NINETEENTH ANNUAL REPORT OF THE NATIONAL LABOR RELATIONS BOARD

FOR THE FISCAL YEAR ENDED JUNE 30

1954

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OF THE

NATIONAL LABOR RELATIONS BOARD

FOR THE FISCAL YEAR

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1954

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NATIONAL LABOR RELATIONS BOARD

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WILLIAM O. MURDOCK, *Associate General Counsel*
DAVID P. FINDLING, *Associate General Counsel*

[1] Took office March 2, 1954, to serve the unexpired term of Paul L. Styles, resigned
[2] Ida Klaus resigned as Solicitor August 28, 1954.

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LETTER OF TRANSMITTAL

NATIONAL LABOR RELATIONS BOARD,
Washington, D. C., January 4, 1955

SIR: As provided in section 3 (c) of the Labor Management Relations Act, 1947, I submit herewith the Nineteenth Annual Report of the National Labor Relations Board for the fiscal year ended June 30, 1954, 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.

Respectfully submitted.

GUY FARMER, *Chairman.*

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

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I

Operations in Fiscal Year 1954

The National Labor Relations Board during fiscal year 1954 closed a total of 13,989 cases of all types. This was a reduction of 11.5 percent from the 15,818 cases closed during fiscal 1953.

This reduction was partially traceable to the fact that for the greater part of the fiscal year the Board was operating with less than its five-man complement. Three new Board Members took office during the year: Chairman Guy Farmer in July 1953, just after the beginning of fiscal 1954; Board Member Philip Ray Rodgers on August 28, 1953; and Board Member Albert C. Beeson on March 2, 1954.

1. Decisional Activities of Five-Member Board

Nevertheless, the Board Members issued decisions in a total of 2,372 cases of all types, which was more than two-thirds as many as the 3,334 issued in fiscal 1953. Of the 1954 decisions, 2,094 were in cases brought to the Board on contest over either the facts or the application of the law. Of these, 341 were unfair labor practice cases and 1,753 were representation cases. Of the unfair practice cases, 248, or 72.7 percent, involved charges against employers and 93, or 22.3 percent, involved charges against unions. In the representation cases, the Board directed 1,407 elections. The remaining 346 contested petitions for elections were dismissed.

In the unfair labor practice cases, the Board found violations in 238, or approximately 70 percent of the cases coming to the Board Members for decision during the fiscal year.

Violations were found in 168, or approximately 68 percent, of the 248 cases against employers. In these cases, the Board ordered the employers to reinstate a total of 305 employees in their jobs and to pay back pay to a total of 688 employees. Illegal assistance or domination of labor organizations was found in 34 cases and ordered stopped. In 44 cases, the employer was ordered to begin collective bargaining.

Violations of the act by unions were found in 70 cases, or 75 percent of the 93 cases against unions which were brought to the five-member Board during the fiscal year. Of these cases, 25 involved the illegal

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discharge of employees, and back pay was ordered paid to 149 employees, in most cases jointly by the employer who made the illegal discharge and the union which requested it. In 17 cases the Board ordered a union to cease requiring an employer to extend it assistance that was illegal under the law. Fifteen cases involved activities by a union which the Board found to violate the act's secondary-boycott ban and ordered halted.

a. New Standards for Asserting Board Jurisdiction

After the close of fiscal 1954, a majority of the Board announced revision of the standards which the Board follows in determining whether or not to assert jurisdiction in cases brought to it.[1] The earlier standards were established in 1950.[2]

The majority stated the new standards involved in the cases decided as follows:

> We have determined that in future cases the Board will assert jurisdiction—
> 1. [General Standards for Other-Than-Retail Establishments:] over enterprises which annually meet one or more of the following standards:
>
> (1) *Direct inflow standard:*
> An enterprise which receives goods or materials from out of State, valued at $500,000 or more.
>
> (2) *Direct outflow standard:*
> An enterprise which produces or handles goods and ships such goods out of State, or performs services outside the State in which the enterprise is located, valued at $50,000 or more.
>
> The enterprise itself must actually ship the goods to the out-of-State destination.[2a]
>
> (3) *Indirect inflow standard:*
> An enterprise which receives goods or materials from other enterprises in the same State which those other enterprises received from out of State, valued at $1,000,000 or more.
>
> However, the goods must be received by the ultimate purchaser in the form in which they entered the State.[2b]
>
> (4) *Indirect outflow standard:*
> An enterprise which furnishes goods or services to other enterprises coming within subparagraph (2), above, or to public utilities or transit

[1] NLRB News Release No. 445 (July 1, 1954); NLRB News Release No. 449 (July 15, 1954); NLRB News Release No. 467 (October 28, 1954) The latter release collects the first cases formulating and applying certain of the new standards. The leading case setting forth the views of the majority—Chairman Farmer and Members Rodgers and Beeson—and the separate dissenting views of Members Murdock and Peterson is *Breeding Transfer Co.*, 110 NLRB No. 64 Member Peterson agreed with the majority that the jurisdictional standards should be changed but he disagreed as to the basis of making the changes and as to a number of specific changes adopted by the majority. Member Murdock dissented as to the basis of the changes and all changes made.

[2] Fifteenth Annual Report (1950), pp. 5–7; Sixteenth Annual Report (1951), pp. 15–39.

[2a] *Mast Lumber Co.*, 111 NLRB No. 2; compare *Homer Chevrolet Co.*, 110 NLRB No. 133.

[2b] *Kenneth Chevrolet Co.*, 110 NLRB No. 241.

systems, or instrumentalities or channels of commerce and their essential links, which meet the jurisdictional standards established for such enterprises; *and*

(a) Such goods or services are directly utilized in the products, services, or processes of such enterprises and are valued at $100,000 or more;[2c] *or*

(b) Such goods or services, regardless of their use, are valued at $200,000 or more.

(5) *Multistate standard:*

An establishment other than retail which is operated as an integral part of a multistate enterprise; *and*

(a) The particular establishment involved meets any of the foregoing standards; *or*

(b) The direct outflow of the entire enterprise amounts to $250,000 or more; *or*

(c) The indirect outflow of the entire enterprise amounts to $1,000,000 or more.

We have further determined that unless an employer's volume of operations meets one of the Board's new independent jurisdictional standards, we will not accumulate those standards in order to assert jurisdiction.[3]

However, direct and indirect inflow may be added in applying the indirect inflow standard.[3a]

2. [Intrastate Links of Interstate Commerce:] over transportation operations or other local activities which constitute a link in the chain of interstate commerce only where the annual income received by the particular company involved from services which constitute a part of interstate commerce totals no less than $100,000.[4]

It was further announced that jurisdiction will be asserted over (1) intrastate transit companies receiving at least $100,000 annually as a link in interstate transportation of passengers; and (2) over transit companies operating partly or wholly interstate and deriving at least $100,000 annually from (a) interstate operations or (b) from combined intrastate link transportation of passengers and interstate operations.[4a]

3. [Concerns Doing National Defense Business:] enterprises of this type only if they are engaged in providing goods or services directly related to national

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[2c] See *Pyne Moulding Corp.*, 110 NLRB No. 240, and *Eagle Iron and Brass Co.*, 110 NLRB No 123; see also *Imperial Rice Mills, Inc.*, 110 NLRB No. 87; compare *G. C. McBride Co.*, 110 NLRB No. 198, declining jurisdiction over a quarry furnishing rock to an interstate railroad because the rock was not "directly utilized" in the operation of the railroad; and *F. M. Reeves and Sons, Inc.*, 111 NLRB No. 25, declining jurisdiction over a concern furnishing materials to a road construction firm since materials were not "directly utilized" in the operational or functional use of the roads.

[3] *Jonesboro Grain Drying Cooperative*, 110 NLRB No. 67. See *Rogers Bros. Wholesalers*, 110 NLRB No. 75.

[3a] *The Brass Rail, Inc.*, 110 NLRB No. 255.

[4] *Breeding Transfer Co., supra.*

[4a] *Rollo Transit Corporation*, 110 NLRB No. 228; see also *Republic Transport Co.*, 110 NLRB No. 247; compare *Edelen Transfer and Storage Co.*, 110 NLRB No. 230; and *Highway Services, Inc.*, 110 NLRB No. 66.

defense pursuant to Government contracts, including subcontracts, in the amount of $100,000 or more a year.[5]

4. [Retailing Concerns:] a company operating a single retail store or service establishment only where the store—

(1) has made annual purchases directly from out of State of at least $1,000,000 in value (direct inflow), *or*

(2) has made annual purchases indirectly from out of State of at least $2,000,000 in value (indirect inflow),[5a] *or*

(3) has made annual sales directly out of State of at least $100,000 in value (direct outflow).

As to *intrastate chains* of retail stores and service establishments we shall continue the practice of totaling direct inflow, indirect inflow, or direct outflow of all stores in the chain to determine whether any one of these standards is met. If the totals satisfy any one of these standards, we will assert jurisdiction over the entire chain or over any store or group of stores in it as in the past.[6]

5. [Multistate Retail Chains:] in future cases involving a *multistate* chain of retail stores or service establishments we will assert jurisdiction over the entire chain or any integral part of it if the annual gross sales of all stores or establishments in the chain amount to at least $10,000,000. Otherwise we will assert jurisdiction only over those individual stores or establishments comprising integral parts of the chain which independently satisfy the inflow or outflow standards set forth above.[7]

6. [Franchised Dealers:] the Board will no longer use the "franchise yardstick" for purposes of asserting jurisdiction over automobile dealers or over distributors, wholesale or retail, in any other industry. . . . [W]here . . . a local retail establishment has a franchise agreement with a multistate enterprise the Board will apply the same jurisdictional standards as are applied to other local retail establishments.[8]

7. [Office Buildings:] over an office building operation only when the employer which owns or leases and which operates the office building is itself otherwise engaged in interstate commerce and also utilizes the building primarily to house its own offices.[9]

8. [Utilities and Transit Systems:] over local public utility and transit systems affecting commerce whose gross value of business is $3,000,000 or more per annum.[10]

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[5] *Maytag Aircraft Corp.*, 110 NLRB No. 70. See also *Ready Mixed Concrete Co.*, 110 NLRB No. 202 (jurisdiction asserted over seller of ready-mixed concrete for construction work at Air Force base); *Massachusetts Institute of Technology* (*Lincoln Laboratory*), 110 NLRB No. 232 (jurisdiction asserted over laboratory engaged in research for defense); *Union Cab Co.*, 110 NLRB No. 259 (jurisdiction declined over taxicab company servicing Air Force reservation).

[5a] See, for example, *The Jefferson Co.*, 110 NLRB No. 113.

[6] *Hogue and Knott Supermarkets*, 110 NLRB No. 68.

[7] *Hogue and Knott Supermarkets, supra.* See also *Liggett Drug Co.*, 110 NLRB No. 157 (jurisdiction asserted); compare *Claffey's Beauty Shoppes*, 110 NLRB No. 97, and *Felsway Shoe Corp.*, 110 NLRB No 238 (jurisdiction declined).

[8] *Wilson-Oldsmobile*, 110 NLRB No. 74. See also *Homer Chevrolet Co.*, 110 NLRB No 133; *Grand River Chevrolet Co.*, 110 NLRB No. 98; *Coca-Cola Bottling Co. of San Angelo*, 110 NLRB No. 106.

[9] *McKinney Avenue Realty Co.*, 110 NLRB No. 69; *American Republics Corp.*, 110 NLRB No. 141.

[10] *Greenwich Gas Co.*, 110 NLRB No. 91. See also *Brooklyn Borough Gas Co*, 110 NLRB No. 11; compare *Southwest Mississippi Electric Power Assn.*, 110 NLRB No. 245, and *Cascade Natural Gas Corp*, 110 NLRB No. 154 (jurisdiction declined).

Rural electric cooperatives are considered analogous to local public utilities. *Clay Electric Cooperative, Inc*, 111 NLRB No. 24.

9. [Newspapers:] over newspaper companies which hold membership in or subscribe to interstate news services, or publish syndicated features, or advertise nationally sold products, if the gross value of business of the particular enterprise involved amounts to $500,000 or more per annum.[11]

10. [Taxicabs:] we shall refuse to assert jurisdiction over taxicab companies. . . .[12]

11. [Associations of Employers:] we will adhere to our past practice of considering all association members who participate in multiemployer bargaining as a single employer for jurisdictional purposes. Accordingly, under the new standards, in determining whether to assert jurisdiction, the Board will continue to consider the totality of the operations of the Association members.[13]

The Board announced that it would press compliance with its orders issued under its old standards involving companies which would not come within Board jurisdiction under the new standards.[14]

Subsequent announcements added new standards and indicated areas to which the application of previously announced standards will be extended. Thus, jurisdiction will be asserted

12. [Communications Concerns:] over radio and television stations, and telephone and telegraph systems if the annual gross income of the enterprise amounts to at least $200,000.[14a]

13. [Restaurants:] over restaurants on the basis of the standards established for retail stores.[14b]

14. [Business in the Territories:] as to business enterprises in the Territories, it was announced that special standards established for particular types of businesses will be applied in the Territories.[14c]

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,[15] members of the agency's field staff function under the General Counsel's supervision in the preliminary investigation of representation and union-shop deauthorization cases. In the

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[11] *The Daily Press, Inc.,* 110 NLRB No 95

[12] *Checker Cab Co.,* 110 NLRB No 109, Members Murdock and Peterson dissenting separately

[13] *Insulation Contractors of Southern California, Inc.,* 110 NLRB No. 105, Member Murdock concurring separately.

[14] *Coca-Cola Bottling Company of Stockton,* 110 NLRB No. 134, Member Murdock concurring separately; Member Rodgers dissenting.

[14a] *Hanford Broadcasting Co. (KNGS),* 110 NLRB No. 208; *Arkansas Airways Co.,* 110 NLRB No. 229.

[14b] *Bickford's Inc.,* 110 NLRB No. 252. See also *Greyhound Post Houses, Inc.,* 110 NLRB No. 253; *The Brass Rail, Inc.,* 110 NLRB No. 255; and *International Idlewild Catering Corp.,* 110 NLRB No. 257.

[14c] *Sixto Ortega,* 110 NLRB No. 251 (retail bakery), *South P. R. Broadcasting Corp (WISO),* 111 NLRB No. 45 (radio station); *Union Cab Co.,* 110 NLRB No. 259 (Alaska taxicab company); compare *The Virgin Isles Hotel, Inc.,* 110 NLRB No. 65.

[15] See Seventeenth Annual Report, p 3, footnote 4.

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

a. Representation Cases

The field staff closed 6,138 representation cases during the 1954 fiscal year without necessity of formal decision by the Board Members. This was 77 percent of the 7,975 representation cases closed by the agency.

In the representation cases closed in the field, consent of the parties for holding an election was obtained in 3,493 cases. Petitions were dismissed by the regional directors in 623 cases. Recognition was granted by the employer in 104 cases without necessity for an election. In 2,023 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 1954 fiscal year closed 4,975 unfair practice cases of all types without the necessity of formal action. This was 83.4 percent of the 5,962 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 821 cases. Of these, 591 were against employers and 230 against unions.

Of the 4,975 unfair labor practice cases which the field staff closed without formal action, 799, or 16 percent, were adjusted by various types of settlements, and 1,673, or 34 percent, were administratively dismissed after investigation. In the remaining 50 percent the charges were withdrawn; in many cases such withdrawals actually reflected a settlement of the matter at issue between the parties through the officers of the field staff. Of the charges against employers, 1,332, or 35 percent, were dismissed; 651, or 17 percent, were adjusted; and 1,849, or 48 percent, were withdrawn. Of charges against unions, 341, or 30 percent, were dismissed; 148, or 13 percent, were adjusted; and 644, or 57 percent, were withdrawn.

3. Division of Trial Examiners

Trial examiners for the Board, who conduct hearings in unfair practice cases, conducted hearings in 669 such cases during fiscal 1954 and issued intermediate reports and recommended orders in 556 cases.

This was an increase of 9 percent in the number of cases heard, compared with the 1953 fiscal year, and an increase of 5 percent in the number of cases in which intermediate reports were issued.

In 57 cases coming to the five-member Board during the year, the trial examiners' reports were not contested by the parties, and thereby became orders of the Board.

During the year, 60 cases were closed by compliance with the trial examiners' recommended orders. This was 11 percent of the cases in which intermediate reports were issued, compared with 11 percent in which direct compliance occurred in fiscal 1953 and 16 percent in fiscal 1952.

4. Results of Representation Elections

The Board conducted a total of 4,813 representation elections of all types during the 1954 fiscal year.[16] This was a decrease of 22.4 percent from the 6,191 elections conducted in fiscal 1953.

In the 1954 representation elections, collective-bargaining agents were selected in 3,108 elections. This was 66.6 percent of the elections held, compared with selection of bargaining agents in 71 percent of the 1953 elections.

In these elections, bargaining agents were chosen to represent units totaling 347,401 employees, or 66.5 percent of those eligible to vote. This compares with 79 percent in fiscal 1953 and 75 percent in 1952.

Of 458,762 employees actually casting valid ballots in Board representation elections during the year, 319,016, or approximately 70 percent, cast ballots in favor of representation. Nearly 88 percent of the 521,674 who were eligible to vote cast valid ballots.

Unions affiliated with the American Federation of Labor won bargaining rights in 1,954 of the 3,406 elections in which they took part. This was 57 percent of the elections in which they participated.

Affiliates of the Congress of Industrial Organizations won 794 out of 1,521 elections. This was 52 percent.

Unaffiliated unions won 360 out of 573 elections. This was 63 percent.

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[16] 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.

5. Types of Unfair Labor Practices Charged

The most common type of unfair labor practice charged against employers 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 3,072 cases filed during the 1954 fiscal year. This was 70.2 percent of the 4,373 cases filed against employers.

The second most common charge against employers was refusal to bargain in good faith with the representative of their employees. This was alleged in 1,212 cases, which was 27.7 percent of the cases filed against employers.

The 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 989 cases, or 62.1 percent of the 1,592 cases filed against unions.[17] The second most common charge against unions was that of causing or attempting to cause employers to discriminate illegally against employees, usually because of the employees' lack of union membership, alleged in 954 cases during fiscal 1954. This was charged in 59.9 percent of the cases filed against unions. Other major charges against unions were secondary boycott, made in 234 cases, or 14.7 percent, and refusal to bargain in good faith, made in 173 cases, or 10.9 percent.

6. Fiscal Statement

The expenditures and obligations of the Board for fiscal year ended June 30, 1954, are as follows:

Salaries	$7,402,186
Travel	498,572
Transportation of things	10,876
Communication services	237,252
Rents and utility services	16,682
Printing and reproduction	214,919
Other contractual services	231,656
Services performed by other agencies	49,914
Supplies and materials	81,336
Equipment	29,220
Refunds, awards, and indemnities	857
Taxes and assessments	12,756
Grand total, obligations and expenditures for salaries and expenses	8,786,226

[17] Percentages may add up to more than 100 because violations of more than 1 section often are charged in 1 case. See table 2, appendix A.

II

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. In a representation case, the act forbids investigation of a question of representation "raised by" a noncomplying union. A union also must comply with the filing requirements in order to make a valid union-shop agreement.

The non-Communist affidavit requirement was adopted in an effort to protect the national security against what Congress had found Communists and their followers had done in the past and were likely to do again.[2] In several situations, the Board has taken action designed to forestall or remedy abuse of the processes and policies of the act by apparent circumvention of the affidavit filing requirements of section 9 (h).

These actions have included (1) suspending the investigation of cases brought by unions which have officers under indictment for filing false affidavits;[3] and (2) moving to revoke the compliance status of unions which retain officers who have been convicted of filing false affidavits.[4] The Board previously had ordered union officers to reaffirm their affidavits after the officers had refused to testify before a Federal grand jury as to whether their affidavits filed with the Board were true or false.[5] However, each of these three approaches by the Board to this problem was rejected by the Federal courts as being beyond the statutory authority of the Board.

The only exception indicated by the courts is in a case where the

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

[2] See *American Communications Assn.* v. *Douds*, 339 U. S. 382 (1950) and Fifteenth Annual Report of NLRB (1950), p. 160. See also *Square D Co.*, 105 NLRB 253, 264.

[3] Statement of Policy, 18 Federal Register 8193, October 23, 1953.

[4] *Compliance Status of International Fur and Leather Workers Union*, 108 NLRB No 168.

[5] See *Farmer* v. *United Electrical Radio & Machine Workers Union, et al.*, 211 F. 2d 36 (C A., D. C.).

union membership is aware that the union officer filed a false affidavit.[6] On the basis of this exception, the Board ordered a hearing in the case of Maurice E. Travis, secretary-treasurer of the Mine, Mill and Smelter Workers' Union, to determine whether a statement which he published in the union's newspaper at the time he first signed a non-Communist affidavit constituted notice to the union that he was not filing a true affidavit.[7]

These actions taken by the Board to prevent circumvention are discussed in more detail in section 1 of this chapter.

Furthermore, pursuant to the national policy of eliminating Communist leadership from trade unions, the Board laid down the rule that a contract will not bar a representation election where a local group disaffiliates from a union expelled by its parent federation for reasons related to the expulsion.[8]

1. Protection of Statutory Processes

The filing requirements of the act, particularly the non-Communist affidavit, have presented the Board with some very difficult problems in administration. As one of its foremost concerns in this area, the Board has sought to guard against abuse of the processes of the act resulting from evasions of the non-Communist affidavit requirement. Except in preventing concealment of officers, this effort has been almost uniformly unsuccessful.

The Board conducts a separate administrative investigation whenever it has reason to believe that section 9 (h) has been evaded by a labor organization asserting compliance. The Board does not permit a private party to litigate a union's compliance status in the course of either a representation or an unfair labor practice proceeding. The reason for this rule is "the need to expedite the hearing of cases and the resolution of issues on their merits."[9] Parties to Board proceedings are encouraged to bring to the Board's attention matters affecting the compliance status of unions. The Board, under proper safeguards, will furnish an interested party the names of the union's designated officers and of the persons who have filed section 9 (h) affidavits. The party may then move that the compliance status of the union be redetermined on the basis of information submitted. The Board will then proceed with a separate administrative investigation, if the information warrants it. A hearing will be held if the need appears.

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[6] See *Farmer* v. *U. E., supra,* 211 F. 2d 36.

[7] *Maurice E. Travis, et al.,* Order Directing Administrative Investigation, February 4, 1954. See footnote 19 of this chapter.

[8] *A. C. Lawrence Leather Co*, 108 NLRB No. 88. For further discussion of this ruling, see the section on contract bar in chapter III, p. 29.

[9] *Coca-Cola Bottling Co. of Louisville, Inc.,* 108 NLRB No. 81. See Sec. 102 13 (b) (3), Rules and Regulations, Series 6, as amended.

a. Concealment of Officers

The Board has provided in its Rules and Regulations that "where the Board has reasonable cause to believe that a labor organization has omitted from its constitution the designation of any position as an office for the purpose of evading or circumventing the filing requirements of section 9 (h) of the act, the Board may, upon appropriate notice, conduct an investigation to determine the facts in that regard." [10] Investigations under this provision were conducted in a number of cases during fiscal 1954. In those cases where it was determined that the union involved had concealed officers and thus was not in compliance at certain critical times,[11] the Board invalidated benefits which had been obtained by the particular union during those times, either setting aside the union's certification or vacating the decision and order issued on the union's charge.[12]

b. Prosecution of Union Officers for Filing False Affidavits

During fiscal 1954, the Board took cognizance of indictments of union officers for filing false non-Communist affidavits.[13] Though aware that indictments alleging the falsity of such affidavits do not warrant any inference of guilt, the Board was of the view that ultimate conviction would have the effect of invalidating affidavits previously filed by the officer and thus necessitate cancellation of certifications issued to the union predicated thereon. In order to minimize the impact on collective bargaining of issuing certifications and then having to nullify them, the Board in a policy statement of October 23, 1953,[14] announced that:

> [The Board] has determined to hold in abeyance, pending final disposition of the foregoing indictments, any official action which would necessarily result in according final and official status to a labor organization and which would have to be invalidated in the event convictions resulted in indictments.

However, the subsequent attempt to apply this policy to a union whose president was indicted for filing a false non-Communist affidavit was, at the suit of the union, enjoined by the United States District Court for the District of Columbia, on the ground that the policy was beyond the Board's statutory authority.[15] The Board's application

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[10] Sec. 102.13, *supra*.

[11] See *Compliance Status of UE, Local 1421*, 107 NLRB No. 79; *Compliance Status of Furniture Workers, Local 576*, 107 NLRB No. 203.

[12] *California Wrought Iron, Inc*, 107 NLRB No. 223, and *Woodcraft of Hollywood*, 21-RC-3105, May 13, 1954. *Pryne & Company, Inc*, 107 NLRB No. 80, and *Square D Company*, 107 NLRB No. 81. For cases where the Board found that the union, whose compliance status was under challenge, had not attempted to evade section 9 (h), see *Compliance Status of United Electrical, Radio and Machine Workers*, August 6, 1953; *Coca-Cola Bottling Co. of Louisville*, 108 NLRB No 81.

[13] Section 9 (b) makes the provision of "section 35A of the Criminal Code . . . applicable in respect to such affidavits"

[14] 18 Federal Register 8193.

[15] *International Fur and Leather Workers* v. *Farmer*, 117 F. Supp. 35 (D. C., D. C.).

for a stay of the injunction pending appeal was denied on December 4, 1953, by the Court of Appeals for the District of Columbia Circuit which cited its decision on the same day in the *United Electrical Workers* case.[16]

In *United Electrical Workers* and companion cases,[17] the court sustained a district court injunction entered during the preceding year,[18] restraining the Board from declaring certain unions out of compliance because their officers failed to affirm the truth of non-Communist affidavits which the Board had reason to believe to be false. The Board's action was prompted by a grand jury presentment recommending that the Board revoke the compliance status of the unions concerned because their officers had refused to testify as to the truthfulness of their affidavits, which had been turned over to the Department of Justice for investigation. In the court's opinion, the only available sanction for a union officer's false affidavit is the criminal penalty specifically provided by the act, and the Board has no inherent power to protect its processes by "excluding the union from the Act's benefits because its officer had deceived the union as well as the Board by filing a false affidavit." However, the court did not decide the further question whether a union would be barred from the act's processes if it were shown that its membership was aware of the falsity of affidavits filed by its officers.[19] In consequence of these decisions, the Board suspended its Statement of Policy on December 10, 1953,[20] and petitioned the Supreme Court to review the court of appeals decisions in the *United Electrical Workers* and *Fur Workers* cases. On April 12, 1954, the Supreme Court denied the Board's petition for certiorari in both cases.

c. Board Action Where Falsity of Affidavit Shown

In two cases during fiscal 1954, where union officers were convicted for having lied about matters encompassed by their affidavits under section 9 (h), the Board took action to correct the resultant abuse of its processes. Thus, where a local union failed to show cause why its certification should not be withdrawn in view of the conviction of an

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[16] This appeal was dismissed as moot by the court of appeals on July 2, 1954, in view of the intervening conviction of the officer involved.

[17] *Farmer* v. *United Electrical, Radio & Machine Workers, et al.*, 211 F. 2d 36.

[18] Eighteenth Annual Report, p 90

[19] There is now pending before the Board an investigation for the purpose of determining whether an officer of a union, which had filed unfair labor practice charges, admittedly falsified his non-Communist affidavit and whether the membership of the complaining union was aware of this fact The Board's order directing that a hearing be held on these issues was issued on February 4, 1954. See *Maurice E. Travis, Secretary-Treasurer, International Union of Mine, Mill and Smelter Workers, and Compliance Status of International Union of Mine, Mill and Smelter Workers,* Order Directing Administrative Investigation and Hearing. On August 5, 1954, the Court of Appeals for the District of Columbia Circuit upheld the lower court's refusal to enjoin the conduct of this proceeding. *International Union of Mine, Mill and Smelter Workers* v. *Farmer,* No. 12171.

[20] 18 Federal Register 8193.

officer for having lied, the Board revoked the local's compliance letter as well as its certification as bargaining agent.[21] And when the president of the local's parent was convicted for having filed a false 9 (h) affidavit, and notwithstanding the conviction was reelected to office, the Board, after affording an opportunity to show cause, declared the parent union out of compliance and not entitled to further benefits under the act.[22] Moreover, the Board held that it was in the interest of the integrity of the Board's processes and the purposes of the act to reject the new non-Communist affidavit submitted by the convicted officer after his reelection.[23]

d. Fronting

Protection of the Board's processes against abuse requires at times inquiry into whether a proceeding has been instituted at the instance of a noncomplying labor organization through a "front," that is, through an individual or another labor organization which is itself in compliance.[24] Thus, the Board in one case during fiscal 1954 determined that an individual who petitioned for the decertification of an incumbent bargaining agent had in fact acted in cooperation with a noncomplying union which sought to displace the incumbent.[25] The Board, therefore, granted the employer's motion to dismiss the proceeding.[26]

2. Rules for Determining Compliance

The compliance status of a labor organization which seeks the benefits of the act is determined according to certain rules adopted by the Board.

a. Persons and Organizations Required to File

In order to be in compliance with section 9 (h), the Board requires that there be on file a non-Communist affidavit of each "officer," i. e., "any person occupying a position identified as an office in the constitution of the labor organization." [27] However, if the Board upon investigation finds that a union representative who has not filed an

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[21] *Compliance Status of Local 214, International Fur & Leather Workers Union,* 106 NLRB 1265.

[22] *Compliance Status of International Fur & Leather Workers Union,* 108 NLRB No. 168.

[23] On July 23, 1954, the District Court for the District of Columbia enjoined the Board from giving effect to its order because it believed that under the rule of *United Electrical Workers* case the Board was without power to take the action. The Board's appeal from the district court's decree is now pending in United States Court of Appeals.

[24] Individuals are not subject to the filing requirement of section 9. Compare the trial examiner's ruling in *Cowles Publishing Company,* 106 NLRB 801.

[25] *Bernson Silk Mills, Inc.,* 106 NLRB 826

[26] For cases where the Board found no support for the assertion that the parties which instituted the proceeding were "fronting" for noncomplying unions, see *American Potash & Chemical Corporation,* 107 NLRB No. 290; *Campbell & McLean, Inc.,* 106 NLRB 1049; *Grand Central Aircraft Co., Inc.,* 106 NLRB 358.

[27] Sec 102.13 (b) (3), Rules and Regulations, Series 6, as amended.

affidavit is in fact an officer and that the failure to so designate the representative in the union constitution was to circumvent section 9 (h), it will not recognize the union as being in compliance for the period when the particular person has not filed an affidavit.[28] Thus, during fiscal 1954, the Board declared out of compliance a local union whose trustees, though not clearly named as officers in the local's constitution, were so designated in the governing constitution of the local's parent.[29] Similarly, compliance status was found to be incomplete where a union had amended its constitution so as to omit certain positions formerly designated as offices for the purpose of avoiding the necessity for incumbents to file section 9 (h) affidavits.[30] On the other hand, the Board in one case found that a parent federation's regional director was not, as asserted, an officer.[31] Consequently, it was held that the office was properly omitted from the federation's constitution and that the incumbent was not required to file a non-Communist affidavit in order for the federation's affiliates to be considered in compliance.

While any parent or subsidiary organization with an interest in a proceeding before the Board must comply with the filing requirements of section 9, the Board has held that compliance is not required of administrative arms or subdivisions of a union which have no independent identity and are not separate labor organizations.[32] In one case, the Board held that the compliance status of a petitioning international union was unaffected by its intention to establish a plant local in the event of success in a Board election.[33] The Board noted that the employer's questioning of the future local's compliance status was at least premature.

b. Compliance for Union-Security Purposes

Section 8 (a) (3) specifically makes the validity of a union-security agreement dependent on the contracting union's compliance status with section 9 (h). Accordingly, the Board has held that a union-security agreement made during the contracting union's noncompliance could not bar the representation petition of a rival union, even though compliance was achieved after the petition was filed.[34] However, in cases where the contracting union achieved compliance before the rival petition was filed, the Board has concluded that the contract

[28] Sec. 102.13 (b) (3), *supra*.

[29] *Compliance Status of United Electrical Workers, Local 1421*, 107 NLRB No. 79.

[30] *Compliance Status of Furniture Workers, Local 576*, 107 NLRB No. 203.

[31] *Coca-Cola Bottling Company of Louisville, Inc*, 108 NLRB No. 81

[32] *R. H. Osbrink Manufacturing Company*, 106 NLRB 16; *Grand Central Aircraft Co., Inc.*, 106 NLRB 358; *Kibler-Camp Phosphate Enterprises*, 107 NLRB No. 226. Compare *Safrit Lumber Company, Inc.*, 108 NLRB No. 42, finding a "district" to be a functioning labor organization and hence required to comply.

[33] *Ozark Manufacturing and Supply Company*, 108 NLRB No 212.

[34] See, e. g., *Caribe Plastics Corp.*, 107 NLRB No. 2.

should be held a bar.[35] In the Board's opinion, the union's original noncompliance in these cases was not such a defect in the union-security agreement that it could not be cured by timely subsequent action on the part of the union. This principle was held to apply also where a union, before entering into a union-security agreement, had taken appropriate steps indicating its intention to achieve compliance, although compliance was not perfected until after execution of the agreement and after the filing of a rival petition.[36]

c. Lapse of Compliance With Section 9 (g)

In one representation proceeding during the past year, the Board had to determine the effect of a union's temporary noncompliance with section 9 (g).[37] This section provides that a union, once having filed the requisite information and financial reports under section 9 (f), must keep the information up-to-date with annual reports. However, unlike sections 9 (f) and 9 (h), which bar noncomplying unions from utilizing the processes of the Board, section 9 (g) only precludes a defaulting union from being "eligible for certification." Thus, the Board pointed out, under the express provisions of the act, the intervening union's noncompliance with section 9 (g) during the representation proceeding here did not invalidate the proceeding but merely suspended the intervenor's right, after having won the election, to be certified. The Board therefore held that its *Tube Turns* rule,[38] involving noncompliance with section 9 (h), was not applicable and that the union, being now in compliance, was entitled to certification. However, the Board made it clear that it was not the intention of its decision to alter the usual policy of refusing a place on the ballot to an intervenor out of compliance with section 9 (g). Here, the Board noted, the intervenor had been placed on the ballot through inadvertence, and under the circumstances no useful purpose would be served by withholding certification.

3. Relitigation of *Highland Park* Type Cases

During fiscal 1954, the Board was also concerned with the litigation of the merits of cases which had been dismissed solely on the basis of the Supreme Court's construction of the filing requirements of section 9 in the *Highland Park* case.[39] In *Highland Park* the Supreme Court had held, contrary to the Board, that parent labor federations

[35] *New Idea, Division Avco Manufacturing Corporation,* 106 NLRB 1104; *Industrial Luggage, Inc*, 106 NLRB 1128; *Grand Leader Dry Goods Company of South Bend, Indiana,* 106 NLRB 1141.

[36] *Dichello, Incorporated,* 107 NLRB No. 325

[37] *Fawcett-Dearing Printing Co*, 106 NLRB 1249.

[38] *Tube Turns, Inc.,* 101 NLRB 528.

[39] *Shell Chemical Corporation,* 108 NLRB No. 53. See *N. L. R. B* v. *Highland Park Manufacturing Co.,* 341 U. S. 322.

(such as the CIO and AFL) were labor organizations subject to the filing requirements. When these organizations later came into compliance, the General Counsel issued new complaints because it was the original complaints, rather than the charges, in these cases which were invalid under the *Highland Park* rule. For, as held by the Board and by the Supreme Court, a complaint may issue whenever the complaining union is in compliance, though it may not have been in compliance at the time of filing charges.[40]

Upon carefully weighing the conflicting policies urged by the parties in favor of and against the present adjudication of the alleged unfair labor practices, the Board concluded that the public interest would not be served by continued litigation.[41] The Board was particularly impressed with the fact that revival of litigation might well serve as a source of irritation in the present conduct of labor-management relations by the parties and, moreover, would necessitate continued expenditure of substantial private and public time and funds.

[40] *N. L. R. B.* v. *Dant & Russell, Ltd.*, 344 U. S. 375.
[41] *Shell Chemical*, cited in footnote 39, above.

III

Representation and Union-Shop Cases

The act requires that an employer bargain with the representatives selected by a majority of his employees in a unit appropriate for collective bargaining. 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. 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 in 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 the statutory authority to determine the employees' choice of collective-bargaining representative in any business or industry affecting 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.[1] It also has the power to determine the unit of employees appropriate for collective bargaining.

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. 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 act also empowers the Board to conduct elections to decertify incumbent bargaining agents which have been previously certified or which are 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.

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[1] For a statement of the standards which the Board uses in determining whether to assert jurisdiction in a particular case, see chapter I

Petitions for 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.

This chapter deals with decisions of the Board during the 1954 fiscal year which involve novel questions or set new precedents in representation or union-shop cases.

1. The Question of Representation

Under the provisions of section 9 (c) (1), the direction of a representation election must be preceded by a determination (1) that a "substantial number" of the employees whom the petitioner seeks to represent[2] desire representation, and (2) that a question of representation exists.

a. Showing of Employee Interest

Administratively, the Board requires that a petitioning bargaining agent show that at least 30 percent of the employees in the proposed bargaining unit desire representation. The primary purpose of the requirement, as the Board has again pointed out,[3] is "to screen out those cases in which there is so little prospect of the petitioner winning an election, if directed, as not to warrant the Board incurring the expense of further proceedings on the petition." The Board, therefore, continues to regard the petitioner's showing of interest as an administrative matter which is not subject to attack.

As heretofore, in order to be entitled to an election the petitioner must have a sufficient interest in the unit which the Board finds is appropriate.[4] Thus, in the case of a petition for a broad unit, including 2 separate historical units, self-determination elections in the 2 groups were directed subject to the regional director's finding, upon a recheck, that the petitioner had a 30-percent interest in each group.[5]

An intervenor ordinarily may participate in an election upon a showing of a contractual or other representative interest. However, if the intervenor's request places it in the position of a petitioner, it will be required to show a 30-percent interest in the unit claimed. Such a showing was required where a labor organization sought to intervene in a proceeding for the purpose of severing a smaller unit from an existing industrial unit.[6] Similarly, where the petitioner

[2] An employer seeking an election under section 9 (c) (1) (B) is required to show only that he has been presented with a bona fide representation claim. No proof of representation on the part of the labor organization seeking recognition is required. *Forstmann Woolen Co.*, 108 NLRB No. 211

[3] *The Sheffield Corporation*, 108 NLRB No. 72.

[4] *United Insurance Co.*, 108 NLRB No. 115; *Seattle Packing Co.*, 106 NLRB 451.

[5] *Phillips Petroleum Co.*, 107 NLRB No 266, Member Murdock dissenting. See also *Koehring Southern Co.*, 108 NLRB No. 141.

[6] *Forstmann Woolen Co.*, footnote 2, *supra*.

withdrew its petition, an intervenor's request to proceed to an election with its name on the ballot was denied because the intervenor had failed to show the requisite 30-percent interest.[7]

While the intervenor's interest generally must have been acquired before the close of the hearing,[8] the Board continues to permit an exception

(1) where the representation proceeding was delayed by the filing of unfair labor practice charges and the original petitioner was, by its own practices, in part responsible for such delay; and (2) where a labor organization claims to be the authorized successor of the contracting labor organization.[9]

The same principles apply whether the proceeding has been instituted by a union or an employer.[10]

b. Existence of a Question of Representation

Whether, in a given case, a question of representation exists and an election should be directed is determined according to rules which may vary depending upon whether the petitioner seeks the certification or the decertification of a bargaining agent.

(1) Effect of Prior Withdrawal of Petition or Disclaimer

In order to conserve its funds and facilities for the processing of meritorious petitions, the Board during fiscal 1954 imposed a 6-month limitation on the filing of petitions by unions who had previously withdrawn from, or disclaimed their interest in, a representation proceeding involving the same employees. Under the new rules, unless good cause is shown that they should not apply, the Board will not entertain a petition from a union which had permitted an earlier representation case involving the same employees to go to hearing and then, less than 6 months before the present petition,

(1) had withdrawn the previous petition after a hearing thereon had been held;[11] or

(2) disclaimed any interest in the representation of these employees in a proceeding on an employer petition which had gone to hearing;[12] or

(3) disclaimed its interest in these employees in a decertification proceeding in which the hearing had been held.[13] Moreover, regional directors are instructed to apply the new rules to unions which with-

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[7] *Victorville Lime Rock Co.*, 107 NLRB No. 242; compare *Alloy Mfg. Co*, 107 NLRB No. 257.

[8] *Wisconsin Electric Power Co.*, 107 NLRB No. 262

[9] *Bull Insular Lines, Inc*, 107 NLRB No. 153

[10] See *Bull Insular Lines, Inc., supra.*

[11] *Sears, Roebuck & Co*, 107 NLRB No. 162

[12] See *Campos Dairy Products, Ltd*, 107 NLRB No 163

[13] *Little Rock Road Machinery Co.*, 107 NLRB No. 164; compare *Consolidated Vultee Aircraft Corp, Fort Worth Division*, 108 NLRB No. 95, where a timely disclaimer, filed before hearing, was held not to preclude the disclaiming union's subsequent petition from raising a question of representation.

Since the petitioner in a decertification proceeding acts in the capacity of an agent for the employees concerned, the Board will deny a request for the withdrawal of the petition unless the withdrawal is authorized by the employees involved.[28]

In a decertification proceeding, as in a certification proceeding instituted by an employer, the petition will be dismissed if the bargaining agent named in the petition has effectively disclaimed its interest in the employees concerned.[29]

c. Qualification of Representative [30]

Section 9 (c) (1) (A) of the act provides for employee representation by "an employee or group of employees or any individual or labor organization acting in their behalf." However, it is the Board's policy to deny representation rights to a proposed bargaining agent which is found to lack the requisite qualifications.

During fiscal 1954 the Board, in the *American Potash* case,[31] established the general rule that a union which seeks to split off and to represent a group of craft employees will not be certified as the representative of the group unless it shows that it has traditionally represented the particular craft. Similarly, the *American Potash* rule requires that certain departmental groups with craftlike characteristics may be represented only by unions which have been shown to have traditionally devoted themselves to the special interests of such groups.[32]

During the past year, the Board also was faced with the novel issue whether a union is qualified to bargain for employees at a time when the union is in business competition with their employer.[33] Concluding that a union which is also a business rival of the employer with whom it seeks to bargain is not a proper employee representative, the Board said:

> We believe that the Union by becoming the Respondent's business rival has created a situation which would drastically change the climate at the bargaining table from one where there would be reasoned discussion in a background of balanced bargaining relations upon which good-faith bargaining must rest to one in which, at best, intensified distrust of the Union's motives would be engendered.

[28] *Saginaw Hardware Co*, 108 NLRB No 131

[29] *Little Rock Road Machinery Co*, footnote 13, *supra*

[30] For discussion of filing requirements and effect of noncompliance on status of bargaining agent, see chapter II, The Filing Requirements.

