective date of this amendment: Provided, however, That this proviso shall not have the effect of setting aside or in any way affecting judgments or decrees heretofore entered under section 10 (e) or (f) and which have become final."

EFFECTIVE DATE OF CERTAIN CHANGES

SEC. 102. No provision of this title shall be deemed to make an unfair labor practice any act which was performed prior to the date of the enactment of this Act which did not constitute an unfair labor practice prior thereto, and the provisions of section 8 (a) (3) and section 8 (b) (2) of the National Labor Relations Act as amended by this title shall not make an unfair labor practice the performance of any obligation under a collective-bargaining agreement entered into prior to the date of the enactment of this Act, or (in the case of an agreement for a period of not more than one year) entered into on or after such date of enactment, but prior to the effective date of this title, if the performance of such obligation would not have constituted an unfair labor practice under section 8 (3) of the National Labor Relations Act prior to the effective date of this title, unless such agreement was renewed or extended subsequent thereto.

SEC. 103. No provisions of this title shall affect any certification of representatives or any determination as to the appropriate collective-bargaining unit, which was made under section 9 of the National Labor Relations Act prior to the effective date of this title until one year after the date of such certification or if, in respect of any such certification, a collective-bargaining contract was entered into prior to the effective date of this title, until the end of the contract period or until one year after such date, whichever first occurs.

SEC. 104. The amendments made by this title shall take effect sixty days after the date of the enactment of this Act, except that the authority of the President to appoint certain officers conferred upon him by section 3 of the National Labor Relations Act as amended by this title may be exercised forthwith.

TITLE II—CONCILIATION OF LABOR DISPUTES IN INDUSTRIES AFFECTING COMMERCE; NATIONAL EMERGENCIES

SEC. 201. That it is the policy of the United States that—

(a) sound and stable industrial peace and the advancement of the general welfare, health, and safety of the Nation and of the best interests of employers and employees can most satisfactorily be secured by the settlement of issues between employers and employees through the processes of conference and collective bargaining between employers and the representatives of their employees;

(b) the settlement of issues between employers and employees through collective bargaining may be advanced by making available full and adequate governmental facilities for conciliation, mediation, and voluntary arbitration aid and encourage employers and the representatives of their employees to reach and maintain agreements concerning rates of pay, hours, and working

conditions, and to make all reasonable efforts to settle their differences by mutual agreement reached through conferences and collective bargaining or by such methods as may be provided for in any applicable agreement for the settlement of disputes; and

(c) certain controversies which arise between parties to collective-bargaining agreements may be avoided or minimized by making available full and adequate governmental facilities for furnishing assistance to employers and the representatives of their employees in formulating for inclusion within such agreements provision for adequate notice of any proposed changes in the terms of such agreements, for the final adjustment of grievances or questions regarding the application or interpretation of such agreements, and other provisions designed to prevent the subsequent arising of such controversies.

SEC. 202. (a) There is hereby created an independent agency to be known as the Federal Mediation and Conciliation Service (herein referred to as the "Service," except that for sixty days after the date of the enactment of this Act such term shall refer to the Conciliation Service of the Department of Labor). The Service shall be under the direction of a Federal Mediation and Conciliation Director (hereinafter referred to as the "Director"), who shall be appointed by the President by and with the advice and consent of the Senate. The Director shall receive compensation at the rate of $12,000 per annum. The Director shall not engage in any other business, vocation, or employment.

(b) The Director is authorized, subject to the civil-service laws, to appoint such clerical and other personnel as may be necessary for the execution of the functions of the Service, and shall fix their compensation in accordance with the Classification Act of 1923, as amended, and may, without regard to the provisions of the civil-service laws and the Classification Act of 1923, as amended, appoint and fix the compensation of such conciliators and mediators as may be necessary to carry out the functions of the Service. The Director is authorized to make such expenditures for supplies, facilities, and services as he deems necessary. Such expenditures shall be allowed and paid upon presentation of itemized vouchers therefor approved by the Director or by any employee designated by him for that purpose.

(c) The principal office of the Service shall be in the District of Columbia, but the Director may establish regional offices convenient to localities in which labor controversies are likely to arise. The Director may by order, subject to revocation at any time, delegate any authority and discretion conferred upon him by this Act to any regional director, or other officer or employee of the Service. The Director may establish suitable procedures for cooperation with State and local mediation agencies. The Director shall make an annual report in writing to Congress at the end of the fiscal year.