[31] *American Potash & Chemical Corp*, 107 NLRB No 290.

[32] Compare the statutory provision that a union may not be certified as the representative of guards if it admits to membership employees other than guards. Section 9 (b) (3) And see *American Service Bureau*, 106 NLRB 622, where the Board, at the beginning of fiscal 1954, declined to find that a conflict of loyalties precluded the representation of insurance inspectors by a union which also represents insurance agents

[33] *Bausch & Lomb Optical Co*, 108 NLRB No 213 The question arose in this case in connection with charges that the employer's refusal to bargain with its union competitor violated section 8 (a) (5) Member Murdock concurred in the dismissal of the charges on the sole ground that by engaging in a competitive business the union conducted itself in a manner not consistent with good-faith bargaining.

In another case, the Board dismissed a petition for the certification of a "joint organizing committee" composed of 7 local unions.[34] The committee, an informal organization without constitution, bylaws, or officers, was formed solely for the purpose of organizing the employer's nonunion employees. The Board found that: (1) The committee, if viewed as a labor organization, was not a proper petitioner not having complied with the filing requirements of section 9 (f), (g), and (h); and (2), if viewed as merely a convenient means of designating the 7 constituent locals as joint petitioners, the petition was subject to dismissal because there was no good-faith intention on the part of the locals to bargain on a joint basis for the appropriate overall unit.

The Board during fiscal 1954 also reaffirmed the well established rule that 2 or more labor organizations may jointly act as bargaining agent for a single group of employees.[35] The Board has also adhered to the principle that the qualification of a union to act as bargaining representative for a group of employees ordinarily is not determined by its "jurisdiction" as to membership but rather by its willingness to represent employees under the act. Thus, the Board rejected a contention that a petition filed jointly by 2 unions should be dismissed because some of the employees sought were not eligible for membership in 1 of the 2 unions.[36]

2. The Contract-Bar Rule

It is the Board's continuing belief that the accommodation of the competing statutory objectives of freedom in the choice of bargaining representatives and stability in labor-management relationships requires that, where a contract serves to stabilize an existing bargaining relationship, the employees' freedom to select their representative must, for a reasonable time, be subordinated to the interests of industrial stability.[37]

In the application of the principle that an incumbent union's contract may be a bar to a rival petition, the Board has again had occasion to point out that the contract-bar rule may not be invoked unless the contract on which the incumbent relies is a valid written collective-bargaining agreement, signed by the parties, and containing substantial terms and conditions of employment. Thus, an election was held not barred by an oral agreement reached prior to the filing of a petition but not incorporated in a formal contract until a later date.[38] So, too, a contract made expressly applicable to only one plant, but extended orally to cover new operations established after the execution of the contract, was held no bar to an election at the new plant.[39] A

[34] *Sears, Roebuck & Co*, 106 NLRB 1385.
[35] *Sonoco Products Co*, 107 NLRB No 24; *J. J. Moreau & Son, Inc*, 107 NLRB No. 207.
[36] *Gusdorf & Son*, 107 NLRB No. 204.
[37] *General Electric Company*, 108 NLRB No. 183
[38] *Essex-Graham Co.*, 107 NLRB No 292.
[39] *Michigan Limestone Division, United States Steel Corp.*, 106 NLRB 1391.

contract complete in all substantive respects but not signed by all parties does not bar an election.[40] But a contract signed by the proper officials was held by a Board majority validly executed and a bar, even though a majority of the employees in the unit expressly opposed its execution. The contract here did not provide for membership approval as a condition to its validity.[41] A signed document stating that the parties had reached a complete agreement on all the terms of a contract covering wages, hours, and working conditions, and setting forth its effective date was held no bar since it failed to incorporate by reference any document from which the status of the contractual relations between the parties, or the actual terms agreed upon, could be determined.[42]

a. Duration of Contracts

The question of the effect of the duration of collective-bargaining agreements for contract-bar purposes had to be determined during the past year in cases involving (1) agreements of more than 2 years' duration, (2) agreements of indefinite duration, and (3) agreements terminable at will.

In the cases where the Board denied contract-bar effect to agreements whose terms exceeded 2 years, a majority of the Board was guided by the absence of a showing that such agreements were customary in the particular industry.[43] Chairman Farmer and Member Rodgers, however, withheld their opinion as to the effect that should be accorded to industry custom where such a custom is shown.

(1) Contracts of Uncertain Duration

At the end of the fiscal year, the Board reexamined the companion policies of (1) disregarding contracts "terminable at will," [44] and (2) of according contracts of "indefinite duration" contract-bar effect during a reasonable time, i. e., the first 2 years of their existence. A majority of the Board concluded that both types of contracts should be treated alike, that is, as barring an election during the first 2 years.[45]

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[40] *Simplex Tool and Die Corp.*, 107 NLRB No. 149; see also *Winter Stamping Co*, 107 NLRB No. 6; *Fort Pitt Packaging Co.*, 108 NLRB No. 193.

[41] *Midland Rubber Corp.*, 108 NLRB No. 128, Member Rodgers dissenting

[42] *Pasco Packing Co.*, 106 NLRB 1223, Member Peterson dissenting on another point.

[43] *Joseph Aronauer Incorporated*, 106 NLRB 1382; *Duncan Foundry and Machine Works, Inc.*, 107 NLRB No. 76; *Columbia Broadcasting System, Inc.*, 108 NLRB No. 206. Compare *General Motors Corp.*, 102 NLRB 1140.

[44] See, for instance, *Fawcett-Dearing Printing Co*, 106 NLRB 21, where an election was directed in the face of a contract which, following its initial term, could be terminated by either party on 60 days' notice. Member Murdock dissented as to the effect of the termination clause. See also *Dick Brothers, Inc.*, 107 NLRB No. 219, where contracts terminable only by strike or lockout were held not to be "terminable at will" for contract-bar purposes.

[45] *Rohm & Haas Co.*, 108 NLRB No. 185; Member Rodgers, dissenting, expressed the view that the determining factor was the statutory policy to preserve the freedom of employees to select their bargaining agents and that, in the light of that policy, the Board should review its current rule with respect to contracts of indefinite duration, rather than to consider an election barred by a contract terminable at will.

The majority took the view that it is the duty of the Board to sustain the validity of collective-bargaining contracts and to deny them effectiveness only if the contract is inconsistent with the policies of the act. The majority also observed that, in striking a proper balance between the employees' right to select representatives and the statutory objective of stability in labor relations, the interests and desires of the contracting employer and union are pertinent considerations. With reference to contracts terminable at will, the Board said:

> Agreements terminable at will are presented for Board consideration only when the parties to the contracts wish to preserve and continue their bargaining relationship. If the parties were not satisfied, one or the other would exercise its privilege under the contract to terminate the agreement, and that would dispose of the problem. Thus in application, Board practice of disregarding contracts terminable at will for purposes of representation elections would necessarily have the undesirable effect of disrupting peaceful and settled relations between employers and labor organizations and bringing disagreement and conflict where peace had formerly obtained.

b. Coverage of Contract

According to established practice, contracts have been held to bar an election only to the extent that their coverage included the employees involved [46] and established a unit which was appropriate and conformed to Board policy.

Under these standards, an election among a group of office clericals was held barred where the employer was a party to a national agreement providing that the agreement was to apply to any unit for which the contracting international or one of its locals shall be recognized, and where a subsequent stipulation recognized a specific local as the bargaining agent of the group.[47] On the other hand, an agreement covering *some* of the employer's craft employees and providing for recognition of the union "for all employees involved in the event of any expansion or change in operations" was held no bar to an election among *all* the craft employees following the anticipated expansion.[48]

The question of whether employees specified in a petition are covered by the contract asserted as a bar depends at times upon whether the employer is bound by group bargaining. The principles applied by the Board in determining the employer's status under a given multiemployer contract are discussed in the section on multiemployer units, at pp. 44–45.

(1) Appropriateness of Contract Unit

The Board has reaffirmed the rule that it will not direct an election which would disturb an existing contract unit established by collective

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[46] See, for instance, *United States Time Corporation,* 108 NLRB No. 205; *American Tobacco Company, Incorporated,* 108 NLRB No. 167.

[47] *Radio Corporation of America (RCA Victor Division),* 107 NLRB No 180

[48] *Armstrong Cork Co. (Lancaster Floor Plant),* 106 NLRB 1147.

bargaining, unless the unit is inherently inappropriate in that it is repugnant to Board policy or to the express requirements of the act.[49] In one case,[50] the Board held that an intervenor's contract covering a unit including guards together with production and maintenance employees was no obstacle to an election among the guards because the contract unit contravened the statute's prohibition against the inclusion of guards in a unit with other employees.[51] Applying the same rule in a later case,[52] a majority of the Board rejected the view that a contrary result must be reached under the Board's *American Dyewood* and *Sonotone* decisions.[53] The majority held these cases were to be distinguished in that there a new election would have disrupted the established bargaining pattern of broad units of production and maintenance employees merely because some employees later found to be guards were included in one case through error.

The Board denies contract-bar effect to agreements which embody a substantial departure from the unit previously certified by the Board, such as the exclusion from the coverage of the contract of employees specifically included in the certified unit.[54]

(2) Expanding Units

Restating the rule that "where the character of the bargaining unit has changed during a contract term, such contract is not a bar to determination of representatives," the Board in one case[55] during fiscal 1954 pointed out that:

> [I]n order to invoke the expanding unit doctrine, not only must the size of the unit have changed so that the numbers employed at the date of the contract cannot be said to be representative of those at the time of the filing of the petition or at the hearing, but the nature of the production processes must also have changed to such an extent that the character of the unit has been materially altered

In this case, the Board found that the "expanding" or changed unit doctrine did not apply. The Board noted that, while the number of employees increased substantially, less than 1 percent of the job classifications had been changed, and no new skills had been introduced. The Board also held that, since the petitioning union sought to displace the incumbent union in the entire production and maintenance unit, which had not changed in character, the case was not governed by the rule that a petition for separate representation of employees in a new manufacturing process is not barred by a contract

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[49] *The Murray Company of Texas,* 107 NLRB No 307.
[50] *Nash Kelvinator Corp ,* 107 NLRB No 137
[51] Section 9 (b) (3).
[52] *Monsanto Chemical Co ,* 108 NLRB No. 121, Member Murdock dissenting.
[53] *American Dyewood Company,* 99 NLRB 78 , *Sonotone Corporation,* 100 NLRB 1127. See Seventeenth Annual Report, pp. 45–46.
[54] *Wilford Auto Sales, Inc ,* 106 NLRB 1396.
[55] *The Budd Co.,* 107 NLRB No. 48.

executed before the establishment of the new department.[56] In another case, however, the Board granted an election among the employees of 2 employers whose operations and personnel had been merged.[57] The incumbent union's contract with 1 of the employers was held no bar because, the Board found, the merger of the 2 corporations had resulted in an entirely new operation and the contract unit had ceased to exist.

c. Union-Security Agreements

The Board has consistently disregarded for contract-bar purposes agreements which conflict with the basic policies of the act, such as agreements containing union-security provisions not permitted by section 8 (a) (3). The Board made it clear during the past year that union-security clauses will be scrutinized even though they are not challenged by the parties.[58] Thus, the Board said:

> Where a contract, containing clauses which patently contravene the provisions of the Act, is part of the record, we deem it our duty not to ignore that fact and not to sanction the use of such a contract as a bar to an election

On the other hand, the Board has also expressed the view that it would not be consonant with the purpose of its contract-bar rules to apply the same strict yardstick in evaluating union-security provisions in representation cases as must be applied in unfair labor practice cases.[59] Moreover, where the language of a union-security clause is ambiguous, the Board determines its validity in the light of the intention of the contracting parties and the actual application of the doubtful provisions.[60]

Applying these principles, the Board held the contract no bar to an election when the agreement clearly deprived the new employees of the statutory 30-day grace period for acquiring union membership,[61] and, in another case, required the employer "to employ none but members in good standing" of the contracting union.[62] In the latter case, the Board also held that the mere existence of such a preferential hiring clause is unlawful, and that it was immaterial that the extent of its application was not shown. The Board here also held that the clause was not validated by a saving provision to the contract, which did not expressly defer application of the clause. Similarly, a contract was

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[56] See, for instance, *Armstrong Cork Co. (Lancaster Floor Plant)*, 106 NLRB 1147 Compare *Otis Elevator Company*, 108 NLRB No. 192, where the Board similarly held that a contract which did not cover or contemplate a job category created after its execution was not a bar to an election.

[57] *L B. Spear & Company*, 106 NLRB 687

[58] *Kaye Novelty Co., Inc*, 107 NLRB No. 14. See also *Specialty Woodcraft, Inc*, 107 NLRB No. 209

[59] *Regal Shoe Company*, 106 NLRB 1078, overruling *Hess, Goldsmith and Co., Atwater Division*, 101 NLRB 1009 See also *Grand Leader Dry Goods Co*, 106 NLRB 1141

[60] See, for instance, *Rubin (Klasson Knitwear Co.)*, 106 NLRB 178.

[61] *Hires, Castner and Harris, Inc.*, 107 NLRB No. 139.

[62] *Specialty Woodcraft, Inc., supra.*

held invalid because of provisions which granted preference in hiring to union members holding working cards, and which required employees hired in the open market to obtain temporary working cards from the union at the end of the second working day.[63] In another case,[64] an election was held not barred by a contract with a union-security clause that was illegal because it required union members to pay not only regular membership dues but also general assessments as a condition of continuing employment.

However, a contract was held not ineffective as a bar because its union-shop clause did not expressly grant 30 days' grace to employees who were not union members at the time the contract was executed, because it was found that there were no nonmembers at that time and that the deficiency was thus a purely academic one.[65] The Board noted that the petitioner in a representation proceeding, seeking to disturb a harmonious contractual relationship, should not be permitted to circumvent contract-bar rules on technical and legalistic grounds.

A contract which contained terms that might have been interpreted as subjecting employees hired before its execution to immediate discharge for nonmembership in the union was nevertheless held to be a bar when it was shown that the clause was not intended to have that effect and that, in any event, it had not been enforced.[66] In another case,[67] the Board rejected a contention that a contract was invalid because its provision for the discharge of employees who are expelled from the union permitted discharge on grounds other than the nonpayment of regular initiation fees and dues, the only grounds sanctioned by the act. The Board held that the contract was a bar because (1) under the applicable presumption of legality, the obligation to discharge had to be construed as extending only to situations permitted by the act, and (2) the parties had so interpreted and applied the clause.

d. Schism or Change of Status of Bargaining Agent

In a number of cases during fiscal 1954, it was contended that the Board should make an exception to the contract-bar rule because serious confusion as to the identity of the bargaining agent had arisen as a result of a schism within the ranks of the contracting union. The Board, under its schism doctrine, will direct an election if it finds that the bargaining relationship is so confused that no stabilizing purpose would be served by giving effect to an asserted contract.[68] The Board found relatively few cases where these requirements were met.

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[63] *Kaye Novelty Co., supra.*

[64] *John Deere Planter Works of Deere & Co.*, 107 NLRB No. 306.

[65] *Regal Shoe Company*, 106 NLRB 1078, overruling *Hess, Goldsmith and Co., Atwater Division*, 101 NLRB 1009. See also *Grand Leader Dry Goods Co.*, 106 NLRB 1141.

[66] *Rubin (Klasson Knitwear Co.)*, 106 NLRB 178.

[67] *Humboldt Lumber Handlers, Inc.*, 108 NLRB No. 79.

[68] See *Barton Distilling Co.*, 106 NLRB 361.

However, a new application of the rule was made to cover cases where the membership of a union takes disaffiliation action after the union has been expelled from its parent organization because of Communist leanings.[69] A majority of the Board here concluded that

> expulsion of a labor union by its parent organization coupled with disaffiliation action at the local level for reasons related to the expulsion, disrupts any established bargaining relationship between an employer and that union and creates such confusion that the existing contract with such union no longer stabilizes industrial relations between the employer and its employees.

In view of this conclusion, the majority announced the rule that:

> Where . . . a local group disaffiliates from a union expelled by its parent for reasons related to the expulsion . . ., the Board will find that a schism exists which warrants directing an immediate election notwithstanding the existence of a contract with the union suffering the schism which would otherwise bar a determination of representative.

Generally, the Board continues to recognize a schism only where disaffiliation action was taken at a formal meeting of the contracting union called for the specific purpose of considering disaffiliation.[70] Thus, informal notice by leaflets and word of mouth of a meeting, whose purpose had never been announced publicly, was held insufficient to satisfy the requirement of formalized disaffiliation action.[71] Nor does the Board permit the schism doctrine to be used to facilitate raiding by a rival union. No validity will therefore be accorded to disaffiliation action assisted or controlled by a rival of the contracting union.[72] Moreover, formalized action expressing dissatisfaction with the bargaining agent by employees who desire to change representation, at a time generally considered inappropriate by the Board, is considered insufficient for making an exception to the normal contract-bar rules.[73]

A mere change in affiliation, which leaves no doubt as to the identity of a union which is to administer the contract in question, has also been held not to justify the holding of an election. Thus, in one case, a petition was held barred by a contract to which the petitioner had succeeded.[74] Here, the members of the contracting union were found to have made the petitioner their bargaining agent by voting to affiliate with it. The petitioner, therefore, was bound by the contract for the remainder of its term. According to the Board, the subsequent disestablishment of the contracting union by its former membership was immaterial and did not remove the contract as a bar. Similarly, no

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[69] *A. C. Lawrence Leather Co*, 108 NLRB No. 88; Members Rodgers and Peterson rejected the contract as a bar on other grounds. See also *International Harvester Co*, 108 NLRB No. 91.

[70] See *Pepsi-Cola Buffalo Bottling Corp.*, 107 NLRB No. 192

[71] *The Budd Co.*, 107 NLRB No. 48; *The Linde Air Products Co.*, 107 NLRB No 246

[72] See *Barton Distilling Company*, 106 NLRB 361; *The Weatherhead Co*, 108 NLRB No 101; *The Linde Air Products Co., supra; Dick Brothers, Inc*, 107 NLRB No. 219

[73] See *Barton Distilling Co., supra; Weatherhead Co., supra.*

[74] *Charles Beck Machine Corp.*, 107 NLRB No 165

need for an election was found where, after the contracting union's charter was revoked by its parent organization for failure to pay dues to the parent, the members of the contracting union voted to affiliate with another union and to assign to it the suspended union's contracts and assets.[75]

The Board has continued to disregard a contract of a union which has ceased to function on behalf of the employees covered and is defunct.[76] However, the fact that a union was temporarily ineffective, following the resignation of its officers, was held not to prevent its contract from being a bar.[77] The union here, in the face of a disaffiliation movement, had maintained or regained most of its membership and had continued to administer its contract with the employer which accorded it continued recognition.

e. Effect of Rival Petitions and Representation Claims

Generally, the filing of a rival petition is held to prevent the subsequent execution or renewal of a contract with another union from resulting in a bar to an election.[78] Nor will the Board give effect to a contract executed before the amendment of a timely petition where the amendment is not substantial. Thus, amendments which modified the petitioner's unit request, without materially changing it, were held not to constitute a new petition or to affect the timeliness of the original petition in relation to the intervening contract.[79] Conversely, a complete and valid contract executed contemporaneously with the filing of a rival petition was held to bar the petition, even though the contract was redrafted on the following day to eliminate an inadvertent error and to conform the document to the actual agreement of the parties.[80]

(1) Representation Claims—the 10-Day Rule

The assertion of a representation claim may also prevent a later execution or renewal of a contract with another union from barring an election. However, if the claim is unsupported it will forestall such a contract from operating as a bar only if the claimant files a petition within 10 days from the date of its claim.[81] But where a contract was executed at a time when the employer had knowledge of a conflicting claim, and the claimant believed in good faith that

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[75] *R. C. Williams & Co*, 107 NLRB No. 195 See also *The Prudential Insurance Company of America*, 106 NLRB 237.

[76] See *Universal Utilities, Inc*, 108 NLRB No. 15; *C & D Batteries, Inc*, 107 NLRB No. 261, *Benjamin Air Rifle Co*, 107 NLRB No 38

[77] *The Linde Air Products Co.*, 107 NLRB No 246.

[78] See, for instance, *Treadwell Engineering Co*, 106 NLRB 898. Compare *Coastal Drydock & Repair Corp.*, 107 NLRB No 194.

[79] *Westinghouse Electric Corp*, 107 NLRB No. 7; *Hyster Company*, 106 NLRB 347.

[80] *Laycob Hat Co*, 107 NLRB No. 213.

[81] See *Thomas Electronics, Inc*, 107 NLRB No. 124; *Elliott Company, Crocker-Wheeler Division*, 106 NLRB 1033, Member Peterson dissenting on another point.

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the employer had recognized its claim as valid, failure to file a petition within 10 days of the claim was held not to preclude a finding that a question of representation existed when the contract was executed.[82] In this case the employer and the claiming union had begun negotiations and, when the employer executed a contract with another union, the claimant called a strike. The contracting union thereupon filed a petition, rendering it unnecessary for the claimant to do so. Thereafter, by agreement, the contracting union withdrew its petition, the claimant called off the strike, and the employer filed the instant petition.

(2) Automatic Renewal—Timeliness of Petition

According to established Board practice, contracts providing for their automatic renewal at a fixed date generally continue to bar an election unless a rival claim is made or a petition is filed before the renewal—or so-called "Mill B"—date.[83] A rival petition filed within a reasonable time before the automatic renewal date of an existing contract is not barred thereby,[84] nor is a petition barred where the renewal date is less than 30 days from the date of the Board's decision.[85]

f. Termination of Contracts

In a number of cases the Board's determination of whether there was a question of representation depended on whether a preexisting contract had been effectively terminated before the filing of the petition. The Board has held that where the contract provides for its automatic renewal absent specific notice to terminate or modify, a notice to terminate which does not conform to the contract requirements is ineffective unless the parties have waived the defect in the notice. In one case,[86] a contract was held to have been terminated by notice of a party's desire to negotiate changes even though the notice did not specify the desired changes as required, since by entering upon negotiations the parties had waived the defect. On the other hand, a union which did not receive the employer's notice of termination until 1 day after the automatic renewal date was held not to have waived the defect in the notice by later indicating it was willing to discuss contract changes.[87] The union here at all times maintained that its contract had been automatically renewed. Under these circumstances, the Board viewed the employer's belated notice and the union's favorable reply as postrenewal proposals to nego-

[82] *Lock Joint Pipe Co*, 106 NLRB 355.
[83] *Mill B, Inc.*, 40 NLRB 346.
[84] See *J C Hirschman Co*, 106 NLRB 529. See also *Central Rufina*, 108 NLRB No. 59.
[85] *Cuneo Eastern Press, Inc.*, 106 NLRB 343
[86] *Winter Stamping Co*, 107 NLRB No 6 Compare *Continental Can Co., Betner Division*, 107 NLRB No 3
[87] *Koenig Brothers, Inc.*, 108 NLRB No. 67.

tiate changes. In another case, certain addenda to an outstanding contract, which were to be effective for a limited period, were held not intended to advance the contract's termination to a date which preceded the filing of the petition.[88] The Board noted that the addendum was not by itself a complete bargaining agreement and left most of the provisions of the original contract unmodified including its renewal clause.

In the last-mentioned case, the Board rejected the contention that the contract asserted as a bar had been terminated because of a breach of its no-strike clause. The Board found that the employer's dealings with the union after the strike ended indicated that the employer did not intend to exercise any right it may have had to rescind the contract. However, in another case the Board held that an employer had effectively terminated a contract some 6 months after the contracting union's breach of its no-strike pledge.[89] In view of the union's continuing breach, the Board declined to find that the employer had waived its right to terminate the contract by failing to send an earlier termination notice and by continuing to negotiate with the union.

In one case, the Board rejected the petitioner's contention that an asserted contract had ceased to be a bar under provisions to the effect that the contract should terminate if a strike were called after unsuccessful wage renegotiations.[90] The Board found that the strike in this case was not called by the contracting union over wage negotiations, but rather was brought about by the union's dissident officers and members, who had defected to the petitioner, and the purpose of the strike was to force termination of the contract. The Board held that, under these circumstances, the strike was not one within the provisions of the contract.

A majority of the Board during the past year also reaffirmed the rule that "when modification and termination clauses in the same contract are coterminous, notice under the modification clause is equivalent to notice to terminate for purposes of application of the contract bar rule." [91]

g. Reopening of Contracts

Generally, the Board has adhered to the *Western Electric* rule,[92] that the midterm renegotiation of the contract terms, other than the contract's terminal date, does not remove it as a bar to an election, regardless of whether or not the contract contains a reopening clause.[93] However, near the close of the fiscal year a majority of the Board

[88] *Land O'Sun Dairies, Inc.*, 107 NLRB No. 253.
[89] *Moore Drop Forging Co.*, 108 NLRB No. 5
[90] *Dick Brothers, Inc.*, 107 NLRB No. 219.
[91] *American Lawn Mower Co.*, 108 NLRB No. 215, Member Murdock dissenting.
[92] See *Western Electric Company, Incorporated*, 94 NLRB 54
[93] *Land O'Sun Dairies, Inc.*, 107 NLRB No. 253; *Laycob Hat Co.*, 107 NLRB No. 213, *Frances H. Leggett & Co.*, 106 NLRB 217.

announced that, since the contract-bar rule is designed to serve the interests of industrial stability, the *Western Electric* rule will be applied only where the asserted contract so stabilizes bargaining relations between the parties as to justify the denial of a present election.[94] This essential prerequisite is lacking, a majority of the Board held, when the contract's modification clause provides that (1) either party may require renegotiation of any or all provisions, (2) the union may call a strike to support demands in such renegotiation, and (3), if the union strikes, the employer may terminate the contract. With reference to these provisions, the Board majority said:

> We fail to perceive how a contract which contains such a broad provision for midterm modification, and which contains no inhibitions on the union's right to strike to enforce its demands, and expressly provides the privilege of termination by one party only, can be said to have stabilized the relationship between the parties for the full nominal term of their contract. Under this provision, once notice is given nothing remains of the entire contract but the meaningless terminal date, which is itself subject to extinction. Viewed realistically, this contractual provision insures no greater degree of stability than does the usual automatic-renewal clause, which the Board has consistently held opens a contract to a timely rival petition. In either situation, until the time for giving notice has passed, or the parties have executed a new or modified contract, the degree of industrial stability which the Board's contract-bar principles were designed to preserve does not exist. In neither situation, therefore, is there any rational basis for denying to the employees, on the basis of a timely petition, an immediate opportunity to exercise their franchise.

The *Western Electric* rule is thus modified insofar as the above views limit its application.[95]

h. Premature Extension

The Board has continued to apply the rule that the premature extension of a contract does not bar a petition which would have been timely as to the contract's original expiration or automatic renewal date.[96] Thus, prematurely extended contracts were held no bar to a petition filed before the original contract's renewal date [97] and within 10 days after the petitioner's demand for recognition.[98]

The premature-extension rule is applicable only if the original agreement was a bar to an election when it was extended. Thus, where a contract of unreasonable duration was extended after the

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[94] *General Electric Co.*, 108 NLRB No. 183, Members Murdock and Peterson concurring in directing an election because of the existence of a schism in the contracting union

[95] The majority distinguished *Dick Brothers, Inc*, 107 NLRB No. 219, because of the limited nature of the modification clause there The contract in that case provided for termination by strike or lockout in case of the unsuccessful renegotiation of wages, the only subject for which the contract could be reopened.

[96] *Kennedy Van Saun Mfg. & Engineering Corp.*, 108 NLRB No 226 See *Fawcett-Dearing Printing Co*, 106 NLRB 21. Member Murdock dissented on the ground that the contract contained a renewal clause in relation to which the petition was untimely.

[97] *The Geltman Sponging Company of Rhode Island*, 107 NLRB No. 151. See also *Phelps Dodge Refining Corp.*, 106 NLRB 1084.

[98] *Westinghouse Electric Corp.*, 106 NLRB 1233. Compare *Grand Leader Dry Goods Co.*, 106 NLRB 1141.

second year, the Board held that the petitioner could not invoke the rule.[99]

The Board during fiscal 1954 rejected a contention that a premature extension could not be claimed by a petitioner which at the time had knowledge of the extension.[1] The Board pointed out that such an exception to the premature-extension doctrine will be made only where the petitioner actually participated in the negotiation of the contract extension and accepted benefits under the extended contract.[2] In one case, the Board likewise declined to relax its premature-extension rule because of such circumstances as economic hardship of employees presently subject to wage controls and pressure upon the employer to increase wages in order to combat manpower shortages.[3]

3. Waiver

In several instances, the Board was asked not to direct an election among employees specified in the petition because the petitioner had previously waived its right to represent them by specifically excluding them from its present contract with the employer. The Board denied the request because of the established principle that the exclusion of a group of employees from a contract unit does not of itself constitute a waiver by the union of its right to represent them in the future as part of the contract unit,[4] and because the *Briggs-Indiana*[5] waiver doctrine, invoked in two cases,[6] was inapplicable. In the *Standard Oil* case, the Board pointed out that, unlike in *Briggs-Indiana*, the exclusion of certain employees from the petitioner's contract was not accompanied by a promise that the contracting union will refrain from seeking to represent the employees involved.[7] In the *Wilford* case, the employer contended that the *Briggs-Indiana* doctrine required the dismissal of the petition because the petitioner had agreed not to represent certain categories of employees for the duration of the contract although they were included in the certified unit. In determining that the *Briggs-Indiana* principle ought not to be extended to an agreement by a certified union not to represent employees in the certified unit, the Board said:

> Under a Board certification a union acquires certain rights, but it likewise must assume certain corresponding obligations. Thus, it has long been the policy of the Board to require that a certified union afford equal and full representa-

[99] *Pasco Packing Co.*, 106 NLRB 1223, Member Peterson dissenting on another point Compare *Fawcett-Dearing Printing Co.*, *supra*

[1] *General Electric Co. (River Works)*, 107 NLRB No 21 See also *Kennedy Van Saun Mfg & Engineering Corp*, 108 NLRB No 226

[2] See *Raytheon Manufacturing Company*, 98 NLRB 785 and 1330

[3] *Kennedy Van Saun Mfg & Engineering Corp*, footnote 1, *supra*

[4] *United States Gypsum Company*, 107 NLRB No 39

[5] *Briggs-Indiana Corporation*, 63 NLRB 1270

[6] *Standard Oil Co*, 107 NLRB No 311, *Wilford Auto Sales, Inc.*, 106 NLRB 1396

[7] See also *Penn-Dixie Cement Corporation*, 107 NLRB No. 74.

tion to all employees in the certified unit or risk revocation of its certification[8] Just as a certified union may not avoid its duty to represent all employees in the certified unit, it may not relieve itself of this obligation by bargaining away the corresponding right acquired through certification.

4. Impact of Prior Determinations

The Board's determination of the timeliness of a petition again depended in some cases on the applicability of the rule by which the Board has accorded a certified representative 1 year within which to establish contractual relations with the employer without interference by rival claims.[9] In other instances, the determinative factor was the statutory 12-month limitation on elections in section 9 (c) (3).

a. Change in Rule Regarding Petitions During Certification Year

Late in the fiscal year, the Board had occasion to reexamine its *Quaker Maid* rule[10] which recognized as a bar any contract made during the certification year, be it an original contract or a renewal or extension thereof. In the view of a majority of the Board, this rule should no longer be followed because it unduly prolongs the period during which a bargaining relationship established by a certificate is protected and the employees are prevented from exercising their right to change representatives.[11] The majority held that the normal contract-bar rules should apply to a contract executed during the certification year. The majority opinion said:

> The original reason for the 1-year certification rule was to afford time to the certified union and the employer for negotiating a collective-bargaining agreement free of interference by rival claims of representation. The rule itself was a pronouncement of the Board and is nowhere required by the Act. In the Board's experience, 1 year is adequate time for the certified union and the employer to reach agreement on terms and conditions of employment, if they are ever to do so. But, if the parties are able to agree on a collective-bargaining contract in less than the 1 year allotted, there is no sound reason for saying that they shall have the remainder of the year to make a second or third contract free of interference by rival claims of representation. [Footnote omitted.]

Since under the new rule representation petitions may be entertained during the certification year, the Board modified the *Centr-O-Cast* decision[12] in which the Board had implemented the *Quaker Maid* rule by declining to process any petition during the certification year.

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[8] The Board here refers to *Hughes Tool Co*, 104 NLRB 318, and cases cited therein See Eighteenth Annual Report, pp 19–20

[9] See, for instance, *Ludlow Typograph Company*, 108 NLRB No 209, more fully discussed below; compare *Pasco Packing Co*, 106 NLRB 1223

[10] See *The Quaker Maid Company, Inc.*, 71 NLRB 915; see also *Westinghouse Electric Corporation*, 107 NLRB No. 96.

[11] *Ludlow Typograph Co*, 108 NLRB No 209, Members Murdock and Peterson dissenting.

[12] *Centr-O-Cast & Engineering Company*, 100 NLRB 1507

b. Effect of Prior Election

In giving effect to section 9 (c) (3) which limits representation elections to 1 in a 12-month period, the Board has continued to compute the 12-month period from the date of balloting in the earlier election.[13] The Board has also reaffirmed the rule that section 9 (c) (3) does not preclude the processing of a petition filed near the end of the 12 months as long as the new election is not held sooner than 1 year after the prior election.[14]

Section 9 (c) (3) bars a new election only in a "unit or any subdivision" in which a previous election was held. The Board during the past year ruled that the provisions of the section do not preclude the direction of an election in an overall unit including a craft group which had previously been granted a self-determination election in which the group had expressed its desire to remain a part of the overall unit.[15]

In one case the Board granted an employer's request to rescind an outstanding direction of election because the petitioner in the case in the meantime had lost a consent election conducted by a State board.[16] In dismissing the petition, the Board pointed out that the petitioner, after invoking the State board's jurisdiction in the erroneous belief that the National Board had declined jurisdiction, had received a fair determination of its representation claim so that there was no longer an undetermined question of representation. However, the Board declined to give like effect to a State board election in another case.[17] The Board noted that in this case, unlike the *Oil Transport* case, State board action had been invited by the intervenor, and the petitioner at no time took action inconsistent with its petition before the National Board. Nor did it appear whether the State election was held in the same unit as the one now sought, or whether the present petitioner sought or was offered a place on the State ballot.

5. Unit of Employees Appropriate for Bargaining

In determinations of the unit, or group, of employees appropriate for bargaining, the Board continues to give primary consideration to grouping together of employees with substantial common work interest. There was occasion to reaffirm the rule that a unit determination will not be based on considerations unrelated to work interests

[13] *Whiting Corp.*, 107 NLRB No. 108.

[14] *Coastal Drydock & Repair Corp.*, 107 NLRB No. 194 As to the subsequent modification of the *Centr-O-Cast* rule to which the Board refers, see p. 35

[15] *Westinghouse Electric Corp.*, 107 NLRB No. 96.

[16] *Oil Transport, Inc.*, 106 NLRB 1321.

[17] *King Brooks, Inc.*, 108 NLRB No. 8.

and functions, such as the sex of the employees.[18] The Board again declined to direct an election in a unit of only one employee.[19]

The following sections discuss the more important cases involving the determination of units during fiscal 1954.

a. Collective-Bargaining History

Generally, the Board is reluctant to disturb a well-established bargaining pattern.[20] However, as heretofore, the Board does not consider itself bound by a bargaining history resulting from a consent election conducted upon the basis of a unit stipulated by the parties rather than a unit determined by the Board.[21] Nor does the Board consider controlling a bargaining history based in large measure upon jurisdictional agreements between the contracting unions.[22] Moreover, a bargaining history ceases to be decisive if significant changes have occurred in the employer's operations.[23]

The Board also continues to decline to establish a unit based on a history which is repugnant to established Board policy regarding the composition and scope of bargaining units.[24] Thus, a history of inclusion of retail sales employees in a unit of manual workers is not controlling. On the other hand, a bargaining history deviating from a Board certification was given weight where the parties had not altered the specific composition of the certified unit.[25] In this case, the incumbent union originally had a single-plant contract for the unit sought by the petitioner, but it had been merged into a multiplant contract some 15 months before the petition was filed. The Board held that the ensuing multiplant history, together with the fact that multiplant bargaining was particularly suited to the employer's glass container plants,[26] indicated the appropriateness of a multiplant unit. The Board further held that this multiplant history in excess of a year's duration precluded the establishment of a single-plant unit.[27]

In one case, contractual history was held not entitled to controlling weight because the Board, in an unfair labor practice proceeding, had

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[18] See e g, *Cuneo Eastern Press, Inc., of Pennsylvania,* 106 NLRB 343

[19] *Fritzsche Brothers Inc.,* 107 NLRB No. 166; *Producers Rice Mill, Inc.,* 106 NLRB 119. However, an employee was permitted to express in an election whether he desired to be included in an existing bargaining unit. *The Enterprise Co.,* 106 NLRB 798.

[20] *General Electric Co. (River Works),* 107 NLRB No. 21, *The Murray Co. of Texas, Inc.,* 107 NLRB No 307.

[21] *General Electric Co. (River Works),* 107 NLRB No. 21

[22] *Utility Appliance Corp.,* 106 NLRB 398.

[23] *The Mennen Co.,* 108 NLRB No. 62.

[24] *General Electric Co. (River Works),* see footnote 20

[25] *Owens-Illinois Glass Co*, 108 NLRB No. 130.

[26] In a prior decision (82 NLRB 205) the Board had found that such a unit of this employer's plants might be appropriate.

[27] The Board cited *Taylor and Boggis Foundry Division of the Consolidated Iron-Steel Manufacturing Company,* 98 NLRB 481, and distinguished *Oswego Falls Corp.,* 104 NLRB 314. Compare *Motor Cargo, Inc.,* 108 NLRB No. 98.

ordered the employer to cease recognizing the contracting union, unless certified, and to cease giving effect to its contracts.[28]

Ordinarily, the bargaining history which the Board considers is that of the employees sought to be represented rather than the bargaining practices for similar employees in the locality or industry. In one case the Board rejected a contention that a unit limited to 1 of an employer's 3 mines was inappropriate because the bargaining pattern in the area was on a division- or company-wide basis.[29] There had been no bargaining history involving the employer's employees.

The Board has adhered to the *Seagram* doctrine,[30] to the effect that the bargaining pattern for an organized group of employees does not invariably control the bargaining pattern for unorganized employee groups of the same employer.[31] In one case, however, where associationwide bargaining for certain employee groups had been demonstrably successful, the Board gave controlling weight to this bargaining history since the petitioning union and the employer were willing to bargain for the previously unrepresented employees on an associationwide basis, and the petitioner had made an adequate showing of interest.[32] In another case, where the bargaining history of the group involved was equivocal, the Board merely accorded weight to the bargaining pattern of the employer's other organized employees.[33]

b. Craft and Departmental Units

During fiscal 1954, the Board reexamined the question of separate representation for craft employees and similar departmental groups in the light of past policies and the statutory reference to craft representation. Section 9 (b) (2) confers on the Board discretion to establish craft units, but prohibits denial of separate representation to craft employees solely on the ground that the Board had previously included them in a different unit. The conclusions of a majority of the Board were translated into a new set of rules announced in the *American Potash* case.[34] These rules pertain to (a) the establishment of true craft units, (b) the recognition of traditional departmental units, and (c) the abandonment of the practice of denying craft or departmental severance in integrated industries.

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[28] *ABC Vending Corp and Dee-Lish Beverages, Inc*, 107 NLRB No 199

[29] *J O. Rhude and Gilbert Corp*, 106 NLRB 536

[30] *Joseph E Seagram & Sons, Inc*, 101 NLRB 101; Eighteenth Annual Report, p 21. See also *Lownsbury Chevrolet Co*, 101 NLRB 1752

[31] *Sovereign Products, Inc, and Ralston & Riley Co*, 107 NLRB No 101

[32] *Peninsula Auto Dealers Association of the California Association of Employers*, 107 NLRB No. 22

[33] *Retail Employee Relations Commission*, 107 NLRB No 97

[34] *American Potash & Chemical Corporation*, 107 NLRB No. 290. Partial dissents from the views expressed by Chairman Farmer and Member Rodgers were recorded by Members Murdock and Peterson

(1) True Craft Units

The *American Potash* decision announced that—

> . . . a craft group will be appropriate for severance purposes in cases where a true craft group is sought and where, in addition, the union seeking to represent it is one which traditionally represents that craft.

In the view of the Board's majority, the congressional intent requires that once the prerequisites for separate representation are present—*viz*, true craft status of the group and traditional craft experience of the proposed representative—the Board must afford the group an opportunity to decide the issue of separate representation for itself. This rule applies also in highly integrated industries.[35] The majority opinion said:

> . . . it is not the province of this Board to dictate the course and pattern of labor organization in our vast industrial complex. If millions of employees today feel that their interests are better served by craft unionism, it is not for us to say that they can only be represented on an industrial basis or for that matter that they must bargain on strict craft lines. . . . Whatever may be lost in maximum industrial efficiency, and experience has not shown that this loss is measurably greater than that which flowed from the rigid doctrine of *American Can*,[36] is more than compensated for by the gain in industrial democracy and the freedom of employees to choose their own unions and their own form of collective bargaining.[37]

The majority made it clear, however, that the requirement of true craft status for severance purposes will be strictly followed.

As to the scope of craft units, the majority announced that—

> . . . all craftsmen of the same type in any plant, except those in traditional departmental units,[38] must be included in the unit. By like token, employees who may work in association with the craft but not in the direct line of progression in the craft will be excluded. All the craftsmen included in the unit must be . . . primarily engaged in the performance of tasks requiring the exercise of their craft skills.

Defining a "true craft unit" as "a distinct and homogeneous group of skilled journeymen craftsmen, working as such, together with their apprentices and/or helpers," the Board noted that—

> To be a "journeyman craftsman," an individual must have a kind and degree of skill which is normally acquired only by undergoing a substantial period of

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[35] See subsection c of this section

[36] 13 NLRB 1252

[37] Member Peterson in his dissent expressed the view that, in exercising its statutory discretion in the matter of craft representation, the Board should not automatically direct an election whenever a craft union seeks to sever a craft group from an established industrial unit, but should continue to approve severance in a given case only after giving weight to "the history of bargaining in the plant or of the employer or industry, the employer's organization, management, operation and unit contentions; and the participation in and benefits obtained from the historical pattern of bargaining by the group sought to be severed"

[38] Member Murdock, concurring and dissenting in part, believes that the Board should adhere to the *Westinghouse Electric Corp.* rule (101 NLRB 441) under which precedence was accorded representation on a craft basis over representation on a departmental basis so as to require the inclusion in a craft unit of all craftsmen in the plant of the same type.

apprenticeship or comparable training. An excellent rule-of-thumb test of a worker's journeyman standing is the number of years' apprenticeship he has served—the generally accepted standards of which vary from craft to craft. We will, however, recognize an experience equivalent where it is clearly demonstrated to exist. [Footnotes omitted.]

In a later case, the Board had occasion to point out that the *American Potash* standards and requirements as to craft skills apply not only when a craft unit is sought to be severed from an established broader unit, but also when a craft unit is requested without prior bargaining history.[39]

The new rules were applied in a number of cases during the year. Where severance was granted, the Board excluded employees who neither performed craft tasks nor were in the direct line of progression within the craft.[40] In some instances, severance was denied because a part of the employees in the group were not true craft employees.[41] Severance was denied in several cases because the petitioner had not traditionally represented the craft categories it sought.[42] In one of these cases,[43] a majority of the Board [44] also held that the petitioner, which formerly had represented a plantwide unit, could not represent 1 of the 3 proposed separate units because the petitioner's representative interest was "mainly concerned with a desire to reestablish itself as the plant's overall bargaining representative, rather than as a craft representative."

(2) Departmental Units

The *American Potash* decision treats as likewise severable groups of employees who, "though lacking the hallmark of craft skill," are "identified with traditional trades or occupations distinct from that of other employees and who have common special interest in collective bargaining for that reason." In order to grant separate representation to such groups on a departmental basis strict proof is required—

(1) that the departmental group is functionally distinct and separate and (2) that the petitioner is a union which has traditionally devoted itself to serving the special interest of the employees in question.

The Board points out, however, that in recognizing the claims to separate representation of groups "which have by tradition and practice

[39] *Reynolds Metals Company,* 108 NLRB No. 120. Applying the new rules to the facts of the case, craft severance was granted to a unit of electricians, and departmental severance was accorded to a powerhouse unit. A skilled electrician located in the power division was placed in the powerhouse voting group, rather than in the electricians voting group. Severance was denied certain other employee groups who neither exercised craft skills nor comprised a functionally distinct and coherent group

[40] *Western Electric Co. Inc.,* 108 NLRB No. 86; *Mendon Co., R. B. M. Div.,* 108 NLRB No. 68; *Marine Iron & Shipbuilding Co.,* 108 NLRB No. 40.

[41] See, e. g., *Clayton & Lambert Mfg. Co.,* 108 NLRB No. 64; *F. L. Jacobs Co.,* 108 NLRB No. 85; *Magic Chef, Inc.,* 108 NLRB No. 69.

[42] See *Forstmann Woolen Co.,* 108 NLRB No. 211; *Mills Industries, Inc,* 108 NLRB No 49; see also *Southbridge Finishing Co.,* 108 NLRB No. 13 Cf. *North American Aviation, Inc,* 108 NLRB No. 119.

[43] *Mills Industries, Inc.,* see preceding footnote.

[44] Member Rodgers dissenting.

acquired craftlike characteristics," it will not allow departmental severance for the purpose of establishing units based on extent of organization or for fragmentizing plantwide units where craft severance requirements were lacking.

While departmental severance was granted in several subsequent cases,[45] a majority of the Board denied separate representation to truckdrivers in two instances on the ground that they did not constitute a "functionally distinct departmental group" under the *American Potash* test. The majority noted that the drivers here were interchanged with production and maintenance employees, either on a permanent or temporary basis, and that many of them were not hired as drivers.[46]

In one case, severance of a multicraft maintenance department was denied, on either a craft or departmental basis, because the petitioner was not a union which traditionally represents crafts or departments such as the one sought.[47] The Board here also held that one production department cannot constitute a "department unit" within the meaning of the *Potash* rule.

(3) Craft Units in Integrated Industries

Upon reexamining the *National Tube* doctrine[48] and its limitations on craft and departmental severance in industries where production processes are highly integrated, the Board reached the conclusion that separate representation should not be denied merely because of the nature of the industry in which the employees concerned are employed. The Board, henceforth, will therefore not extend the practice of denying severance on the ground of the degree of integration of an industry's production processes. On the other hand, the Board announced that, in order to preserve firmly established bargaining patterns, it will not entertain petitions for craft or departmental severance in industries to which the Board has already applied *National Tube*.[49]

c. Employees' Wishes in Unit Determinations

In appropriate situations, the Board has continued to postpone its ultimate unit determination until it ascertains the employees' wishes

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[45] *John Deere Planter Works of Deere & Co.*, 107 NLRB No. 306 (toolroom department); *Industrial Rayon Corp.*, 107 NLRB No. 304 (powerhouse); *The Schaible Co*, 108 NLRB No. 4 (foundry); *A. P. Controls Corp.*, 108 NLRB No 92 (toolroom and model shop).

[46] *Richmond Engineering Co.*, 108 NLRB No. 235; *American Can Co.*, 108 NLRB No. 234. Chairman Farmer, dissenting in both cases, expressed the view that the majority's interpretation of *American Potash* had the effect of eliminating truckdrivers' units entirely.

[47] *Southbridge Finishing Co.*, 108 NLRB No. 13

[48] See *National Tube Co.*, 76 NLRB 1199.

[49] In addition to the basic steel industry, the integration doctrine had been applied to the aluminum industry (*Permanente Metals Co*, 89 NLRB 804); lumber industry (*Weyerhauser Timber Company*, 87 NLRB 1076), and wet milling industry (*Corn Products Refining Company*, 80 NLRB 362).

in a self-determination election.[50] Such elections ordinarily are held (1) where different units proposed 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, whether or not heretofore represented, be merged in or added to a larger unit which the Board has found appropriate.

Situations of the first type arise frequently in the case of competing requests for the representation of a craft or departmental group as a separate unit or as part of a larger unit.[51] Similarly, a self-determination election will be directed where the overall unit proposed by the petitioner includes departmental groups with a separate bargaining history.[52]

In cases of the second type,[53] the Board has adhered to the *Great Lakes Pipe Line* principle[54] and has directed self-determination elections among the group to be merged or added regardless of whether it constituted a separate appropriate unit.

In one case,[55] the Board reaffirmed the rule that, where the representative of an existing production and maintenance unit requests a separate unit of a group of unrepresented maintenance employees, and where the Board finds that the group more properly should be added to the existing unit, the wishes of the employees in the group will be ascertained in a self-determination election.[56]

(1) Change in Rule on Self-Determination for Fringe Employees

In cases where an incumbent union proposed to add to the established bargaining unit an unrepresented fringe group and petitioned for an election in the enlarged unit, the *Waterous Co.*[57] rule, adopted in 1950, precluded self-determination elections in which the fringe group could express its wishes as to inclusion in the bargaining unit or continued nonrepresentation. During fiscal 1954, the Board reexamined the merits of that rule and the predecessor *Peterson & Lytle*[58] principle which had accorded self-determination to previously unrepresented fringe groups.[59] A majority of the Board[60] concluded

[50] Self-determination elections as to the inclusion of professional employees in units with nonprofessionals are mandatory under section 9 (b) (1) of the act

[51] See the cases discussed under section 2, above.

[52] See *Phillips Petroleum Co.*, 107 NLRB No. 266, Member Murdock dissenting

[53] See e g, *Western Electric Co., Inc*, 108 NLRB No. 86; *Wisconsin Electric Power Co*, 107 NLRB No. 262, *The Item Co*, 108 NLRB No 177, Member Peterson dissenting from the denial of an election in one group which the majority believed could properly form a part of the overall unit sought by the petitioner

[54] *Great Lakes Pipe Line Co*, 92 NLRB 583 (1950)

[55] *United States Gypsum Company*, 107 NLRB No. 39.

[56] The Board cited *Kurstein Leather Co., Inc.*, 100 NLRB 1469

[57] *Waterous Co*, 92 NLRB 76, Chairman Herzog and Member Reynolds dissenting

[58] *Peterson & Lytle*, 60 NLRB 1070 (1945)

[59] *The Zia Company*, 108 NLRB No 140, amended July 22, 1954, in respects not material to this discussion

[60] Member Murdock dissenting

that the earlier rule is the best policy. The *Waterous* doctrine was overruled and the *Peterson & Lytle* rule was reinstated. In the majority's opinion, adherence to the rule

> will . . . tend to insure that the wishes of small groups of employees no longer will be thwarted by the numerical superiority of employee-members of an existing historical unit from which the former have been excluded.

The majority further pointed out that this rule safeguards the right of such a group to determine for themselves whether or not they are to become part of the bargaining unit and thus gives effect to the statutory policy which affords employees the right "to bargain collectively" or "to refrain from such action." Nor, according to the majority, did the inappropriateness as a separate bargaining unit of the fringe group justify refusal to it of the privilege of self-expression in the matter of continued nonrepresentation. The majority pointed out that it had been the Board's policy to accord self-determination elections to historical groups to express their desire to continue bargaining regardless of their appropriateness as a unit, and that similar groups should not be treated differently where the issue is continued nonrepresentation.

(2) Change in Method of Tallying Ballots in Self-Determination Election

In the *American Potash* case,[61] the Board recognized that the current method of tallying votes cast in self-determination (or "*Globe*" type) elections, such as the one directed in the case, may not reflect the true wishes of certain voting groups. It was found, as pointed out by Members Murdock and Peterson in their dissent in *Pacific Intermountain*,[62] that a system of pooling votes must be used where voting groups, established for the purpose of ascertaining their wishes as to representation in separate units or their inclusion in a more comprehensive unit, indicate their preference for the larger unit in which a concurrent election is held.[63] Expressly adopting the earlier recommendations of Members Murdock and Peterson,[64] the Board ruled that in the case of such a vote the ballots cast by the group must be pooled with the votes cast in the larger unit and are to be tallied in the following manner:

> the votes for the union seeking the separate unit shall be counted as *valid* votes, but neither for nor against any union seeking to represent the more comprehensive unit; all other votes are to be accorded their face value, whether for representation in a union seeking the comprehensive group or for no union.[65]

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[61] See pp 38–41

[62] *Pacific Intermountain Express Co*, 105 NLRB 480.

[63] Where the voting group selects the union seeking to represent it separately, the employees in the group will, as heretofore, be taken to have indicated their desire to constitute a separate bargaining unit.

[64] The identical pooling method had been applied in the earlier *Wisconsin Electric Power Co.* case, 107 NLRB No. 262.

[65] For an illustration of this method of pooling and tallying votes see the dissent in the *Pacific Intermountain* case.

The labor organization which receives a majority of the pooled votes will then be certified as the representative of the comprehensive unit.

In one case,[66] where a craft group was sought to be represented separately by 1 union, and as part of a production and maintenance unit by 2 competing unions and the craft union was also on the ballot in the production and maintenance unit, the Board directed that if the craft employees should not vote for the craft union, their votes would be pooled with those of the production and maintenance group, and accorded their face value in determining the craft union's standing in the larger unit.

d. Multiemployer Units

The criteria on which the appropriateness of a multiemployer unit depends were summarized by the Board during fiscal 1954 in the following terms:[67]

> Under Board law, it is not a prerequisite for the establishment of an association-wide or multiemployer unit that there be evidence of an employer association with formal organizational structure, or that the members delegate to the association final authority to bind them, or that the association membership be nonfluctuating. The settled criterion for the inclusion of an employer in a multiemployer bargaining unit is whether the employer unequivocally intends to be bound in collective bargaining by group, rather than individual, action. Thus, participation by an employer in group bargaining provides such evidence of the employer's intention. But whatever an employer's previous bargaining policy or practice may have been, there is no question as to the principle that the employer may properly withdraw from an existing multiemployer unit, provided it clearly evinces at an appropriate time its intention of pursuing an individual course in bargaining. [Footnotes omitted.]

Thus, where it was found that an employer's participation in areawide bargaining indicated its intent to be part of the multiemployer bargaining pattern, the request for a single-employer unit was denied.[68] While the employer here had not, until recently, formally participated in association joint bargaining, it had been customarily used by the area unions to initiate bargaining for the industry. The employer in turn considered its contracts as interim agreements to be modified and amended to conform to the subsequent industrywide agreements. More recently, the employer participated in group negotiations, signed the resulting industry agreement, and at the hearing stated its position that it was part of the multiemployer group. But, in another case, it was held that the mere adoption by the 2 employers for at least 8 years of the terms of multiemployer contracts was held insufficient to warrant their inclusion in the multiemployer unit.[69] The employers involved had never participated in joint negotiations or authorized anyone to conduct negotiations for them on a group basis.

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[66] *Mendon Company, R B M. Division,* 108 NLRB No. 68, as amended 108 NLRB No 110.
[67] *York Transfer & Storage Co.,* 107 NLRB No. 47.
[68] *Martinolich Shipbuilding Co.,* 108 NLRB No. 45.
[69] *West End Brewing Co.,* 107 NLRB No 310.

Single-employer units were held inappropriate where the employers involved had participated in joint negotiations for at least 11 months and had recently reaffirmed their unqualified desire to continue to bargain on a multiemployer basis.[70]

Conversely, the Board has declined to include in a multiemployer unit employers who had clearly manifested their intention to abandon their former participation in group action and to pursue a course of individual action with respect to their labor relations. In one case, single-employer units of warehouse and production employees, who had been represented in a multiemployer unit for 15 years, were approved.[71] The employers involved, the Board found, had evidenced an unequivocal intention to abandon bargaining through the association of which they had been members. Each of them had submitted to the association its resignation from membership, and had made clear at the hearing that it had no connection with the association whatever. In an earlier case, involving the same association, to which the employers in this case were parties,[72] the Board had denied requests for separate units because the employer-members there had not been shown to have effectively resigned from the group. The employers there had merely attempted to resign from the bargaining unit while retaining their association membership.

In addition to being unequivocal, an employer's announcement of intent to abandon group bargaining must be timely. The Board continues to adhere to the principle that a withdrawal which occurs after the expiration of the most recent contract is timely.[73]

In two cases during the past fiscal year, the Board reaffirmed the rule that, where an employer has evinced an unequivocal intention to abandon group bargaining and to pursue instead individual bargaining, the employer's expressed desire will be given effect without regard to his reason for so doing.[74]

e. Employees in Separate Units

A number of cases during fiscal 1954 presented questions regarding the establishment of separate units of plant guards, which is required under section 9 (b) (3); and the proper unit placement of professional employees under section 9 (b) (1), and of clerical employees in the light of previous Board policy.

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[70] *Acryvin Corporation of America*, 107 NLRB No 178, *Motor Cargo, Inc*, 108 NLRB No. 98.

[71] *Reid Murdock Co.*, 107 NLRB No. 53.

[72] *Blue Ribbon Products Co., Inc.*, 106 NLRB 562.

[73] *20th Century Press*, 107 NLRB No. 84.

[74] *Bearing & Rim Supply Co.*, 107 NLRB No. 34; and *Moscow Idaho Seed Co.*, 107 NLRB No. 35. Member Murdock agrees with the principle, but dissented in both cases on the ground that no unequivocal intent to abandon group bargaining was shown.

(1) Plant Guards

Section 9 (b) (3) defines a guard 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." The section directs that guards may be represented only in separate units by a union which does not admit, and is not directly or indirectly affiliated with a union which admits, employees other than guards.

Generally, an employee is held to be a guard if he is primarily engaged in such duties as patrolling the plant, checking for fires or theft, enforcing plant rules, and performing gate duty for the purpose of identifying persons entering the plant and checking whether employees leaving the plant take away plant property.[75] Safety department employees who merely check for fire hazards and check other employees concerning the wearing of safety equipment have been held not to have guard status.[76]

The question whether employees of an organization which furnishes protective services to its customers are guards within the meaning of section 9 (b) (3) was reexamined during the past year in the *Armored Motor Service* case.[77] Overruling earlier decisions to the contrary,[78] the Board concluded that the statutory language does not require it to give controlling effect to the fact that the property protected by the employees in question belongs to their employer's customers rather than their own employer. Thus the Board said:

> We do not believe that Congress intended to limit the prohibition of section 9 (b) (3) to plant guards. The statutory language contains no such restriction, and we see no basis for giving it so narrow a construction. The danger of divided loyalty which Congress sought to eliminate may not be quite so far reaching in the case of armored-car guards, but it is, nevertheless, present. A conflict of loyalty could arise, for example, if the guards should be called upon to deliver money or valuables to one of their customers whose employees were represented by the same union as represented the armored-car guards and the employees of the customer were on strike and picketing the premises of the customer.

Observing that its views were in accord with those of the Third Circuit Court of Appeals in *N. L. R. B.* v. *American District Telegraph Company*, 205 F. 2d 86 (setting aside 100 NLRB 155), the Board accorded guard status to employees who spent 75 percent of their time on the employer's armored trucks, transporting and protecting money and valuables belonging to the employer's customers, and who spent the remainder of their time putting money in pay envelopes on their

[75] See, e. g., *Nash-Kelvinator Corporation*, 107 NLRB No. 137

[76] *Nash-Kelvinator Corporation*, see preceding footnote.

[77] *Armored Motor Service Co., Inc.*, 106 NLRB 1139.

[78] *Brink's Inc*, 77 NLRB 1182, and *American District Telegraph Co*, 89 NLRB 1228

employer's premises, or standing guard on the premises of customers while pay envelopes were distributed.

The Board, during fiscal 1954, also reconsidered the status of part-time guards in a case where the employer's watchmen during 75 percent of their time performed regular maintenance work in the plant.[79] While heretofore guard status was made to depend on the performance of recognized guard duties during at least 50 percent of his time,[80] the Board in the *Walterboro* case rejected this test. The Board here stated:

> An employee who spends only part of his time as a watchman will, of course, be in a position where the conflict between his loyalty to fellow union members and to his employer will exist only part of the time. But the policy considerations which prompted the special treatment of "guards" are as applicable to part-time as to full-time guards. It is the nature of the duties of guards and not the percentage of time which they spend in such duties which is and should be controlling.

Following the *Walterboro* case, the Board treated as guards employees who, in addition to their primary duties, perform guard duties regularly on weekends when the plant is not in operation, and an employee who substitutes for them in their absence 2 or 3 times a year.[81]

The question of a union's capacity under section 9 (b) (3) to represent a guard unit arose in a case where the certified representative of a guard unit was subsequently found to have been assisted in its organization by a nonguard union to an extent which resulted in the "indirect" affiliation of the two unions.[82] The Board revoked the union's certificate upon finding that the nonguard union had warned the employer that the use of supervisors during a pending layoff would be reported to it by the guards, and that the guard union, after demanding recognition, had held a meeting at the headquarters of the nonguard union with at least one of the nonguard union's officials in attendance. However, when it appeared in a subsequent proceeding[83] that the guard union's charter had been revoked by its international, another local of the international which had received no outside assistance in organizing the same group of guards was held entitled to represent them.

(2) Professional Employees

The act, in section 9 (b) (1), also gives special consideration to professional employees who may not be included in a unit with non-

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[79] *Walterboro Mfg Corp*, 106 NLRB 1383.

[80] See Seventeenth Annual Report, p 77

[81] *Textron Inc*, 107 NLRB No 89; *American Lawn Mower Co*, 108 NLRB No 215.

[82] *Mack Manufacturing Corporation*, 107 NLRB No. 59 The question of the union's representative capacity was raised in defense to a complaint that the employer of the guards had unlawfully refused to bargain with their representative.

[83] *Mack Manufacturing Company*, 108 NLRB No. 157.

professionals unless they vote in favor of such inclusion.[84] The term "professional employee" is defined in section 2 (12) of the act.

In the cases in which the unit treatment of certain employees depended upon their status under section 2 (12), the Board during the past year held that the following categories were professionals: Pharmacists;[85] registered nurses;[86] chemists,[87] inspection, field, and industrial engineering;[88] engineers primarily engaged in developing and improving equipment;[89] and technical assistants engaged in testing equipment for the purpose of recommending changes.[90] The Board declined to recognize the asserted professional status of certain estimators and instrumentmen,[91] and of an employee who trimmed windows and laid out newspaper advertisements.[92]

(3) Sales and Clerical Employees

In several cases during fiscal 1954, the Board was confronted with varying contentions regarding the unit placement of salesmen and office clericals[93] in automotive sales and service establishments. Upon repeated consideration of the question whether sales and office personnel should be included in a single unit with service employees, the Board announced the policy that, in the absence of a contrary agreement of the parties, sales and office employees will be excluded from service department units.[94] Noting the dissimilarity of the duties of salesmen and office clericals from those of service employees, the Board specifically overruled its earlier decisions in which it had accorded controlling weight to the size of the establishment in determining whether the relationship among the two groups of employees was so close as to justify a single unit.[95]

f. Persons Excluded From Unit by Statute

The statutory exclusion of agricultural laborers and independent contractors from the definition of the term "employee" in section 2 (3) of the act[96] received particular attention during fiscal 1954.

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[84] See *Westinghouse Electric Corporation*, 107 NLRB No 7.

[85] *Crown Drug Company*, 108 NLRB No. 142.

[86] *Consolidated Vultee Aircraft Corporation*, 108 NLRB No. 95.

[87] *Seattle Gas Company*, 108 NLRB No. 174; *Ohio Ferro Alloys Corporation*, 107 NLRB No. 119.

[88] *Standard Oil Company*, 107 NLRB No. 311.

[89] *Southern Radio and Television Equipment Company, Television Station WTVJ*, 107 NLRB No 67

[90] *Southern California Edison Co.*, 107 NLRB No 184

[91] *E. I Dupont de Nemours and Company, Inc.*, 107 NLRB No. 135.

[92] *The Fair Department Store*, 107 NLRB No. 309.

[93] As to the Board's continued policy to differentiate between office clerical and plant clerical employees, and not to include both types of clericals in the same unit, see *General Electric Company (River Works)*, 107 NLRB No. 21.

[94] *F. L. Babb, Babb Motors*, 108 NLRB No. 154.

[95] *Bogalusa Motors, Inc.*, 107 NLRB No. 30; *Tom Zweifel, Inc.*, 108 NLRB No. 20.

[96] Section 2 (3) also excludes supervisors, individuals employed by a parent or spouse, domestic servants, and individuals subject to the Railway Labor Act.

(1) Agricultural Laborers

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.

During the past year the Board had to determine whether, under this definition, the term "agricultural laborer" applied to truckdrivers who spent two-thirds of their time hauling fruit directly from an employer's groves to his processing plant approximately 3 miles away, and who, during the remainder of their time, hauled fruit from the grove to the roadside.[97] Holding that the drivers were engaged in "agricultural" work, both when driving "flats" from the groves to the roadside and when driving directly from the groves to the plant, the Board said:

> In arriving at this conclusion, we note that in hauling directly from the groves to the plant, never at a distance of more than 2 or 3 miles from the groves, the "flat drivers" spend a substantial part of their time on the farm property. We also note that the operation is conducted by, and for the benefit of, the Employer who admittedly is engaged in a farming operation. Under the circumstances, particularly in view of the proximity of the groves to the processing plant, we are of the opinion that the driving of the "flats" with fruit from the groves to the plant is directly related to the marketing of such fruit by the grower thereof. Such operation is therefore, "a practice performed by a farmer . . . as an incident to or in conjunction with, such farming operations." [98]

The Board thus deviated from the earlier practice under which grove-to-plant hauling had been customarily held to be a nonagricultural operation.[99]

Moreover, the Board held that even if grove-to-plant driving be deemed nonagricultural work, the drivers here must nevertheless be excluded from the bargaining unit because they spend at least one-third of their time in the completely agricultural function of grove-to-road hauling. The Board noted that the policy which prompted the treatment of part-time guards as guards for unit placement purposes [1] is equally applicable in determining whether employees belong to a category that is excluded from the coverage of the act, such as "agricultural laborers."

Packingshed workers of fruit and produce growers who operate the sheds as part of a "single, indivisible enterprise of growing [agricultural products] and preparing them for market" have been held "agricultural laborers," [2] even though the employer may also pack a

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[97] *Clinton Foods, Inc.*, 108 NLRB No. 16.
[98] Quoting section 3 of the Fair Labor Standards Act
[99] See *L. Maxcy, Inc*, 78 NLRB 525
[1] *Walterboro Mfg. Corp.*, 106 NLRB 1383, discussed at p 47.
[2] See *K. Malofy & Son*, 107 NLRB No. 201.

small amount of produce grown by others.[3] Conversely, where packingshed operations constitute a separate commercial enterprise, the shed workers are not considered "agricultural laborers." Thus, the Board held that, under established principles, the statutory exemption did not apply to the employees in a turkey rancher's separate and highly industrialized processing plant.[4] The Board held it immaterial that some of the processing plant employees are employed on the employer's turkey ranches when the plant is not in operation.

One case involved the status of meat packing company employees engaged in feeding and fattening sheep for 40 to 90 days before delivery to the employer's slaughterhouse, 1 block away from the feed lot.[5] The Board noted that under the applicable Fair Labor Standards Act provisions the "raising of livestock" *per se* constitutes "agriculture," and that the feeding, fattening, and care of cattle 80 to 100 days on far removed feed lots had previously been regarded as "raising livestock."[6] Having been advised that the Department of Labor considered the respective feeding periods for sheep and cattle comparable, the Board dismissed the petition for the representation of the feed lot employees in this case.

(2) Independent Contractors

In determining whether a person who performs work for another person is the latter's "employee" or an independent contractor, and therefore excluded from any bargaining unit by section 2 (3) of the act, the Board relies primarily on the "right of control" test. The Board, during the past year, again pointed out that:

> Under this test, an employer-employee relationship exists where the person for whom the services are performed reserves the right to control not only the end to be achieved, but also the manner and means to be used in reaching such end. The resolution of this question depends on the facts of each case, and no one factor is determinative.[7]

Deciding that the industrial debit agents of an insurance company in this case were "employees" rather than independent contractors, the Board took into consideration the following factors: New agents were instructed by supervisors as to methods of approach. The company had the right to inspect the agent's debit books at any time. The company insured the regular servicing of debits by conditioning the payment of any bonus on the status of the agent's account, and kept a check on the agent's activities by requiring weekly reports and by investigating complaints. These circumstances, according to the Board, showed that the company reserved to itself the right to control the manner and means by which the agents performed their services as

[3] See *L Bianchi & Son,* 107 NLRB No 161.
[4] See *Nephi Processing Plant, Inc.,* 107 NLRB No. 140.
[5] *Armour & Co ,* 108 NLRB No 26
[6] See *Swift & Company,* 104 NLRB 922.
[7] *United Insurance Co ,* 108 NLRB No 115.

well as the end to be achieved. That the company did not exercise that right to the fullest extent possible and the agents were left considerable latitude in the performance of their duties was held not controlling.[8] The Board also held that an employer-employee relationship here was further indicated by the company's unilateral determination of the agent's compensation and its right to terminate the relationship at will; the servicing of debits during an agent's sickness or vacation; the provisions for fringe benefits; and the withholding tax and social-security tax payments for debit agents.

The status of owner-drivers of trucks who provide hauling services for freight transportation companies was again before the Board during fiscal 1954 in one case.[9] The decision turned on whether the facts brought it within the rule of the *Nu-Car Carriers*[10] case, or that of the *Greyvan*[11] and *Oklahoma Trailer*[12] cases. The Board held that the owner-drivers here were independent contractors in that their situation paralleled more closely that of the drivers in the *Greyvan* and *Oklahoma* cases than that of the *Nu-Car Carriers* drivers. The Board considered it particularly significant that, unlike in *Nu-Car Carriers*, the drivers here owned their vehicles when they started to work for the freight line. Moreover, as in *Greyvan* and *Oklahoma*, the drivers' relationship to the freight line was characterized by the former's responsibility for license fees and taxes, for labor costs incidental to the loading or unloading of freight, and for the maintenance and repair of equipment. The Board further noted that no deductions were made from the drivers' pay for social security, workmen's compensation, and tax purposes, and that the drivers did not participate in fringe benefits received by the company's employees.

In another case,[13] the status of drivers who operated trucks of a transportation company under conditional sales agreements had to be determined in order to establish whether "substitute" drivers were employees of the transportation company or of the "conditional sales" drivers. Upon reexamining the earlier decision[14] in the light of further evidence, the Board found that under their sales agreements the drivers not only were required to furnish acceptable "substitute" drivers whenever required for the operation of their trucks for more than 12 hours per day, but also that in relation to substitutes the drivers "are vested with and exercise, either jointly with the company of

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[8] The Board here cites *N. L. R. B.* v. *Phoenix Mutual Life Insurance Co.*, 167 F. 2d 983 (C. A. 7), cert. denied 335 U. S. 845.

[9] *Malone Freight Lines, Inc.*, 106 NLRB 1107, affirmed on reconsideration 107 NLRB No. 116.

[10] *N. L. R. B.* v. *Nu-Car Carriers, Inc.*, 189 F. 2d 756 (C. A. 3), enforcing 88 NLRB 75, cert. denied 342 U. S. 919.

[11] *Greyvan Lines, Inc.* v. *Harrison*, 156 F. 2d 412 (C. A. 7), affirmed *sub nomine United States* v. *Silk, etc.*, 331 U. S. 704.

[12] *Oklahoma Trailer Convoy, Inc.*, 99 NLRB 1019.

[13] *Eldon Miller, Inc.*, 107 NLRB No. 117, reversing 103 NLRB 1627.

[14] *Eldon Miller, Inc.*, 103 NLRB 1627.

independently thereof, the kind of power exercised by 'employers,' rather than by ordinary 'employees.'" In view of this employing power and other indicia of "independent contractor" status noted in the original decision, the Board held the intent expressed by the parties in the lease agreements to create an independent contractor relationship must be given determinative weight. The "substitute" drivers were thus held to be employees of the "conditional sales" drivers and as such not properly part of a unit of the company's employees.[15]

In a similar situation, the Board found that licensed labor contractors engaged in the operation of packingsheds under contracts with fruit and vegetable growers were independent contractors and that packingshed employees were the employees of the packingshed operators rather than of the growers.[16]

g. Persons Excluded as a Matter of Policy

The question whether the policies of the act require exclusion from bargaining units of persons who technically are "employees" under section 2 (3) confronted the Board in the case of managerial and confidential employees, relatives of management,[17] and foreign nationals.

(1) Confidential and Managerial Employees

The Board has continued to exclude from bargaining units employees whom it considers as having confidential status because they handle or have access to information regarding the employer's labor relations policies. Among the employees excluded on this ground were: Secretaries to officials, such as department heads, managers, and personnel directors, who participate in the formulation or effectuation of labor policies,[18] interviewers who exercise authority in the hiring process and lecturers who have occasion to express company policies, including labor relations policies, in connection with their programs for the indoctrination of employees and the training of supervisors;[19] and a bookkeeper and a payroll clerk who were constantly informed of

[15] Rather than to exclude the independent contractor drivers and their substitutes from the unit previously found, the Board dismissed the petition because the exclusion would have resulted in a substantially different and smaller unit than the one requested in the petition.

[16] *D. W. Ferguson Co.*, 107 NLRB No. 188; *Bernard Hamner, et al.*, 107 NLRB No 187, *John McCormack Co, et al.*, 107 NLRB No. 133. Compare *K. Malofy & Son, et al.*, 107 NLRB No 201, where packingshed employees were found employees of the grower, since the grower possessed and exercised the power of discharge and effectively recommended the employment of a number of farm laborers for packing work. The employees were excluded, however, as agricultural laborers

[17] Other than individuals employed by their parent or spouse, which are specifically excluded in section 2 (3)

[18] *Peter Kiewit Sons' Co.*, 106 NLRB 194; *Minneapolis-Honeywell Regulator Co*, 107 NLRB No 247, *Elyer Co.*, 108 NLRB No 201, *American Lithofold Corp*, 107 NLRB No. 224.

[19] *Peter Kiewit Sons' Co.*, 106 NLRB 194.

anticipated changes in pay as the result of bargaining negotiations.[20]

However, merely incidental, sporadic, or infrequent access to confidential labor matters has been held insufficient to justify the employee's exclusion from the unit.[21] The Board also reaffirmed the view that access to financial and business data does not render a person a confidential employee for unit purposes.[22]

In several instances, the Board found that employees performed functions of a managerial character which required their exclusion from the bargaining unit. Among these were, in one case,[23] purchasing agents who in the regular course of their work could effectively pledge the employer's credit, and a production, planning, and layout man [24] whose decisions regularly affect costs and, therefore, profits, and who also may determine the employees to be retained during slack periods. In another case,[25] the Board excluded an employee who prepared the confidential salary payroll and other payrolls for particular employee categories, and an assistant export department head authorized to exercise great latitude in fixing certain selling prices. On the other hand, in the same case, the Board found no managerial justification for the exclusion of employees who had limited responsibility and discretion in arranging for the order of shipments, in quoting prices and discounts, and employees who prepared hourly payrolls or compiled data on manufacturing costs. In another case,[26] manufacturing engineers were excluded from the unit as managerial employees.

(2) Relatives of Management

During fiscal 1954, the Board reviewed the prior policy of excluding from bargaining units certain near relatives of management representatives on the ground that they lacked a sufficient community of interest with other employees in the unit.[27] A majority of the Board [28] felt that the Board's exclusionary rule was too rigid and expressed its view that

> the mere coincidence of a family relationship between an employee and his employer does not negate the mutuality of employment interest which an individual shares with fellow employees, absent evidence that because of such relationship he enjoys a special status which allies his interests with those of management.

Finding that there was no showing of a special status in the case before it, the majority declined to exclude from the unit of production and

[20] *American Lithofold Corp*, 107 NLRB No. 224.
[21] *Minneapolis-Honeywell Regulator Co.*, 107 NLRB No 247; *Eljer Co.*, 108 NLRB No. 201; *American Lithofold Corp*, 107 NLRB No. 224.
[22] *American Lithofold Corp.*, 107 NLRB No. 224.
[23] *American Lithofold Corp.*, 107 NLRB No. 224.
[24] Member Murdock dissented from his exclusion.
[25] *Eljer Co.*, 108 NLRB No. 201.
[26] *Westinghouse Electric Corporation*, 107 NLRB No. 7.
[27] *International Metal Products Co*, 107 NLRB No. 23.
[28] Member Murdock dissenting.

maintenance employees the following relatives of the employer-partners: The brother, brother-in-law, nephews, nephews by marriage, and a niece by marriage. Similar requests for the exclusion of management relatives were denied in a number of later cases where the requisite special status of the individuals involved was found lacking.[29] In one case,[30] however, the Board excluded from a unit the nephew of the employing corporation's general manager and treasurer. In view of the nephew's apparent authority to settle grievances and to discuss requests for wage increases, the Board concluded that the nephew enjoyed "a special status which allies his interests with those of management" so as to require his exclusion. On the other hand, the son of the corporation's president was included in the unit because there was no showing that the corporation was owned by its president.

(3) Foreign Nationals

In one case during fiscal 1954, the Board was called upon to determine the status of Mexican and British West Indies nationals who were recruited and imported into the United States for agricultural work on a temporary basis in accordance with procedures established by the governments of the United States, Mexico, and the British West Indies.[31] These foreign nationals are required to execute individual standard work contracts with the employer. The Mexican work contracts are executed under governmental supervision and may not be altered without the consent of the United States and Mexican Governments. The British West Indies governmental subdivision from which the contracting worker comes is a party to the agreement. The Board concluded that the individual standardized contracts effectively remove the foreign nationals, for all practical purposes, from the sphere of compulsory bargaining through Board certification. The foreign nationals were therefore excluded from the unit.

6. Conduct of Representation Elections

In exercising its broad statutory discretion regarding election proceedings, the Board, as in prior years, has had to determine numerous questions pertaining to voting eligibility, proper timing and mechanics of elections, as well as violations of electioneering rules.

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[29] *Olden Camera & Lens Co*, 108 NLRB No. 9 (partner's mother-in-law); *Tollefson Brothers*, 108 NLRB No 214 (father and father-in-law of partners); *Alloy Mfg Co.*, 107 NLRB No. 257 (partner's nephew and father-in-law); *Page Boy Co., Inc.*, 107 NLRB No. 46 (husband of vice president and brother-in-law of president); *Herson's Auto and Appliance Co.*, 107 NLRB No. 36, unreported (nephew of co-trustee); and *Bogalusa Motors, Inc.*, 107 NLRB No. 30 (son-in-law, aunt, and husband of president's sister-in-law)

[30] *American Steel Buck Corp*, 107 NLRB No. 121.

[31] *Stokely-Van Camp, Inc*, 107 NLRB No 239.

a. Eligibility to Vote

Voting eligibility is determined on the basis of an employee's status on the date of the applicable eligibility payroll rather than on the date of the election. Thus, the Board sustained the challenge to the ballot cast by an employee who was employed in the bargaining unit at the time of the election but who had been employed as a supervisor on the crucial payroll date.[32] Similarly, an employee in the appropriate unit on the election date was held ineligible to vote because he was employed in a different unit during the governing payroll period.[33]

The Board, during fiscal 1954, had occasion to point out again that employees held to have been discharged in violation of section 8 (a) (3) retain their eligibility status, although the Board's decision in the discharge case is pending in court of appeals for enforcement.[34] The Board noted that an unfair labor practice finding is binding upon the employer unless it is set aside by a court of competent jurisdiction.

The eligibility of employees other than regular full-time employees continues to be determined (1) for part-time employees on the basis of the regularity of their employment in the unit,[35] and (2) for temporary and seasonal employees on the basis of the relationship of their duties and the similarity of their interests to those of the permanent employees in the unit, and their expectation of permanent employment.[36] As heretofore, the eligibility of laid-off employees depends on whether they have a reasonable expectancy of reemployment in the near future.[37]

(1) Probationary Employees

During fiscal 1954, the Board adopted the rule that probationary employees will be permitted to vote in Board elections without exception.[38] The Board observed that probationary employees generally receive and hold their employment with a contemplation of permanent tenure, and that their conditions of work and employment interests are identical with those of regular employees. The Board, therefore, took the view that there was no adequate basis for the former policy of making the voting eligibility of an employer's probationary employees depend on the proportion of them who ultimately become

[32] *Gulf States Asphalt Co.*, 106 NLRB 1212.

[33] *Miller and Miller, Inc*, 106 NLRB 1228.

[34] *Ohio Ferro Alloys Corporation*, 107 NLRB No. 119.

[35] See, for instance, *Crosley Broadcasting of Atlanta, Inc.*, 107 NLRB No. 5 (regular part-time employees); and *Kennecott Copper Corp., Ray Mines Division*, 106 NLRB 390, and *Fritzsche Brothers, Inc.*, 107 NLRB No. 166 (employees working part time in the unit and part time elsewhere for the same employer).

[36] See, for instance, *The Atlantic Refining Company*, 106 NLRB 1268; *Producers Rice Mill, Inc.*, 106 NLRB 119.

[37] *Fresh'nd-Aire Co., Division of Cory Corporation*, 107 NLRB No. 183.

[38] *National Torch Tip Co.*, 107 NLRB No. 269.

permanent employees. Earlier cases applying this test were overruled.

(2) The Eligibility Period

The Board ordinarily directs that voting eligibility be determined on the basis of the employer's payroll for the period immediately preceding the date of the direction of election.[39] However, the Board deviates from this method of fixing eligibility when, because of the circumstances or the nature of the particular industry, maximum participation in the election can be achieved only by using a different basis for eligibility. Thus, in a seasonal packingshed, the Board extended voting rights to all employees employed at any time during the 30 days before the notice of the election was issued by the regional director.[40]

In one case, where a consent election had been set aside because of the employer's misconduct and a new election directed, eligibility was fixed by the payroll just before the direction of the new election in order to make the franchise available to all employees in the bargaining unit which had been substantially expanded since the invalid election.[41] In another case, the Board denied the petitioner's request that only employees working during the week preceding a strike at the employer's plant be permitted to vote.[42] The Board held that the circumstances relied on by the petitioner did not make use of the usual payroll date inappropriate.

(a) Eligibility in waterfront elections

The Board has recognized that in the shipping industry, where employment fluctuates, the normal voting eligibility requirements are not suited to insure that the largest possible number of employees whose representation is at stake have access to the polls. Thus, in directing an election among the longshoremen and other pier and dock workers employed on the New York waterfront, the Board extended voting eligibility to all employees who during the preceding year had worked not less than 700 hours in the voting unit.[43] In selecting the 700-hour test, the Board took cognizance of the fact that: (1) The same figure had been established through many years of collective bargaining as a basis for determining whether employees should be considered part of the industry for the purpose of employee benefits, and (2) it was the general desire to regularize and thereby improve waterfront employment. As a further condition of eligibility, the Board prescribed appropriate registration by those

[39] See, for instance, *Walterboro Manufacturing Corporation*, 106 NLRB 1383; *Riviera Mines Company*, 108 NLRB No 21.

[40] *Giffen, Inc.*, 106 NLRB 764.

[41] *Riviera Mines Company*, 108 NLRB No. 21.

[42] *Walterboro Manufacturing Corporation*, 106 NLRB 1383.

[43] *New York Shipping Association*, 107 NLRB No. 123.

employees in the unit which were required to register under the regulations of the New York-New Jersey Waterfront Commission.

In a case involving intermittent ship maintenance and repair operations, the Board likewise found normal eligibility requirements inadequate.[44] In substantial agreement with past practice, eligibility to vote was extended to all employees in the unit whose names had appeared on 8 or more different payrolls of the employer during the 6-month period preceding the direction of election. The Board here rejected a proposal of the parties that 555 hours of work in the unit during the preceding calendar year should be the test. The Board noted that on this basis only 27 out of 250 employees employed during a comparable period would have been permitted to vote.

(b) Eligibility in runoff elections

During fiscal 1954, the Board made it clear that eligibility in a runoff election will invariably be determined on the basis of the eligibility date for the original election.[45] In order to prevent evasions of this rule, the Board announced that it will be its future policy to grant a petitioner's request to withdraw from a runoff election only on the condition that a new petition will not be entertained until 1 year after the withdrawal.[46]

b. Timing of Election

According to established practice, the Board has provided for elections to be held not later than 30 days from the date of the direction of election, except where an election at a different time appeared more appropriate because of such circumstances as seasonal employment fluctuations.

Elections in seasonal industries customarily are held at or about the peak of the business season,[47] on a date set by the regional director. But the Board has pointed out that the size of the employment peak is but one of many considerations which govern the election date, and that the regional director acts properly if he selects a time when the employment peak is both substantial and representative.[48]

In the case of a new plant not yet in full operation, the election will be postponed until a substantial and representative number of employees is employed.[49] However, the Board denied an employer's request for postponement of an election because of an expansion program

[44] *Tollefson Brothers*, 108 NLRB No. 214.

[45] *Pittsburgh Steamship Division of United States Steel Corporation*, 106 NLRB 1248.

[46] However, the rule was not applied in the case before the Board because the petitioner had been permitted to withdraw its earlier petition without prejudice at a time when the Board was on notice of the petitioner's intention to file a second petition.

[47] See *Nephi Processing Plant, Inc.*, 107 NLRB No. 140

[48] *Stokely-Van Camp, Inc.*, 107 NLRB No. 239.