(d) All mediation and conciliation functions of the Secretary of Labor or the United States Conciliation Service under section 8 of the Act entitled "An Act to create a Department of Labor," approved March 4, 1913 (U. S. C., title 29, sec. 51), and all functions of the United States Conciliation Service under any other law are hereby transferred to the Federal Mediation and Conciliation Service, together with the personnel and records of the United States Conciliation Service. Such transfer shall take effect upon the sixtieth day after the date of enactment of this Act. Such transfer shall not affect any proceedings pending before the United States Conciliation Service or any certification, order, rule, or regulation theretofore made by it or by the Secretary of Labor. The Director and the Service shall not be subject in any way to the jurisdiction or authority of the Secretary of Labor or any official or division of the Department of Labor.

FUNCTIONS OF THE SERVICE

SEC. 203. (a) It shall be the duty of the Service, in order to prevent or minimize interruptions of the free flow of commerce growing out of labor disputes, to assist parties to labor disputes in industries affecting commerce to settle such disputes through conciliation and mediation.

(b) The Service may proffer its services in any labor dispute in any industry affecting commerce, either upon its own motion or upon the request of one or more of the parties to the dispute, whenever in its judgment such dispute threatens to cause a substantial interruption of commerce. The Director and the Service are directed to avoid attempting to mediate disputes which would have only a minor effect on interstate commerce if State or other conciliation services are available to the parties. Whenever the Service does proffer its services in any dispute, it shall be the duty of the Service promptly to put itself in communication with the parties and to use its best efforts, by mediation and conciliation, to bring them to agreement.

(c) If the Director is not able to bring the parties to agreement by conciliation within a reasonable time, he shall seek to induce the parties voluntarily to seek other means of settling the dispute without resort to strike, lock-out, or other coercion, including submission to the employees in the bargaining unit of the employer's last offer of settlement for approval or rejection in a secret ballot. The failure or refusal of either party to agree to any procedure suggested by the Director shall not be deemed a violation of any duty or obligation imposed by this Act.

(d) Final adjustment by a method agreed upon by the parties is hereby declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective-bargaining agreement. The Service is directed to make its conciliation and mediation services available in the settlement of such grievance disputes only as a last resort and in exceptional cases.

SEC 204. (a) In order to prevent or minimize interruptions of the free flow of commerce growing out of labor disputes, employers and employees and their representatives, in any industry affecting commerce, shall—

(1) exert every reasonable effort to make and maintain agreements concerning rates of pay, hours, and working conditions, including provision for adequate notice of any proposed change in the terms of such agreements;

(2) whenever a dispute arises over the terms or application of a collective-bargaining agreement and a conference is requested by a party or prospective party thereto, arrange promptly for such a conference to be held and endeavor in such conference to settle such dispute expeditiously; and

(3) in case such dispute is not settled by conference, participate fully and promptly in such meetings as may be undertaken by the Service under this Act for the purpose of aiding in a settlement of the dispute.

SEC. 205. (a) There is hereby created a National Labor-Management Panel which shall be composed of twelve members appointed by the President, six of whom shall be selected from among persons outstanding in the field of Management and six of whom shall be selected from among persons outstanding in the field of labor. Each member shall hold office for a term of three years, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and the terms of office of the members first taking office shall expire, as designated by the President at the time of appointment, four at the end of the first year, four at the end of the second year, and four at the end

of the third year after the date of appointment. Members of the panel, when serving on business of the panel, shall be paid compensation at the rate of $25 per day, and shall also be entitled to receive an allowance for actual and necessary travel and subsistence expenses while so serving away from their places of residence.

(b) It shall be the duty of the panel, at the request of the Director, to advise in the avoidance of industrial controversies and the manner in which mediation and voluntary adjustment shall be administered, particularly with reference to controversies affecting the general welfare of the country.

NATIONAL EMERGENCIES

SEC. 206. Whenever in the opinion of the President of the United States, a threatened or actual strike or lock-out affecting an entire industry or a substantial part thereof engaged in trade, commerce, transportation, transmission, or communication among the several States or with foreign nations, or engaged in the production of goods for commerce, will, if permitted to occur or to continue, imperil the national health or safety, he may appoint a board of inquiry to inquire into the issues involved in the dispute and to make a written report to him within such time as he shall prescribe. Such report shall include a statement of the facts with respect to the dispute, including each party's statement of its position but shall not contain any recommendations. The President shall file a copy of such report with the Service and shall make its contents available to the public.

SEC. 207. (a) A board of inquiry shall be composed of a chairman and such other members as the President shall determine, and shall have power to sit and act in any place within the United States and to conduct such hearings either in public or in private, as it may deem necessary or proper, to ascertain the facts with respect to the causes and circumstances of the dispute.

(b) Members of a board of inquiry shall receive compensation at the rate of $50 for each day actually spent by them in the work of the board, together with necessary travel and subsistence expenses.