[49] *Mrs. Tucker's Products*, 106 NLRB 533.

which had not progressed beyond the planning stage.[50] Moreover, the contemplated personnel increase concerned classifications already in existence, and the employer's current working force was a substantial and representative segment of the ultimate employment complement. Denying a similar request for postponement where the employer's expansion program had progressed to a substantial degree, the Board took into consideration that a majority of future employees were to be taken from a limited and unskilled labor pool in the area for on-the-job training, and that an undetermined part of the anticipated expansion was speculative in that it was dependent upon the trend of demand.[51]

In the *New York Shipping Association* case,[52] which was the outgrowth of the widely publicized New York longshoremen's dispute, the Board found it necessary to depart from its normal practice of not holding an election while unfair labor practice charges are pending against parties to the representation proceeding. Here, the legal capacity of the incumbent waterfront union to act as bargaining agent was challenged in an unfair practice proceeding at a time when the competing representation claims of the incumbent and its rival were under investigation. The incumbent, following the expiration of its contract, had supported its demands for continued recognition with a strike against all maritime employers along the Atlantic coast. This strike was judicially enjoined after a Presidential Board of Inquiry had found that the strike had extremely serious effects on the economy and the public welfare, and that it constituted a "national emergency" within title II of the Labor Management Relations Act. Being advised that the strike would be resumed upon the expiration of the 80-day injunction, and realizing that at the bottom of the dispute was the unresolved representation question, the Board held that "the effectuation of the policies of the Act" unmistakably required the holding of an immediate election. However, in directing the election, the Board provided that the certification of its results would be conditioned on the subsequent conclusions in the unfair labor practice case regarding the status of the incumbent union.

The general rule is that an election will be held despite unfair labor practice charges if a waiver has been filed by the parties. The Board pointed out in one case that the purpose of the rule is to prevent the charging parties from later urging the alleged violations as a basis for setting aside the election and that it is therefore intended solely for the protection of the Board's processes.[53] Consequently, the Board held, compliance with the waiver requirement is a matter for administrative determination and may not be litigated by the parties.

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[50] *Crosley Broadcasting of Atlanta, Inc.*, 106 NLRB 795.
[51] *Independent Lock Company of Alabama*, 106 NLRB 1136.
[52] *New York Shipping Association*, 107 NLRB No. 123.
[53] *Wells Dairies Cooperative*, 107 NLRB No. 298.

c. 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 untrammeled 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.[54]

In the case of objections to an election based on alleged interference by one of the parties, the Board has adhered to the *A & P* rule[55] and has considered on the merits any conduct occurring, in consent elections, after execution of a consent-election agreement, or in directed elections, after the issuance of a notice of hearing by the regional director.[56] However, in a case involving conduct after the notice of hearing, a majority of the Board took the position that the *A & P* rule only establishes a cutoff date for objections to an election and does not preclude the Board from considering the time element in assessing the effect of conduct on the election and from finding that the conduct was remote and could not have interfered with the election.[57]

(1) Mechanics of the Election

Election procedures are governed in general by the Board's Rules and Regulations. However, election details are left to a large extent to the discretion of the regional director.

(a) Election observers

In some cases during the past year, objections based on election mechanics were concerned with election observers. In one of these cases, the Board had occasion to reaffirm its policy of not permitting persons closely identified with the employer, such as a vice president, treasurer, and office manager, from acting as observers.[58] The Board rejected the contention that the rule should not be applied where the observers proposed by the employer are the only persons who can identify all eligible voters. On the other hand, an officer of the petitioning union, though not an eligible voter, was again held to be a proper observer where otherwise qualified.[59] Insofar as the election agreement in this case provided that the observers be employees, the

[54] Sec. 102.61, Rules and Regulations, Series 6, as amended.

[55] *The Great Atlantic and Pacific Tea Company,* 101 NLRB 1118; Eighteenth Annual Report, pp. 26–27.

[56] See *Hudson Sharp Machine Company,* 107 NLRB No. 29; *S. & L. Co. of Des Moines,* 107 NLRB No. 193; *The Liberal Market, Inc.,* 108 NLRB No. 220.

[57] *The Liberal Market, Inc.,* 108 NLRB No. 220, Members Murdock and Peterson dissenting.

[58] *Watkins Brick Company,* 107 NLRB No. 110.

[59] *Soerens Motor Company,* 106 NLRB 1388.

Board held that an employee whose prior discharge was the subject of an unfair labor practice charge at the time of the election was an employee and could serve as an observer of the election.[60] Regarding the rule against the use of supervisors as election observers, the Board in one case pointed out that the reason for this policy is that a supervisor's presence at the polls may unduly influence employees in casting their vote.[61] Thus, the Board held, an election at which a supervisor acted as observer need not be set aside where no votes were cast for no union, and where, moreover, there is no basis for inferring that the supervisory observer influenced the employees to vote for one union rather than another. In another case, the fact that an employee who served as observer allegedly had made threatening remarks prior to the election was held not to justify the setting aside of the election.[62]

(b) Place of election

The Board during fiscal 1954 reemphasized the administrative necessity of leaving the selection of the time and place of elections to the regional director's discretion.[63] In this connection the Board observed that:

> [The] factors which determine where an election may best be held are peculiarly within the Regional Director's knowledge. His close view of the election scene, including the many imponderables which are seldom reflected in a record, is essential to a fair determination of this issue. We are convinced that it would be administratively unfeasible for the Board to make such determinations in every case.

The Board here declined to depart from its practice and to direct specifically that the election be held either off company premises, as requested by the union, or on company premises, as requested by the employer. The Board rejected the union's contention that the employer's premises were not a suitable place in view of the previous failure of several unions to win past elections, and pointed out that such matters as the availability of other places, convenience, and fairness which the parties stressed were the very matters the regional director was best qualified to resolve. However, the Board observed that prejudice resulting to any party from the regional director's action may be brought to the Board's attention either by way of a motion for reconsideration or by appropriate objections to the election.

In one case, the Board held that the regional director did not abuse his discretion and was justified by the circumstances in arranging for the polling of employees in a private automobile on a public street.[64]

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[60] The Board distinguished *Tri-Cities Broadcast Company,* 74 NLRB 1107, 1110.
[61] *Owens-Parks Lumber Co ,* 107 NLRB No. 44.
[62] *S. & L. Co of Des Moines,* 107 NLRB No. 193.
[63] *Manchester Knitted Fashions, Inc.,* 108 NLRB No. 203
[64] *Freuhauf Trailer Company,* 106 NLRB 182.

The Board noted the employer's uncooperative refusal to permit the holding of the election on its premises; the unavailability of another suitable location; and the fact that the election had already been delayed for 2 months because of the employer's repeated but unsupported motions for reconsideration and its attempt to enjoin the Board proceeding. The Board further noted the absence of any showing that the secrecy of the ballot was impaired because of the regional director's voting arrangements.

(c) Voting mechanics

In the matter of voting mechanics, the Board has adhered to the rule that the burden to check eligibility lists rests with the participating unions rather than with the Board;[65] and that ballots cast by eligible voters will be counted if they clearly indicate the voter's intent, even though they may show signs of erasures or blot marks.[66]

The Board also reaffirmed the rule against mail balloting of military personnel.[67]

In one case, the Board declined to find that the employer was prejudiced by the action of a Board agent who accompanied a union representative for the purpose of inspecting the polling place.[68] In the Board's view, no inference of Board support of the union would be likely to be drawn by employees from this occurrence.

(2) Electioneering and Campaign Tactics

In cases in which exception is taken to the preelection conduct of participants, the Board sets the election aside if it appears that it was not conducted "under such circumstances and under such conditions as were conducive to the sort of free and untrammeled choice of representatives contemplated by the Act."[69] The Board, therefore, determines in each case whether a free expression of choice of a bargaining agent was made possible by, for instance, the creation of confusion and fear of reprisal; or by the nature and extent of campaign tactics and preelection propaganda.

In passing on objections to the New York waterfront elections in the *New York Shipping Association* case,[70] the Board gave expression to its conviction that the proper appraisal of an election requires the application of a realistic yardstick and complete regard for the specific exigencies of the case. Thus, according to the Board, consideration must be given to the type of employees, the size of the election, the intensity of the dispute between the competing unions, and the entire

[65] *Calcor Corporation,* 106 NLRB 539

[66] *American Cable and Radio Corporation,* 107 NLRB No. 230; see also *Denver and Ephrata Telephone and Telegraph Company,* 106 NLRB 1134.

[67] *The Atlantic Refining Company,* 106 NLRB 1268.

[68] *Calcor Corporation,* 106 NLRB 539

[69] *Diamond State Poultry Co., Inc.,* 107 NLRB No. 19.

[70] *New York Shipping Association,* 108 NLRB No. 32.

environment in which the election took place. On the basis of these considerations, the Board found in the *New York Shipping* case that the tension and isolated incidents at two polling places, where no actual disturbance or violence occurred, did not invalidate the election, but that, on the other hand, voting at a third place was accompanied by such misconduct that the election could not stand. There, the "no electioneering" area and the polling place itself were continuously invaded by supporters of one union, who had an unsavory reputation for crime and violence;[71] rival union members were threatened and assaulted while distributing literature or carrying campaign signs, and large numbers of nonvoters arrived at the polling area and demonstrated until dispersed by the police. Moreover, the Board included in its direction of a new election specific provisions intended to insure that the new election may be held under proper conditions. This included provisions that any union which before the election engaged in conduct designed to thwart or abuse the processes of the Board was to be denied a place on the ballot; and the regional director was to make appropriate arrangements with State and municipal authorities necessary to insure a free election.

In another case, the Board likewise set aside an election which had been held in a general atmosphere of confusion and fear of reprisal.[72] However, violence and threats of violence in connection with a strike in which the petitioning union, some 2 weeks before the election, had participated sympathetically were held too remote to have probable effect on the election.[73]

Because the Board's objective is to hold a free election, the Board in assessing the effect of threats and violence has held it is not controlling that fear and disorder among the voters was created by individual employees or nonemployees whose conduct could not be attributed either to the employer or to the unions.[74]

While reaffirming its prohibition against electioneering in the immediate vicinity of the polls when the polls are open,[75] the Board rejected an employer's contention that, as a general rule, electioneering inside the plant on election day is likewise improper.[76]

(a) Preelection statements

As heretofore, the Board as a matter of policy has declined to censor or police preelection propaganda, but has left "to the good

[71] The Board expressed doubt as to whether the mere presence in nonrestricted areas of union men of similar reputation would have required that the election be set aside as asserted by some interested parties.

[72] *Diamond State Poultry Co., Inc.*, 107 NLRB No. 19.

[73] *Southdown Sugars, Inc.*, 108 NLRB No. 17.

[74] *Diamond State Poultry Co., Inc.*, 107 NLRB No. 19; *Southdown Sugars, Inc*, 108 NLRB No. 17; *Peerless Plywood Company*, 107 NLRB No. 106. But see *The Gruen Watch Company*, 108 NLRB No. 104.

[75] See *Peerless Plywood Company*, 107 NLRB No. 106.

[76] *Calcor Corporation*, 106 NLRB 539. Compare *Emerson Electric Company*, 106 NLRB 149.

sense of the voters the appraisal of such matters, and to opposing parties the task of correcting inaccurate and untruthful statements." [77] Objections based on the asserted untruthfulness or misleading nature of campaign propaganda will therefore not be sustained, except in the case of forgery or other campaign trickery tending to impair the voters' ability to evaluate the propaganda to such an extent that a free election is impossible.[78] Thus, for instance, mere accusations that a rival union was untruthful and was making "back-door" agreements with the employer were held not to have invalidated an election.[79] Nor were employees held unduly influenced by an employer's inaccurate statement as to the effect of certain Board and court decisions, because the employees knew the source of the information and the objecting union had had ample opportunity to correct the inaccuracy.[80]

However, a union was held to have exceeded the permissible limits of propaganda methods when it distributed handbills purporting to be "Sample" ballots, but worded so as to create the impression that the Board had endorsed the union's propaganda claims.[81] Setting aside the election, the Board said:

> The Board is jealous of its reputation for the strictest impartiality in the conduct of representation elections. It looks with disfavor upon any attempt to misuse its processes to secure partisan advantage. The Board allows broad latitude in carrying on pre-election propaganda. But there are limits to propaganda methods which the Board will permit. The Petitioner exceeded those limits in the present case.
>
> The Board has permitted parties to distribute marked sample ballots in order to show their partisans how to vote at the election. But that permission does not extend to the distribution of falsified ballots under the guise of true copies of official ballots used in elections. [Footnotes omitted.]

Preelection statements which contain promises of benefits or threats of reprisals, or which otherwise improperly tend to influence the employees, will be held to invalidate the election.

As to promises of benefits, the Board has held that it is immaterial that they may be in the nature of "campaign promises," and that a proper test is whether they are reasonably calculated to convey the impression that the employees may receive a benefit in the form of more favorable terms of employment depending on the outcome of the election.[82] Thus, the Board set aside an election because of the employer's announcement that the election of the incumbent union's rival would result in contract terms "equal or better" than the existing ones. Elections also were invalidated where the employer's pre-

[77] *Unity Manufacturing Company,* 107 NLRB No. 10; see also *Calcor Corporation,* 106 NLRB 539.

[78] *International Smelting & Refining Company,* 107 NLRB No. 16.

[79] *Calcor Corporation,* 106 NLRB 539

[80] *Unity Manufacturing Company,* 107 NLRB No. 10.

[81] *Anderson Air Activities,* 106 NLRB 543.

[82] *Hudson Sharp Machine Company,* 107 NLRB No 29.

election speech implied that a Christmas bonus and year-end wage raise would be given only if the employees voted against the union,[83] and where the employer clearly implied that the election of the petitioning union would result in loss of employment by its Negro and older employees.[84]

However, preelection statements in the nature of expressions of the employer's opinion as to union matters or the effects of unionization, or of the employer's legal position in the matter of collective bargaining have been held insufficient to invalidate elections. Thus, a letter addressed to the employees merely expressing the employer's preference for dealing directly with the employees, unaccompanied by any threats or promises, was held to be within the free speech guarantee of section 8 (c).[85] Similarly, preelection statements, made in a noncoercive atmosphere, predicting that the election of a union may entail strikes and otherwise result in loss of employment, or may necessitate removal of the plant because of the employer's inability to pay union wages, were held privileged and not cause for setting aside the election.[86] Moreover, in the view of a majority of the Board, the free speech protection also extended to statements of the employer's intention to continue operations during strikes and to maintain standby facilities for that purpose, and an announcement that the employer was always willing to pay as high wages as might be obtained through collective bargaining.[87]

In the *Esquire* case, a majority of the Board also reiterated its view that an election need not be set aside merely because of the employer's expression of its legal position that (1) the unit found by the Board was inappropriate and (2) the employer, therefore, would not bargain with the union, if certified until after litigation of this issue, which might require considerable time.

(b) Preelection speeches—the *Peerless Plywood* rule

During fiscal 1954, the Board reappraised the potential effect of preelection speeches to the assembled employees, by either employers or unions, and reconsidered the means which may best prevent the exertion of undue pressure and the taking of undue advantage in the

[83] *Kent Plastics Corporation,* 107 NLRB No. 51; See also *Gardner Machine Company,* 106 NLRB 197.

[84] *Southern Car & Manufacturing Company,* 106 NLRB 144.

[85] *A S. Abell (WMAR–TV),* 107 NLRB No. 102; see also *Sylvania Electric Products, Inc.,* 106 NLRB 1210; *Esquire, Inc. (Coronet Instructional Films Division),* 107 NLRB No. 260.

[86] *Sylvania Electric Products, Inc.,* 106 NLRB 1210; *Chicopee Manufacturing Corporation,* 107 NLRB No 31; *Morganton Full Fashioned Hosiery Company,* 107 NLRB No. 312.

[87] *Esquire, Inc. (Coronet Instructional Films Division),* 107 NLRB No. 260. Member Murdock dissenting. And see the Board's earlier decision in *National Furniture Manufacturing Company,* 106 NLRB 1300, overruling *Metropolitan Life Insurance Company,* 90 NLRB 935, insofar as inconsistent.

eve-of-election atmosphere. A majority of the Board summarized its conclusions in the *Peerless Plywood* case[88] as follows:

> It is our considered view, based on experience with conducting representation elections, that last-minute speeches by either employers or unions delivered to massed assemblies of employees on company time have an unwholesome and unsettling effect and tend to interfere with that sober and thoughtful choice which a free election is designed to reflect. We believe that the real vice is in the last-minute character of the speech coupled with the fact that it is made on company time whether delivered by the employer or the union or both. Such a speech, because of its timing, tends to create a mass psychology which overrides arguments made through other campaign media and gives an unfair advantage to the party, whether employer or union, who in this manner obtains the last most telling word.

In the view of the majority the evil inherent in last-minute electioneering speeches on company time could not be effectively countered by the Board's former *Bonwit Teller* rule,[89] under which elections were set aside where the employer, after making a preelection speech to his employees during working hours, denied the campaigning union an opportunity to reply under like circumstances. This rule, according to the majority, failed to establish preelection equality and gave an advantage to the party who had the last opportunity to talk to the voters. The majority therefore announced the rule that

> . . . employers and unions alike will be prohibited from making election speeches on company time to massed assemblies of employees within 24 hours before the scheduled time for conducting an election. Violation of this rule will cause the election to be set aside whenever valid objections are filed.

The majority concluded that

> . . . implicit in the rule is our judgment that noncoercive speeches made prior to the proscribed period will not interfere with a free election, inasmuch as our rule will allow time for their effect to be neutralized by the impact of other media of employee persuasion.[90]

The majority further made it clear that the rule:

(1) Does not sanction coercive speeches prior to the 24-hour period.

(2) Does not prohibit an employer from making noncoercive campaign speeches before the 24-hour period, without granting the union an opportunity to reply.

(3) Does not prohibit an employer or union from making campaign speeches on or off company premises during the 24-hour period if employee attendance is voluntary and on the employees' own time.

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[88] *Peerless Plywood Company,* 107 NLRB No. 106, Member Murdock dissenting.

[89] See *Bonwit Teller, Inc.,* 96 NLRB 608; Eighteenth Annual Report, pp. 26–27. As to the reversal of the *Bonwit Teller* doctrine in unfair labor practice cases see *Livingston Shirt Corporation,* 107 NLRB No. 109, discussed at pp. 74–76.

[90] Member Murdock took the view that *Bonwit Teller* dealt more effectively with preelection speeches in that it took into consideration not only the undesirable effect of anti-union employer speeches on company time, but also what he considers the equally harmful impact of such speeches when made on company premises. Member Murdock also urged that the free competition of employer and union argument was insured by the *Bonwit Teller* rule inasmuch as it guaranteed employees the broadest possible basis of discussion and information on which to make their decision.

(4) Does not prohibit the use of other campaign media during the 24-hour period.

In a later case, where a plant manager, during the crucial 24-hour period, had talked to a group of employees near closing time, the Board held that the *Peerless* rule could not be invoked because the manager's talk was informal and not a planned or systematic attempt to conduct a meeting, and because it contained no reference to any union involved in the election and was nonpartisan in character.[91] However, the Board rejected an employer's contention that a similar exception should be made in the case of a "single brief meeting" on company time and property during which the employer sought to refute specific and allegedly inaccurate union propaganda.[92] Here, the Board held, the employer's speech was a campaign speech because of its purpose and subject, and was distinguishable from the informal and general discussion in the *Petro* case which involved a small group of employees who chose voluntarily to remain after the end of their shift. The Board likewise rejected a contention that the *Peerless* rule did not apply to electioneering that occurred in the course of a regularly scheduled employee meeting not called for electioneering purposes.[93]

In one case, the Board held that the *Peerless* rule was not violated by a union's speeches which reached the employees from loudspeakers outside the plant during their lunch period.[94] The Board noted that the attendance was voluntary and the speeches were made on the employees' own time.

In computing the 24-hour period under the *Peerless* rule, calendar days rather than working days are counted.[95]

(c) Other electioneering rules

The Board has reaffirmed its long-standing rule against electioneering by the parties at or near the polling place by whatever means, including the use of sound trucks located outside the prohibited area.[96] Previously, however, a majority of the Board had declined to set aside an election because of the petitioning union's dissemination of campaign propaganda through a sound truck during the initial 20 minutes of the first of three 2-hour voting periods.[97] The majority believed that the use of the sound truck was not sufficiently effective, having been discontinued immediately upon the Board representative's request. The majority made it clear, however, that it did not

[91] *National Petro-Chemicals Corporation,* 107 NLRB No. 330.
[92] *General Motors Corporation,* 108 NLRB No. 165.
[93] *The American Thermos Bottle Company,* 107 NLRB No 317.
[94] *Underwood Corporation,* 108 NLRB No. 199.
[95] *Sylvania Electric Products, Inc.,* 108 NLRB No 182
[96] *Peerless Plywood Company,* 107 NLRB No. 106.
[97] *Higgins, Inc.,* 106 NLRB 845, Chairman Farmer dissenting

approve of sound trucks as an acceptable tactic to be used without risk until ordered stopped.

The discriminatory enforcement of no-solicitation rules by an employer also may be held to prevent a free election. Thus, the Board set aside an election where the employer, in the face of its rule forbidding any solicitation or distribution of handbills on company property, issued letters and delivered speeches to its employees concerning the election, without granting the campaigning union's request for permission to reply in like manner.[98] Conversely, where the objecting union did not establish the asserted existence of a no-solicitation rule, the Board held that the election was not invalidated by the employer's distribution of antiunion literature on company time and premises and by refusing the union permission to answer under similar circumstances.[99] Nor did the Board find that an election was invalidated by a minor supervisor's acquiescence in the violation of the employer's no-solicitation rule by 1 of 2 rival unions.[1] In this case the Board found that the employer had vigorously enforced its rule impartially whenever it was aware of attempted evasions, and that the employer's earnest neutrality was well known to its employees. In another case, the Board found that there was no justification for setting aside an election because one of the competing unions had abused its advantageous position under its current contract with the employer to contact employees.[2] The Board noted that as soon as the employer received notice of the union's electioneering, it took immediate action to halt it. And in another case,[3] the Board also found insufficient disparity in campaigning opportunity to warrant the setting aside of the election. Here, one of the campaigning unions ceased its electioneering after a certain time pursuant to an assurance it had given the employer, and in the belief that its competitor had likewise been requested to refrain from further electioneering. The Board said, however, that if an employer's request to one union that it cease activities is in the nature of a prohibition, the employer's failure to address a similar "request" to the union's rival may constitute improper assistance to the latter's election effort.

The furnishing of transportation to the polls on a discriminatory basis also may improperly interfere with an election,[4] but a union's "car pool" transportation plan for getting employees to the polls was held not to invalidate the election, even though the arrangement was subject to criticism.[5] Here, payments to car-pool drivers for

[98] *Johnston Lawnmower Corporation,* 107 NLRB No. 217.

[99] *Riegel Paper Corporation,* 107 NLRB No. 270.

[1] *The Liberal Market, Inc ,* 108 NLRB No. 220.

[2] *Emerson Electric Company,* 106 NLRB 149.

[3] *Calcor Corporation,* 106 NLRB 539.

[4] Compare the Board's second direction of election in the *New York Shipping Association* case (108 NLRB No. 94). There, among other precautionary measures, transportation of voters to the polls by chartered buses or other vehicles for hire was prohibited.

[5] *David Goetz, d/b/a Federal Silk Mills,* 107 NLRB No. 177.

transporting voters were made specifically for "gas and oil," and the employees were not shown to have regarded the payments as inducements to vote for the union. Similarly, the Board found that the fact that some foremen had transported employees to the polls in their cars during a rainstorm was not grounds for voiding an election.[6] Transportation was on a nondiscriminatory basis and no attempts to influence the employees' vote had been made.

An employer interferes with an election if he facilitates electioneering by one of the election contestants without affording like assistance to its opponent. In one case during 1954,[7] a majority of the Board held that this rule was not violated by an employer who, upon request, furnished an employee mailing list to a decertification petitioner, without making the same information available to the incumbent union, which did not request the list and did not show that its request would have been futile.

(d) Preelection concessions

Concessions granted or promised by an employer shortly before an election have been held to invalidate the election if they were calculated or tended to influence the employees in voting for or against a particular union. Thus, the Board held that in executing a contract with one of the competing unions, after an election had been directed, the employer accorded that union a potent form of assistance which prevented a free choice by the employees.[8] An election also was set aside where, less than 2 weeks before the election, the employer announced that it had made application to the Wage Stabilization Board for approval of substantial employee benefits.[9] The Board found that the announcement in fact constituted a promise of benefits calculated to interfere with the employees' freedom of choice. The Board noted that the employer had never before announced so many benefits simultaneously. Similarly, an employer's announcement of paid holiday benefits, about 1 week before the election, was held to have invalidated the election because it was deliberately timed and calculated to influence the employees' choice.[10] An earlier announcement that the employer was "considering" paid holidays was held immaterial as but a vague suggestion which had not yet taken the form of a promise.

However, an objection based on a preelection wage increase within the scope of the wage reopening clause of a current contract was

[6] *Gong Bell Manufacturing Co.*, 108 NLRB No. 181

[7] *Morganton Full Fashioned Hosiery Company*, 107 NLRB No. 312. Member Murdock dissented on another point, but did not pass on this particular issue.

[8] *Johnson Transport Company*, 106 NLRB 1105.

[9] *Union Sulphur and Oil Corporation*, 106 NLRB 384.

[10] *Knickerbocker Manufacturing Company*, 107 NLRB No. 111.

overruled.[11] Here, the Board pointed out that "the mere raising of a representation question by another union does not suspend the rights of an incumbent union under its existing contract, nor does the granting of any benefit to a contracting union by an employer pursuant to a current contract afford ground for setting aside an election."

Also, in another case, the Board declined to set aside an election at a new plant where the employer, following its normal practice, announced certain benefits which had depended on the outcome of a strike settlement at another plant.[12] The Board did not believe that the employer was obligated to defer the announcement until after the election merely because the strike settlement coincided with the Board's direction of election. Nor was a wage increase, announced 2 days after issuance of a direction of election, held improper under the following circumstances:[13]

The employer had to withdraw an annual wage increase pending Wage Stabilization Board approval. It then granted the challenged increase, announcing that it constituted but a fraction of the amount applied for. Moreover, the employer had no antiunion bias and had manifested its intention not to influence the impending election by not announcing the later WSB approval before the election. A majority of the Board, in another case, declined to set aside an election because of the employer's preelection announcement that it had "been working on a formula" embodying substantial benefits.[14] The majority concluded that the announcement had not assumed the proportions of a "promise of benefit" within section 8 (c), and was at most a vague suggestion of the possibility that at some indeterminate date a formula might be found for granting the suggested benefits.

Preelection offers by a union of special reduced initiation fees during the campaign were held not to constitute interference with the election where the benefit offered was in no way contingent on how the employees voted.[15]

7. The Union-Shop Referendum

Section 9 (e) (1) of the act accords employees who are subject to a union-shop agreement the right, by a referendum election, to revoke the bargaining agent's authority to make such an agreement. Such deauthorization poll is conducted by the Board when a petition is filed which is supported by at least 30 percent of the employees in the bargaining unit covered by the contract.

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[11] *The Coolidge Corporation,* 108 NLRB No 1.

[12] *Detroit Aluminum & Brass Corporation,* 107 NLRB No. 285.

[13] *Universal Butane Company, Inc.,* 106 NLRB 1101.

[14] *American Laundry Machinery Company,* 107 NLRB No. 114, Member Murdock dissenting.

[15] *The Gruen Watch Company,* 108 NLRB No. 104.

In one case during fiscal 1954, the Board for the first time was confronted with a union's contention that the unit for deauthorization purposes is not necessarily the bargaining unit. The union in this case contended that employees not subject to the contract's union-security provisions should not be permitted to participate either in the election or in initiating the petition.[16] Rejecting the contention, the Board pointed out that section 9 (e) expressly provides for an election in the bargaining unit. The Board held that, in the absence of a legislative history to the contrary, these provisions must necessarily be held to entitle all employees in the bargaining unit, and not only those required to become union members, to initiate and participate in a deauthorization poll. A majority of the Board also held that there were no circumstances requiring an exception similar to those recognized by the Board in union-shop authorization cases before the 1951 amendment of section 9 (e).[17]

The Board has adhered to the view that normal contract-bar rules do not apply in section 9 (e) proceedings, and that the Board is not precluded from directing a deauthorization election during the term of a collective-bargaining agreement which contains a union-security clause.[18]

In one case a deauthorization election was held appropriate at the time when the union-security provisions of an expired contract were continued in force.[19] The contract provided that it should continue in effect during the negotiation of a new contract. A majority of the Board considered it immaterial that the deauthorization petition was filed after the expiration of the original contract.[20] A majority also held that the Board was not estopped from conducting a deauthorization poll during the existence of a union-security agreement which resulted from the settlement of unfair labor practice charges.[21] It was

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[16] *F. W. Woolworth Co.*, 107 NLRB No. 145. Member Murdock noted that in accord with his dissent in *Great Atlantic & Pacific Tea Co.*, 100 NLRB 1494, he was still of the opinion that section 9 (e) (1) was not intended to provide for revocation of union-security provisions of a contract during its term, but considered himself bound by the majority position in that decision.

[17] See *Giant Food Shopping Center, Inc.*, 77 NLRB 791 (multistate unit extending into State with a law banning the union shop); *Manufacturers' Protective Development Assn.*, 95 NLRB 1059 (Globe-type proceeding). Member Rodgers did not consider it necessary to decide in the *Woolworth* case, *supra*, whether an exception should be made where there is a State ban on the union shop as in the *Giant* case. Member Murdock would not have made the exception in the Globe-type situation because he deemed the employees polled separately as mere accretions to the bargaining unit.

[18] *F. W. Woolworth Co*, 107 NLRB No. 145; *Accurate Molding Corp.*, 107 NLRB No. 229; *Hydraulics Unlimited Mfg. Co.*, 107 NLRB No. 324, Member Murdock dissenting. See *Great Atlantic & Pacific Tea Co.*, 100 NLRB 1494, Member Murdock dissenting.

[19] *Haley Canning Co*, 107 NLRB No. 170

[20] Member Murdock viewed the interim extension of the original contract as of indefinite duration and therefore no bar to an election.

[21] *Hydraulics Unlimited Mfg. Co*, 107 NLRB No. 324, Member Murdock dissenting.

stated that the employees' statutory right to withdraw their union's authority to make such an agreement could not be bargained away by private agreement. In declining to dismiss a deauthorization petition in another case, the Board noted that it is irrelevant whether such a petition, filed by an individual, may have been sponsored or inspired by a rival union.[22]

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[22] *Accurate Molding Corp.*, 107 NLRB No. 229.

IV

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." 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 labor practices. The Board, however, may not act to prevent or remedy such activities until a charge of unfair labor practice has been filed with it. Such charges may be filed by an employer, an employee, a labor organization, or other private party. They should be filed with the regional office of the Board in the area where the unfair practice allegedly was committed.

This chapter deals with decisions of the Board during the 1954 fiscal year which involve novel questions or set new precedents.

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. 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, or to assist or dominate an organization of employees which is formed, or is being formed, for the purpose of bargaining. 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.

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 prohibition may take the form of (1) any of the types of conduct specifically iden-

tified in subsections 2 through 5 of section 8,[1] or (2) any other conduct which independently tends to restrain or coerce employees in exercising their statutory rights. This section treats only the cases coming within category (2)—independent violations of 8 (a) (1).

a. Questioning of Employees

The problem of the interrogation of employees regarding their union activities or sympathies was dealt with in a variety of contexts during fiscal 1954.

Where the employer's highest official systematically questioned group of employees in order to learn the identity of the union organizer, the Board found that the action was clearly coercive and violated section 8 (a) (1) when viewed in the light of the organizer's later discharge.[2] Similarly, section 8 (a) (1) was held violated by questions as to "when the union would come in," whether the employees belonged to it, and whether they participated in a strike vote and knew if a strike had been called.[3] In the same case, the Board held that the employer unlawfully requested a show of hands to determine which employees would report for work the next day. The Board held that the employer's entire conduct indicated that the strike poll was intended to interfere with the employees' right to engage in a planned economic strike and was not in the nature of innocent interrogation.

In one case, an employer was enjoined from using, as part of a discriminatory hiring plan, application forms designed to elicit information concerning the union affiliation of prospective employees.[4] And the questioning of prospective employees as to their union sympathies in another case also was held to have unlawfully restrained them in the exercise of their statutory rights.[5] The Board here overruled the trial examiner's finding that the coercive effect of the interrogation had been dispelled by the later employment of the applicants.

However, an employer was held to have acted within his rights in inquiring whether an employee had been threatened with loss of employment unless she joined the union.[6]

Isolated instances of interrogation in some cases where no other violations of the act were found were held not to constitute infractions of section 8 (a) (1) or to justify a remedial order.[7]

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[1] Violations of these types are discussed in subsequent sections of this chapter.

[2] *St. Louis Car Co.*, 108 NLRB No. 222. Members Murdock and Peterson expressed the view that the interrogation was illegal independently of the context of the illegal discharge.

[3] *New Hyden Coal Co.*, 108 NLRB No. 163. Compare *A. E. Nettleton Co*, 108 NLRB No. 236, involving similar interrogation. Chairman Farmer and Member Rodgers dissented on the ground that the remarks were isolated and not made in an antiunion context.

[4] *McGraw Construction Co*, 107 NLRB No. 210

[5] *Babcock & Wilcox Co.*, 108 NLRB No. 233.

[6] *Hadley Mfg Corp.*, 108 NLRB No. 224.

[7] See for instance *New Mexico Transportation Co.*, 107 NLRB No. 8; *Livingston Shirt Corp.*, 107 NLRB No 109; *The Walmac Co. (Radio Station KMAC & FM Station KISS)*, 106 NLRB 1355. Compare *Vanover Coal Co.*, 107 NLRB No. 286.

(1) Permissible Purposes of Interrogation

The Board has consistently held that questioning of employees regarding their union activities is privileged to the extent required by legitimate trial preparation in an unfair labor practice case. On two occasions during the past year, the Board concluded that this privilege was not exceeded because some of the questions relating to past union activities proved to be unnecessary in the proceeding.[8] The Board noted that there had been no intention to intrude unduly upon the employees' privacy in their union affairs.

In one case, a majority of the Board also held that the questioning of employees as to a union's representative status was a *bona fide* attempt to determine the validity of the union's representation claim and did not violate section 8 (a) (1).[9] The majority pointed out that the employer's subsequent recognition of the union conclusively established that the verification of its majority status was the sole purpose of the questioning.

b. Influencing Employee Elections

In addition to the conventional question of whether employers have sought unlawfully to influence the outcome of representation elections by the direct solicitation of antiunion votes or by threats and promises,[10] the Board has had to deal with the problem of whether employers who confined themselves to privileged persuasion nevertheless violated section 8 (a) (1) by exercising their right of free speech in a manner and under circumstances which exerted an undue influence on the employees' election choice.

(1) Speeches on Company Time—The *Livingston* Rule

In the *Livingston* case,[11] the Board had occasion to reexamine the question whether an employer unduly influences his employees by assembling and addressing them on company time and premises and by refusing the campaigning union's request for permission to reply under like circumstances. Concluding that, absent unusual circumstances, the act does not require an employer to grant such a request, a majority of the Board [12] rejected the "equal opportunity" principle of the earlier *Bonwit-Teller* case.[13] In the view of the majority, the

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[8] *Babcock & Wilcox Co.*, 108 NLRB No. 233; *Partee Flooring Mill*, 107 NLRB No. 249 (Member Murdock dissenting).

[9] *A. E. Nettleton Co*, 108 NLRB No. 236 (Members Murdock and Peterson dissenting).

[10] See for instance *Partee Flooring Mill*, 107 NLRB No. 249; *Endicott-Johnson Corp.*, 108 NLRB No. 23; *Armco Drainage & Metal Products, Inc*, 106 NLRB 725; compare *Sparkletts Drinking Water Corp*, 107 NLRB No. 293.

[11] *Livingston Shirt Corporation*, 107 NLRB No. 109.

[12] Member Murdock dissenting.

[13] *Bonwit-Teller, Inc.*, 96 NLRB 608. The Board majority specifically overruled earlier decisions to the extent that they were based on the "equal opportunity" rule.

postulate that employers and unions alike should be free to persuade employees in their election choice does not require, and Congress did not intend, that an employer who uses his own property make his premises and working time similarly available to the campaigning union. In support of its conclusion, the majority pointed out that:

> An employer's premises are the natural forum for him just as the union hall is the inviolable forum for the union to assemble and address employees. We do not believe that unions will be unduly hindered in their right to carry on organizational activities by our refusal to open up to them the employer's premises for group meetings, particularly since this is an area from which they have traditionally been excluded, and there remains open to them all the customary means for communicating with employees. These include individual contact with employees on the employer's premises outside working hours (absent, of course, a privileged broad no-solicitation rule), solicitation while entering and leaving the premises, at their homes, and at union meetings. These are time-honored and traditional means by which unions have conducted their organizational campaigns, and experience shows that they are fully adequate to accomplish unionization and accord employees their rights under the Act to freely choose a bargaining agent.

However, under the *Livingston* rule an employer is not privileged to make a preelection speech on his time and premises, and to deny a campaigning union's request for an opportunity to reply, if he has in effect "either an unlawful broad no-solicitation rule (prohibiting union access to company premises on other than working time) or a privileged no-solicitation rule (broad, but not unlawful because of the character of the business)." [14] On the other hand, the employer's privilege is not affected by a normal rule prohibiting solicitation only during working hours.

As noted in *Livingston*, the unfair labor practice rule of that case must be accommodated to the *Peerless Plywood* election rule of the same date which prohibits campaign speeches on company time and premises less than 24 hours before a scheduled Board election.[15] Thus, an employer's speech to employees assembled on company time, which is privileged and not an unfair labor practice under the *Livingston* rule, will nevertheless be held to invalidate the ensuing election if the speech was made during the critical 24-hour period.[16]

c. Rules Restricting Union Activities

The Board during fiscal 1954 has had occasion to reaffirm the employer's right to prohibit union activities to the extent that this is

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[14] In support of its ruling the majority cited *N. L. R. B.* v *American Tube Bending Co.*, 205 F. 2d 45 (C. A. 2).

[15] See the discussion of *Peerless Plywood Company*, 107 NLRB No. 106, pp. 64–66.

[16] *Sparkletts Drinking Water Corporation*, 107 NLRB No. 293.

For other cases where the Board held that the *Livingston* doctrine precluded a finding that the employer unlawfully denied a union company facilities to reply to a preelection speech, see *Cooper's, Inc. (of Georgia)*, 107 NLRB No. 206; *Nationally Famous Mary Jane Shoes, Inc.*, 107 NLRB No. 284; *Detergents, Inc.*, 107 NLRB No. 281.

necessary to maintain plant efficiency and order. Thus, nondiscriminatory rules limiting legitimate union activities to nonworking time were held lawful.[17] And no violation of section 8 (a) (1) was found where an employer issued a notice during rival organizing campaigns forbidding "the future use of company facilities on working time" for organizational purposes.[18] The Board pointed out that the purpose of the prohibition was to maintain the employer's neutrality, that the rule was not enforced in a discriminatory manner, and that the employer was not aware of any of the infractions which allegedly occurred.

But in another case an employer was enjoined from enforcing a rule prohibiting the distribution of union literature on its parking lot during nonworking time.[19] The majority of the Board here adopted the trial examiner's conclusion that under established precedent [20] the ban on the distribution of literature unduly restricted the employees' organizational freedom because distribution on the company's property was virtually impossible, at times hazardous, and could not readily be conducted.[21]

The Board also had to consider the effect of the promulgation of a rule against solicitation on the employer's own right to address his employees in the matter of their organization. The question arose in the *Livingston* case [22] where the employer was charged with having violated section 8 (a) (1) by making an antiunion speech to its assembled employees in disregard of its rule against solicitation during working hours, and by denying the campaigning union's request for a similar opportunity to reply. Dismissing the complaint, a majority of the Board [23] held that the employer's limited no-solicitation rule being lawful "there was nothing improper in [the] employer refusing to grant the union a right equal to his own in his plant." However, the majority indicated that its ruling here was predicated on "the absence of either an unlawful broad no-solicitation rule (prohibiting union access to company premises on other than working time) or a privileged no-solicitation rule (broad, but not unlawful because of the character of the business)."

In one case the Board held that the employer who operated on a 24-hour basis did not unlawfully interfere with the organizing efforts

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[17] See for instance *Livingston Shirt Corporation,* 107 NLRB No. 109

[18] *Universal Oil Products Co.,* 108 NLRB No. 19.

[19] *Monsanto Chemical Company,* 108 NLRB No. 151.

[20] The trial examiner relied primarily on the Supreme Court's holding in *N. L. R B* v *LeTourneau Company,* 324 U. S. 793.

[21] Member Beeson, dissenting, believed that the case did not come within the *LeTourneau* rule because, in his view, there was adequate opportunity to reach the employees off company property, and the use of company property here would result in interference with business operations and undue hardship to the employer.

[22] *Livingston Shirt Corporation,* 107 NLRB No. 109.

[23] Member Murdock dissenting.

of its employees by denying an organizer's request to assemble all employees at one time.[24] According to the Board, any right of access to an employer's property a union may have does not include the right to require that operations be shut down to accommodate organizational efforts.

d. Discouragement of Union Activities

As in previous years, there were numerous cases in which the Board had to determine whether employers had unlawfully interfered with the employees' organizational freedom by attempts to discourage participation in concerted action. These cases involved such conduct as threatened or actual discrimination in employment status or loss of employment benefits for union adherence and activities, as well as attempts to induce the abandonment of union support by direct economic concessions or promises of benefits.

(1) Discharge of Supervisors

In one case, during fiscal 1954, the Board held that an employer interfered with the self-organizational rights of its rank-and-file employees, who had elected a bargaining agent, by discharging certain supervisors because of their failure to bring about the union's defeat.[25] This action, the Board pointed out, demonstrated to the employees the employer's persistent determination to thwart organizational activities, and must be taken to have caused nonsupervisory employees to fear similar retaliation if they continued to support the union. The fact that the act no longer protects supervisors against discharge for their own concerted activities, according to the Board, does not preclude a finding that the discharge of a supervisor nevertheless violates the act if, as here, it constitutes an invasion of the self-organizational rights of rank-and-file employees.[26]

(2) Threats and Inducements

The Board again has had repeated occasion to remedy violations of section 8 (a) (1) which took the form of threats that union organization or participation in concerted action would result either in the withholding or withdrawal of economic benefits and privileges, or in the temporary or permanent loss of employment itself through

[24] *The Smith Meal Company, Inc*, 107 NLRB No. 259.

[25] *Talladega Cotton Factory, Inc.*, 106 NLRB 295, enforced 213 F. 2d 208 (C. A. 5).

[26] The Board adopted the reasons for a similar conclusion in *Inter-City Advertising Company*, 89 NLRB 1103 The Board's finding of an 8 (a) (1) violation in that case was reversed by the court of appeals on factual grounds, 190 F. 2d 240 (C. A. 4).

discharge or the closing or removal of the employer's plant.[27] However, no violation was found where the employer's challenged statement did not clearly threaten reprisals or was merely in the nature of a prediction of the possible consequences of unionization.[28] In some instances the Board held that the threats of reprisal of which complaint was made were so isolated as not to warrant remedial action.[29]

Unlawful interference was found where employers resorted to immediate economic concessions or promises of future benefits to bring about the abandonment of organizational activities,[30] the withdrawal of employees from their union [31] and the formation of another organization,[32] and the abandonment of strike action [33] or the withdrawal of unfair labor practice charges.[34]

e. Employer's Responsibility for Acts of Subordinates and Others

The liability of employers for unfair labor practices in some cases depended on whether, under the applicable principles of agency,[35] they could properly be charged with the acts of certain persons.[36]

In one case the employer had requested the local chief of police to interview and check the moral character of prospective employees. In performing this function, the police chief took it upon himself to warn applicants against union membership and to ask them to report

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[27] *McCann Steel Co.*, 106 NLRB 41; *Clearfield Cheese Co.*, 106 NLRB 417, enforced as modified in another respect 213 F. 2d 70 (C. A. 3); *Consolidated Industries, Inc.*, 108 NLRB No. 14; *Mills-Morris Co*, 108 NLRB No 169; *Utah Oil Refining Co.*, 108 NLRB No 197: *Kerrigan Iron Works, Inc.*, 108 NLRB No 118; *Concrete Haulers, Inc.*, 106 NLRB 690, enforced 212 F. 2d 477 (C. A. 5); *Late Chevrolet Co.*, 106 NLRB 64, enforced as modified in other respects 211 F. 2d 653 (C. A. 8); *American Sheet Metal Works*, 106 NLRB 154; *Jamestown Sterling Corp.*, 106 NLRB 466, enforced 211 F. 2d 725 (C. A. 2); *Klinka's Garage*, 106 NLRB 969; *Shook & Fletcher Supply Co.*, 107 NLRB No. 275; *Marathon Electric Mfg. Corp.*, 106 NLRB 1171.

[28] *The Deming Co*, 107 NLRB No. 233; *East Texas Steel Castings Co.*, 108 NLRB No 143; *West Texas Utilities Co.*, 108 NLRB No. 80.

[29] *Dazey Corp.*, 106 NLRB 553; *Braswell Motor Freight Lines*, 107 NLRB No. 154, *The Frohman Mfg. Co.*, 107 NLRB No. 279, *Price Electric Corp.*, 107 NLRB No. 295.

[30] *Jamestown Sterling Corp.*, 106 NLRB 466, enforced 211 F. 2d 725 (C. A. 2).

[31] *R J. Oil & Refining Co.*, 108 NLRB No. 103; *Mills-Morris Co.*, 108 NLRB No. 169; *The Cambria Clay Products Co.*, 106 NLRB 267, enforced as modified in other respects, 215 F. 2d 48 (C. A. 6); *Marathon Electric Mfg. Corp.*, 106 NLRB 1171; *Shook & Fletcher Supply Co.*, 107 NLRB No. 275; *Northern Fruit Co.*, 108 NLRB No. 148.

[32] *Clearfield Cheese Co.*, 106 NLRB 417, enforced as modified in another respect, 213 F. 2d 70 (C. A. 3).

[33] *American Rubber Products Co*, 106 NLRB 73, enforced as modified in other respects, 214 F. 2d 47 (C. A. 7); *Clearfield Cheese Co.*, 106 NLRB 417, enforced as modified in another respect, 213 F. 2d 70 (C. A. 3). See also *The Cambria Clay Products Co.*, 106 NLRB 267, enforced as modified in other respects, 215 F. 2d 48 (C. A. 6).

[34] *Clearfield Cheese Co*, 106 NLRB 417, enforced as modified in another respect, 213 F. 2d 70 (C. A. 3); *The Cambria Clay Products Co.*, 106 NLRB 267, enforced as modified in other respects, 215 F. 2d 48 (C. A. 6).

[35] See section 2 (13) of the act.

[36] See for instance *Miami Coca-Cola Bottling Co.*, 108 NLRB No. 83, and see the trial examiner's findings, affirmed by the Board in *Poultry Enterprises, Inc.*, 106 NLRB 100, enforcement denied because the court concluded that the acts charged were committed by an employee without supervisory status, 216 F. 2d 798 (C. A. 5); *J. A. Utley Co*, 108 NLRB No. 78, enforced 217 F. 2d 885 (C. A. 6); *De Diego Taxi Cabs, Inc.*, 107 NLRB No. 215; *Fairbanks Transit System, Inc.*, 108 NLRB No. 135. Cf. *Graff Motor Supply Co.*, 107 NLRB No. 52. *Restaurant El Alcazar*, 107 NLRB No. 68, enforced 213 F. 2d 536 (C. A. 1).

to him if their membership was solicited.[37] In attributing this conduct to the employer, the Board held that it was so closely related to the authorized conduct of the chief of police that it could not be regarded as outside his apparent authority. In another case an employer was held responsible for the antiunion campaign of a "Citizen's Committee" with which the employer had actively cooperated.[38] Conversely, the Board declined to attribute to an employer the warning in handbills distributed by a citizens' committee that the employees' election of a union might result in the closing of the employer's plant.[39] The Board here pointed out that the requisite agency relationship between the employer and the committee had not been established and that, unlike in the *Armco Drainage* case, there was no evidence that the employer "aided, abetted, assisted, or cooperated with" the committee.[40]

While an employer may avoid liability for unlawful statements of its officers or supervisors by repudiation or disavowal in a manner which effectively dissipates their coercive effect,[41] responsibility for acts of violence committed by supervisors cannot be escaped by subsequent repudiation. Thus, the Board held that an employer's liability for severe assaults on union officials was not affected by whatever measures, including disciplinary action, the employer had taken to protect itself against liability for future acts of this kind.[42]

2. Employer Domination or Support of Employee Organizations

In administering the prohibitions of section 8 (a) (2) against employer interference with the formation and administration of labor organizations, the Board has continued to adjust its remedial orders to the extent of the interference found. Thus, where the employer's conduct amounted to domination, the Board has again directed that the dominated organization be completely disestablished.[43]

In one case where the employer was charged with unlawful domination, the Board rejected the employer's contention that it could not be held to have violated section 8 (a) (2) because the union in-

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[37] *Babcock & Wilcox,* 108 NLRB No. 233.

[38] *Armco Drainage & Metal Products, Inc.,* 106 NLRB 725.

[39] *Livingston Shirt Corp.,* 107 NLRB No. 109.

[40] Compare *Pacific Intermountain Express Company,* 107 NLRB No. 158, where the Board held that the employer could not be held to have violated section 8 (a) (4) because the agent of a union, to which the determination of employee seniority had been delegated, advised an employee that his seniority grievance would not be processed because he had filed an unfair labor practice charge. The Board held that the agent's statement was not within the scope of the authority which the employer delegated to the union—that is, authority to settle controversies over, or to determine initially, the seniority standings of employees.

[41] See *Livingston Shirt Corporation,* 107 NLRB No. 109.

[42] *Miami Coca-Cola Bottling Co.,* 108 NLRB No. 83.

[43] See for instance *Hale Fire Pump Co.,* 106 NLRB 603. *Milco Undergarment Co.,* 106 NLRB 767, enforced 212 F. 2d 801 (C. A. 3); *Ed Taussig, Inc.,* 108 NLRB No. 82.

volved had been certified by the Board as the employees' statutory representative. The Board pointed out that its certification was merely an administrative determination of the union's majority status but not an adjudication of the employer's relations with the union.[44] However, the Board made it clear that any conduct on the employer's part which was merely consistent with honoring the union's certification would not, without more, furnish a basis for finding an 8 (a) (2) violation. The Board's ultimate conclusion that the employer here went beyond its obligations under the Board certification was predicated on the employer's ready extension of recognition and various privileges to the favored inside union while denying similar advantages to a campaigning rival outside union, the manifest identification of the inside union with management through such acts as a supervisor's wearing of the union insignia, and the disciplining of employees for nonsupport of the employer-favored organization.[45]

In cases where the employer is found to have violated section 8 (a) (2) by assistance and support which did not reach the point of domination, the Board, as heretofore, ordinarily directs that recognition be withheld from the assisted organization until it is certified by the Board as the employees' bona fide bargaining agent.[46] And where the unlawful assistance had taken the form of a contract granting exclusive recognition to a union other than the statutory representative, coupled with provisions requiring members of the favored union to maintain their membership, the employer was further directed to cease giving effect to the contract or to any other contract with the assisted union until it was certified by the Board.[47] Similarly, employers who had contractually obligated themselves to give hiring preference to members of a favored union were directed not to give any further effect to their contracts prior to Board certification.[48] But an employer who contractually delegated to a union the determination of the employees' seniority status and enforced the seniority provisions of the contract so as to lend unlawful support to the union in recruiting its members was not required to abandon its entire contract with the assisted union but only the unlawful seniority provisions.[49] The Board here noted that these provisions were separable from the remaining provisions of the contract and that the contract was one which applied

[44] *Milco Undergarment Co.*, 106 NLRB 767, enforced 212 F. 2d 801 (C. A 3).

[45] For cases in which the Board directed the disestablishment of unions on the basis of the trial examiner's findings of their employer domination see *P. R. Mallory Co.*, 107 NLRB No. 103; *Essex Wire and Associated Machines, Inc*, 107 NLRB No. 250, *P. R. Mallory Co.*, 107 NLRB No. 103; *Ed Taussig, Inc.*, 108 NLRB No. 82.

[46] See, for instance, *Marathon Electric Mfg. Corp.*, 106 NLRB 1171; *Henry Heide, Inc.*, 107 NLRB No. 258; *Permanente Steamship Corp.*, 107 NLRB No. 234; *Ebasco Services, Inc.*, 107 NLRB No. 143.

[47] *Henry Heide, Inc.*, 107 NLRB No. 258.

[48] *Permanente Steamship Corp.*, 107 NLRB No 234; *Ebasco Services, Inc*, 107 NLRB No 143.

[49] *Pacific Intermountain Express Co.*, 107 NLRB No. 158.

to several thousand employers and various local unions other than the ones involved in the case.

In one case, the Board rejected a trial examiner's conclusion that an employer who violated section 8 (a) (3) by acceding to a union's demand that overtime work be denied to a nonmember and noncooperating employee thereby also violated section 8 (a) (2).[50] In the Board's opinion, the employer's action here, standing alone, was not the type of union support contemplated by that section. In another case, the Board declined to sustain a trial examiner's finding of unlawful employer interference which was primarily based on the part played by the employer in the establishment of the organization, which occurred more than 6 months before the filing of the charges in the case.[51] The Board held that while the employer's relations with the union before the statutory 6-month period was admissible as background, it could not be given independent and controlling weight in determining whether the employer violated section 8 (a) (2). Other practices on which the examiner had relied were held to be too insubstantial to warrant the finding of a violation particularly because they had ceased after they were forbidden by the employer and because the employer proclaimed its neutrality as soon as rival union activities began.

The Board during fiscal 1954 reaffirmed its view that in determining whether an employer violated section 8 (a) (2) by checking off union charges from the employees' pay, the requirements for a checkoff authorization under section 302 of the act should not be considered.[52] Thus, the Board held that the deduction of certain annual "over-the-road assessments" to which the employer's drivers had voluntarily assented did not violate section 8 (a) (2), regardless of whether or not the deduction conformed to the requirement of section 302.

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 make an agreement with a labor organization requiring that employees, as a condition of continued employment, join and maintain membership in the union.

The question whether section 8 (a) (3) has been violated frequently requires not only determinations of factual issues but also a determination of such basic questions as whether the complaining person is an

[50] *Wyandotte Chemicals Corp*, 108 NLRB No. 196.

[51] *Universal Oil Products Company*, 108 NLRB No 19.

[52] *Pacific Intermountain Express Company*, 107 NLRB No. 158, Member Rodgers dissenting.

"employee" coming within the protection of the act, and whether or not the activities for which he was discriminated against were protected.[53] In many instances the Board also must decide the employer's motive in discharging, or otherwise disciplining, an employee, that is, whether the disciplinary action was prompted by legitimate or prohibited reasons.[54]

a. Employee Status of Discriminatee

In one case during fiscal 1954, the Board held that a company violated section 8 (a) (3) by causing a subcontractor to deny employment to a union official who had organized the company's employees.[55] The absence of a direct employer-employee relationship between the company and the discriminatee, according to the Board, was not controlling because of the intimate business relationship between the two employers under the subcontract, which delegated to the company the right to have any employee removed.[56] The Board further observed that the company itself was an employer of the discriminatee, either because the subcontract made the company the subcontractor's agent with respect to preventing or terminating the employment of any person who worked on the contracted project, or because company and subcontractor were dual employers with joint control over the hire and tenure of employees under the contract. The Board concluded that under the contractual arrangement the company was an employer at least of persons over whom it effectively exercised control.

Another case involved the question of the effect of the former supervisory status of a job applicant to whom the employer refused rank-and-file employment because of a fear that he would become an active union adherent.[57] The Board held that the employer's action violated section 8 (a) (3) and that the situation was distinguishable from that in the *Texas Company* case.[58] In this case, the Board noted, the former supervisor had been terminated for economic reasons, and the employer in refusing him nonsupervisory employment was not, as in the *Texas* case, refusing to hire him in a rank-and-file capacity because he had engaged in union activities while a supervisor.

In a third case, the existence of a violation of section 8 (a) (3) depended on the actual nature of the relationship between the complainant and the respondent company. Dismissing the complaint,

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[53] For questions arising in connection with union-security agreements, see pp. 90–95.

[54] See *St. Louis Car Company,* 108 NLRB No. 222, where the Board points out the inherent difficulties of this task in the discharge of which resort must be had to the Board's broad experience in appraising motives.

[55] *West Texas Utilities Co.,* 108 NLRB No. 80.

[56] See the like holding in *Austin Company,* 101 NLRB 1257, which the Board held controlling.

[57] *Columbus Iron Works Co.,* 107 NLRB No. 283.

[58] *Texas Company* v. *N. L. R. B.,* 198 F. 2d 540 (C. A 9), setting aside 93 NLRB 1358.

the Board found that the company and the complainant had become associated solely for the purpose of determining their compatibility with a view to becoming coowners of the business, and that no ordinary employer-employee relationship was contemplated.[59]

b. Protected and Unprotected Activities

The protection of the act is not limited to the union activities of employees but extends to all of their legitimate "concerted activities for the purpose of collective bargaining or other mutual aid or protection." [60] Therefore, in cases arising under section 8 (a) (3), the Board must frequently determine whether activities which gave rise to discrimination were "concerted activities" and were carried on in a manner which the act protects.

(1) Strikes and Strike Tactics

In order for a strike to be protected, and for those who engage in it to be secure against discrimination because of their participation, the strike must have a lawful objective and must be carried on in a lawful manner.

Thus, the Board held that a minority group in a bargaining unit was not engaged in a protected activity when it sought to induce the employer to deal with the group independently and to ignore the bargaining representative of the unit in a matter clearly covered by the existing bargaining agreement.[61] The illegality of the concerted pressure brought by the group was held to be manifest because if the employer had yielded to the request, it would have committed an unfair labor practice. Compliance with the demands of the group without consultation of the bargaining agent would have encouraged the minority group to abandon the bargaining agent, thus violating section 8 (a) (1). The same action would have violated section 8 (a) (5) since the group sought adjustment of matters which were subject to collective bargaining under the incumbent union's contract, and not the adjustment of grievances which under section 9 (a) may be taken directly to the employer.

In another strike situation, the Board had occasion to express its view that the right to strike is limited in the case of employees whose work tasks involve responsibility for safeguarding property against damage.[62] Employees who strike in breach of this obligation, in the Board's opinion, engage in unprotected activity which subjects them to discipline.

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[59] *Capitol Smoked Fish Corp*, 107 NLRB No 155.

[60] Section 7.

[61] *Dazey Corp*, 106 NLRB 553.

[62] *Marshall Car Wheel and Foundry Co*, 107 NLRB No. 100 Chairman Farmer dissented on another ground. See p. 88.

In the matter of strike techniques, the Board in one case had to determine whether the act's protection extended to a union's publicized strategy to bolster its economic demands on the employer with what it termed "hit and run" work stoppages.[63] Under the union's strike scheme, employees in many locations of the divisionwide bargaining unit left their jobs on different days and then returned to work only to walk out again after a day or two. Simultaneously, roving pickets of the striking union appeared sporadically at many places throughout the division. The resulting intermittent and unpredictable work stoppages created confusion which made it difficult for the company to maintain its services even with the aid of emergency crews. A majority of the Board concluded that the union's course of action, intended to bring about a condition that would be "neither a strike nor work," was not entitled to the protection of the act.[64] The majority opinion said:

> However lawful might have been the economic objective which CWA sought to achieve by its hit-and-run technique, and regardless of the success or failure of the Respondent in its efforts to defend against the intermittent and unpredictable strike and picket attacks, the inherent character of the method used sets this strike apart from the concept of protected union activity envisaged by the Act.[65]

In another case the act was held not to have protected store employees who, while remaining at work, urged customers and deliverymen to honor a picket line their union had established in connection with contract negotiations.[66] The Board found that the employees' actions amounted to a serious failure in their assigned duties for which they could be legally discharged. Quoting a court of appeals' decision in a comparable case,[67] the Board concluded that "an employee cannot work and strike at the same time. He cannot continue his employment and openly or secretly refuse to do his work. He cannot collect wages for his employment, and, at the same time, engage in activities to injure or destroy his employer's business."

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[63] *Pacific Telephone and Telegraph Co.*, 107 NLRB No. 301, Member Murdock dissenting.

[64] Member Murdock, expressing doubt as to whether the strike here could properly be regarded as unprotected, dissented from the dismissal of the complaint on the ground that the complaining employees, in any event, could not be legally disciplined because their participation in the strike scheme was limited to honoring the striking union's picket lines which had been established in connection with lawful economic demands.

[65] See also *Textile Workers Union of America, CIO (Personal Products Corp.)*, 108 NLRB No. 109, where the Board's finding that a union refused to bargain in violation of section 8 (b) (3) was based in part on the union's resort to such harassing tactics as an organized refusal to work overtime, unauthorized extension of rest periods, direction to employees not to work special hours, slowdowns, and unannounced walkouts The Board there held that these activities were unprotected and would have justified the employees' discharge For further discussion of the case, see p. 105.

[66] *Montgomery Ward & Company*, 108 NLRB No. 152.

[67] *Hoover Co* v. *N. L. R B.*, 191 F. 2d 380, 390 (C. A. 6).

(2) Refusing to Cross Picket Line

The question whether the refusal of employees to cross a picket line constituted protected concerted activity presented itself in several cases under varying circumstances. In one case coal mine employees who refused to cross an organizational picket line and left their work after the employer had threatened to discharge them or any employee attempting to organize the mine were held to have engaged in a concerted work stoppage which was protected by the act.[68] On the other hand, an employee who objected to having to make deliveries to customers where a picket line was maintained and who disregarded the employer's request to perform the work assigned to him was held subject to discipline for failure to obey instructions.[69] And in the *Pacific Telephone* case [70] employees who failed to cross the picket line of a union representing other employees of their employer were found to have removed themselves from the act's protection because they knew that in doing so they were cooperating in the picketing union's planned and unprotected harassing technique.

(3) Election Propaganda

The extent to which the use of propaganda material during an election campaign is protected had to be considered by the Board in a case involving the discharge of employees for attacking the employer's veracity in a letter addressed to the employer and disseminated among the employees.[71] The letter, which contained disrespectful epithets, was in response to, and was in turn answered by, company letters to the employees similarly imputing untruthfulness to the campaigning union. Holding that the letter under the circumstances here did not exceed the proper bounds of concerted activity,[72] the Board pointed out, however, that the employees' right to challenge the preelection statements of their employer is not unlimited. Thus, the Board observed, an employee by participating in concerted activity "does not acquire a general nor an unqualified right to use disrespectful epithets concerning his employer," and he may be lawfully discharged if what he does or says seriously impairs the maintenance of discipline and order and renders the employee unfit for further service.[73]

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[68] *Bruns Coal Company, Inc.*, 106 NLRB 590.

[69] *Auto Parts Co*, 107 NLRB No 78

[70] *Pacific Telephone and Telegraph Co*, 107 NLRB No 301, discussed at p. 84.

[71] *Blue Bell, Inc*, 107 NLRB No. 118, Member Rodgers dissenting on other points.

[72] The Board did not find it necessary to decide whether a single employee would be protected for similar critical comments.

[73] See also *El Mundo Broadcasting Corporation*, 108 NLRB No. 186, where the Board adopted the trial examiner's conclusion that an employee's letter intended to induce fellow employees to join a union, and calling attention to alleged injustices in the employer's policies, was protected and could not serve as a justification for the writer's discharge

(4) Bargaining Technique

In one case the employer sought to justify the denial of employment to a union representative because of alleged threatening remarks he had made during bargaining negotiations.[74] The union representative had stated that he would retaliate against what he considered stalling bargaining tactics on the part of the employer by seeking "municipal ownership" of the employer's electric power plant. Rejecting this as justification, the Board observed that the statement, made in the heat of an argument during bargaining negotiations, did not warrant the denial of employment to the union official as a matter of law.[75]

c. Discrimination for Concerted Activities

An employer may not discriminate against employees because of their participation in protected strikes and other concerted activities, except that economic strikers may be permanently replaced. However, the Board has consistently held that the discharge of economic strikers before replacement violates the act.[76] The Board has also adhered to the rule that the employer's right to replace economic strikers is lost where the strike, economic in its inception, is converted into an unfair labor practice strike by intervening violations of the act.[77] But an economic strike will be held to have been so converted only if there is a causal relationship between the employer's unfair labor practice and the continuing strike.[78]

(1) Participation in Unprotected Activities

The Board during the past year was faced with the question whether all members of a union which had struck in violation of its contract were subject to discipline regardless of their actual participation in the strike.[79] In this case, the employer terminated its contract with the striking union and discharged all employees including those not physically present at the time of the walkout. Among the latter were employees whose absence at the time was excused, employees who reported for work but were unable to gain admittance to the plant, as well as employees who were not due to report until

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[74] *West Texas Utilities Company,* 108 NLRB No. 80. Other aspects of this case are discussed at p. 82.

[75] Compare *Textile Workers Union of America, CIO (Personal Products Corp.),* 108 NLRB No. 109, where the Board held that a union was not protected in engaging in harassing tactics which amounted to an abuse of the union's bargaining powers.

[76] See for instance *Consolidated Western Steel Corporation,* 108 NLRB No. 136. Compare *Kerrigan Iron Works, Inc.,* 108 NLRB No. 118.

[77] See for instance *R. J. Oil & Refining Co., Inc.,* 108 NLRB No. 103.

[78] See *Jordan Bus Company,* 107 NLRB No. 148. Compare *Kerrigan Iron Works, Inc.,* 108 NLRB No. 118.

[79] *Marathon Electric Mfg Corp.,* 106 NLRB 1171.

after the plant had closed down. The Board rejected the trial examiner's conclusion that the employees in the foregoing categories, not being participants in the walkout, could not be lawfully discharged. In the Board's view, the circumstances did not permit an inference that because of their fortuitous absence these employees did not share in the union's action. The Board observed that, following the walkout, many of them, instead of disassociating themselves from the walkout, acted in a manner which indicated their complete accord with the action taken by the union, while others appeared at the plant only after union leaders had reported that the gates were locked and when the union, as a tactical maneuver, had issued instructions to the employees to report for work at their regular shift times.

The Board also held that the employer was not required to recall employees who were on the inactive list at the time of the strike in accordance with its contractual undertaking to give preference to laid-off employees in filling vacancies. The Board pointed out that the contract had been lawfully terminated by the employer because of the breach of its no-strike provisions and that there was no evidence that the failure to recall the inactive employees was motivated by any reason other than the cancellation of the contract.

On the other hand, the Board rejected the employer's contention that it did not violate section 8 (a) (3) by later discharging the wives of two participants in the unlawful walkout because of the husbands' continued picketing and refusal to return to work. These activities, the Board noted, were protected and were not in breach of contract because the pickets were no longer bound by the contract as (1) they had been validly discharged at the time of the illegal walkout and (2) the contract itself had been terminated.[80]

The question of the effect of indirect participation in unprotected concerted activities also had to be dealt with in the *Pacific Telephone* case.[81] Citing *Marathon Electric*, the Board there held that a group of employees removed themselves from the act's protection by refusing to cross picket lines which they knew were part of a planned "hit and run" strike scheme that was outside the area of protected activity.

(2) Condonation of Misconduct

While employees may be disciplined for participation in illegal concerted activities or in misconduct accompanying otherwise pro-

[80] The Board further held that the discharge of the pickets' wives unlawfully interfered with the latter's statutory right to refrain from participating in concerted activities, and to assert their neutrality in a strike situation and to resist any pressure to assist any party to the dispute.

[81] See footnote 70, p. 85.

tected concerted action, the Board has adhered to the rule that an employer who is shown to have condoned the misconduct may not later assert it in order to justify subsequent discrimination against the participants. The Board, however, has reaffirmed its position [82] that the condonation principle is not available in the case of a strike which was unlawful in its inception.[83]

The condonation doctrine was applied during the past year in a case involving a walkout which, because of its suddenness, endangered the employer's plant.[84] The employer subsequently refused to reinstate the strikers except as new employees. According to a Board majority finding, the employer throughout had maintained that the employees were disciplined not because of their failure to take necessary precautions in advance of the strike, but because of the violation of a rule prohibiting employees from leaving the plant without permission and providing that employees who break the rule will be considered to have quit. The Board majority held that (1) since the rule could not abrogate the employees' statutory right to engage in concerted activities it was not a valid defense to the employer's discriminatory treatment of the strikers, and (2) by failing to assert its right to discipline the strikers because of the unprotected aspect of their walkout, the employer had condoned their misconduct and could not now revive it in order to justify the discrimination.[85] The majority pointed out that the strikers did not automatically lose their employee status because of their unprotected conduct and that the employer, not having asserted its right to discipline them for their misconduct, had waived its right to do so.

d. Lockouts and Plant Removal

Several cases during fiscal 1954 involved complaints that employees had been deprived of employment and wages in consequence of unlawful lockouts which in some instances were accompanied by the removal of the employer's operation to another location. Where section 8 (a) (3) was found to have been violated because the employer's action was motivated not by valid business considerations but by an antiunion purpose, the Board has had to devise remedies to vindicate the purpose of the act under the particular circumstances.

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[82] See *Mackay Radio and Telegraph Company, Inc*, 96 NLRB 740.

[83] *Clearfield Cheese Company, Inc.*, 106 NLRB 417. The part of the Board's order in this case which directed the reinstatement of certain strikers was reversed in *N. L. R. B. v Clearfield Cheese Co., Inc*, 213 F 2d 70 (C A 3), because of the court's disagreement with the Board's finding that the strikers' misconduct had, in fact, been condoned

[84] *Marshall Car Wheel and Foundry Co.*, 107 NLRB No. 100, on reconsideration of 105 NLRB 57.

[85] Chairman Farmer dissented from the majority's conclusion both because of his belief that the condonation principle should not be applied in the case of conduct of the kind involved, and because of the absence of affirmative evidence of condonation on the part of the employer.

In 1 case the Board found that a transportation company had transferred its office functions from 1 of its terminals to its general office in another city,[86] not as "a step taken in the ordinary course of business, but [as] a device to avoid bargaining" with the representative of its clerical workers. In determining the appropriate means for redressing the consequent loss of employment by 2 employees, a majority of the Board [87] took into consideration that at the hearing the company offered the 2 similar employment at its general office and undertook to reimburse them for moving expenses incurred by themselves and their families if they accepted. The majority held that this offer was a reasonable attempt to provide employment and was in keeping with the Board's remedial policy in situations where substantially equivalent jobs are not available in the location where discriminatees were working when deprived of work. Consequently, the majority held that the employer's back-pay liability should terminate as of the date of the offer to provide employment at the new location of its clerical operations. In the matter of reinstatement, the majority found that since the discriminatees had refused employment at the new location, the employer should be required only to provide employment at the old location if it should resume office operations there. However, the majority did not believe that the employer could appropriately be directed to resume office operations at the former location in order to provide immediate employment. In this respect, the majority took into account the fact that the transfer of operations, though timed to coincide with the advent of the union, was also attended by strong economic considerations and did not necessitate the hiring of clerical personnel at the new location. To order resumption of clerical operations at the former place, according to the majority, would have been punitive rather than remedial and would result in additional financial burdens and the continuation of uneconomic business conditions.[88]

No violation of section 8 (a) (3) was found in situations where the closing of a plant or transfer of operations in the Board's opinion had been motivated entirely by economic considerations and was not

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[86] *Tennessee-Carolina Transportation, Inc*, 108 NLRB No. 179.

[87] Member Murdock dissenting.

[88] Compare the earlier case of *Mount Hope Finishing Co*, 106 NLRB 480, where the Board had similarly found that the employer, in order to evade its responsibilities under the act, closed its plant and removed part of the operations to a new location in another State. Here the company's decision to shut down the plant and to remove its operations was made 2 days after a union victory in a representation election and a day after an unsuccessful attempt to obtain a strike settlement The Board's order in this case, however, was set aside by the Fourth Circuit Court of Appeals because of the court's view that the shutdown and transfer of operations was the result of economic considerations. See *Mount Hope Finishing Co.* v. *N. L. R B.*, 211 F 2d 365.

intended to avoid bargaining with, or to discourage membership in, a union which claimed recognition.[89]

e. Discrimination Under Union-Security Agreements

Section 8 (a) (3) not only prohibits discrimination in employment to discourage union membership or other protected activities, but also prohibits discrimination intended to compel membership in a union which does not have a valid union-security agreement. Moreover, even under a valid union-security agreement, an employee may be discharged only for lack of membership in the contracting union which results from his failure to tender on time "the periodic dues and initiation fees uniformly required." [90]

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 an agreement to be valid (1) the contracting union must have the statutory qualifications, i. e., it must be the bona fide representative of the employees covered in an appropriate unit; [91] (2) it must have complied with the filing and non-Communist affidavit provisions of the act; [92] and (3) the terms of the agreement must conform to the statutory limitations.

(1) Delegation of Authority Over Seniority to Union

One case presented the question whether it is consistent with the union-security limitations of section 8 (a) (3) for an employer to enter into a contract with a union delegating to the latter the authority to settle controversies relating to seniority.[93] The contract first incorporating the seniority provisions here was superseded by a later contract containing the additional provision that the union shall determine such controversies "without regard to whether the employees involved are members or not members of the union." Overruling an earlier decision,[94] the Board held that delegation to a union of complete control over seniority is violative of the act, even though the contract does not, on its face, provide that the union shall make its seniority determinations on the basis of union affiliation, and regardless of whether the contract specifically provides that union member-

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[89] *Brown Truck and Trailer Manufacturing Company,* 106 NLRB 999, Chairman Farmer dissenting on another point; *Marathon Electric Mfg. Corp.,* 106 NLRB 1171, further discussed at p. 86.

[90] Section 8 (a) (3).

[91] *Henry Heide, Inc.,* 107 NLRB No. 258.

[92] *Tacoma Harbor Lumber and Timber Co.,* 108 NLRB No. 127.

The proviso of section 8 (a) (3) also provides that the contracting union's authority to make a union-security agreement must not have been revoked by the employees within the preceding 12 months in a deauthorization poll under section 9 (e).

[93] *Pacific Intermountain Express Company,* 107 NLRB No. 158.

[94] *Firestone Tire and Rubber Co.,* 93 NLRB 981 (1951).

ship shall not be considered in determining seniority. The Board observed:

> The objective standards relevant to a determination of seniority generally derive from the employment history of the employees involved, and that information is, as a rule, peculiarly within the knowledge of the employer. Indeed, the area in which the union is likely to be more informed than the employer with respect to the employer's employees is that pertaining to employees' union membership or to the employees' compliance with the union's constitution, bylaws, or other regulations—subjects, however, which obviously are not relevant considerations in the implementation of a seniority provision. We can therefore see no basis for presuming that when an employer delegates to a union the authority to determine the seniority of its employees, or even to settle controversies with respect to seniority, such control will be exercised by the union in a nondiscriminatory manner. Rather, it is to be presumed, we believe, that such delegation is intended to, and in fact will, be used by the union to encourage membership in the union.

On the basis of these considerations, the Board concluded that delegation of authority to a union over seniority necessarily tends to encourage membership in the union and that the mere inclusion in the contract of a statement that seniority will be determined without regard to union membership is not by itself enough to cure the inherent illegality of the delegation.

(2) Other Terms of Union-Security Agreements

In several cases, the Board again had to determine whether union-security agreements, relied on as a defense to discrimination charges, effectively provided for the statutory 30-day grace period which must be accorded employees for acquiring membership.

In 1 case the Board held that a provision requiring membership after 21 working days did not satisfy the statute and did not, as contended, allow new employees 30 days of grace.[95] Pointing out that the union-security proviso of section 8 (a) (3) creates an exception to the act's antidiscrimination scheme, the Board made it clear that the plain 30-day language of the proviso must be given effect and may not "be distorted by different language requiring an involved construction to attain the same meaning."

Where a contract does not clearly accord all nonmembers the 30-day grace period to which they are entitled, the contract may nevertheless be held valid on the basis of evidence indicating that the parties did in fact intend to comply with the statutory provisions. Thus, a clause which could be construed as requiring employees with more than 30 days' previous employment to acquire membership immediately after the effective date of the contract was held valid in the light of circum-

[95] *Tacoma Harbor Lumber and Timber Co.*, 108 NLRB No. 127.

stances attending and following its adoption.[96] The Board noted that, during negotiation of the contract, the adequacy of the 30-day clause was considered and that at a ratification meeting the employees were advised that all employees, *old and new alike*, had a 30-day grace period for acquiring membership. Concluding that under the circumstances the clause was valid, the Board also noted that no employee had in fact been required to acquire union membership less than 30 days after the execution of the contract.

In another case a majority of the Board held that a maintenance-of-membership agreement was not, as contended, invalid in that on its face it failed to extend the required 30-day grace period to old employees whose membership in the contracting union had lapsed prior to the execution of the contract.[97] The majority pointed out that the contract in question was executed contemporaneously with the expiration of an earlier contract likewise requiring maintenance of membership; that absent evidence to the contrary, the employees must be presumed to have maintained their membership; and that, all employees being members of the union upon the renewal of the contract, there were no employees who were entitled to a 30-day grace period under the *Krause Milling* rule.[98]

Union-security agreements have uniformly been held illegal under section 8 (a) (3) where they obligated the employer to give preference to or to hire only union members, thus depriving new employees of the statutory grace period.[99] Nor was an agreement, though containing valid union-security provisions, held to protect the employer in making job assignments dependent on seniority which was determined by the contracting union on the basis of the dates on which employees acquired membership rather than on the basis of dates of employment.[1] As noted by the Board, the employer's practice had the effect of requiring employees to become members of the union immediately upon being hired and thus to forego the statutory 30-day period.

The Board has again held that the illegality of a union-security clause cannot be cured by a so-called "saving" clause to the effect

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[96] *Krambo Food Stores, Incorporated,* 106 NLRB 870. The circumstances considered here had not been before the Board in the prior representation proceeding where the same contract was held not to be a bar to an election because of its defective union-security clause (98 NLRB 1320). In view of the present determination that the clause was a valid one, the Board ordered that its certification in the representation proceeding shall be accorded no further force or effect

[97] *Utility Co-Workers' Association (Public Service Electric and Gas Co),* 108 NLRB No. 122, Member Rodgers dissenting.

[98] *Krause Milling Company,* 97 NLRB 536.

[99] See, e. g., *Permanente Steamship Corporation,* 107 NLRB No 234 , *Boilermakers Local 803 (Harbor Ship Maintenance Co),* 107 NLRB No 212 ; *Ebasco Services, Incorporated,* 107 NLRB No 143

[1] *Pacific Intermountain Express Company,* 107 NLRB No 158

that the clause shall be "subject to the provisions of any and all existing laws." [2]

On the other hand, a Board majority took the view that a deferral clause, purporting to postpone the effectiveness of a union-security clause if "now prohibited by law" until it shall "become lawful," must be given effect where it appears that the parties actually intended deferral and that the employees were aware that the clause was not presently operative.[3] The majority found no material difference between looking to extrinsic evidence to determine whether an ambiguous union-security clause violates the act because of its terms,[4] and to determine whether an unlawful clause is presently operative.

(3) Application of Union-Security Agreements

The enforcement of the union-security provisions of a contract may violate section 8 (a) (3) also because the provisions, though legal, are applied in a discriminatory manner.

In the latter respect, section 8 (a) (3) provides that an employer cannot lawfully discharge an employee if he has reasonable grounds to believe that (1) union membership was not available to the employee on equal terms with other employees, or (2) the union requested discharge for reasons other than the employee's failure to pay the regular dues and initiation fees. Under these provisions, the Board held that an employer who, at the union's request, discharged an employee who had failed to pay arrears consisting of dues and a nonattendance fine, did not violate section 8 (a) (3) because the employer was justified in believing that the sole reason for the union's request was the employee's failure to pay his regular dues.[5] The Board found that the employer had taken care to carry out only its legal obligation under the union-security provisions of the contract; that it had been repeatedly advised by the union that dues delinquency was the sole reason for demanding the employee's discharge; and that it sought unsuccessfully to ascertain from the employee himself whether the union was motivated by some other reason. Nor was the discharge of an employee for failure to pay union dues held unlawful simply because the union at one time also had insisted on the payment of a fine.[6] The Board pointed out that, while the act does not permit the discharge of an employee for failing to pay a fine, a fine re-

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[2] *Ebasco Services, Incorporated,* 107 NLRB No. 143. The Board cited numerous decisions of its own and the courts where similar "savings" or "separability" clauses were held ineffectual.

[3] *Sterling Faucet Company,* 108 NLRB No. 238, Member Murdock dissenting.

[4] See *Krambo Food Stores, Incorporated,* 106 NLRB 870, p. 92.

[5] *Bloomingdale's,* 107 NLRB No. 62. Member Murdock concurred in the dismissal of the complaint against the employer, but believed that the union likewise should have been absolved of the charge that its request violated the act.

[6] *National Lead Co., Titanium Division,* 106 NLRB 545.

quirement in connection with the payment of dues is not proscribed as long as the employee's failure to remit the fine is not the reason for the union's request that the delinquent employee be discharged. Here, the Board noted, the employee's discharge was brought about only after the demand for dues had been separated from the demand for the fine.

The legality of the application of contractual union-security provisions depended in some instances on whether the employees affected were subject to the provisions at the time of their discharge. In one case an employee whose discharge had been requested because of the nonpayment of dues under a maintenance-of-membership agreement was found to have effectively resigned from the union before the execution of its current agreement.[7] The union's previous maintenance-of-membership agreement, which was in effect at the time of the employee's resignation, had expired 9 days before the execution of the new agreement. Thus, the Board held, the discharged employee was not, and was not required to be, a member of the union when the new contract was made. Consequently, he did not become subject to its maintenance-of-membership requirements and could not be lawfully discharged for his failure to pay dues. The Board distinguished the situation from that in an earlier case where employees were held to have been lawfully discharged under existing union-security provisions for dues delinquencies which accrued during the term of the union's preceding contract.[8] There, the Board pointed out, there was no hiatus between the two contracts, the second of which was but a continuation of the first.

In one case the Board held that the discharge of employees who had attempted to comply with the terms of a union-security agreement as represented to them by the parties could not be justified on the ground that the employees' applications for membership were too late under the actual terms of the agreement.[9] The parties, having themselves varied the terms of the contract and thereby misled the employees, were bound by their representations, according to the Board.

(a) Withholding of Vacation Pay for Dues Delinquency

A further question presented during the past fiscal year was whether, under the union-security proviso of section 8 (a) (3), employees delinquent in their dues could legally be penalized by the withholding of their vacation pay.[10] In the view of a majority of the Board, this action was not permitted by the exception to the antidiscrimination rule of section 8 (a) (3) because it was not in

[7] *New Jersey Bell Telephone Company,* 106 NLRB 1322.
[8] *National Lead Co , Titanium Division,* 106 NLRB 545.
[9] *Busch Kredit Jewelry Co., Inc ,* 108 NLRB No. 170
[10] *Krambo Food Stores, Inc.,* 106 NLRB 870, Members Murdock and Styles dissenting.

the nature of selecting a penalty short of discharge, but of imposing an "*additional discrimination*, over and above the threat of discharge." The majority concluded that the union-security provisos were not designed "to give employers and unions a license to use various discriminatory devices, short of discharge, to coerce an employee to join the union while still holding over head the alternate threat of discharge."

4. Refusal to Bargain in Good Faith

Section 8 (a) (5) makes it an unfair labor practice for an employer to refuse to bargain in good faith with the representative which a majority of an appropriate unit of employees has chosen to bargain for them about wages, hours, or other conditions of employment.

a. Majority Status of Representative

Where an employer, charged with having violated Section 8 (a) (5), seeks to excuse his admitted refusal to bargain on the ground that the bargaining agent of the employees does not represent a majority of them, the Board determines the validity of the employer's defense according to certain rules. If the bargaining agent was previously certified by the Board on the basis of an election, its majority status is presumed to continue, and the employer is obligated to bargain with it for a reasonable period of time, normally a year.[11] As pointed out in the *Heide* case, this rule is qualified, however, in that a union's majority may be challenged within the certification year where "unusual circumstances" are present,[12] such as the dissolution of the certified union; doubt as to the bargaining agent's identity following a change in its affiliation; and a substantial increase in the number of employees in the bargaining unit during the certification year. The Board, however, specifically rejected the contention in the *Heide* case that the mere filing of a rival petition during the year likewise creates special circumstances and relieves the employer from its bargaining duty until the Board acts on the petition. To so hold, the Board declared, would be "[to place] a heavy premium on frivolous petitions filed by rival unions during the certification years of *other* unions, and would be lending the processes of the Board towards upsetting the industrial stability that Congress expressly intended for us to preserve." But the Board also pointed out that if the Board issues a notice of hearing on such a petition because it believes that the circumstances warrant a formal investigation, the employer may suspend bargaining with the certified union when the notice of hearing issues.

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[11] *Henry Heide, Inc.*, 107 NLRB No. 258, Member Murdock concurring.
[12] See also *Shirlington Supermarket, Inc.*, 108 NLRB No. 90.

In the case of a bargaining agent whose first certification year has expired, or whose majority claim is not based on a certification, the Board continues to hold that the employer's refusal to bargain, or his conditioning of recognition on a Board election, is not unlawful as long as the employer challenges the union's status in good faith.[13] Conversely, where the employer's assertion of doubt regarding the status of the majority representative is not made in good faith, the employer's refusal to bargain will be held a violation of section 8 (a) (5). The Board has again made it clear that "one of the essential prerequisites to any finding that the employer raised the majority issue in good faith is that it must *not* have been raised in a context of illegal antiunion activities, or other conduct . . . indicating that in raising the majority issue the employer was merely seeking to gain time in which to undermine the union." [14]

b. The Request to Bargain

The Board has consistently held that an employer cannot be found to have violated section 8 (a) (5) if the complaining union did not make an unequivocal request to bargain. As reiterated by the Board in one case, "while the request to bargain need not be formal, nor made in any particular manner, a union must clearly convey to the employer its desire to negotiate with him." [15] In this case, the Board held that the General Counsel did not sustain the burden of showing that an effective request had been made. The Board noted that the asserted request consisted only of (1) a letter containing no "present, clear demand for bargaining" but at most asking that the employer consent to an election, and (2) conversations which could be interpreted as a request to bargain about the discharge of two employees but not about any other subject of bargaining.