(c) For the purpose of any hearing or inquiry conducted by any board appointed under this title, the provisions of sections 9 and 10 (relating to the attendance of witnesses and the production of books, papers, and documents) of the Federal Trade Commission Act of September 16, 1914, as amended (U. S. C. 19, title 15, secs. 49 and 50, as amended), are hereby made applicable to the powers and duties of such board.

SEC. 208. (a) Upon receiving a report from a board of inquiry the President may direct the Attorney General to petition any district court of the United States having jurisdiction of the parties to enjoin such strike or lock-out or the continuing thereof, and if the court finds that such threatened or actual strike or lock-out—

(i) affects an entire industry or a substantial part thereof engaged in trade, commerce, transportation, transmission, or communication among the several States or with foreign nations, or engaged in the production of goods for commerce; and

(ii) if permitted to occur or to continue, will imperil the national health or safety, it shall have jurisdiction to enjoin any such strike or lock-out, or the continuing thereof, and to make such other orders as may be appropriate.

(b) In any case, the provisions of the Act of March 23, 1932, entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes", shall not be applicable.

(c) The order or orders of the court shall be subject to review by the appro-

priate circuit court of appeals and by the Supreme Court upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 29, secs. 346 and 347).

SEC. 209. (a) Whenever a district court has issued an order under section 208 enjoining acts or practices which imperil or threaten to imperil the national health or safety, it shall be the duty of the parties to the labor dispute giving rise to such order to make every effort to adjust and settle their differences, with the assistance of the Service created by this Act. Neither party shall be under any duty to accept, in whole or in part, any proposal of settlement made by the Service.

(b) Upon the issuance of such order, the President shall reconvene the board of inquiry which has previously reported with respect to the dispute. At the end of a sixty-day period (unless the dispute has been settled by that time), the board of inquiry shall report to the President the current position of the parties and the efforts which have been made for settlement, and shall include a statement by each party of its position and a statement of the employer's last offer of settlement. The President shall make such report available to the public. The National Labor Relations Board, within the succeeding fifteen days, shall take a secret ballot of the employees of each employer involved in the dispute on the question of whether they wish to accept the final offer of settlement made by their employer as stated by him and shall certify the results thereof to the Attorney General within five days thereafter.

SEC. 210. Upon the certification of the results of such ballot or upon a settlement being reached, whichever happens sooner, the Attorney General shall move the court to discharge the injunction, which motion shall then be granted and the injunction discharged. When such motion is granted, the President shall submit to the Congress a full and comprehensive report of the proceedings, including the findings of the board of inquiry and the ballot taken by the National Labor Relations Board, together with such recommendations as he may see fit to make for consideration and appropriate action.

COMPILATION OF COLLECTIVE BARGAINING AGREEMENTS, ETC.

SEC 211. (a) For the guidance and information of interested representatives of employers, employees, and the general public, the Bureau of Labor Statistics of the Department of Labor shall maintain a file of copies of all available collective bargaining agreements and other available agreements and actions thereunder settling or adjusting labor disputes. Such file shall be open to inspection under appropriate conditions prescribed by the Secretary of Labor, except that no specific information submitted in confidence shall be disclosed.

(b) The Bureau of Labor Statistics in the Department of Labor is authorized to furnish upon request of the Service, or employers, employees, or their representatives, all available data and factual information which may aid in the settlement of any labor dispute, except that no specific information submitted in confidence shall be disclosed.

EXEMPTION OF RAILWAY LABOR ACT

SEC. 212. The provisions of this title shall not be applicable with respect to any matter which is subject to the provisions of the Railway Labor Act, as amended from time to time.

TITLE III

SUITS BY AND AGAINST LABOR ORGANIZATIONS

SEC. 301. (a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

(b) Any labor organization which represents employees in an industry affecting commerce as defined in this Act and any employer whose activities affect commerce as defined in this Act shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

(c) For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

(d) The service of summons, subpena, or other legal process of any court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

(e) For the purposes of this section, in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

RESTRICTIONS ON PAYMENTS TO EMPLOYEE REPRESENTATIVES

SEC. 302. (a) It shall be unlawful for any employer to pay or deliver, or to agree to pay or deliver, any money or other thing of value to any representative of any of his employees who are employed in an industry affecting commerce.

(b) It shall be unlawful for any representative of any employees who are employed in an industry affecting commerce to receive or accept, or to agree to receive or accept, from the employer of such employees any money or other thing of value.

(c) The provisions of this section shall not be applicable (1) with respect to any money or other thing of value payable by an employer to any representative who is an employee or former employee of such employer, as compensation for, or by reason of, his services as an employee of such employer; (2) with respect to the payment or delivery of any money or other thing of value in satisfaction of a judgment of any court or a decision or award of an arbitrator or impartial chairman or in compromise, adjustment, settlement or release of any claim, complaint, grievance, or dispute in the absence of fraud or duress; (3) with respect to the sale or purchase of an article or commodity at the prevailing market price in the regular course of business; (4) with respect to money deducted from the wages of employees in payment of membership dues in a labor organization: *Provided*, That the employer has received from each employee, on whose account such deductions are made, a written assignment which shall not be irrevocable for a period of more than one year, or beyond the termination date of the applicable collective agree-

ment, whichever occurs sooner; or (5) with respect to money or other thing of value paid to a trust fund established by such representative, for the sole and exclusive benefit of the employees of such employer, and their families and dependents (or of such employees, families, and dependents jointly with the employees of other employers making similar payments, and their families and dependents): *Provided*, That (A) such payments are held in trust for the purpose of paying, either from principal or income or both, for the benefit of employees, their families and dependents, for medical or hospital care, pensions on retirement or death of employees, compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, or unemployment benefits or life insurance, disability and sickness insurance, or accident insurance; (B) the detailed basis on which such payments are to be made is specified in a written agreement with the employer, and employees and employers are equally represented in the administration of such fund, together with such neutral persons as the representatives of the employers and the representatives of the employees may agree upon and in the event the employer and employee groups deadlock on the administration of such fund and there are no neutral persons empowered to break such deadlock, such agreement provides that the two groups shall agree on an impartial umpire to decide such dispute, or in event of their failure to agree within a reasonable length of time, an impartial umpire to decide such dispute shall, on petition of either group, be appointed by the district court of the United States for the district where the trust fund has its principal office, and shall also contain provisions for an annual audit of the trust fund, a statement of the results of which shall be available for inspection by interested persons at the principal office of the trust fund and at such other place as may be designated in such written agreement; and (C) such payments as are intended to be used for the purpose of providing pensions or annuities for employees are made to a separate trust which provides that the funds held therein cannot be used for any purpose other than paying such pensions or annuities.

(d) Any person who willfully violates any of the provisions of this section shall, upon conviction thereof, be guilty of a misdemeanor and be subject to a fine of not more than $10,000 or to imprisonment for not more than one year, or both.

(e) The district courts of the United States and the United States courts of the Territories and possessions shall have jurisdiction, for cause shown, and subject to the provisions of section 17 (relating to notice to opposite party) of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914, as amended (U. S. C., title 28, sec. 381), to restrain violations of this section, without regard to the provisions of sections 6 and 20 of such Act of October 15, 1914, as amended (U. S. C., title 15, sec. 17, and title 29, sec. 52), and the provisions of the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes", approved March 23, 1932 (U. S. C., title 29, secs. 101–115).

(f) This section shall not apply to any contract in force on the date of enactment of this Act, until the expiration of such contract, or until July 1, 1948, whichever first occurs.

(g) Compliance with the restrictions contained in subsection (c) (5) (B) upon contributions to trust funds, otherwise lawful, shall not be applicable to contributions to such trust funds established by collective agreement prior to January 1, 1946, nor shall subsection (c) (5) (A) be construed as prohibiting contributions to such trust funds if prior to January 1, 1947, such funds contained provisions for pooled vacation benefits.

BOYCOTTS AND OTHER UNLAWFUL COMBINATIONS

SEC. 303. (a) It shall be unlawful, for the purposes of this section only, in an industry or activity affecting commerce, for any labor organization to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is—

(1) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person;

(2) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9 of the National Labor Relations Act;

(3) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 9 of the National Labor Relations Act;

(4) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class unless such employer is failing to conform to an order or certification of the National Labor Relations Board determining the bargaining representative for employees performing such work. Nothing contained in this subsection shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under the National Labor Relations Act.

(b) Whoever shall be injured in his business or property by reason of any violation of subsection (a) may sue therefore in any district court of the United States subject to the limitations and provisions of section 301 hereof without respect to the amount in controversy, or in any other court having jurisdiction of the parties, and shall recover the damages by him sustained and the cost of the suit.

RESTRICTION ON POLITICAL CONTRIBUTIONS

SEC. 304. Section 313 of the Federal Corrupt Practices Act, 1925 (U. S C., 1940 edition, title 2, sec. 251; Supp. V, title 50, App., sec. 1509), as amended, is amended to read as follows:

"SEC. 313. It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, or for any corporation whatever, or any labor organization to make a contribution or expenditure in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices, or for any candidate, political committee, or other person

to accept or receive any contribution prohibited by this section. Every corporation or labor organization which makes any contribution or expenditure in violation of this section shall be fined not more than $5,000; and every officer or director of any corporation, or officer of any labor organization, who consents to any contribution or expenditure by the corporation or labor organization, as the case may be, in violation of this section shall be fined not more than $1,000 or imprisoned for not more than one year, or both. For the purposes of this section 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work."