In another case, the Board dismissed refusal-to-bargain charges because the union's bargaining request was defective in that it failed to specify an appropriate unit in which the union claimed majority status.[16]

The union's written request in this case was such that, under the circumstances, the employer could not be certain whether a single-

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[13] See *Vulcan Steel Tank Corp.*, 106 NLRB 1278; *Poe Machine & Engineering Co.*, 107 NLRB No. 287; *American Laundry Machinery Co.*, 107 NLRB No. 316; and *The Walmac Co. (Radio Station KMAC & FM Station KISS)*, 106 NLRB 1355

[14] *Henry Heide, Inc.*, 107 NLRB No. 258 See also *Consolidated Textile Co. (Ella Div.)*, 106 NLRB 580. In this case, the Board also found a refusal to bargain on the alternate ground that the employer was not in a position to challenge the union's majority status because a reasonable time had not yet elapsed since the execution of a settlement agreement requiring the employer to bargain. The Board applied the rule of *Poole Foundry & Machine Co.* v *N L R. B*, 192 F 2d 740 (C A. 4), enforcing 95 NLRB 34, certiorari denied 342 U S 954.

[15] *McCann Steel Co.*, 106 NLRB 41.

[16] *Mike Persia Chevrolet Co., Inc.*, 107 NLRB No. 82.

employer unit or a multiemployer unit was sought. Further, the union at the time had on file with the Board a petition for a three-employer unit, but the union was not shown to have had majority status in such a unit. A single-employer unit was ultimately found appropriate. The Board held that, under these circumstances, the employer was not required to seek clarification from the union of its ambiguous request.

c. Suspension of the Bargaining Obligation

In several cases, a question arose as to whether the employer's duty to bargain with the acknowledged representative of the employees had been suspended. The Board's finding of such suspension in 2 cases was predicated on the complaining union's own action. In 1 case, the employer had refused to bargain further with a union as long as it retained the dual status of the employees' bargaining agent and the employer's business competitor.[17] In the Board's view, a bargaining agent's status as business rival of the employer with whom it seeks to deal is incompatible with the union's statutory duty to bargain "with the single-minded purpose of protecting and advancing the interests of employees." For, the Board said, the union has acquired a special interest which may well be at odds with that purpose. The Board added:

> We believe that the Union by becoming the Respondent's business rival has created a situation which would drastically change the climate at the bargaining table from one where there would be reasoned discussion in a background of balanced bargaining relations upon which good-faith bargaining must rest to one in which, at best, intensified distrust of the Union's motives would be engendered. The Board has held that under unusual circumstances a union may, by contemporaneous action in connection with bargaining, afford an employer grounds for refusing to bargain so long as that conduct continues. This is so because it cannot be determined whether or not an employer is wanting in good faith where the measurement of this critical standard is precluded by an absence of fair dealing on the part of the employees' bargaining representative. In our opinion, the Union involved herein by virtue of its dual capacity has made fair dealing with the Respondent inherently impossible.[18] [Footnotes omitted.]

In another case, the Board held that a union which called a strike in breach of its contractual no-strike pledge similarly forfeited its bargaining rights and that the employer's duty to bargain was suspended until the strike ended.[19]

On the other hand, the Board during fiscal 1954 made it clear that an employer's duty to bargain with an incumbent union is not sus-

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[17] *Bausch & Lomb Optical Co.*, 108 NLRB No. 213, Member Murdock concurring

[18] Member Murdock concurred in the dismissal of the complaint solely on the ground that under *Phelps Dodge*, cited by the Board, the union's engaging in a competitive business was conduct inconsistent with good-faith bargaining.

[19] *Marathon Electric Mfg. Corp.*, 106 NLRB 1171.

pended merely because a representation petition has been filed with the Board by either the employer himself or a rival union.[20]

In another case, it was contended that the employer's duty to bargain with the newly certified representative of a craft group did not become fully operative during the remainder of the term of a contract with another union which covered a unit including the craft.[21] The contract had been held by the Board to be ineffective as a bar to an election in the craft group because it was of unreasonable duration. However, the employer insisted that its substantive terms were not affected by the substitution of a new bargaining agent for the craft. The Board held that the same policy reasons which militate against recognizing a contract of unreasonable duration as a bar to a Board representation election during its entire term entitle a newly certified representative to full collective bargaining for the unit it is certified to represent. The Board observed that its rule permitting employees to change representatives at reasonable intervals would be of little value if contracts of unreasonable duration were held to preclude a new representative from negotiating new terms and conditions of employment for an extended period of time.

d. Violation of Bargaining Duty

An employer who is legally required to bargain with the representative of his employees will be found to have violated his statutory duty if it is shown that he did not in fact intend to deal with the representative in good faith,[22] or that in the course of negotiations the employer resorted to action inconsistent with the concept of collective bargaining.

(1) Bypassing the Employees' Representative

The employer's statutory duty to bargain exclusively with the employees' accredited representative is violated where the employer deals with the employees directly or acts unilaterally in matters subject to bargaining. Thus the Board in one case found a violation of section 8 (a) (5) where, following unsuccessful negotiations and rejection of a final wage offer, the employer polled the employees as to whether they wished to accept his offer or intended to refuse it and to obey the union's strike call.[23] The employees responded, their vote favoring acceptance was published in a local newspaper, and the strike did not occur. The Board pointed out that while an employer without vio-

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[20] *Henry Heide, Inc.*, 107 NLRB No. 258, Member Murdock concurring See also pp. 95–96.

[21] *American Seating Company*, 106 NLRB 250.

[22] See section 8 (d) of the act. And see for instance *A. E. Nettleton Co.*, 108 NLRB No. 236 Compare *Partee Flooring Mill*, 107 NLRB No. 249, Member Murdock dissenting; *American Laundry Machinery Company*, 107 NLRB No. 316; *The Frohman Manufacturing Co., Inc.*, 107 NLRB No. 279, Member Murdock dissenting.

[23] *The Stanley Works*, 108 NLRB No 102

lating the act may inform the employees of the status of its negotiations with the union and may even urge them to persuade the union leadership to accept the last offer made, the employer may not deal directly with the employees. Here, the Board found, the employer in fact did deal directly with the employees by appealing to them to accept its final offer after the union membership had rejected it and by asking each employee to advise the employer by ballot of his position. However, in one case the Board held that while the employer violated section 8 (a) (1) by soliciting employees engaged in a recognition strike to return to work, the employer did not thereby also violate his bargaining duty under section 8 (a) (5).[24] The Board held that the solicitation of the strikers could not be regarded as evidence that the employer sought individual rather than collective bargaining.

In the matter of unilateral action, the Board held in one case that an employer violated section 8 (a) (5) by granting a wage increase during a strike called by a union to obtain recognition as the employees' representative.[25] However, unilateral employer action while the empolyee representative seeks to bargain has not invariably been held to violate the act without regard to the attending circumstances. Thus, the Board found that an employer did not violate his bargaining obligation by granting certain wage increases during the interim between an impasse which had been reached in good faith, and the resumption of negotiations.[26] The Board noted that the employer displayed no antiunion animus, that the parties overcame the impasse and reached agreement, and that the harmonious relations between them had not been disrupted. Nor were unilateral wage increases held unlawful where the bargaining agent had full knowledge of the employer's action and had indicated its acquiescence by its failure to protest the action until the time of the hearing in the case.[27]

(2) Grievance Procedure

During fiscal 1954, the Board was called upon to construe the grievance provisos of section 9 (a) [28] and to determine whether it is proper for an employer to accept and consider a grievance presented, not by

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[24] *Efco Manufacturing, Inc.,* 108 NLRB No. 52.

[25] *Efco Manufacturing, Inc.,* cited above.

[26] *Quaker State Oil Refining Corporation,* 107 NLRB No. 11.

[27] *The Frohman Manufacturing Co., Inc.,* 107 NLRB No. 279, Member Murdock dissenting See also *The Stanley Works,* 108 NLRB No. 102, where the Board agreed with the trial examiner's conclusion that a notice announcing the employer's intention to discontinue its customary Christmas bonus did not violate section 8 (a) (5) since the employer subsequently bargained with the union regarding the subject.

[28] According to the provisos "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 "the bargaining representative has been given opportunity to be present at such adjustment."

the employee immediately concerned, but by a union other than the certified representative of the griever's bargaining unit.[29] The Board concluded that such action on the part of an employer is not contemplated by the provisos and, consequently, violates section 8 (a) (5). In the Board's view, the legislative history of the grievance provisos to section 9 (a) of the amended act clearly indicates that Congress was concerned with assuring the individual griever the right to confer with his employer without requiring participation of the certified bargaining agent, but that Congress did not intend to permit the griever to seek intervention of a minority union. The Board declared that "to read such a broad meaning into the provisos would effectively disrupt the peaceful application of the majority rule inherent in the Board's certification and would lead to instability in industrial relations." [30]

In one case, the Board dismissed a refusal-to-bargain complaint based on the employer's refusal to submit a dispute to arbitration—the third stage of a contractually established grievance procedure.[31] The Board held that in the absence of any evidence that the employer did not in good faith deal with the merits of the grievance during the first two stages, the employer's failure to comply with the union's request to proceed to arbitration could not be considered a violation of section 8 (a) (5), regardless of whether the refusal constituted a breach of the collective-bargaining agreement.

(3) Limitation of Contract Term

In cases where the employer refused to enter into a contract with the bargaining agent for a term extending beyond its certification year, the Board has held that such a refusal is not a violation of the act in the absence of an intent to avoid good-faith bargaining.[32] Conversely, in a case where the employer's insistence on a limited contract term was not made in good faith, but was intended to avoid further bargaining with a certified union, the Board found an unlawful refusal to bargain.[33] In this case, the Board found that the employer not only had indicated its bad faith by its prior conduct, but had manifested its intention to frustrate successful bargaining during the union's certification year by insisting on a limited contract term in order to prevent agreement on a contract. This adamant insistence on conditioning further bargaining on the limitations of any contract to the certification year, the Board held, constituted itself an unlawful refusal to

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[29] *Federal Telephone and Radio Co*, 107 NLRB No. 146.

[30] *Federal Telephone and Radio Co*, cited above. The Board noted its disagreement with the view in *Douds* v. *Local 1250, Retail Wholesale Department Store Union,* 173 F. 2d 764 (C A. 2), where the court held that the provisos permit the processing of a grievance through a union other than the certified representative.

[31] *Textron Puerto Rico (Tricot Division),* 107 NLRB No. 142.

[32] See *Vulcan Steel Tank Corporation,* 106 NLRB 1278.

[33] *Henry Heide, Inc.,* 107 NLRB No. 258.

bargain. In an earlier case, the Board had similarly found that an employer's refusal to bind itself by contract beyond the certification year occurred in a context of unfair labor practices and was evidence of bad-faith bargaining.[34]

(4) Refusal to Furnish Information

The question of the extent to which section 8 (a) (5) requires an employer to make available information to the employees' representative was raised again during the past year by a union's charge that it had been denied information disclosing the wage rate of each employee in the bargaining unit.[35] A majority of the Board held that the employer's refusal to furnish the information was unlawful, particularly since no showing was made that compliance with the request would have been unduly burdensome. The majority pointed out that the union was entitled to obtain all information necessary to the full development of bargaining negotiations and, therefore, could rightfully demand the names and wage rates of the employees in the unit. The majority made it clear that where information is sought "for the purposes of collective bargaining generally" it is sufficient that the requested information "is related to the issues involved in collective bargaining, and . . . no specific need as to a particular issue must be shown." [36]

In an earlier case, the Board dismissed refusal-to-bargain charges based on the employer's failure to furnish financial data in connection with negotiations concerning wages for work on certain machines.[37] The union in this case had abandoned its request for the information after agreement was reached regarding the particular machine rates. The Board noted that the impasse subsequently reached by the parties concerned other issues and was unrelated to the machine-rate dispute.

B. Unfair Labor Practices of Unions

Section 8 (b) of the act specifically proscribes as unfair labor practices 6 separate types of conduct by unions or their agents. The more important cases decided during fiscal 1954 under subsections (1), (2), (3), and (4) of section 8 (b) are discussed below. No cases came to the 5-member Board involving 8 (b) (5) which forbids excessive and discriminatory union fees, or 8 (b) (6) which prohibits so-called "featherbedding" practices.

[34] *International Furniture Co.*, 106 NLRB 127, enforced 212 F. 2d 431 (C. A. 5).

[35] *Whitin Machine Works*, 108 NLRB No. 223.

[36] Chairman Farmer, concurring, further emphasized the necessity of establishing a clear-cut rule in this matter, because of the many cases which arise from disagreements regarding the scope of the employer's obligation to supply wage information. Member Beeson, dissenting, believed that the information furnished by the employer here was fully adequate for the union's expressed bargaining purposes and that no need had been shown for the individual wage rates which the employer withheld.

[37] *Douglas Silk Products Company, Inc*, 107 NLRB No. 98.

1. Restraint or Coercion of Employees

Section 8 (b) (1) (A) forbids a union to restrain or coerce employees in their statutory right to engage in or refrain from engaging in self-organization. In administering this provision, the Board has again had to deal with situations involving violations in the form of threatened or actual violence in the course of strikes,[38] and hiring agreements and practices unlawfully tending to compel union membership [39] or the requirement that the employee abandon rival union membership to obtain a job.[40]

In one case, the Board found that a union violated section 8 (b) (1) (A) by its threats and reprisals against employees who had complained to the parent organization about the union's dealings with the employer.[41] The Board pointed out that the employees' right to protest and question the actions of their bargaining representative and to persuade others to support their position is inherent in the employees' right to self-organization guaranteed by section 7.

In another case, the Board rejected a union's contention that it did not violate section 8 (b) (1) (A) by coercing employees to participate in concerted activities which were outside the protection of section 7 or by restraining employees from testifying against it before the Board.[42] The Board made it clear that section 7 guarantees the right to refrain from assisting labor organizations and that employees may therefore not be coerced to give such assistance by engaging in *any* conduct. The fact that the activities may not have been within the purview of section 7 was therefore held irrelevant. In the matter of testifying, the Board observed that an employee's right to participate in proceedings before the Board is equally protected against interference whether the participation is in support of, or in opposition to, the position of a participating labor organization.

The Board also had occasion during the past year to reiterate that the proviso to section 8 (b) (1) (A), which preserves a union's right to prescribe membership rules, cannot be used to defend conduct which violates any other provision of the act. Thus, a discriminatory system of job assignments was held to be unlawful under section 8 (b) (1) (A) even though the contract adopting the system conformed to the union's rules and bylaws.[43]

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[38] See for instance *District 50, UMW (Tungsten Mining Corporation)*, 106 NLRB 903, *The Englander Company, Inc.*, 108 NLRB No. 7.

[39] See *Ebasco Services Incorporated*, 107 NLRB No. 143; *Roadway Express, Inc*, 108 NLRB No 123; *Local 595, Iron Workers (Bechtel Corporation)*, 108 NLRB No. 149; and *Pacific Coast Marine Firemen (Pacific Maritime Association)*, 107 NLRB No. 126

[40] See *Seabright Construction Company*, 108 NLRB No. 6.

[41] *Roadway Express, Inc*, 108 NLRB No. 123.

[42] *Textile Workers Union, CIO (Personal Products Corporation)*, 108 NLRB No. 109.

[43] *National Lead Company*, 106 NLRB 545; *Pacific Intermountain Express Company*, 107 NLRB No. 158.

2. Causing or Attempting to Cause Illegal Discrimination

The provisions of section 8 (b) (2) forbidding a union "to cause or attempt to cause" discrimination against employees, except in the lawful enforcement of union-security agreements, were involved in a number of cases during fiscal 1954. The violations charged for the most part concerned the legality of the adoption and enforcement of union-security agreements and hiring practices.

The Board has continued to hold that the inclusion in a contract of illegal union-security provisions [44] which tend to encourage union membership itself violates section 8 (b) (2), [45] and that section 8 (b) (2) is likewise violated where a union resorts to economic pressure to enforce demands for an unlawful union-security arrangement.[46]

a. Discriminatory Employment Practices

Several cases under section 8 (b) (2) arose from discriminatory hiring agreements or hiring arrangements under which the unions involved were placed in a position to limit employment to their members. Among the challenged practices were conventional agreements, or arrangements, prevalent in such industries as shipping and construction, whereby the employer must give employment preference to union members or may hire only such applicants as have been referred or cleared by the particular union.[47]

The Board has continued to hold that by being a party to a hiring arrangement which contemplates discrimination against nonunion employees a union becomes liable for any discrimination pursuant to the arrangement. Thus a union which had a referral arrangement was found to have caused a job applicant's failure to obtain employment even though the applicant had not sought and therefore had not

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[44] For a discussion of such illegal contract clauses encountered during the past year see the section on employer discrimination under union-security agreements, pp. 90–95. See also *Local 803, International Brotherhood of Boilermakers,* 107 NLRB No. 212, where the Board held that a union-security clause which may have been lawful in itself was not available as a defense to section 8 (b) (2) charges because it was inseparably interwoven and tainted with other union-security provisions and practices which were illegal.

[45] See for instance *Permanente Steamship Corporation,* 107 NLRB No. 234. And see *Pacific Intermountain Express Company,* 107 NLRB No. 158. The illegal seniority provisions involved in that case are discussed at p. 93. See also *Consolidated Western Steel Corporation,* 108 NLRB No. 136. In this case the Board also held that the clause, which was a continuation of a similar provision antedating the amended act, was not validated by the saving provision of section 102. The former agreement contained no substantive terms as to wages, hours, and other employment conditions and, in the Board's view, was therefore not one to which the immunity of section 102 extended.

[46] See for instance *Local Union No. 55 and Carpenters' District Council of Denver,* 108 NLRB No. 29.

[47] See *Permanente Steamship Corporation,* 107 NLRB No. 234; *Local 803, Boilermakers (Harbor Ship Maintenance Co.),* 107 NLRB No. 212; *Seabright Construction Company,* 108 NLRB No. 6; *Consolidated Western Steel Corporation,* 108 NLRB No. 136.

been specifically denied union clearance.[48] The Board held that the existence of discriminatory conditions of employment which the union had created made it futile for nonunion job applicants to seek referral and they were not required to do so in order to hold the union responsible for the normal consequences of its acts. But the Board in one case pointed out that the mere refusal of a union to refer men to an employer on request, standing alone and absent a discriminatory hiring agreement or practice, does not violate section 8 (b) (2).[49]

One case during fiscal 1954 involved the question of whether contractual seniority provisions were in conflict with the prohibitions of section 8 (b) (2).[50] The Board concluded that a delegation to the union of complete control over the seniority standing of employees violates that section in that such a delegation tends to encourage union membership.[51]

b. Illegal Application of Union-Security Agreements

The limitations of section 8 (a) (3) and (b) (2) permit discrimination against employees subject to a valid union-security agreement only for the purpose of compelling the payment of regular union dues and initiation fees. Consequently, unions were held to have violated section 8 (b) (2) when they brought about discrimination, not because of the employee's dues delinquency, but for such reasons as nonpayment of a union fine [52] or for the manifest purpose of ridding itself of dissident members.[53] A like violation was found where a union caused an employee to be discharged for failure to maintain membership although the employee had effectively resigned from the union and was no longer subject to the contract.[54]

A Board majority during fiscal 1954 also held that it was unlawful for a union under section 8 (b) (2) to enforce its membership requirements by causing a delinquent employee's vacation pay to be withheld.[55]

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[48] See *Permanente Steamship Corporation*, 107 NLRB No 234. Compare *Consolidated Western Steel Corporation*, 108 NLRB No. 136.

[49] *Local 595, Iron Workers (Bechtel Corp.)*, 108 NLRB No 149.

[50] *Pacific Intermountain Express Company*, 107 NLRB No. 158. This case is more fully discussed at pp. 90 and 92.

[51] Compare *International Brotherhood of Teamsters, Local No. 710*, 108 NLRB No. 134, where the Board found that the union charged with a violation of section 8 (b) (2) had not been shown to have unlawfully brought about preferred seniority standing of its members. The validity of the seniority provisions of the union's contract was not litigated in this case.

[52] *Custom Underwear Manufacting Company*, 108 NLRB No. 24; *Bloomingdale's*, 107 NLRB No. 62.

[53] *Roadway Express, Inc*, 108 NLRB No 123.

[54] *New Jersey Bell Telephone Company*, 106 NLRB 1322.

[55] *Krambo Food Stores, Incorporated*, 106 NLRB 870, Members Murdock and Styles dissenting. For fuller discussion of this case, see p. 94.

3. Refusal to Bargain

Section 8 (b) (3), the act's counterpart to section 8 (a) (5),[56] prohibits a union from refusing to bargain on behalf of appropriate employee units it represents. In the only case arising under this section, the Board made it clear that the statutory bargaining duty as defined in section 8 (d) requires employers and unions alike to bargain "in good faith." [57] The unions in this case, the Board held, violated this duty when they engaged in a series of unprotected harassing tactics [58] in order to force the employer's hand during negotiations. The strategy employed prevented the employer from making production plans for delivery commitments, but the union at the same time did not communicate to the employer the purpose of its tactics or by what concessions they could be avoided. The Board said:

> [The act's] policy is clearly neither furthered nor effectuated when an employer or a union so exercises its bargaining *powers* as to thwart or impair the bargaining *process*, which requires for its furtherance cooperating in the give-and-take of personal conferences, with a willingness to let ultimate decision follow a fair opportunity for presentation of opposing views, arguments, and positions.

The Board rejected the contention that, under the Supreme Court ruling in the *UAW* case,[59] the union's conduct could not be considered in determining whether the union violated section 8 (b) (3) because, as in the *UAW* case, the conduct was not prohibited by the National Labor Relations Act and therefore was not cognizable by the Board. In the *UAW* case, the Board pointed out, the Supreme Court was concerned with whether the union's conduct was subject to State regulations and not with the question of whether union conduct may be evidence of a lack of good faith in bargaining.

4. Illegal Secondary Strikes and Boycotts

The act's prohibitions of secondary strikes and boycotts are contained in subsections (A) and (B) of section 8 (b) (4). Subsection (A) contains the general prohibition against such strikes and boycotts. Subsection (B) forbids a strike or boycott action against one employer for the purpose of forcing another employer to recognize or bargain with a union which has not been certified by the Board. Both subsections specifically forbid a union or its agent to engage in such strikes or boycotts, or "to induce or encourage employees" to engage in them.

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[56] See pp. 95–101.

[57] *Textile Workers Union of America, CIO (Personal Products Corp.)*, 108 NLRB No. 109.

[58] These tactics included an organized refusal to work overtime, an unauthorized extension of rest periods from 10 to 15 minutes, the direction of employees to refuse to work special hours, slowdowns, unannounced walkouts, and inducing employees of subcontractor not to work for the employer.

[59] *International Union UAW, AFL, Local 232* v. *Wisconsin Employment Relations Board*, 336 U. S. 245, rehearing denied 336 U. S. 970.

a. Scope of Prohibition

Insofar as the secondary-boycott provisions contemplate the inducement of concerted refusals to work by employees, the Board held in one case that inducement not to work communicated to only one employee, or to no employees at all, was not a violation of section 8 (b) (4) (A).[60] In the same case, however, a majority of the Board[61] declined to find that the union's action against one employer was primary because of the close association between the picketed employer and the employer immediately involved in the underlying dispute. According to the majority, the picketed employer, an independent contractor, was not an "ally" of the primary employer simply because under the contract the latter may have had some control over wage increases for employees engaged in the contracted work.[62] In the *New York Shipping Association* case,[63] the Board upheld the trial examiner's conclusion that the union's pressure against association members in connection with its strike against tugboat operators did not lose its secondary character because association members resorted to means other than tugboat service to maintain their waterfront operations. In the trial examiner's view, the pier employers by seeking to accommodate their operations to the strike situation did not make themselves "allies in interest with struck employers." The trial examiner concluded that:

> A secondary employer faced with a strike against his supplier of services is not obliged to sit idly by lest he forfeit his status as a neutral; he may, without risking the protection Section 8 (b) (4) (A) accords him against the extension to his business of economic conflicts in which he is not involved, seek other suppliers, devise other methods, and employ other means to enable him to continue his business on as nearly normal a level as possible.

b. Situs of Dispute Test

The Board again was repeatedly faced with the question of whether the secondary-boycott provisions were violated by union action in furtherance of a primary dispute but which occurs at or close to premises of strangers to the dispute. As heretofore, these situations arose chiefly where the primary employer's business operations intermittently extended to the premises of other employers, as in the case of trucking operations, or had a permanent common situs with the business of a neutral employer, as in the case of the general contractor and

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[60] *Denver Building Trades Council,* 108 NLRB No. 66.

[61] Member Murdock dissenting.

[62] The majority distinguished the situations present in *Irwin-Lyons Lumber Co.,* 87 NLRB 54, 56, and *Douds* v. *Metropolitan Federation of Architects;* 75 F. Supp. 672 (D. C., N. Y.).

[63] *United Marine Division, Local 333, ILA (New York Shipping Association),* 107 NLRB No. 152.

subcontractors on a construction project. In a case of the latter type,[64] The Board at the end of fiscal 1954 recapitulated its approach to the problem. The Board there said:

In this situation the Board recognizes that the traditional right of a union to picket at the location of a labor dispute and the competing right of a neutral employer to be free from picketing in a controversy in which it is not directly involved cannot be absolute.[65] The problem is one of balancing rights. When the picketing union by its picketing signs[66] or by its conduct on the picket line[67] or elsewhere[68] indicates that the dispute extends beyond the primary employer, and thereby directly seeks to enlist the active participation of employees of neutral employers, the picketing union violates the secondary boycott provisions of the Act. On the other hand, if the picketing union by its signs and conduct does indicate that its disagreement is only with the primary employer, its conduct is primary and lawful even though employees of neutral employers may of their own volition refuse to cross the picket line and thereby exert pressure on the primary employer. These secondary effects of legitimate primary picketing must be regarded as incidental in the light of the legislative history of the Taft-Hartley Act.[69]

On the basis of these considerations the Board held that the union did not violate section 8 (b) (4) (A) by picketing several construction sites in connection with an organizational drive. For, the Board pointed out,

[T]he picket signs indicated clearly that the picketing was for the purpose of persuading the nonunion men on the project to join the Union. The conduct of the pickets was consistent with the legends on the signs they carried. They made no attempt to persuade employees not to go to work, but handed out authorization cards when asked for the same and responded to inquiries by stating that the Council was engaged in an organizing campaign. There is no evidence that the Respondents were engaging in secondary picketing under the guise of conducting an organizational campaign. There is also lacking any substantial evidence that away from the picket line the Respondents instructed or attempted to persuade the unionized employees of secondary employers to respect the picket line. [Footnotes omitted:]

Previously, in a similar situation, a majority of the Board had held that picketing activities at the common business situs of two employers were unlawful because the union's picket signs failed to show that the union's dispute was confined to the primary employer.[70] In

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[64] *Baltimore Building Trades Council (Stover Steel Service)*, 108 NLRB No. 221. See also *Denver Building Trades Council (Climax Molybdenum Co.)*, 108 NLRB No. 66, Member Murdock dissenting in part.

[65] Citing *Local Union No. 55 (Professional and Business Men's Life Insurance Company)*, 108 NLRB No. 29; *Chauffeurs, Teamsters, Warehousemen, etc. (Hoosier Petroleum Company, Inc.)*, 106 NLRB 629, enforced 212 F. 2d 216 (C. A. 7).

[66] Citing *Local Union No. 55, etc. (Professional and Business Men's Life Insurance Company), supra.* Member Murdock dissented from finding the violation therein.

[67] Citing *Chauffeurs, Teamsters, Warehousemen, etc. (Hoosier Petroleum Company), supra.*

[68] Citing *Local No. 55, etc. (Professional and Business Men's Life Insurance Company), supra.*

[69] Citing *Sailors' Union of the Pacific (Moore Dry Dock Company)*, 92 NLRB 547.

[70] *Local Union No. 55, and Carpenter's District Council of Denver (Professional and Business Men's Life Insurance Co.)*, 108 NLRB No. 29, Member Murdock dissenting.

this case the union picketed a housing-construction project on land owned by the general contractor. The picketing was intended to obtain recognition of the union by the general contractor and was carried on with signs referring to the "job" as "unfair." As the result of the picketing, employees of two subcontractors left their work. The Board majority concluded that, while the picket signs identified the picketing union, they failed to indicate clearly that only the owner-general contractor was picketed. Thus, the majority pointed out, the use of the words "this job" in the sign was a reference to the entire project, so that the subcontractors' men could reasonably understand that their employers also were picketed. In the majority's view, this interpretation of the picket-sign language moreover was strengthened by various acts on the part of the picketing union over a period of 3½ months before the establishment of the picket line. The majority held that such incidents as the union's statements during that period may be used to demonstrate the extent of a union's picketing regardless of whether or not the statements are lawful in themselves. The *Hoosier Petroleum* case,[71] to which the Board referred, likewise involved a recognition strike against an employer, a truck owner-lessor, who maintained a regular place of business at the premises of another, neutral employer, a filling-station operator. The Board there had likewise held that, while the wording and format of the union's picket signs may have left the scope of the picketing in doubt, the pickets' actual conduct clearly indicated the union's intention to extend its pressure to the neutral employer.

The Board made it clear that the requirement for unequivocal limitation of picketing to the primary employer is the same where the latter's business has a common situs with that of a neutral employer, as in the *Professional* and *Hoosier* cases, and where it is ambulatory, as in the earlier *Moore Dry Dock* case.[72]

In two cases of picketing at the business situs of neutral employers, the Board during the past year held that the exonerating conditions laid down in *Moore Dry Dock* were not present and that the union's extension of their action to neutral premises resulted in a prohibited secondary boycott. Thus, in the *New York Shipping* case,[73] the Board adopted the trial examiner's conclusion that the extension of a strike against tugboat owners to the piers of shipping association members was unlawful because the piers were picketed when none of the struck tugboat owners' craft were "present at or in the immediate vicinity of the places picketed, or were otherwise then engaged in the function-

[71] *Chauffeurs, Teamsters, etc., Local Union No. 135 (Hoosier Petroleum Company, Inc.)*, 106 NLRB 629

[72] *Sailors' Union of the Pacific (Moore Dry Dock Company)*, 92 NLRB 547.

[73] *United Marine Division, Local 333, ILA (New York Shipping Association)*, 107 NLRB No 152

ing of their business operations." The trial examiner had pointed out that the union's conduct failed to meet the *Moore Dry Dock* test at least insofar as the picketing was not "strictly limited to times when the situs of dispute [was] located on the secondary employer's premises," and was not conducted at a time when "the primary employer [was] engaged in its normal business at the situs."

In the *Washington Coca Cola* case,[74] the picketing of the company's delivery trucks at the premises of its customers was held unlawful under the *Moore Dry Dock* rule because here, unlike in *Moore Dry Dock* and similar cases, the primary employer had a permanent business place in the area which harbored the situs of the dispute and where the union could fully exercise its right to picket effectively by confining its activities to the primary employer's centrally located plant.

c. Disruption of Business Between Third Parties to Dispute

Three cases to come before the Board during fiscal 1954 involved situations where secondary union action resulted in the disruption of business dealings between employers none of which was a party to the union's primary dispute. In each case, the union was held to have engaged in a prohibited secondary boycott. Thus, in *Washington Coca Cola* the union was found to have violated section 8 (b) (4) (A) by picketing retail stores—the bottling company's customers—so as to cause drivers of their suppliers to delay or refrain from making deliveries. The pickets achieved their object by picketing store entrances used in common by customers, store employees, and employees of suppliers, and in one instance by patrolling an entrance used exclusively for deliveries. In *Jay-K Lumber*,[75] the prohibition against secondary boycotts was held similarly violated. The union caused employees of a neutral employer not to unload the truck of another neutral because the truck had crossed the union's organizational picket line at the primary employer's premises. The Board noted that the disruption of the flow of business between the 2 neutrals was intended to force 1 of them to cease doing business with the primary employer and therefore was unlawful.

In the *New York Shipping* case [76] the Board agreed with the trial examiner's conclusion that section 8 (b) (4) (A) condemns all secondary union action which injures the business of third persons not involved in the basic dispute, and its operation is not limited to ac-

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[74] *Brewery and Beverage Drivers Local No. 67, IBT (Washington Coca Cola Bottling Works)*, 107 NLRB No. 104.

[75] *International Brotherhood of Teamsters, Local 182 (Jay-K Independent Lumber Corp.)*, 108 NLRB No. 189. Member Murdock, dissenting, believed that the union could not be held to have induced employees to refuse to unload the truck Member Rodgers dissented on another point

[76] Cited footnote 63.

tions which have the object of stopping business between a neutral and the primary employer. According to the trial examiner, it was unimportant that the struck operators of tugboats and other harbor craft had suspended their business operations. He held it was sufficient for section 8 (b) (4) (A) that the union's secondary action at the piers of shipping association members was intended to paralyze all pier operations and thus force all employers who normally transacted business there to cease their business dealings with one another, as a means of inducing these secondary employers to assist the union in its dispute with the truck towing association.

5. Union Action to Compel Employers to Join Union

Subsection (A) of section 8 (b) (4) also prohibits similar union action intended to force an employer or self-employed person to join a labor organization or an employer organization. One of the rare cases involving this prohibition came to the Board during fiscal 1954. The Board found that the union violated this section by picketing the premises of a partnership for the purpose of forcing three of the partners to become members of the union.[77] The Board rejected the union's motion to dismiss the complaint because the union had disavowed its intent to compel union membership. The Board noted that, according to well-established principle, discontinuance of the unfair labor practice does not render a complaint moot, and that, in any event, it was impossible to ascertain whether the cessation of the unlawful activities was voluntary because it occurred after initiation of a proceeding under section 10 (l) in which the Board sought to have the union's conduct enjoined.

6. Strikes for Recognition Against Certification

Section 8 (b) (4) (C) prohibits direct or indirect action to force an employer to recognize and deal with a particular union if another union has been certified by the Board as the employees' bargaining representative.

In one case where this section was invoked, the offending union contended that section 8 (b) (4) (C) should not be applied because the incumbent union's majority status, certified 7 years before, had become subject to challenge.[78] Rejecting the contention, the Board held that the incumbent was still the certified representative of the employees concerned and that its status was protected by section 8

[77] *International Brotherhood of Teamsters (Lakeview Creamery Company)*, 107 NLRB No. 144.

[78] *District 50, UMW (Tungsten Mining Corp.)*, 106 NLRB 903, enforced March 18, 1954 (C. A. 4).

(b) (4) (C) which places no limitation on the duration of a certification. The Board found it unnecessary to pass on the applicability in an 8 (b) (4) (C) case of the rule that, for the purpose of an employer's duty to bargain under section 8 (a) (5), a union's majority status becomes vulnerable after the first year of its certification. The Board noted that the evidence in the case pointed in favor of, rather than against, presuming that the incumbent's majority status continued.[79]

In another case, the Board adopted the trial examiner's finding that a union clearly violated section 8 (b) (4) (C) when, after it was defeated in a Board election and another union was certified, it continued to picket the employer in order to obtain recognition.[80]

7. Jurisdictional Disputes

Section 8 (b) (4) (D) forbids a labor organization to engage in a so-called "jurisdictional strike" over the assignment of work tasks "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."

An unfair labor practice charge under this section, however, must be handled differently from a charge alleging any other type of unfair labor practice. Section 10 (k) requires that the parties to a "jurisdictional dispute" be given a period of 10 days to adjust their dispute after notice of the filing of charges with the Board. If at the end of this time they are unable to "submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of the dispute," the Board then is empowered to make a determination of the dispute. Section 10 (k) further 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 the underlying dispute.[81]

a. Disputes Subject to Determination Under Section 10 (k)

In section 10 (k) proceedings the Board decides first whether the asserted dispute is one involving the assignment of work and is therefore properly before it.

During fiscal 1954, the Board specifically held that a primary dispute arising from a union's insistence that an employer hire additional

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[79] While the majority of the Board did not determine whether the legality of a strike against an outstanding certification may be affected by any circumstances, Chairman Farmer expressed the view that the prohibition of section 8 (b) (4) (C) is absolute.

[80] *Lumber and Sawmill Workers Union, Local No. 2781 (Everett Plywood & Door Corp.)*, 107 NLRB No. 120.

[81] Only two complaints have come to the Board for adjudication under this section since its enactment.

personnel from among its members for the performance of a particular task is subject to determination under section 10 (k).[82] Here, the Board took cognizance of a situation where a union demanded permission to furnish a timekeeper rather than to have the employer assign timekeeper duties to some of its employees who were members of a sister local of the disputing union. Similarly, the Board in another case held that section 10 (k) applied to a situation in which a union claimed it was entitled to have the work of unloading merchandise from a company's trucks assigned to its members rather than to the company's own employees.[83]

In another case, it was contended that the proceeding should be quashed because (1) the dispute involved was not one over the assignment or reassignment of work, and (2) the nature of the asserted union conduct was at most secondary activity within the meaning of section 8 (b) (4) (A) rather than section 8 (b) (4) (D) and, therefore, furnished no basis for a determination under section 10 (k).[84] The dispute concerned the installation of equipment on a construction job by members of the union which represented the subcontractor's employees. The Board found reasonable cause to believe that building trades council affiliates, one of which claimed the work, caused a work stoppage on the project for the purpose of forcing the general contractor and a subcontractor to transfer the installation to a subcontractor employing members of the union which asserted "jurisdiction." A majority of the Board held that, while the ostensible object of the union's actions was to force the general contractor to terminate its installation subcontract and to let the disputed work to a new subcontractor, the manifest ultimate purpose was to obtain the substitution of only such a subcontractor as would assign the disputed work to members of the building trades affiliate. The dispute, according to a majority of the Board, was thus clearly one cognizable in a section 10 (k) proceeding. Rejecting the second contention, the Board majority was of the view that sections 8 (b) (4) (A) and 8 (b) (4) (D) are not mutually exclusive and that the Board was not precluded from proceeding under sections 10 (k) and 8 (b) (4) (D)) because the charging party might have a remedy under section 8 (b) (4) (A).[85]

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[82] *I. L. A. No 1351, Steamship Clerks and Checkers (Rothermel Brothers)*, 108 NLRB No 108

[83] *Teamsters Local 175 (Biagi Fruit & Produce Co.)*, 107 NLRB No 70 Member Murdock dissented in this case, but subsequently considered himself bound by the majority's conclusion here.

[84] *Local 562, Plumbers and Pipefitters, AFL (Northwest Heating Co.)*, 107 NLRB No. 134, Member Murdock dissenting.

[85] Chairman Farmer, while concurring in the view that the dispute was subject to determination by the Board, expressed his belief that the section 10 (k) procedure should, wherever possible, be reserved for use in cases of jurisdictional disputes which do not also involve violation of other subsections of section 8 (b).

In another case, the Board found that section 10 (k) applied even though the union's jurisdictional claims allegedly were based on contract provisions.[86] The union had separate contracts with two lumber companies regarding the representation of all of their employees in their respective operations. When, during the life of these agreements, the contracting employers entered upon a joint logging venture, the union struck in support of its claim that its agreements entitled employees laid off by the individual employers to seniority standing for the purpose of employment at the latter's joint operation. Citing numerous earlier cases, where immediate and derivative contract claims had been made in similar situations, the Board pointed out that the claim here did not remove the dispute from the scope of sections 8 (b) (4) (D) and 10 (k).

b. Determination of Dispute

One case during fiscal 1954 presented various problems regarding the determination of work-assignment disputes of which the Board had taken cognizance.[87] Here it was contended, on the one hand, that no determination should be made because some of the disputes involved had been adjusted and all of them had become moot. And, in the second place, the unions charged with having violated section 8 (b) (4) (D) asserted that they were in any event entitled to the disputed work under the terms of their contracts, which had been breached by the contracting employers, or under applicable "custom" and "practice." In view of the nature of the dispute the Board was also concerned with the proper scope of its determination.

Regarding the question of adjustment, through the National Joint Board for Settlement of Jurisdictional Disputes, in the building and construction industry, the Board found that, except for two instances, the unions had not, as provided by section 10 (k), "adjusted" their disputes "or agreed upon methods for [their] adjustment." The Board held that the mere submission of the disputes by one of the parties to the Joint Board did not constitute "adjustment," especially because no decisions were issued by the Joint Board and the competing unions continued to assert their conflicting jurisdictional claims. Nor, the Board pointed out, was there any agreement as to methods for voluntary adjustment since some of the parties to the dispute had either severed their connections with the Joint Board or had never assented to the Joint Board plan.

As for the assertion that the disputes here had become moot with the completion of the projects to which the disputed work assignments

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[86] *Local 5–265, Woodworkers (Willamette Lumber Co.)*, 107 NLRB No. 237.

[87] *United Association, Plumbers and Pipefitters Local 428, AFL (Philadelphia Association)*, 108 NLRB No. 50.

related, the Board pointed out that the jobs involved could be completed only because the employers either acted in accordance with or capitulated to the disputing unions' demands. Thus, the Board held, the basic jurisdictional dispute which involved all construction in the area remained unresolved and its determination by the Board was still necessary.

In the matter of the union's reliance on its contracts with the several employers, the Board held that the contracts could not authorize the union's actions because of several defects. The Board noted that: (1) In some instances the disputed work was assigned by an employer who was not a party to the agreement, so that the work assignment could not be regarded as a breach of the contract; (2) in some cases where the disputed work assignment was made by the contracting employer, the contract did not in fact embrace the disputed work either by direct mention or by reference.

Finally, the Board pointed out that in one instance the contracting union's claim depended on patently unlawful union-security provisions. The Board made it clear that, as a matter of policy, it will not allow a contract of this type to determine a work-assignment dispute in favor of the contracting union.

To the extent that the disputing union invoked custom and practice and decisions of the parent organization, the Board reaffirmed the rule that these factors are material to a determination only where both competing unions have an immediate contractual claim to the disputed work.

In fixing the proper scope of its determination, the Board took into consideration the fact that the immediate disputes before it were not merely an isolated series of occurrences but part of a continuing plan on the part of the particular union and its affiliates to obtain the disputed work for its members throughout the area. Consequently, in the Board's opinion, limitation of its determination to the disputes involving the particular employers would not adequately serve the statutory purposes. Rather, the Board concluded, these purposes required that its determination prevent continuation of the basic jurisdictional strife throughout the union's area of operations.