STRIKES BY GOVERNMENT EMPLOYEES

SEC. 305 It shall be unlawful for any individual employed by the United States or any agency thereof including wholly owned Government corporations to participate in any strike. Any individual employed by the United States or by any such agency who strikes shall be discharged immediately from his employment, and shall forfeit his civil service status, if any, and shall not be eligible for reemployment for three years by the United States or any such agency.

TITLE IV

CREATION OF JOINT COMMITTEE TO STUDY AND REPORT ON BASIC PROBLEMS AFFECTING FRIENDLY LABOR RELATIONS AND PRODUCTIVITY

* * * * * * *

TITLE V

DEFINITIONS

* * * * * * *

SAVING PROVISION

* * * * * * *

SEPARABILITY

* * * * * * *

APPENDIX E

NLRB Regional Offices

The following listing presents the directing personnel, locations, and territories of the regional offices of the National Labor Relations Board.

First Region—**Boston 8,** Mass., 24 School Street. Director, Bernard L. Alpert; chief law officer, Robert Greene.

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

Second Region—**New York 16,** N. Y., 2 Park Avenue. Director, Charles T. Douds; chief law officer, John A. Cuneo.

Fairfield County in Connecticut; in New York State, the counties of Albany, Bronx, Clinton, Columbia, Dutchess, Essex, Greene, Kings, Nassau, New York, Orange, Putnam, Queens, Renssalaer, Richmond, Rockland, Saratoga, Schenectady, Suffolk, Sullivan, Ulster, Warren, Washington, and Westchester [for remainder of New York State, see Third Region]; in New Jersey, the counties of Bergen, Essex, Hudson, Passaic, and Union.

Third Region—**Buffalo 3,** N. Y., 350 Ellicott Square Building, 295 Main Street. Director, Merle D. Vincent, Jr.; chief law officer, Thomas H. Ramsey.

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

Fourth Region—**Philadelphia 7,** Pa., 1500 Bankers Securities Building. Director, Bennet F. Schauffler; chief law officer, Ramey Donovan.

New Jersey except those counties included in the Second Region; in Pennsylvania, the counties of Adams, Berks, Bradford, Bucks, Carbon, Chester, Columbia, Cumberland, Dauphin, Delaware, Juniata, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Monroe, Montgomery, Montour, Northampton, Northumberland, Perry, Philadelphia, Pike, Schuylkill, Snyder, Sullivan, Susquehanna, Tioga, Union, Wayne, Wyoming, and York [for remainder of Pennsylvania, see Sixth Region]; New Castle County in Delaware.

Fifth Region—**Baltimore 2,** Md., Sixth Floor, 37 Commerce Street. Director, John A. Penello; chief law officer, David Sachs.

Maryland; District of Columbia; Virginia; in West Virginia, the counties of Berkeley, Grant, Hampshire, Hardy, Jefferson, Mineral, Morgan, and Pendleton [for remainder of West Virginia, see Sixth and Ninth Regions]. Kent and Sussex Counties in Delaware.

Sixth Region—**Pittsburgh 22,** Pa., 2107 Clark Building. Director, Henry Shore; chief law officer, W. G. Stuart Sherman.

Pennsylvania except those counties included in the Fourth Region; in West Virginia, the counties of Barbour, Brooke, Doddridge, Hancock, Harrison, Lewis, Marion, Marshall, Monongalia, Ohio, Pocahontas, Preston, Randolph, Taylor, Tucker, Upshur, Webster, and Wetzel.

Seventh Region—**Detroit 26,** Mich., 1740 National Bank Building. Director, Harry Casselman; chief law officer, William J. Little.

In Michigan, the counties of Alcona, Allegan, Alpena, Antrim, Arenac, Barry, Bay, Benzie, Berrien, Branch, Calhoun, Cass, Charlevoix, Cheboygan, Clare, Clinton, Crawford, Eaton, Emmet, Genesee, Gladwin, Grand Traverse, Gratiot, Hillsdale, Huron, Ingham, Iona, Iosco, Isabella, Jackson, Kalamazoo, Kalkaska, Kent, Lake, Lapeer, Leelanau, Lenawee, Livingston, Macomb, Manistee, Mason, Mecosta, Midlane, Missaukee, Monroe, Montcalm, Montmorency, Muskegon, Newaygo, Oakland, Oceana, Ogemaw, Osceola, Oscoda, Otsego, Ottawa, Presque Isle, Roscommon, Saginaw, St. Clair, St. Joseph, Sanilac, Shiawassee, Tuscola, Van Buren, Washtenaw, Wayne, and Wexford [for remainder of Michigan, see Eighteenth Region].

Eighth Region—**Cleveland 14,** Ohio, Ninth-Chester Building. Director, John A. Hull, Jr.; chief law officer, Philip Fusco.

In Ohio, the counties of Allen, Ashland, Ashtabula, Auglaize, Belmont, Carroll, Champaign, Columbiana, Coshocton, Crawford, Cuyahoga, Darke, Defiance, Delaware, Erie, Fulton, Geauga, Guernsey, Hancock, Hardin, Harrison, Henry, Holmes, Huron, Jefferson, Knox, Lake, Licking, Logan, Lorain, Lucas, Mahoning, Marion, Medina, Mercer, Miami, Morro, Muskingum, Ottawa, Paulding Portage, Putnam, Richland, Sandusky, Seneca, Shelby, Stark, Summit, Trumbull, Tuscarawas, Union, Van Wert, Wayne, Williams, Wood, and Wyandot [for remainder of Ohio, see the Ninth Region].

Ninth Region—**Cincinnati 2,** Ohio, Ingalls Building, Fourth and Vine Streets. Director, Jack G. Evans; chief law officer, Jerome Brooks.

Kentucky; Ohio except those counties included in the Eighth Region; in West Virginia, the counties not included in the Fifth and Sixth Regions.

Subregion 35—202 Insurance Center Building, 21 N. Pennsylvania Street, **Indianapolis 4,** Ind Officer in charge, F. Robert Volger.

In Indiana, the counties of Bartholomew, Blackford, Boone, Brown, Clark, Clay Crawford, Daviess, Dearborn, Decatur, Delaware, Dubois, Fayette, Floyd, Franklin, Gibson, Greene, Hamilton, Hancock, Harrison, Hendricks, Henry, Jackson, Jay, Jefferson, Jennings, Johnson, Knox, Lawrence, Madison, Marion, Martin, Monroe, Montgomery, Morgan, Ohio, Orange, Owen, Parke, Perry, Pike, Posey, Putnam, Randolph, Ripley, Rush, Scott, Shelby, Spencer, Sullivan, Switzerland, Union, Vanderburgh, Vermillion, Vigo, Warrick, Washington, and Wayne [for remainder of Indiana, see Thirteenth Region].

Tenth Region—**Atlanta 3,** Ga., 50 Seventh Street, N. E Director, John C. Getreu; chief law officer, William M. Pate.

Georgia; in Alabama, the counties of Autauga, Bibb, Blount, Calhoun, Chambers, Cherokee, Chilton, Clay, Cleburne, Colbert, Coosa, Cullman, DeKalb, Elmore, Etowah, Fayette, Franklin, Greene, Hale, Jackson, Jefferson, Lamar, Lauderdale, Lawrence, Lee, Limestone, Madison, Marion, Marshall, Morgan, Perry, Pickens, Randolph, St. Clair, Shelby, Sumter, Talladega, Tallapoosa, Tuscaloosa, Walker, and Winston [for remainder of Alabama, see Fifteenth Region]; in Tennessee, the counties of Anderson, Bedford, Bledsoe, Blount, Bradley, Campbell, Cannon, Carter, Cheatham, Claiborne, Clay, Cocke, Coffee, Cumberland, Davidson, De Kalb, Dickson, Fentress, Franklin, Giles, Grainger, Greene, Grundy, Hamblen, Hamilton, Hancock, Hawkins, Hickman, Houston, Humphreys, Jackson, Jefferson, Johnson, Knox, Lawrence, Lewis, Lincoln, Loudon, McMinn, Macon, Marion, Marshall, Maury, Meigs, Monroe, Montgomery, Moore, Morgan, Overton, Perry, Pickett, Polk, Putnam, Rhea, Roane, Robertson, Rutherford, Scott, Sequatchie, Sevier, Smith, Stewart, Sullivan, Sumner, Trousdale, Unicoi, Union, Van Buren, Warren, Washington, Wayne, White, Williamson, and Wilson [for remainder of Tennessee, see Subregion 32]; in Florida, the counties of Alachua, Baker, Bradford, Brevard, Broward, Charlotte, Citrus, Clay, Collier, Columbia, Dade, De Soto, Dixie, Duval, Flager, Gadsden, Gilchrist, Glades, Hamilton, Hardee, Hendry, Hernando, Highlands, Hillsborough, Indian River, Jefferson, Lafayette, Lake, Lee, Leon, Levy, Madison, Manatee, Marion, Martin, Monroe, Nassau, Okeechobee, Orange, Osceola, Palm Beach, Pasco, Pinellas, Polk, Putnam, St. Johns, St. Lucie, Sarasota, Seminole, Sumter, Suwannee, Taylor, Union, Volusia, and Wakulla [for remainder of Florida, see Fifteenth Region].