V

Supreme Court Litigation

The cases decided by the Supreme Court during fiscal 1954, which arose under the act or otherwise affected its administration, presented important issues of Board jurisdiction and of the proper construction of various unfair labor practice provisions. In the matter of Board jurisdiction, the Court was concerned with (1) conflicting views of courts of appeals as to whether franchised local automobile dealers were within the ambit of the act, and (2) the extent to which Federal power under the act precludes the exercise of State power. In both, the Board successfully defended the compass and exclusiveness of its jurisdiction. The unfair labor practice questions before the Court involved the meaning and application of the phrase "discrimination . . . to encourage or discourage [union] membership" in section 8 (a) (3) of the act, and the extent to which employees are protected in engaging in concerted activities. Here, too, the Board's views and remedial actions were sustained by the Supreme Court.

1. Jurisdiction

The Court affirmed the Board's jurisdiction over retail automobile dealers who operate as "an integral part" of the manufacturer's national distribution system.[1] In the Court's opinion, the Board had properly predicated its jurisdiction on the fact that the agency agreements under which the dealers operated clearly established the interdependence of the dealer's local activities and the manufacturer's national activities.

In one case, a Supreme Court majority held that a United States District Court had properly granted the Board's request for relief restraining an employer from enforcing a State court injunction against union practices of which the employer had also complained to the Board.[2] The employer's complaint involved the prohibition of section 8 (b) (4) of the act against secondary boycotts. It was, therefore, mandatory for the Board under section 10 (l) to apply to the district court for an injunction against the asserted conduct. In mak-

[1] *Howell Chevrolet Co.* v. *N. L. R. B*, 346 U. S 482; *N. L. R B.* v. *Bill Daniels, Inc.*, 347 U. S. 924, Justice Douglas dissenting

[2] *Capital Service, Inc.* v. *N. L R B.*, 347 U S. 501 Justice Black dissented. Justice Jackson did not participate.

ing application, the Board called attention to the outstanding State court injunction and requested that enforcement of the State court order be enjoined in order that the district court would be free from this impediment in exercising jurisdiction in the section 10 (l) proceeding.

According to the Supreme Court majority, the district court clearly had power to enjoin State action which constituted an intrusion on a subject matter within the exclusive jurisdiction of the Board. The majority further held that the provisions of section 2283 of the Judicial Code,[3] prohibiting Federal courts from enjoining proceedings in a State court, did not apply, since section 2283 expressly permits such intervention by a district court when, as here, it is "necessary in aid of its jurisdiction." The majority of the Court point out that, unless the State decree were removed, the district court would be limited in the action it might take in the section 10 (l) proceeding, and would not have the requisite unfettered power to decide for or against the union and to write whatever decree it deemed necessary to effectuate the purposes of section 10 (l).

The exclusiveness of the Board's remedial jurisdiction in matters regulated by the National Labor Relations Act was also affirmed in the *Garner* case.[4] The Board participated in this case as *amicus curiae*. Here, the Supreme Court unanimously held that the highest Pennsylvania State court had properly declared the State's equity courts to be without power to enjoin the peaceful picketing involved. The State court had issued the injunction because of its belief that the union's conduct violated local labor laws which in effect paralleled section 8 (b) (2) of the national act. The present situation, the Court observed, was not one involving conduct the national Board was without express power to prevent, or which was subject to the State's police powers, and thus was not governed by the Court's ruling in the *UAW* [5] and *Allen-Bradley* [6] cases. Regarding the consequent absence of concurrent State power to deal with the matter, the Supreme Court said:

> Congress did not merely lay down a substantive rule of law to be enforced by any tribunal competent to apply law generally to the parties. It went on to confide primary interpretation and application of its rules to a specific and specially constituted tribunal and prescribed a particular procedure for investigation, complaint and notice, and hearing and decision, including judicial relief pending a final administrative order. Congress evidently considered that centralized administration of specially designed procedures were necessary to obtain uniform application of its substantive rules and to avoid these diversities and conflicts likely to result from a variety of local procedures and attitudes toward labor controversies.

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[3] 28 U. S. C Sec. 2283.

[4] *Garner, t/a Central Storage and Transfer Co.* v. *Teamsters, Chauffeurs & Helpers Local Union No. 776, AFL,* 346 U. S. 485.

[5] *International Union, UAW* v. *Wisconsin Board,* 336 U. S. 245, 254.

[6] *Allen-Bradley Local* v *Wisconsin Board,* 315 U. S. 740, 749.

The Court rejected the theory that, since Federal power is available only to vindicate the *public rights* affected by prohibited conduct, recognition of supplemental State power for the protection of concurrently injured *private rights* is therefore necessary. In the Court's view, "Whatever purpose a classification of rights as public or private may serve, it is too unsettled and ambiguous to introduce into constitutional law as a dividing line between federal and state power or jurisdiction." The Court pointed out that even if it were assumed that the rights under the Pennsylvania statute were of a distinctly private nature, it would not follow that Federal authority may be supplemented with State authority on that account. For, according to the Court, "The conflict lies in remedies, not rights. The same picketing may injure both public and private rights. But when two separate remedies are brought to bear on the same activity, a conflict is imminent." The Court concluded that unless Congress specifically provides otherwise,

> To the extent that the private right may conflict with the public one, the former is superseded. To the extent that public interest is found to require official enforcement instead of private initiative, the latter will ordinarily be excluded.

2. Encouragement of Union Membership

Three cases before the Supreme Court concerned the construction of the antidiscrimination provisions of the act in several separate respects.[7] One question presented was whether a finding of unlawful discrimination may be made only where it is shown that encouragement or discouragement of union membership was actually intended.[8] Another issue—common to the three cases—arose from conflicting views of courts of appeals as to whether unlawful discrimination in employment may be inferred from the nature of the discrimination, or whether it must be shown by express proof that the discrimination had the effect of encouraging or discouraging employees in the matter of union membership. A third question concerned the meaning of the term union "membership" in the context of encouragement rather than discouragement of such membership, a problem which had not previously been before the Court.[9] Lastly, the Court had to decide whether a union may properly be held to have unlawfully caused employer discrimination in violation of section 8 (b) (2) without a concurrent adjudication that the employer violated section 8 (a) (3).[10]

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[7] *Radio Officers' Union, AFL* v. *N. L. R. B., N. L. R. B.* v. *International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America,* and *Gaynor News Company, Inc.* v. *N. L R. B.,* 347 U. S. 17.

[8] *Gaynor News Co , Inc.* v. *N. L. R. B.,* 347 U. S. 17.

[9] *Radio Officers' Union of the Commercial Telegraphers Union, AFL (Bull Steamship Co.),* and *International Brotherhood of Teamsters,* see footnote 7.

[10] *Radio Officers' Union of the Commercial Telegraphers Union,* see footnote 7.

a. Proof of Discrimination

Regarding the prerequisites to a finding of unlawful discrimination, a majority of the Supreme Court held that in order to violate the act the discrimination must have been intended to encourage or discourage union membership, but that actual encouragement or discouragement need not be shown.

Proof of unlawful motivation, according to the Court's majority, is not required to be specific where the type of discrimination shown inherently encourages or discourages union membership. Thus, the Court said, where the natural consequence of discrimination is to encourage or discourage union membership, this consequence is presumed to have been intended. The Court pointed out that this is the import of its earlier decision in the *Republic Aviation* case.[11] There, according to the Court, disciplinary action against employees for union activities in disregard of broad and invalid no-solicitation rules was held to have violated the antidiscrimination provisions of the act because the "foreseeable result" of the discrimination was to discourage union membership. In view of this foreseeability, it was immaterial that the employer did not intend the prohibited result. The Court noted that the principle announced in *Republic Aviation* was properly applied in the *Gaynor* case. There, the Second Circuit held that disparate wage treatment of employees, solely on the basis of membership in the employees' majority representative,[12] was "inherently conducive to increased membership" and therefore unlawful.

b. Meaning of "Membership"

The act's proscription of the encouragement of union membership, according to the Court, contemplates not only bare membership but membership in good standing as well. Thus, contrary to the Eighth Circuit's conclusion in *Teamsters*, the Supreme Court held that the union violated section 8 (b) (2) by causing a reduction in the seniority standing of a dues-delinquent member under a rule providing that a member 1 month in arrears would suffer loss of seniority rights. Since the union had not expelled the delinquent member, the apparent purpose of its action in the Court's view was to enforce a rule designed to encourage prompt payment of dues. This action, the Board had found, had the effect of encouraging membership in good standing and was proscribed. Sustaining the Board's conclusion in *Teamsters*, the Supreme Court pointed out that the Second Circuit in *Radio Officers* had likewise held that encouragement to remain in good standing in a union is unlawful and that the union there violated the act by encouraging members to abide by the union's hiring practices.

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[11] *Republic Aviation Corporation* v. *N. L. R. B.*, 324 U. S. 793.

[12] The Court expressed no opinion as to the legality of disparate wages to members of a union which is not an exclusive bargaining agent.

c. Relation of Sections 8 (b) (2) and 8 (a) (3)

In the *Radio Officers* case, the Court rejected the contention that the Board cannot direct a union to reimburse employees for losses incurred because of the union's violation of section 8 (b) (2) unless the employer is joined in the proceeding and concurrently directed to restore the former employment status of those who suffered discrimination. As to the asserted necessity for joint action against union and employer, the Court pointed out two reasons which militate against such a requirement:

(1) In prohibiting unions not only from causing, but likewise from *attempting* to cause, employer discrimination, a finding that section 8 (b) (2) has been violated manifestly requires only union action designed to cause the employer to engage in conduct which, if committed, would violate section 8 (a) (3).

(2) Under section 10 (a), it is the Board's statutory function to "prevent any person from engaging in any unfair labor practice," a function which, however, may be exercised only upon the issuance of a complaint. Thus, a complaint based on 8 (b) (2) charges must be processed even though the absence of an 8 (a) (3) complaint precludes the Board from proceeding against the employer to whom the respondent union's unlawful request was addressed. The Court found no merit in the assertion that, in any event, the policies of the act were not served, and that the Board abused its statutory power by posing on the union the entire burden of remedying the wrong inflicted on the complaining employee.

Finally, the Court held that section 10 (c) cannot, as contended, be construed so as to require that a back-pay order against a union must be accompanied by a reinstatement order against the employer. According to the Court, the proviso to the reinstatement and back-pay provisions of section 10 (c)[13] was added by Congress in 1947, not for the purpose of limiting the Board's power to order back pay, but to give the Board power to remedy union unfair labor practices comparable to its power to remedy unfair labor practices by employers.

3. Protection of Concerted Activities

One case concerned the Board's denial of reinstatement rights to a television station's technicians who had disparaged the station's programs at a time when collective-bargaining negotiations were in progress.[14] The Board found that the technicians' conduct under the

[13] The relevant portion of section 10 (c) permits the Board to require reinstatement of employees with or without back pay ". . *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."

[14] *N. L R. B.* v. *Local Union No. 1229, International Brotherhood of Electrical Workers (Jefferson Standard Broadcasting Co.)*, 346 U. S. 464.

circumstances was so indefensible as to be outside the act's protection and to subject the participants to discharge. Upon reviewing the Board's dismissal of the discrimination charges, the District of Columbia Court of Appeals remanded the case to the Board for a finding as to the "unlawfulness" of the technicians' conduct. In the view of the court of appeals, the proper criterion for determining the status of conduct under section 7 is its lawfulness, and concerted employee action loses its protected status only if it violates Federal or local law.[15] A majority of the Supreme Court, three members dissenting,[16] reversed the judgment of the lower court. Sustaining the Board's denial of reinstatement, the Supreme Court majority held that the complaining employees had been discharged "for cause" and not because of protected concerted activities. The Court was of the view that the "fortuity of the existence of a labor dispute affords these technicians no substantial defense" because the disparagement of their employer's product disclosed no purpose of being made in support of economic demands, and because, in any event, the means used were such as to deprive the technicians of the act's protection.

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[15] See Eighteenth Annual Report, pp. 63–64.

[16] Justices Frankfurter, Black, and Douglas

VI

Enforcement Litigation

In the course of the Board's enforcement litigation during fiscal 1954, the courts of appeals reviewed orders in 182 cases.[1]

The more important issues decided by the courts of appeals during the past year are discussed in the following chapter.

1. Jurisdiction

The validity of Board orders was challenged on jurisdictional grounds in several cases by employers who asserted either that their operations did not have sufficient effect on commerce to be subject to the act, or that, while the Board had legal jurisdiction over the enterprise, it had improperly exercised its discretion in asserting jurisdiction.

In the case of a laundry and dry cleaning establishment,[2] and a mortuary,[3] the United States Court of Appeals for the Ninth Circuit rejected the contention that the interstate aspects of the enterprises were so insignificant as to come within the *de minimis* rule. The laundry involved annually purchased about $12,000 worth of supplies from out-of-State sources, while the undertaking business derived over $53,000 in annual revenue from services connected with burials outside the State. Another mortuary which received about a quarter of a million dollars from similar services was likewise held subject to the act in a companion case.[4]

In another case, the Sixth Circuit held that the Board could properly assert jurisdiction over the owner and operator of a terminal building.[5] Among the tenants occupying the structure were interstate railroad ticket offices, branch offices of nationally known concerns, an interstate bus terminal, and a telegraph company. The employees involved included elevator operators and service employees. In the court's

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[1] For statistical breakdown of court actions on these cases, see Table 19, Appendix A.

[2] *N. L. R. B.* v. *Harvey Stoller d/b/a Richland Laundry and Dry Cleaners,* 207 F. 2d 305 (C. A. 9), certiorari denied 347 U. S. 919.

[3] *N. L. R. B.* v. *Pierce Brothers,* 206 F. 2d 569 (C. A. 9).

[4] *N. L. R. B.* v *Forest Lawn Memorial Park Association, Inc.,* 206 F. 2d 569 (C. A. 9), certiorari denied 347 U. S. 915.

[5] *N. L. R. B.* v. *Dixie Terminal Co*, 210 F. 2d 538 (C. A. 6), modified in other respects. The employer's petition for certiorari was denied, 347 U. S. 1015.

opinion, the work of these employees "although local in nature, had such a relation to the interstate business of the tenants as to affect commerce. A labor dispute involving such employees would tend to burden or obstruct the free flow of commerce of the tenants therein." The Supreme Court's decision in the *Callus* case,[6] relied on by the employer, was held inapplicable. The Sixth Circuit pointed out that (1) the *Callus* case involved the Fair Labor Standards Act conferring a narrower jurisdiction than the Board's jurisdiction under the Labor Management Relations Act, and (2) the *Callus* case was concerned solely with operations incident to leased office space and not with a building used in the actual physical interstate operations of some of the tenants.

a. Discretion of the Board

As to the Board's discretion in asserting its legal jurisdiction over a given enterprise, the Second Circuit in one case reiterated that the exercise of this discretion will not be reviewed as long as it has a reasonable basis.[7] The court here expressly approved the assertion of jurisdiction over one member of an employer association on the basis of the aggregate commerce activities of all association members who had joined together for collective-bargaining purposes. Noting the reasons—first stated in *Vaughn Bowen*[8]—for using this method of determining effect on commerce in the case of association members, the court pointed out that the Board's policy had also been upheld by other circuits. The court agreed that the policy may be validly applied regardless of whether or not a particular association exists as a formal entity. All that is necessary, according to the court, is that the employer involved acts jointly with the other employers in the association in the negotiation of collective agreements.[9]

The Ninth Circuit in *Stoller* and *Pierce Brothers*[10] rejected the contention that its earlier ruling in the *Atkinson* case[11] invalidated the respective orders because the Board had not previously exercised jurisdiction over similar enterprises. The court pointed out that no policy of refusing to exercise jurisdiction had been shown on which the employer could have relied. And in *Pierce* the court also made it clear that the mere failure of the Board to assert jurisdiction over a certain type of business does not operate so as to preclude the Board permanently from asserting jurisdiction over members of the particular industry.

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[6] *10 East 40th Street Co* v *Callus*, 325 U. S 578

[7] *N. L. R. B* v *Gottfried Baking Co.*, 210 F. 2d 772

[8] *Vaughn Bowen*, 93 NLRB 1147, 1150.

[9] Similarly, the Ninth Circuit approved the Board's practice of asserting jurisdiction over a local business if the owner is engaged in multistate operations whose dollar value meets established standards. *N. L. R. B.* v. *Melvin R. Smith & Leighton T. Everly, d/b/a Service Parts Co*, 209 F 2d 905.

[10] See footnotes 2 and 3 above.

[11] *N. L R. B.* v. *Atkinson Co.*, 195 F 2d 141, 143 (1952).

2. Employer Unfair Labor Practices

In most cases in which enforcement of the Board's order depended on the validity of the underlying unfair labor practice findings, the principal issue was whether the findings were supported by substantial evidence. The more important cases which turned on the legal conclusions which could properly be drawn from the established facts are discussed below.

a. Interference With Organizing Activities

Two of the cases where the Board found that employers violated section 8 (a) (1) presented questions regarding an employer's right to inject himself into an organizing campaign.

(1) Discharge of Supervisors

One case before the Fifth Circuit concerned the discharge of two supervisory employees because of their failure to promote the employer's antiunion campaign effectively and to bring about the employees' rejection of the union which sought representation rights in an election.[12] The court upheld the Board's conclusion that the employer's action unlawfully interfered with the nonsupervisory employees' organizational rights and that the full restoration of those rights required the reinstatement with back pay of the discharged supervisors. The court noted that the discipline of supervisors for failure to assist their employer in the perpetration of unfair labor practices here no less violated section 8 (a) (1) than it would have violated section 8 (1) of the Wagner Act. According to the court, the amended act, while excluding supervisors from the term "employee," did not diminish the protection accorded ordinary employees. Nor, in the court's opinion, was the Board precluded from ordering that the supervisors be reinstated with back pay in order to remedy the unfair labor practices here. For, though the Board is without power "to reinstate supervisors as 'employees' to redress their private grievance," the Board has the "remedial power to redress acts of indirect interference and restraint of ordinary employees through discharge of supervisors, as it . . . has to redress acts of direct restraint with the rights of the same employees to uninhibited self-organization."

(2) Antiunion Speeches and No-Solicitation Rule

In one case, a majority of the Sixth Circuit disagreed with the Board's conclusion that the enforcement of a broad, but privileged, no-solicitation rule[13] made it unlawful for the employer to address

[12] *N. L. R. B. v. Talladega Cotton Factory*, 213 F. 2d 208 (C. A. 5).

[13] Since the employer operated a retail store, it had a right to prohibit solicitation in the store at all times in accordance with established Board and court precedent.

the employees repeatedly on working time before a scheduled Board election and at the same time to refuse to relax the no-solicitation rule at the request of the campaigning union.[14] The Board's conclusion was in harmony with the Second Circuit's ruling in the *Bonwit Teller* case,[15] as well as with the Board's later decision in the *Livingston* case,[16] brought to the court's attention after oral argument. Denying enforcement, one judge believed that the controlling consideration was the employer's right under section 8 (c) to make a noncoercive anti-union speech on his own time and property, a right which was in no way limited by the employer's valid no-solicitation rule. One judge, concurring, was of the view that only that part of the employer's rule which prohibited campaigning during working hours was involved, that this rule was valid, and that its discriminatory application was not a violation of section 8 (a) (1). The third member of the court, dissenting, expressed the view that no question regarding the employer's freedom of speech was involved and that the discriminatory enforcement of the rule against solicitation at all times was unlawful.

b. Employer Neutrality—Rival Union Contests

In two cases, the validity of the Board's finding of a violation of section 8 (a) (2) depended on whether the employer had maintained the required neutrality during a contest between rival unions. The Second Circuit sustained the Board's conclusion that an employer interfered with the organizational rights of its employees and contributed unlawful support to a union by entering into a contract with it after it had won an election but while objections to the election, subsequently found meritorious, were pending before the Board.[17] The court held that the principle underlying the Board's *Midwest Piping* doctrine[18] was applicable in the circumstances in this case. Under this doctrine, as the court noted, it is an unfair labor practice for an employer to recognize 1 of 2 unions as the exclusive bargaining agent during the pendency of the rival union's petition for certification when the employer then knew "that there existed a real question concerning the representation of the employees."

This rule, the court further pointed out, "is a direct outgrowth of the parent doctrine of employer neutrality in matters relating to employees' choice of a bargaining representative." Thus, during a contest between rival unions, "the employer may not accord such treatment to one of the rivals as will give it an improper advantage

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[14] *N. L. R. B.* v. *F. W. Woolworth,* 214 F. 2d 78 (C. A. 6).

[15] *Bonwit Teller, Inc.* v. *N. L. R. B.,* 197 F. 2d 640, certiorari denied 345 U. S. 905.

[16] *Livingston Shirt Corporation,* 107 NLRB No. 109, discussed at pp. 74–77.

[17] *N. L. R. B.* v. *National Container Corp*, 211 F. 2d 525 (C. A. 2). For other aspects of the case, see p. 136.

[18] *Midwest Piping and Supply Co.,* 63 NLRB 1060.

or disadvantage." The court held that here the employer clearly violated its duty to maintain neutrality by entering into a collective-bargaining agreement with a union in the face of objections to the election in which the favored union had polled a majority. According to the court, the employer's action was a wrongful usurpation of the Board's function to resolve the still-pending representation question and amounted to a decision on the part of the employer that the objections raised before the Board had no merit.

The Seventh Circuit likewise reaffirmed the employer's duty to "maintain a position of strict neutrality" while rival unions seek support of the employees.[19] The employer, the court said, "must refrain from any action which tends to give either an advantage over its rival," such as recognition of a competitor as bargaining agent. However, contrary to the Board, the court held that the employer did not violate section 8 (a) (2) by granting recognition to the union which submitted proof of its majority status at a time when the incumbent bargaining agent, certified some 2 years before, conducted contract negotiations. The Board had found that the petitions repudiating the incumbent, on which the employer relied, were not proof of majority status but only raised a representation question which could not be resolved by the employer. The court, on the other hand, believed that the employer had no reason to doubt the authenticity of the rival union's majority claim and that recognition of the rival here was, therefore, legitimate and not a violation of section 8 (a) (2).

c. Discrimination Against Employees

Enforcement of numerous Board orders under the antidiscrimination provisions of section 8 (a) (3) depended for the most part on the court's view regarding the sufficiency of the evidence. In several cases, however, determination of the validity of the Board's order also required decision as to whether the complainant was in fact an "employee" within the meaning of the act and was therefore protected by the act. Other cases raised the question of whether the conduct for which the employee was discharged was protected by section 7 and, therefore, was not a valid reason for discipline. Also, questions arising from the particular nature of the discrimination involved were involved in some cases.

(1) Employee Status of Discrimination

In one case, the court rejected the contention that the exemption of supervisors from the protection of the act precluded an employee, scheduled to be promoted to a supervisory job, from invoking sec-

[19] *N. L. R. B.* v. *Indianapolis Newspapers*, 210 F. 2d 501 (C. A. 7).

tion 8 (a) (3) on the ground that his promotion had been improperly suspended at the request of a union.[20] The court observed that the employee's prospects of promotion were among the conditions of his employment and did not affect his protected status under the act. As long as he held a nonsupervisory position, the court continued, the employee was protected and it was immaterial that his resort to the act was calculated to enable him to obtain a position in which he would no longer be protected.

In another case, the Ninth Circuit declined to enforce a reinstatement and back-pay order in favor of fruit packingshed employees who, in the court's view, were "agricultural laborers" within the exemption of section 2 (3) of the act.[21] The Board had concluded that the statutory exemption did not apply because the sorting and packing operations here were carried on in a separate packingshed by a partnership which, as such, did no farming and owned no farm lands. In the Board's view, the packingshed processes assumed the proportions of an industry entirely separate from farming operations and were, therefore, not within the applicable definition of the Fair Labor Standards Act [22] because they were not "practices . . . performed by a farmer or on a farm as an incident to or in conjunction with . . . farming operations, including preparation for market . . . ." The court's rejection of the Board's conclusion was largely influenced by the circumstance that the partnership packed produce grown on farms owned by the members of a family who composed the partnership.

The continuing protected employee status of certain strikers depended in one case on the proper construction of section 8 (d), which forbids strikes during a specified 60-day period following the declared intention of the bargaining representative to terminate its contract.[23]

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[20] *N. L. R. B.* v. *Bell Aircraft Corp.*, 206 F. 2d 235 (C. A. 2).

[21] *Dofflemeyer Bros.* v. *N. L. R. B.*, 206 F. 2d 813 (C. A. 9).

[22] The pertinent provisions of section 3 (f) of the Fair Labor Standards Act (52 Stat. 1060, 29 U. S. C. 203 (f)) must be applied by the Board under a continuing rider to the Board's annual appropriations.

[23] *Local 3, United Packinghouse Workers of America, CIO* v. *N. L. R. B.*; and *Wilson & Co., Inc.* v. *N. L. R. B.*, 210 F. 2d 325 (C. A. 8).

Section 8 (d), which defines the duty to bargain collectively, provides, among other things, that where a collective-bargaining contract is in effect, no party thereto shall terminate or modify it unless such party

"(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;

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"(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."

Section 8 (d) further provides that: "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."

The strike in which the employees participated was not called by the union until after 60 days following its notice of contract termination. However, at the time the strike began the contract had not yet expired. The court's opinion indicated that in its view Congress intended to establish a waiting period extending throughout the life of a contract remaining after notice of termination, and that the strikers had therefore lost the protection of the act.

(2) Protected and Unprotected Employee Activities

The legality of the discharge of an employee in one case depended on whether or not he engaged in protected concerted activity when circulating a petition among fellow employees authorizing him to take whatever action was necessary to recover back wages believed to be due the group under the Fair Labor Standards Act.[24] The court agreed that, contrary to the employer's contention, the circulation of the petition constituted action which was both "concerted" and for "mutual aid or protection" within the meaning of section 7 of the act. For, the court observed, activity to be protected under section 7 need not be union activity, and concerted activity may take place where one person seeks to induce group action.[25] The court said:

> By soliciting signatures to the petition, Sturdivant was seeking to obtain such solidarity among the [employees] as would enable the exertion of group pressure upon the [employer] in regard to possible negotiation and settlement of the [employees'] claims. If suit were filed, such solidarity might enable more effective financing of the expenses involved. Thus, in a real sense, circulation of the petition was for the purpose of "mutual aid or protection."

The court also rejected the view that, because the back-pay rights were individual, no question of "mutual" aid or protection was involved. In this respect, the court pointed out that concerted activity for mutual aid or protection "is often an effective weapon for obtaining that to which the participants, as individuals, are already 'legally' entitled." Regarding the employer's contention that the discriminatee's activity, even if otherwise protected, justified his discharge because of the resulting disturbance, the court noted that protected concerted activities often create a disturbance in the sense that they create dissatisfaction with existing conditions, a fact which by itself does not justify disciplinary action by the employer. Here, the court observed, no neglect of work by any of the employees concerned was shown.

In one case, the Sixth Circuit upheld the Board's finding that spontaneous walkouts and temporary work stoppages by employees in protest against excessive heat in the employer's factory constituted protected concerted action for which the employees could not be discrimi-

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[24] *Salt River Valley Water Users' Association* v. *N. L. R. B.*, 206 F. 2d 325 (C. A. 9). The Board's order was modified in another respect.

[25] The court cited numerous precedents supporting these propositions.

nated against.[26] The Sixth Circuit cited the decisions of other courts in support of the view that temporary cessations of the work in protest over working conditions are within the protection of the act.

Enforcement was denied in a case where the Board found that a union checkweighman had been unlawfully prevented from performing his regular weighing functions at a mine because of his participation in a protest movement of his union.[27] The union's action here was directed against a "Fire Boss" bill pending before the State legislature which the union believed made inadequate provision for safety inspections. The court held that the activities participated in by the discriminatee were outside the protection of the act both because they were not intimately connected with the employee's immediate employment, and because, in the court's view, the attendant work stoppage was in the nature of an unauthorized "wildcat" strike. The court rejected the Board's conclusion that the protest against legislation though adversely to affect mine safety was clearly within the statutory concept of concerted activity "for the purpose of mutual aid or protection." The court's belief that the work stoppage was unauthorized was based on two grounds: (1) The local union at the mine had "jumped the gun" on the protest "holiday" designated by its parent organization, and (2) the work stoppage violated the union's contract which, according to the court's construction, contained a no-strike clause. The Board, on the other hand, had taken the view that the local's premature strike, having been staged by all members and local officers, could not be regarded as the action of a dissident minority such as had been condemned by the Fourth Circuit in the *Draper* case.[28] As to the asserted breach of contract, the Board had adopted the trial examiner's finding that no applicable no-strike agreement was in effect at the time, the current contract having expressly eliminated provisions to that effect contained in prior contracts.

In another case, denial of enforcement of an order similarly was the result of the court's conclusion that the strike in which the complaining discriminatees had engaged was not protected but was a "wildcat" strike within the rule of the *Draper* case.[29] The Board here had held that a work stoppage for the purpose of learning the progress of bargaining negotiations, and of deciding what steps to take through the union to further them, was protected activity and, in view of its purpose, was not inconsistent with the union's status as exclusive bargaining representative. Unlike the court, the Board did not treat the walkout as minority action in the sense of the *Draper* case, because the actual walkout, though initiated by a minority group, was called by

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[26] *N. L. R. B.* v. *Southern Silk Mills*, 209 F. 2d 155 (C. A. 6); rehearing denied 210 F. 2d 824; certiorari denied 347 U. S. 976.

[27] *N. L. R. B.* v. *Bretz Fuel Co.*, 210 F. 2d 392 (C. A. 4).

[28] *N. L. R. B.* v. *Draper Corp.*, 145 F. 2d 199.

[29] *Harnischfeger Corp.* v. *N. L. R. B.*, 207 F. 2d 575 (C. A. 7).

the union and was participated in by a majority of the employees. The court, on the other hand, viewed the situation as involving only action by "a comparatively small number of discontented employees" who attempted to take over and direct the actions of their bargaining representative. The court held that, under the circumstances shown, this activity was not within the protection of section 7.[30]

d. Types of Discrimination

In one case during fiscal 1954, the Fifth Circuit upheld the Board's finding that section 8 (a) (3) was violated by the discharge of employees for their refusal to sign individual employment contracts at a time when the employer was faced with the bargaining request of the employees' representative.[31] The court found no merit in the employer's defense that (1) the request for individual contracts was proper because no change in existing terms of employment was involved and the proposed contracts were terminable at will, and (2) the purpose of the individual contracts was to comply with requirements under the Fair Labor Standards Act. As to the employer's first defense, the court observed that the vice of the employer's conduct was the insistence on individual dealing when the employer was under a statutory obligation to bargain collectively. Nor, according to the court, did the Fair Labor Standards Act furnish a valid defense. The court pointed out that that statute and the National Labor Relations Act are parts of harmonious legislation and that, rather than to require individual employment contracts, the Fair Labor Standards Act in section 7 (e) specifically sanctions collective agreements made as the result of collective bargaining.

(1) Discrimination Under Union-Security Agreements

In several cases the courts enforced Board orders remedying discrimination resulting from discriminatory hiring practices. These cases reaffirm the principle that (1) while a hiring-hall or referral arrangement is not in itself improper, section 8 (a) (3) is violated if the arrangement results in the discriminatory referral and hiring of only union members,[32] and (2) because of the tendency of a discrimi-

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[30] In *Ohio Ferro-Alloys Corp.* v. *N. L. R. B.*, 213 F. 2d 646, the Sixth Circuit, setting aside the Board's order, held that the strike of a union (not in compliance with the filing requirements of section 9 (f), (g), and (h)) for recognition while another union's representation petition was pending before the Board was illegal, and that strike participation deprived employees of the act's protection. The Board had not reached the issue decided by the court because in its view of the evidence the striking union's objective at the time of the filing of the petition was no longer recognition but reinstatement of certain strikers Thus, the Board concluded, the strike was lawful and the participants were entitled to reinstatement.

[31] *N. L. R. B.* v. *Stewart Oil Co*, 207 F. 2d 8 (C. A. 5).

[32] *Eichleay* v. *N. L. R. B.*, 206 F. 2d 799 (C. A. 3), and *N. L. R. B.* v. *Philadelphia Iron Works*, 211 F. 2d 937 (C. A. 3).

natory hiring agreement to encourage union membership, its mere existence apart from its actual enforcement falls squarely within the prohibition of section 8 (a) (3).[33] In view of these conclusions, the court in one case held further that the employer could not escape liability under section 8 (a) (3) merely because no members of the complaining union—the contracting union's rival—had ever sought employment. For, the court said, it was "certainly reasonable to conclude that no one applied because it appeared futile to do so" in the face of the employer's known discriminatory hiring policy.[34]

Similarly, it was held that the fact that no jobs were available when the complainants applied and that they did not renew their applications when hiring did take place did not relieve an employer of liability under section 8 (a) (3) for requiring job applicants to secure union clearance in accordance with a discriminatory hiring agreement.[35] The court made it clear that where it is apparent that an existing discriminatory hiring policy would make further application for employment futile "the job applicants need not go through the useless procedure of reapplying for employment . . . when jobs are actually available in order to establish that they were victims of the discriminatory hiring policy." [36]

The court in one case agreed that the manifest intention of the parties to an unlawful hiring agreement not to enforce it prevented its retention from constituting a violation of section 8 (a) (3) on the part of the employer.[37] However, the failure to communicate the intended nonenforcement to the employees resulted in continuing restraint on employees' rights in violation of section 8 (a) (1).

e. Refusal to Bargain

The scope of the act's bargaining mandate under section 8 (a) (5) was involved in a substantial number of cases where the validity of a Board order was challenged. These cases presented questions as to (1) whether there was a present duty to bargain on the part of the objecting employers, and (2) whether an established bargaining obligation had in fact been violated. The latter type of cases were concerned with the propriety of affirmative conduct such as unilateral action on bargainable matters, refusal to discuss subjects as to which the Board believed bargaining is required, or insistence on specific terms. Other cases turned on the employer's good faith at the bargaining table.

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[33] *Eichleay* v *N. L R B*, 206 F 2d 799 (C. A. 3), and *N. L R B.* v. *Gottfried Baking Co*, 210 F 2d 772 (C A. 2)

[34] *Eichleay* v. *N. L R B*, 206 F 2d 799 (C A 3)

[35] *N L. R. B.* v *The Lummus Co*, 210 F. 2d 377 (C. A 5).

[36] To the same effect, *N. L R. B* v. *Thomas Rigging Co.*, 211 F 2d 153 (C. A 9).

[37] *N. L R B* v *Gottfried Baking Co.*, 210 F. 2d 772 (C A 2)

(1) Majority Status of Representative

The courts during fiscal 1954 again had to pass on assertions of employers that their refusal to bargain was justified because the complaining union lacked majority status at the crucial time. In those cases where it was found that the employer clearly did not have a good-faith doubt, the Board's bargaining order was enforced.[38] The court in one case held that the complaining union's petition for Board certification did not as matter of law excuse the employer's refusal to bargain.[39]

Regarding an employer's right to challenge the majority status of a union following Board certification, the Fifth Circuit in one case observed that "the claimed fact that the bargaining agent designated by the Board had lost its majority . . . did not in and of itself terminate the union's status as bargaining representative." [40]

On the other hand, the same court, denying enforcement in another case, held that the employer was not required to bargain with the complaining local union after all of its members had resigned in protest after the national union had ousted the local's business agent, and the local, if it continued to exist at all, was functioning only through a trustee.[41]

(2) Selection of Bargaining Representative

Two cases before the Fifth Circuit concerned the statutory mandate that an employer must bargain with the particular organization selected by the employees and must meet with the persons whom the employees, through their union, send to the bargaining table.[42] In the *Taormina* case, the employer in the course of negotiations with the employees' incumbent representative insisted that the latter's parent organization become a party to any contract as a condition to its execution by the employer.[43] Upon the union's failure to comply with this

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[38] See for instance *N. L R B.* v *Trimfit of California,* 211 F 2d 206 (C A 9); *N. L. R. B.* v. *Model Mill Co*, 210 F 2d 829 (C A 6), and *N. L R B* v *Clearfield Cheese Co*, 213 F. 2d 70 (C A 3). Compare *Mount Hope Finishing Co* v. *N. L R B*, 211 F 2d 365 (C. A 4). The court here held that the employer did not raise the majority issue in bad faith and did not refuse to bargain in good faith. However, the court pointed out that while an "employer normally has the right to insist upon a Board-ordered election, he may not refuse to recognize the union in bad faith in order to gain time in which to undermine the union or dissipate its claimed majority, and other proof, such as signed membership cards, has been deemed sufficient in certain cases especially where it is evident that the employer is determined not to bargain under any conditions or engages in unfair labor practices to get rid of the union" Numerous cases to the same effect were cited by the court

[39] *N L. R B* v *Model Mill Co*, 210 F 2d 829 (C A 6)

[40] *N L. R B.* v. *Taormina,* 207 F 2d 251 (C A. 5)

[41] *N. L. R. B* v. *National Shirt Shops of Florida,* 212 F 2d 491 (C A 5).

[42] *N. L. R B.* v. *Taormina,* 207 F. 2d 251, *N. L R B* v. *Roscoe Shipper, Inc*, 213 F 2d 793 (C. A. 5)

[43] The employer here demanded that the local union secure contract performance either by posting a $50,000 bond or, in the alternative, by making its parent a party to the contract.

demand, negotiations were broken off. The court sustained the Board's conclusion that the employer's action violated section 8 (a) (5). For, the court said, not only did the employer needlessly delay consummation of an agreement by its demand, but it sought to impose upon its employees a bargaining representative other than the one elected by them. In *Roscoe Skipper*, the same court agreed that the employer unlawfully brought about the breakdown of bargaining relations by rejecting the negotiator who had been designated by the union. Here the court said:

> To select one's own representative or agent is a natural right and the statute accords it in express terms. For the employer, in the absence of exceptional circumstances which do not appear here, to have a right of choice either affirmatively or negatively as to any of those who are to sit on the opposite side of the table from him would defeat and nullify the law.

(3) Subjects of Bargaining

In two cases where the Board found that employers unlawfully refused to bargain on the subject of company housing, the courts agreed that such housing is a mandatory bargaining subject if under the circumstances the terms of occupancy of company houses affect conditions of employment.[44] Enforcing the Board's order in the *Lehigh* case, the Fourth Circuit made it clear that its earlier decision in *Hart Cotton Mills* [45] was not intended to require that, in order to be a proper bargaining subject, company houses must be a necessary part of the enterprise, or their occupancy must affect the workers' pay. It is sufficient, the court said, that "their ownership or management materially affects the conditions of employment." This prerequisite, the court concluded, was met in the *Lehigh* case because company house rents were below the prevailing rate for private housing, and 25 percent of the employees who occupied company houses had the additional advantage of residing near the plant where other housing was hard to get. On the other hand, the Fifth Circuit in the *Bemis* case held that the bargaining order was not sufficiently supported by the facts of the case.[46] Unlike the Fourth Circuit, the Fifth Circuit took the view that company housing may not be regarded as a condition of employment unless there is "some necessity, either imposed by the employer or by the force of circumstances" which requires the employee to subject himself to the conditions of occupancy of company housing. According to the court, other adequate housing appeared to be available, and rentals charged by the employer were not "so low as to be partial remuneration for services and, therefore, in effect wages."

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[44] *N. L. R. B.* v. *Lehigh Portland Cement*, 205 F. 2d 821 (C. A. 4); *N. L R. B.* v. *Bemis Bros. Bag Co.*, 206 F. 2d 33 (C. A. 5).

[45] *N. L. R. B.* v. *Hart Cotton Mills, Inc*, 190 F 2d 964.

[46] Cited in footnote 44.

The validity of the Board's order in one case turned on whether an employer is entitled to insist upon insertion in an agreement of clauses providing for employee votes on ratification of the contract and authorization to strike.[47] The contract clauses sought provided that (1) any agreement on terms and conditions of employment reached in negotiations should become effective only upon ratification by the employees in the bargaining unit, and (2) in the case of contract termination and failure to reach a new agreement within 30 days, a strike should not be called except with the approval of a majority of the employees in the bargaining unit. The Board held that these clauses did not involve terms or conditions of employment and therefore were not matters of compulsory bargaining. The court rejected this view. The Board concluded that the employer's insistence upon these ratification and strike-vote clauses was an attempt to detract from the union's normal authority to act on behalf of the employees. The court, however, was of the view that the disputed clauses were subject to bargaining and that the position taken by the employer did not amount to a refusal to bargain. On the other hand, the court, without deciding the point, indicated that the strike-vote and ratification clauses may have been defective insofar as they required affirmative action by a majority of the employees in the unit rather than a majority of those participating in the election "in accordance with the democratic process universally sanctioned."

In another case, the Eighth Circuit disagreed with the Board's view that the omission from a collective-bargaining contract of certain benefits—life insurance, hospitalization, and Christmas bonuses—did not entitle the employer to terminate the benefits unilaterally and without consulting the employees' bargaining representative.[48] The Board had found that the subjects involved were not fully discussed or consciously explored during contract negotiations and could not be regarded as having been waived by the union. The court, however, concluded that, since the question of the maintenance of the insurance and bonus benefits had not been "ignored" in the negotiations, the parties' ultimate agreement must be taken to represent their entire undertaking and the employer was not under obligation to bargain with the union as to the discontinuance of the benefits.

3. Union Unfair Labor Practices

The more important cases in which the Board during fiscal 1954 sought enforcement of orders under section 8 (b) involved complaints that unions restrained employees in the exercise of their statutory right to refrain from participating in union activities, either directly

[47] *Allis-Chalmers* v. *N. L. R. B.*, 213 F. 2d 374 (C. A. 7).
[48] *N. L. R. B.* v. *Nash-Finch Co.*, 211 F. 2d 622 (C. A. 8).

or through their employer, or that the union's actions violated the secondary-boycott provisions of the act.

a. Reprisal and Discrimination

The Board's finding of a violation of section 8 (b) (1) (A) and 8 (b) (2) was sustained in a case where a union enforced the provisions of a union-security agreement under which employees were not to be promoted to a supervisory position during the pendency of union charges against them.[49] The union in this case had requested and obtained postponement of the promotion of an employee[50] who had abandoned a picket line, conduct which resulted in the filing of union charges. The court held that under section 7 of the act the employee was free to refrain from participating in the strike and was protected against reprisal for nonparticipation. The filing of charges, implemented by the requested denial of promotion, the court continued, interfered with the employee's statutory rights and thus violated section 8 (b) (1) (A).[51] The court further held that the union's conduct also violated section 8 (b) (2), for the requested denial of promotion to the employee constituted discrimination designed to encourage the employee's membership in good standing[52] in the union, a purpose clearly prohibited by that section. The union-shop provisions of the union's contract furnished no valid defense, the court pointed out, because the union-security proviso of the act permits enforcement of such provisions only against employees who have failed to pay their regular union fees and dues.

b. Secondary Boycotts

The prohibitions of section 8 (b) (4) (A) against secondary boycotts were involved in 2 cases before the courts of appeals. In 1 case, the respondent union had caused its members to leave a shingle plant after the arrival of a Canadian shipment of nonunion shingles.[53] The inducement of the work stoppage was part of the union's policy to eliminate the use of "unfair" Canadian shingles from the United States markets. The court sustained the Board's finding that the union's action constituted a prohibited secondary boycott notwithstanding the union's assertion that it had no direct dispute with the

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[49] *N. L. R. B.* v. *Bell Aircraft Corp.*, 206 F. 2d 235 (C. A. 2).