Eleventh Region—**Winston-Salem,** N. C., 1831 Nissen Building. Director, Reed Johnston; chief law officer, Sidney J. Barban, Jr.

North Carolina and South Carolina.

Thirteenth Region—**Chicago 3,** Ill., Midland Building, 176 West Adams Street. Director, Ross M. Madden; chief law officer, Robert Ackerberg.

In Wisconsin, the counties of Brown, Calumet, Dane, Dodge, Door, Fond du Lac, Green, Jefferson, Kenosha, Kewaunee, Manitowoc, Milwaukee, Outagamie, Ozaukee, Racine, Rock, Sheboygan, Walworth, Washington, Waukesha, Winnebago [for remainder of Wisconsin, see Eighteenth Region]; in Illinois, the counties of Boone, Bureau, Carroll, Cass, Champaign, Cook, De Kalb, De Witt, Douglas, Du Page, Ford, Fulton, Grundy, Hancock, Henderson, Henry, Iroquois, Jo Daviess, Kane, Kankakee, Kendall, Knox, Lake, La Salle, Lee, Livingston, Logan, McDonough, McHenry, McLean, Macon, Marshall, Mason, Menard, Mercer, Morgan, Moultrie, Ogle, Peoria, Piatt, Putnam, Rock Island, Sangamon, Schuyler, Stark, Stephenson, Tazewell, Vermilion, Warren, Whiteside, Will, Winnebago, Woodford [for remainder of Illinois, see Fourteenth Region]; Indiana except those counties included in Subregion 35.

Fourteenth Region—**St. Louis 2,** Mo., 520 Boatman's Bank Building, 314 North Broadway. Director, V. Lee McMahon; chief law officer, Harry G. Carlson.

Illinois, except those counties included in the Thirteenth Region; in Missouri, the counties of Audrain, Bollinger, Butler, Callaway, Cape Girardeau, Carter, Clark, Crawford, Dent, Dunklin, Franklin, Gasconade, Iron, Jefferson, Knox, Lewis, Lincoln, Madison, Maries, Marion, Mississippi, Monroe, Montgomery, New Madrid, Oregon, Osage, Pemiscot, Perry, Phelps, Pike, Ralls, Reynolds, Ripley, St Charles, St. Francois, St. Louis, Ste Genevieve, Scotland, Scott, Shannon, Shelby, Stoddard, Warren, Washington, and Wayne [for remainder of Missouri, see Seventeenth Region].

Fifteenth Region—**New Orleans 13,** La., 820 Lowich Building, 2026 St. Charles Street. Director, John F. LeBus; chief law officer, Charles M. Paschal, Jr.

Louisiana; in Arkansas, the counties of Ashley, Bradley, Calhoun, Chicot, Clark, Cleveland, Columbia, Dallas, Desha, Drew, Hempstead, Howard, Lafayette, Lincoln, Little River, Miller, Nevada, Pike, Ouachita, Sevier, and Union [for remainder of Arkansas, see Subregion 32]; in Mississippi, the counties of Adams, Amite, Attala, Bolivar, Calhoun, Carroll, Chickasaw, Choctaw, Claiborne, Clarke, Clay, Copia, Covington, Forrest, Franklin, George, Greene, Grenada, Hancock, Harrison, Hinds, Holmes, Humphreys, Issaquena, Jackson, Jasper, Jefferson, Jefferson Davis, Jones, Kamper, Lamar, Lauderdale, Lawrence, Leake, Leflore, Lincoln, Lowndes, Madison, Marion, Monroe, Montgomery, Neshoba, Newton, Noxubee, Oktibbeha, Pearl River, Perry, Pike, Rankin, Scott, Sharkey, Simpson, Smith, Stone, Sunflower, Tallahatchie, Walthall, Warren,

Washington, Wayne, Webster, Wilkinson, Winston, Yalobusha, and Yazoo [for remainder of Mississippi, see Subregion 32]; Alabama except those counties included in the Tenth Region; Florida except those counties included in the Tenth Region.

Subregion 32—714 Falls Building, 22 North Front Street, **Memphis 3**, Tenn. Officer in charge, Anthony Sabella.

Arkansas except those counties included in the Fifteenth Region; Tennessee except those counties included in the Tenth Region; Mississippi except those counties included in the Fifteenth Region.

Sixteenth Region—**Fort Worth 4**, Tex, Room 2093, 300 W. Vickery Street. Director, Edwin A. Elliot; chief law officer, Elmer P. Davis.

Oklahoma; in Texas, the counties of Anderson, Angelina, Archer, Armstrong, Bailey, Baylor, Bell, Bosque, Bowie, Briscoe, Brown, Burnet, Callahan, Camp, Carson, Cass, Castro, Cherokee, Childress, Clay, Cochran, Coke, Coleman, Collin, Collingsworth, Comanche, Concho, Cooke, Coryell, Cottle, Crockett, Crosby, Dallam, Dallas, Deaf Smith, Delta, Denton, Dickens, Donley, Eastland, Ellis, Erath, Falls, Fannin, Fisher, Floyd, Foard, Franklin, Freestone, Garza, Glasscock, Gray, Grayson, Gregg, Hale, Hall, Hamilton, Hansford, Hardeman, Harrison, Hartley, Haskell, Hemphill, Henderson, Hill, Hockley, Hood, Hopkins, Houston, Howard, Hunt, Hutchinson, Irion, Jack, Johnson, Jones, Kaufman, Kent, Kimble, King, Knox, Lamar, Lamb, Lampsas, Leon, Limestone, Lipscomb, Llano, Lubbock, McCulloch, McLennan, Madison, Marion, Mason, Menard, Milam, Mills, Mitchell, Montague, Moore, Morris, Motley, Nacogdoches, Navarro, Nolan, Ochiltree, Oldham, Palo Pinto, Panola, Parker, Parmer, Potter, Rains, Randoll, Reagan, Red River, Roberts, Robertson, Rockwell, Runnels, Rusk, Sabine, San Augustine, San Saba, Schleicher, Scurry, Shackleford, Shelby, Sherman, Smith, Somervell, Stephens, Sterling, Stonewall, Sutton, Swisher, Tarrant, Taylor, Throckmorton, Titus, Tom Green, Trinity, Upshur, Van Zandt, Wheeler, Wichita, Wilbarger, Williamson, Wise, Wood, and Young [for remainder of Texas, see Subregion 33 and 39]

Subregion 33—504 North Kansas, **El Paso**, Tex. Officer in charge, Harold L. Hudson.

New Mexico; in Texas, the counties of Andrews, Borden, Brewster, Crane, Culberson, Dawson, Ector, El Paso, Gaines, Hudspeth, Jeff Davis, Loving, Lynn, Martin, Midland, Pecos, Presideo, Reeves, Terrell, Terry, Upton, Ward, Winkler, Yoakum [for remainder of Texas, see Sixteenth Region and Subregion 39].

Subregion 39—6 Federal Land Bank Building, 430 Lamar Avenue, **Houston**, Tex. Officer in charge, Clifford W. Potter

All of Texas except the counties included in the Sixteenth Region and in Subregion 33.

Seventeenth Region—**Kansas City 6**, Mo., 1411 Federal Office Building, 911 Walnut Street. Director, Hugh E. Sperry; chief law officer, Robert S. Fousek.

Nebraska; Kansas, Missouri except those counties included in the Fourteenth Region.

Subregion 30—411 Ernest and Cranmer Building, 930 Seventeenth Street, **Denver 2**, Colo. Officer in charge, Clyde F. Waers.

Wyoming; Colorado.

Eighteenth Region—**Minneapolis 1**, Minn., 601 Metropolitan Life Building, Second Avenue S and Third Street. Director, C. Edward Knapp; chief law officer, Clarence Meter.

North Dakota; South Dakota; Minnesota; Iowa; Wisconsin except those counties included in the Thirteenth Region; Michigan except those counties included in the Seventh Region.

Nineteenth Region—**Seattle 4**, Wash., 407 U. S. Court House, Fifth Avenue and Spring Street. Director, Thomas P. Graham, Jr.; chief law officer, Patrick H. Walker.

Alaska; Montana; Idaho; Washington except Clark County.

Subregion 36—715 Mead Building, **Portland 4**, Oreg. Officer in charge, Robert J. Wiener.

Oregon; Clark County in Washington.

Twentieth Region—**San Francisco 3**, Calif., 818 U. S. Appraisers Building, 630 Sansome Street. Director, Gerald A. Brown; chief law officer, Louis Penfield.

Nevada; Utah; in California, the counties of Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Eldorado, Fresno, Glenn, Humboldt, Inyo, Kings, Lake, Lassen, Madera, Marin, Mariposa, Merced, Modoc, Mono, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Trinity, Tulare, Tuolumne, Yolo, and Yuba [for remainder of California, see Twenty-first Region].

Subregion 37—334 Federal Building, **Honolulu 2**, T. H. Officer in charge, **Arnold F. Wills.**
Territory of Hawaii.

Twenty-first Region—**Los Angeles 14**, Calif., 111 West Seventh Street. Director, Howard F. LeBaron; chief law officer, Charles K. Hackler.
Arizona; California except those counties included in the Twentieth Region.

Twenty-fourth Region—**Santurce**, P. R., P. O. Box 9176. Director, Salvatore Cosentino; chief law officer, George L. Weasler.
Puerto Rico, Virgin Islands.