[50] The court's affirmance of the Board's conclusion that the exclusion of supervisors from the act's protection does not apply to an employee candidate for a supervisory position is discussed at pp. 125–126.

[51] Insofar as the union's action was consistent with an arbitrator's award, the court pointed out that the award was but an interpretation of the union's private contract and could not curtail the Board's power to enforce the act.

[52] For the Supreme Court's affirmance of the view that union "membership" in the context of section 8 (b) (2) means "membership in good standing," see pp. 117–119.

[53] *N. L. R. B.* v. *Washington-Oregon Shingle Weaver's District Council*, 211 F. 2d 149 (C. A. 9).

Canadian producer. The court pointed out that the manifest object of the work stoppage was to compel the complaining employer to cease using the product of another company, an object clearly within both the language and the congressional intent of section 8 (b) (4) (A). As to the union's contention that the employer had agreed not to work on shingles not bearing the union label and that a strike to enforce the agreement was not unlawful,[54] the court held that there was no clear showing of such an agreement, so that the union's defense, assuming it to be otherwise valid, was without merit. The court further observed that since the asserted agreement would constitute a waiver of the statutory protection against secondary boycotts it would have to be clear and unmistakable and, as recognized by the Board, could not be implied.

Decision in another case turned on the question whether picketing violated section 8 (b) (4) because it occurred at a location which was the common business situs of two separate employers—a trucking firm from whom the union, not certified by the Board, demanded recognition as bargaining representative of its drivers, and a filling station operator for whom the trucker hauled products.[55] In order to press its recognition demand, the union picketed the filling station in a manner which, according to the court, indicated that the picketing was directed at both the drivers' employer and the neutral filling station. The Board had found that, since one of the objects of the picketing necessarily was to force the station to cease doing business with the trucker, the union violated the act's secondary-boycott ban. Sustaining the Board, the court agreed that the situation here was not one in which the secondary employer had to suffer some of the consequences of the picketing of the primary employer, and that the union's conduct violated section 8 (b) (4) (A) and (B) under the rules laid down by the Board in the *Moore Dry Dock* case.[56]

4. Election Rules

The courts of appeals had occasion during fiscal 1954 to pass on election rules established by the Board in the administration of the representation provisions of section 9 of the act.[57] The cases were concerned with the validity of elections on which, in turn, depended

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[54] The union relied on the Second Circuit's ruling in *Rabouin* v *N. L. R. B.*, 195 F. 2d 906, 912.

[55] *N. L. R. B.* v. *Chauffeurs, Teamsters and Warehousemen Local 135, AFL,* 212 F. 2d 216 (C. A. 7). The court agreed with the Board's conclusion that the trucking firm was an independent contractor and that the filling station owner was not the coemployer of the trucker's drivers.

[56] *Moore Dry Dock Co*, 92 NLRB 547. For recent applications by the Board of its *Moore Dry Dock* rules, see pp. 106–109.

[57] The wide discretion of the Board in devising procedures for the purpose of safeguarding the fairness of representation elections has been generally recognized by the courts. See, e. g., *N. L. R. B.* v. *Moyer & Pratt,* 208 F. 2d 624 (C. A. 2).

the validity of the Board's findings regarding the lawfulness of employer recognition or nonrecognition of certain unions.

a. Objections to Preelection Conduct

In one case,[58] the Second Circuit approved application of the Board's *Atlantic & Pacific Tea Co.*[59] rule. In the *A & P* case, the Board announced certain new rules regarding the consideration of objections to a Board election based on the preelection conduct of interested parties. One of these rules was that the merits of objections to an election will be considered if based on alleged preelection interference occurring after "the execution by the parties of a consent-election agreement or a stipulation for certification upon consent election."[60] This rule superseded the Board's prior policy of disregarding objections to an election based on conduct which the objecting party knew about before the election but on which it had neither filed charges nor otherwise protested until after the election. As noted by the court, in adopting the *A & P* rule, the Board abandoned its former policy of treating interference with an election during the time specified as having been waived where no objections were filed until after the election.[61]

In *National Container*, the Board, after a consolidated hearing on the postelection objections and unfair labor practice charges of a participating union, found that the election was invalid. Therefore, the objecting union's rival, which had polled a majority of the votes, did not acquire status as the employees' statutory representative, and the employer violated section 8 (a) (2) by entering into a contract with that union. As to the timing of the protesting union's objections, the Board held that they were entitled to consideration under the *A & P* rule and furnished a proper basis for invalidating the election.

The employer's objection to the Board's application of the *A & P* rule for two separate reasons was held without merit by the court. Thus, the fact that the acts of interference of which the protesting union complained began before the *A & P* cutoff date, i. e., before the date of the consent-election agreement, in the court's view was immaterial and could not preclude the Board from giving consideration to the continuation of the same conduct during the crucial period. The court pointed out that, while the Board considers a union which agrees to a consent election as having waived any prior interference,

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[58] *N. L. R. B.* v. *National Container Corp.*, 211 F. 2d 525.

[59] *Great Atlantic & Pacific Tea Co.*, 101 NLRB 1118

[60] The Board also announced that the same consideration will be given to objections relating to conduct after the issuance by the regional director of a notice of hearing in a formal representation proceeding.

[61] See *Denton Sleeping Garment Mills, Inc.*, 93 NLRB 329 (1951).

"such a waiver can in no way constitute a license to the employer to continue such interference thereafter."

The court further found that the employer was not denied due process of law merely because the *A & P* rule had not yet been announced at the time of the acts on which the Board's order was predicated and, under the waiver rule then in effect, the complaining union would have been deemed to have waived its objections because it failed to assert them before the election. The court observed that, since the employer's unlawful conduct continued after the Board's *A & P* decision, application of the rule of that case was not retroactive. Moreover, the court held, the employer actually did not, as claimed, rely on the Board's former rule and, therefore, could not assert that it was prejudiced by the change in the Board's rule. In any event, the court concluded that, even assuming the employer relied on the Board's old rule, retroactive application by the Board of the new rule was not improper. For, the court held, "reliance upon a Board rule should not estop the Board from applying a new rule in an appropriate case, where its application will effectuate the purposes of the Act." Quoting another court,[62] the Second Circuit made it clear that the test is whether "the practical operation of the Board's change of policy will work hardship upon respondent altogether out of proportion to the public ends to be accomplished."

b. Effect of Schism Within Bargaining Agent

One case before the Seventh Circuit involved an application of the Board's policy of entertaining a petition for an election despite an outstanding collective-bargaining contract if the contracting union's majority status is in doubt because of a schism within its ranks.[63] Referring to the Board's practice in schism cases of making an exception to the general rule that an outstanding contract is a bar to a present election,[64] the court recognized that the contract-bar policy as well as the exceptions thereto "are solely of the Board's creation" and that it is within the Board's discretion to "reasonably expand or restrict this policy as it sees fit."

However, the court was of the view that the election which the Board had directed was invalid and that the order directing the employer to bargain with the successful union could, therefore, not be enforced. The court found that the winning union had improperly asserted control over union funds and property on hand at the time of the schism, and had improperly exerted pressure on the members of the losing faction by announcing that only its members

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[62] *N. L. R. B.* v. *Guy F. Atkinson Co*, 195 F. 2d 141, 149 (C. A. 9).

[63] *Kearney & Trecker Corp.*, v. *N. L. R. B*, 210 F. 2d 852, certiorari denied 348 U. S. 824.

[64] For recent applications of the contract-bar rule, and exceptions to the rule, see the discussion at pp. 23–34.

were entitled to derive benefits from the funds. The court concluded that the union's conduct in this respect was coercive and invalidated the election. The court believed that the Board should not have directed the election without first determining the effect of the union's conduct regarding union property, and that, in any event, the union should not have been certified because of what the court considered improper electioneering tactics. Consideration of the union's assertion of control over union property, in the court's view, was not precluded by the pendency of State court litigation regarding title to this property. The Board, on the other hand, had concluded that neither the union's announcement regarding the funds nor other actions asserted to have been coercive were such as to have exceeded the bounds of permissible election propaganda. As to the determination of the legal title to union property, the Board had adhered to its belief that in schism cases its sole function is to ascertain the bargaining status of the competing factions and that questions regarding successorship and rights of ownership should properly be left to the courts.

VII

Contempt Proceedings

During fiscal 1954, the courts of appeals passed on petitions for contempt adjudications in 4 cases where the Board believed that the court's decree remedying unfair labor practices had been violated. In 2 cases, 1 involving an employer and 1 a union,[1] contempt was found. In 2 cases instituted against employers the court held that its decree had not been violated.

Three of the cases involved bargaining decrees. In one case the Ninth Circuit upheld the special master's finding that the respondent employer had not bargained in good faith as required by the decree.[2] The employer, the court held, "did no more than to make a mere pretense at negotiating, keeping a completely closed mind and having no spirit of cooperation and faith." Thus, the court noted, after contract terms had been agreed on in negotiations, the employer made new demands concerning the matters agreed upon and refused to recognize commitments made by his representative although he had led the union to believe that the representative had full authority to conclude an agreement. The employer, according to the court, further demonstrated his bad faith by misleading a Board agent as to the status of bargaining negotiations and by his failure to acknowledge communications from the Board and the union regarding the consummation of a contract. In view of his contempt, the employer was directed to sign, within 30 days, the contract which had been agreed to by his agent and which agreement he had sought in bad faith to withdraw. The employer was assessed the costs of the proceeding and the Board's expenses. The court's contempt order further provided that, in case of failure to comply within 40 days, the employer would be assessed a compliance fine of $500, and an additional fine of $100 for each day of continued noncompliance.

The same court on rehearing in another case reaffirmed its prior adjudication [3] that the respondent union was in contempt of a bargaining decree. The decree forbade the union from insisting, as a condi-

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[1] For violations of district court decrees under section 10 (1) see chapter VIII, Injunction Litigation, sec. 2F.

[2] *N. L. R. B.* v. *R. D Nesen,* 211 F. 2d 559 (C A 9).

[3] *N. L. R. B.* v. *Retail Clerks Union Local 648,* 203 F. 2d 165 (C A. 9). See Eighteenth Annual Report, pp. 82–83.

tion of bargaining for employees in the bargaining unit, that the employer also bargain for certain supervisory employees.[4] The court found that specific demands made by the union clearly violated the decree in that they related to (1) persons the company may employ as supervisors, (2) the conditions under which supervisors shall work, and (3) the kind of work supervisors may do.[5] The court expressed the belief that its decree enforcing the Board's order effectuated the congressional purpose underlying the exclusion of supervisors from the operation of the act. The union was allowed 60 days within which to purge itself of its contempt by withdrawing its unlawful demands on the employer.

One of two cases, in which the Fifth Circuit denied the Board's petition, arose from a decree directing the respondent employer (1) to disestablish a union found to have been employer dominated and (2) to refrain from recognizing it or any successor thereto.[6] This decree, in the Board's view, was violated when the employer transferred recognition to a new union formed under the auspices of leaders of the former organization who became officers in the new union. The court, however, held that the latter was the freely chosen representative of the employees and that the employer could, therefore, not be held to have violated the enforcement decree. Thus, the court declined to infer for contempt purposes that, in the absence of a clear line of fracture between the dominated union and the one newly formed, the employees did not have an opportunity to exercise their full statutory freedom in selecting a bargaining representative. The validity of such an inference by the Board under like circumstances has been generally acknowledged by the courts in enforcement proceedings.

The Board's petition in the second case before the Fifth Circuit was predicated on the employer's continued refusal to bargain with the union named in the Board's order and in the court decree.[7] Following entry of the decree, the employer had requested the Board to redetermine the union's representative status because a majority of the employees had indicated that they did not wish to be represented by it. The Board dismissed the employer's petition for an election because of the noncompliance with the bargaining decree. In requesting that the employer be adjudicated in contempt, the Board invoked the firmly established rule that a union's loss of majority status following unfair labor practices is no bar to an order and enforcement decree requiring that the employer bargain for a reasonable time. The court, however, held that this rule has "no application in a contempt proceeding to

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[4] *N. L. R. B.* v. *Retail Clerks Union Local 648*, 211 F. 2d 759 (C A. 9).

[5] Judge Bone, dissenting, believed that only one of the union's demands was in violation of the court's decree.

[6] *N. L. R. B.* v. *Red Arrow Freight Lines, Inc.*, 213 F. 2d 260.

[7] *N. L. R. B* v. *Warren Company, Inc.*, 197 F 2d 814.

which entirely different considerations apply."[8] In the court's opinion, the employer here did not violate the bargaining decree by refusing to deal with a union which apparently had been repudiated by the employees.[9]

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[8] Compare the application of the rule by the Fifth Circuit in the enforcement cases discussed at p. 131.

[9] Subsequent to the preparation of this report the Board filed a petition for a writ of certiorari in the Supreme Court, seeking review of this decision.

VIII

Injunction Litigation

Section 10 (j) and (l) of the amended act provides for injunctive relief in the United States district courts on the petition of the Board or the General Counsel 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.

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." 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."

Under the mandatory provisions of section 10 (l), injunctions were requested in 65 cases. Fifty of these cases involved secondary action believed to violate the provisions of subsection (A), and in some instances also subsection (B), of section 8 (b) (4). One case involved primary conduct under the provisions of section 8 (b) (4) (A) relating to action intended to force an employer to join a labor organization. Five cases involved primary action allegedly initiated in disregard of a Board certification in violation of section 8 (b) (4) (C). Two cases involved action believed to violate both subsections (A) and (D)

[1] These sections contain the act's prohibitions against secondary strikes and boycotts, certain types of sympathy strikes, and strikes of boycotts against a Board certification of representatives.

of section 8 (b) (4), while seven requests for temporary relief were based on alleged violations of the jurisdictional dispute provisions of subsection (D) alone.

1. Injunction Proceedings Under Section 10 (j)

During fiscal 1954, requests for injunctive relief under section 10 (j) against labor organizations were granted in four cases.[2] Similar relief was granted in one case against an employer and an intervening union. Relief against an employer was denied in one case and held in abeyance in another case.

a. Refusal to Bargain

The Board's petition for injunctive relief against an employer was granted by the United States District Court for Southern New York on the basis of a complaint pending before the Board charging the employer with continuing violations of section 8 (a) (1), (2), (3), and (5) of the act.[3] The conduct charged included the employer's alleged refusal to bargain with a union certified by the Board, and assistance to another union through contractual recognition and union-security provisions which resulted in discrimination against members of the certified union. Enjoining the conduct specifically charged, as well as "like or related acts, or conduct whose commission in the future is likely or fairly may be anticipated," the court once again made it clear that its function is not to determine the actual existence of unfair labor practices. Thus, the court held, the question whether the employer's refusal to bargain with the certified union was justified by an alleged good-faith doubt regarding the union's majority status could be determined finally only by the Board after resolving the conflicts in the evidence. Insofar as the employer and the intervening assisted union offered to consent to an injunction conditioned on the holding of a new election by the Board, the court pointed out that it was without power to bypass the statutory processes under which the Board alone may determine how the effects of unfair labor practices are to be expunged.

In another case, an injunction restraining similar conduct was denied by the United States District Court for Northern California.[4] Here, the Board's complaint alleged that the employer refused to bargain with the incumbent representative of an existing bargaining unit and unlawfully recognized the incumbent's rival. The court's action

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[2] Three of these cases were filed against the same union in three different courts on the basis of the same complaint

[3] *Jaffee* v. *Henry Heide, Inc.*, 115 F Supp. 72 (D C., So. N Y.).

[4] *Brown* v. *The Pacific Telephone and Telegraph Co.*, June 24, 1954 (D. C., No. Calif), 34 LRRM 2564.

in denying temporary relief was predicated on the belief that the employer had justifiable doubt as to the appropriateness of the existing bargaining unit, as well as on the fact that the employer had undertaken to maintain the status quo in its bargaining relations as of the date of the complaint and the further fact that the hearing on the complaint was to be held within 2 weeks. After close of the fiscal year, this ruling was reversed by the Court of Appeals for the Ninth Circuit and relief was granted as requested by the Board.[5]

b. Preelection Conduct in Waterfront Dispute

Four district court orders granting injunctive relief under section 10 (j) were issued to restrain union conduct in connection with the Board election in the 1953–1954 New York waterfront dispute. On October 20, 1953, the United States District Court for Southern New York by temporary restraining order enjoined the International Longshoremen's Association and certain of its affiliates from conduct which, according to the Board's complaint, was intended to prevent the formation of a rival union and to force waterfront employees to maintain membership in the respondent unions.[6] The court's order specifically enjoined the checking, segregating, or detaining of shipping employees or preventing them from engaging in their normal employment; threatening, assaulting, or inflicting bodily injury or harm upon them; threatening to deprive them of present or future employment, or with loss of welfare or pension benefits or with other reprisals; and threatening to shut down the operations of waterfront employers whose employees failed to adhere to the respondents or actively adhered to their rival. While the Board's unfair labor practice complaint was still pending, the longshoremen struck in furtherance of their dispute with the New York waterfront employers in March 1954. In view of the manner in which the strike was conducted, the Board again applied for relief under section 10 (j). Temporary restraining orders were issued in the Southern District of New York on April 1, and in the Eastern District of New York, as well as the New Jersey District, on April 2.[7] The conduct enjoined, which was in apparent conflict with the prohibitions of section 8 (b) (1) (A), included threats of violence and the striking unions' picketing methods. The number of pickets was limited to 12 at any 1 location. The unions were directed to post signed notices informing waterfront em-

[5] *Brown* v. *The Pacific Telephone and Telegraph Co.*, December 30, 1954 (C. A. 9), 35 LRRM 2346.

[6] *Douds* v. *International Longshoremen's Association, Local 327–1, et al.*, October 20, 1953 (D. C., So. N. Y.), 33 LRRM 2004. The order was later converted into a temporary injunction by consent and was subsequently dissolved when the parties consented to the entry of a decree

[7] *Douds* v. *ILA, Independent, et al.*, April 1, 1954 (D. C., So. N. Y.); April 2, 1954 (D. C., E. N. Y.); April 2, 1954 (D. C., N. J.). These orders were initially for 5-day periods but were continued in full force and effect through varying dates by subsequent court orders to which the respondents consented.

ployees that the unions would refrain from further engaging in the specified conduct. Shortly after issuance of the orders, the strike was terminated.

2. Injunctions Under Section 10 (l)

Of the 65 cases in which mandatory applications for temporary relief were made, such relief was granted in 30 cases and denied in 3 cases. All such cases involved allegations of secondary boycotts or other conduct prohibited by section 8 (b) (4). The court's order granting relief in each case was the result of its conclusion that statutory prerequisites were met, *viz*, 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. The remaining 32 cases were settled or withdrawn, chiefly because the alleged illegal activity had ceased.

a. Effect of Settlement Agreement

In one case, the Board applied for relief under section 10 (l) following the respondent union's failure to comply with the terms of an informal settlement of unfair labor practice charges alleging a violation of section 8 (b) (4) (A) and other subsections of section 8 (b).[8] In accordance with its rules, the Board, upon finding that the charges justified the issuance of a complaint, invited the union to agree to a settlement designed to correct the situation and to make it unnecessary to apply for an injunction. The substance of the union's undertaking was that it would refrain from action interfering with the normal interchange and interlining of freight between the complaining carriers and other carriers who had contracts with the union. Notice of the agreement was to be given to the union's members and to the agents of the union and its parent. In granting the Board's application, the court concluded that on the facts shown to have existed before the settlement agreement, the Board was entitled to an injunction; that the settlement agreement was not intended to take away the Board's right to an injunction; and that the Board was presently entitled to the statutory relief in view of the union's apparent failure to comply fully with the agreement. The court further held that the saving provision of section 502 of the act, which protects employees against involuntary service, must be read in the light of the act's unfair labor practice provisions and, thus read, was no obstacle to the court's issuance of an injunction against the union's interference with the complaining employer's operations.

[8] *Elliott* v. *Local No. 968, IBT (Red Ball Motor Freight)*, 121 F. Supp 145 (D. C., So. Tex.).

b. Secondary Strikes and Boycotts in Waterfront Dispute

The New York waterfront dispute which gave rise to injunctions under section 10 (j)[9] also necessitated relief under section 10 (l). Application for relief under that section was made following charges that the unaffiliated longshoremen's union—ILA—halted the movement of cargo to or from New York piers by boycotting all freight handled by a Teamsters local which honored a picket line of the AFL longshoremen's union. A temporary restraining order was issued March 4, 1954, prohibiting the respondent union from continuing the boycott.[10] When the restraining order failed to check the strike, the Board instituted contempt proceedings to compel obedience of the court's order.[11] During the pendency of these proceedings, waterfront employers filed new charges that the respondent unions induced the union's members among tugboat crews to join the strike. This action was restrained on March 30 by a further order under section 10 (l) requiring the respondents (1) to discontinue the picketing of tugs and to cancel their instructions to tugboat crews not to work and (2) to instruct the crews to return to work.[12] Supplementary action was initiated by the respondents at the ports of Baltimore, Philadelphia, and Boston to prevent the movement of cargo diverted from New York. The conduct at Baltimore and Philadelphia was enjoined March 28 and 30 by temporary restraining orders of the United States District Courts for Maryland[13] and Eastern Pennsylvania.[14] The Massachusetts strike terminated before the proceedings were concluded.[15]

c. Other Secondary Strikes and Boycotts

In a number of cases, section 10 (l) injunctions were granted to restrain secondary conduct at construction sites using the services or products of employers with whom the respondent union had a primary dispute.[16]

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[9] See p. 144.

[10] *Douds* v. *International Longshoremen's Union, Independent (New York Shipping Association)*, March 4, 1954 (D. C., So. N. Y.)

[11] See p. 150.

[12] *Douds* v. *International Longshoremen's Union, Independent (New York Shipping Association)*, March 30, 1954 (D. C., So. N. Y.).

[13] *Penello* v. *ILA, Independent (Steamship Trade Assn. of Baltimore)*, March 28, 1954 (D. C., Md.), converted into temporary injunction March 30, 1954. The union's conduct in this case was alleged to violate subsection (B) as well as (A) of section 8 (b) (4).

[14] *Schauffler* v. *ILA, Independent (Philadelphia Marine Trade Assn.)*, March 30, 1954 (D. C., E. Pa.).

[15] A temporary restraining order in a related case (*Alpert* v. *ILA, Independent (City Lumber Co of Bridgeport)*), was obtained March 29, 1954 (D. C., Mass.). This order was converted into a temporary injunction by consent on April 7. The respondent here was also charged with and restrained from violating the jurisdictional dispute provisions of section 8 (b) (4) (D).

[16] See for instance *Evans* v. *Local Union 1701, IBEW (Hartz & Kirkpatrick)*, July 14, 1953 (D. C., W. Ky.); *Waers* v. *Denver Building Trades Council (Pearse)*, September 24, 1953 (D. C., Colo.); *Getreu* v. *Brotherhood of Painters, Decorators and Paperhangers Local 193 (Pittsburgh Plate Glass)*, October 30, 1953 (D. C., No. Ga.); *Irving* v. *Carpenters Local 12 (Booher Lumber)*, September 23, 1953 (D. C., No. N. Y.).

In one case, a union was enjoined from extending its picket line from the store premises of an employer, with whom the union had a dispute over contract terms, to the site of an addition to the store then under construction.[17] The pickets, according to the charge before the Board, had induced suppliers of the contractor, who had complete control over the walled-off site, not to make deliveries so that construction work came to a complete standstill.

In one group of cases of this type, the courts granted relief upon determining that the activities charged were secondary rather than primary under the Board's "situs of dispute" test[18] and therefore within the purview of section 8 (b) (4). Thus, the District Court for Southern Texas held that a truckdrivers' union, which had a dispute with an employer whose drivers it represented, was not entitled to transfer picketing activities from the employer's place of business to a construction site where installation workers of the primary employer performed work under a subcontract.[19] Noting that the primary employer had its principal place of business within easy reach of the union's pickets and that its drivers were present at the picketed construction site only at irregular and brief intervals, the court held that the picketing could not be regarded as primary since it did not occur at the situs of the dispute or the place of employment of the strikers. The court then said:

> It is difficult to see how the fact that insulators employed by Massey upon a job site far distant from Massey's place of business would make that job site the situs of a dispute between Massey and his truckdrivers. The doctrine for which the Union here contends, carried to its logical conclusion, would permit picketing by *any* union in connection with its dispute with a primary employer at *any* spot where that employer had any employee engaged in its normal business, without regard to the fact that such employee and his duties might be entirely unrelated to the union in question and to its dispute with the employer. Such result would show scant regard for the interests of the public or the neutral employer whose interests the Act undertakes to protect. The prohibition against the secondary boycott found in 8 (b) (4) (A) would be of little force and effect.

In another case, the District Court for Northern Georgia (Atlanta Division) similarly enjoined picketing at a construction site, where it had the effect of inducing the general contractor on the project to remove the glazing subcontractor with whom the picketing union had a dispute and to give the work to another firm.[20] The picketing occurred as employees of the primary employer appeared on the job.

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[17] *Shore* v *General Teamsters Local 249, IBT (Crump)*, March 5, 1954 (D. C., W. Pa.).

[18] See the discussion of the Board's recent interpretation of its *Moore Dry Dock* doctrine in the *Washington Coca Cola Bottling* case, pp 106–110.

[19] *Elliott* v *General Drivers Local Union 968 (Otis Massey)*, 123 F. Supp 125 (D C, So. Tex).

[20] *Getreu* v. *Painters, Decorators and Paper Hangers, Local 193 (Pittsburgh Plate Glass)*, October 30, 1953 (D. C., No Ga.), Civil No 4699.

Picket signs declared the glasswork on the job "unfair" without identifying the "unfair" employer. In determining that the picketing was secondary, the court also applied the tests established by the Board in *Moore Dry Dock* and approved by the Second Circuit Court of Appeals in the *Service Trade* case.[21] In the district court's view, the picketing failed to meet those tests. The court noted that, while the picketing was essentially primary, it was carried on at a location where employees of both the primary and secondary employers were at work without disclosing clearly that the picketing union's dispute was solely with the primary employer. The court, therefore, enjoined the union from using, on any job, signs which did not definitely name the primary employer. The order also restrained the union from any conduct, "whether by act, deed or silence," which might reasonably tend to create in the minds of the workers on the job the impression that the union's dispute involved the general contractor or subcontractors other than the primary employer.[22]

Section 10 (l) injunctions were likewise granted in situations where truckdrivers' unions sought to further their disputes over the employment of union drivers by extending their picketing from the permanent business establishments of the employers directly involved in the dispute to the premises of secondary employers, or by inducing the employees of neutral employers not to load, unload, or otherwise assist in the movement of goods to or from the employers involved in the primary dispute.[23]

Other unions were similarly enjoined from picketing activities which under the *Moore Dry Dock* rule were secondary rather than primary. Thus, a musicians' union was restrained from picketing a baseball stadium and boxing arena in connection with its dispute with a radio station.[24] The apparent object of the picketing, the court found, was to force the users of the stadium not to use the radio station's broadcasting facilities. The court held that the union's activities at the stadium were not lawful under the "ambulatory situs" rule of *Schultz Refrigerated Service, Inc.*[25] and *Moore Dry Dock Co.*,[26] because the union's members at the radio station were never employed

[21] *N. L R B.* v. *Service Trade Chauffeurs,* 191 F. 2d 65.

[22] See also *Getreu* v. *Painters, Decorators and Paper Hangers, Local 1730,* November 25, 1953 (D. C., So. Ga.). In this case the court on June 14, 1954, denied the union's motion to modify the injunction decree so as to permit primary picketing within the Board's *Moore Dry Dock* doctrine. The court noted that the decree enjoined only unlawful secondary picketing.

[23] *Evans* v. *Teamsters Local 505 (Whitten Transfer),* January 5, 1954 (D. C., So W Va.) ; *Elliott* v. *Local 968, Teamsters (Red Ball Motor Freight),* 121 F. Supp. 145 (D. C, So Tex.).; *Johnston* v. *Teamsters Locals 71 and 391 (Thurston Motor Lines),* June 1, 1954 (D C, Middle N. C) ; *Getreu* v. *Teamsters Local 612 (Goodyear Tire & Rubber Co),* June 9, 1954 (D. C., No. Ala).

[24] *Douds* v. *Associated Musicians of Greater N. Y. Local 802, AFM–AFL (Gotham Broadcasting Corp),* May 27, 1954 (D. C., So. N. Y.).

[25] 87 NLRB 502.

[26] 92 NLRB 547.

at the stadium and because the radio station had a business situs which the respondent could picket and had in fact picketed.

In another case, the court's injunction restrained as secondary the respondent union's picketing of employers who used and serviced the machines of a typewriter company.[27] Some of the picketing here occurred at times when the only employees present were those of secondary employers, deliverymen, and members of the public. The court held that under the *Washington Coca Cola*[28] rule such picketing was unlawful even though it purported to appeal only to the public. In another case, the court held that the alleged picketing of a struck dairy's retail store customers was sufficiently similar to the picketing in the *Washington Coca Cola* case to come within the rule of that case and to justify injunctive relief.[29]

d. Strikes Against Certifications—Meaning of "Labor Organization"

Section 10 (l) injunctions were granted in several cases for the purpose of restraining unions from striking for recognition while the Board's certification of another union as the employees' representative was in effect.[30] Such a strike violates section 8 (b) (4) (C). In one such case [31] the United States District Court for Southern New York rejected the contention that section 8 (b) (4) (C) did not apply because the certified representative was an individual rather than a union. That section, the court held, was designed to protect Board certifications of representatives and to allow collective bargaining to proceed in an orderly manner, and the term "labor organization" should be construed in the light of the objects to be accomplished. The court further observed that, while distinctions may have been drawn between "individuals" and "labor organizations" for the purposes of other sections, no intention may be attributed to Congress to make a similar distinction for the purposes of section 8 (b) (4) (C) because such a distinction would defeat the basic policies of the act.

e. Denial of Injunctions

The Board's application for section 10 (l) relief was denied in three cases believed by the Board to present secondary boycott situations. In one case, the court was of the view that the refusal of the

[27] *Douds* v. *Business Machine & Office Appliance Mechanics, IUE (Royal Typewriter Co)*, 122 F. Supp 43 (D. C., So. N. Y.).

[28] *Washington Coca Cola Bottling Co.*, 107 NLRB No. 104.

[29] *Douds* v. *New York Local 10, Production, Maintenance and Operating Employees (Aiello Dairy Farms Co.)*, 120 F. Supp 221 (D. C., E. N. Y.).

[30] See *Madden* v. *Chauffeurs "General" Local 200, IBT (Lincoln Warehouse)*, March 24, 1954 (D. C., E. Wis.); *Shore* v. *Local 56, IBEW (American Sterilizer)*, April 2, 1954 (D. C., W. Pa.); *Douds* v. *Bonnaz Union Local 66, ILGWU (Gemsco)*, June 22, 1954 (D. C., So. N. Y.).

[31] *Douds* v. *Bonnaz Union Local 66, ILGWU (Gemsco)*, June 22, 1954 (D. C., So. N. Y.).

employees of a group of employers to handle the goods of another employer designated as "unfair" was not the result of illegal inducement but of the enforcement of a "hot cargo" clause in the respondent union's contract.[32] This clause, according to the court, was similar to to the one in the *Rabouin* case [33] and, as held there by the Second Circuit Court of Appeals, prevented the refusal to handle the complaining employer's goods from being a violation of section 8 (b) (4) (A). In another case, denial of injunctive relief was the result of the court's conclusion that the operations of the secondary employer were so integrated with those of the employer immediately involved in the union's dispute that the secondary employer could not be regarded as a neutral or disinterested employer entitled to the protection of section 8 (b) (4) (A).[34]

In one case, relief was denied because the court believed that the public interest did not require a present injunction and that it would be sufficient to grant the Board's request in case the respondent union should resume the conduct with which it was charged.[35] The Board's petition for relief was also denied in a case alleging violations of section 8 (b) (4) (A) and 8 (b) (4) (D),[36] and in another case arising under section 8 (b) (4) (D).[37]

f. Contempt of Decrees Under Section 10 (l)

Proceedings for contempt adjudications against unions believed to have violated decrees under section 10 (l) were instituted in four cases during fiscal 1954.

In one case, a union which had consented to the entry of a decree was held to have violated its terms by failing to withdraw unequivocally its orders, instructions, directions, and appeals, and then to terminate its secondary boycott activities. The union was later found to have purged itself of its civil contempt except as to the payment of litigation costs.[38]

Civil and criminal contempt charges were filed in the *New York Shipping Association* case [39] when it appeared that the longshoremen's unions there continued secondary boycott activities which had been the subject of a temporary restraining order. The criminal contempt

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[32] *Madden* v. *Local 442, Teamsters (Wisco Hardware)*, 114 F. Supp. 932 (D C., W. Wis.). See also Fifteenth Annual Report, pp. 143–144.

[33] *Rabouin* v. *N. L R B*, 195 F. 2d 906

[34] *Madden* v. *Chauffeurs "General" Local 200 IBT (Lincoln Warehouse)*, July 27, 1953 (D. C., E. Wis.)

[35] *Graham* v. *Pasco-Kennewick Building Trades Council (Cisco Construction)*, June 4, 1954 (D. C, E. Wash.).

[36] *Casselman* v. *Local 58 IBEW (Taylor Electric)*, February 26, 1954 (D. C., E. Mich.).

[37] *Ackerberg* v. *Local 136, Machinery, Safe Movers and Riggers (Ross)*, August 14, 1953 (D. C., No. Ill.).

[38] *Elliott* v. *Local 568, Teamsters (Red Ball Motor Freight)*, March 25, 1954 (D. C., W. La.), 34 LRRM 2073.

[39] See p. 146.

charges resulted in convictions and fines for the respondent unions and jail sentences for the union officers. Civil contempt proceedings against the respondents were still pending at the close of the fiscal year.

Petitions for contempt adjudications were dismissed in two cases [40] and continued indefinitely in another case,[41] upon stipulation following discontinuance of the respondent unions' conduct alleged to be contemptuous.

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[40] *Johnston* v *Teamsters Locals 71 and 391* (*Thurston Motor Lines*), June 1, 1954 (D. C, Middle N. C.); *Schauffler* v. *Local 420 Plumbers and Pipe Fitters* (*Hake*), May 5, 1954 (D C., E Pa.).

[41] *McMahon* v. *Iron Workers Local 595* (*Bechtel Corporation*), October 12, 1953 (D C, E Ill)

IX

Miscellaneous Litigation

Litigation instituted by the Board during the past year in order to aid or protect its statutory processes included subpoena enforcement proceedings, and suits to enjoin State encroachment on the Board's statutory jurisdiction and to safeguard employee rights under a back-pay decree. Other litigation was in defense against suits in which private parties sought to enjoin the Board's administrative processes in representation cases.[1]

1. Litigation in Aid of Board Processes

The order of a United States district court enforcing Board subpoenas was upheld by the Fifth Circuit Court of Appeals over the company's objection that (a) the subpoenas were not properly served, and (b) the subpoenas in the form issued by the Board were oppressive.[2] The court agreed that any defect there may have been in service was cured by the fact that the parties concerned admittedly received the subpoenas and petitioned the Board to revoke them. As to the production of documents, the court pointed out that the terms imposed were manifestly reasonable rather than oppressive, since specific provision was made for compliance in the form of "a statement, signed by a responsible officer of the company, setting forth the information which would be shown by all the matters and things above subpoenaed."

In one case, the District Court for Southern California denied the Board's request for the enforcement of a prehearing subpoena issued for the purpose of eliciting facts which would enable the Board to determine its jurisdiction in the pending representation proceedings.[3] The court here believed that the subpoena had not been legally issued and was too broad in its scope and terms.

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[1] Litigation connected with the Board's endeavor to prevent or remedy circumventions of the non-Communist affidavit requirements of section 9 (h) is discussed in chapter II of this report

[2] *Winn & Lovett Grocery Co.* v. *N L R. B*, 213 F. 2d 785.

[3] *N. L R B.* v *Pesante,* 119 F Supp. 444.

In another case, where the Sixth Circuit had previously enforced a back-pay order, the Board petitioned the court to exercise its jurisdiction under section 10 (e) to grant temporary relief and to restrain the employer under the back-pay decree from dissipating its assets pending liquidation of the back-pay claims.[4] The Board's petition was predicated on its belief that certain assignments of assets by the back-pay debtor to its parent corporation were made for the purpose of depleting the subsidiary's funds and thus to defeat the unliquidated back-pay claims. The Board urged upon the court that the requested relief was necessary in order to prevent contempt of its enforcement decree. The court denied the Board's motion. In the court's view, back-pay claims not having priority over claims of other creditors, the question of one creditor obtaining improper advantage over another creditor was a matter for legal relief in a court of original jurisdiction rather than for the equity jurisdiction of the court of appeals under section 10 (e). Nor, in the court's opinion, was the case one which justified the exercise of its discretionary contempt powers. The court observed that if an act of contempt were anticipated here, the relief to be granted would result in giving to back-pay claims priority to which they were not entitled over claims of other creditors.

a. Injunction Against State's "Labor Board"

In one case, the United States District Court for the District of Montana granted the Board's petition for a preliminary injunction restraining the "Butte Labor Relations Board" from conducting a representation election among employees of a mining company whose operations were subject to the Board's jurisdiction.[5] The Butte board had been specially created by a State court for the purpose of determining which of two competing unions was to represent the employees in the company's Butte operations. At the time a representation proceeding involving the same employees was pending before the National Board under the National Labor Relations Act.

The court-created board was preparing to hold an election just before the National Board held one among the same employees. The United States district court's order, restraining the local board from exercising its assigned function, was predicated on the conclusion that the contemplated election would invade the National Board's exclusive jurisdiction in the matter and would improperly interfere with the proceeding before the National Board.

[4] *N. L. R. B.* v. *Deena Artware, Inc.*, 207 F. 2d 789.
[5] *N. L. R. B.* v. *Butte Labor Board*, March 10, 1954 (D. C., Mont), 33 LRRM 2841.

2. Suits To Enjoin Representation Proceedings

In two instances petitions for direct review of Board action in representation proceedings under section 9 of the act were denied by the respective courts. In one case, the Sixth Circuit Court of Appeals held that neither the National Labor Relations Act nor the Administrative Procedure Act, as judicially construed, conferred jurisdiction on the court to entertain petitions for the direct review of the Board's action in representation proceedings.[6] The petitioners in this case sought to have the Board's unit determination and ultimate dismissal of a decertification proceeding reviewed and set aside. In another case, the United States District Court for Northern Ohio similarly declared itself without power to intervene in the intermediate stages of a representation proceeding and review the legality of the Board's action.[7]

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[6] *Cameron and Franks* v. *N. L. R. B.*, 207 F 2d 775 (C. A. 6)
[7] *United States Steel* v *Hull*, October 29, 1953 (D. C., No. Ohio).

APPENDIX A

Statistical Tables for Fiscal Year 1954

Table 1.—Total Cases Received, Closed, and Pending (Complainant or Petitioner Identified), Fiscal Year 1954

	Number of cases					
	Total	Identification of complainant or petitioner				
		A. F. L. affiliates	C. I. O. affiliates	Unaffiliated unions	Individuals	Employers
	All cases [1]					
Pending July 1, 1953	4,289	1,867	1,048	236	889	249
Received July 1, 1953–June 30, 1954	14,094	6,662	2,712	889	2,689	1,142
On docket July 1, 1953–June 30, 1954	18,383	8,529	3,760	1,125	3,578	1,391
Closed July 1, 1953–June 30, 1954	13,989	6,683	2,949	855	2,451	1,051
Pending June 30, 1954	4,394	1,846	811	270	1,127	340
	Unfair labor practice cases					
Pending July 1, 1953	[2] 2,669	938	635	130	802	164
Received July 1, 1953–June 30, 1954	5,965	2,042	926	275	2,147	575
On docket July 1, 1953–June 30, 1954	8,634	2,980	1,561	405	2,949	739
Closed July 1, 1953–June 30, 1954	5,962	2,118	1,117	289	1,933	505
Pending June 30, 1954	2,672	862	444	116	1,016	234
	Representation cases					
Pending July 1, 1953	1,614	929	412	106	82	85
Received July 1, 1953–June 30, 1954	8,076	4,620	1,786	613	489	568
On docket July 1, 1953–June 30, 1954	9,690	5,549	2,198	719	571	653
Closed July 1, 1953–June 30, 1954	7,975	4,565	1,831	565	468	546
Pending June 30, 1954	1,715	984	367	154	103	107
	Union-shop deauthorization cases					
Pending July 1, 1953	6	0	1	0	5	----------
Received July 1, 1953–June 30, 1954	53	0	0	1	52	----------
On docket July 1, 1953–June 30, 1954	59	0	1	1	57	----------
Closed July 1, 1953–June 30, 1954	52	0	1	1	50	----------
Pending June 30, 1954	7	0	0	0	7	----------

[1] **Definitions of Types of Cases Used in Tables.** The following designations, used by the Board in numbering cases, are used in the tables in this appendix to designate the various types of cases:

CA A charge of unfair labor practices against an employer under section 8(a).

CB. A charge of unfair labor practices against a union under section 8 (b) (1), (2), (3), (5), (6)

CC A charge of unfair labor practices against a union under section 8 (b) (4) (A), (B), (C).

CD: A charge of unfair labor practices against a union under section 8 (b) (4) (D)

RC: 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 A petition by employer for certification of a representative for purposes of collective bargaining under section 9 (c) (1) (B).

RD 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

UD. A petition by employees under section 9 (e) (1) asking for a referendum to rescind a bargaining agent's authority to make a union-shop contract under section 8 (a) (3).

[2] Includes 30 cases filed under the National Labor Relations Act, prior to amendment Of this number, 18 were closed during the fiscal year, leaving 12 pending on June 30, 1954

Table 1A.—Unfair Labor Practice and Representation Cases Received, Closed, and Pending (Complainant or Petitioner Identified), Fiscal Year 1954

	Number of unfair labor practice cases						Number of representation cases					
	Total	Identification of complainant					Total	Identification of petitioner				
		A. F. L. affiliates	C. I. O. affiliates	Unaffiliated unions	Individuals	Employers		A. F. L. affiliates	C. I. O. affiliates	Unaffiliated unions	Individuals	Employers
	CA cases [1]						RC cases [1]					
Pending July 1, 1953	2,134	894	601	121	517	1	1,447	928	412	106	1	----------
Received July 1, 1953–June 30, 1954	4,373	1,959	894	245	1,275	0	7,028	4,620	1,785	612	11	----------
On docket July 1, 1953–June 30, 1954	6,507	2,853	1,495	366	1,792	1	8,475	5,548	2,197	718	12	----------
Closed July 1, 1953–June 30, 1954	4,618	2,056	1,069	264	1,228	1	6,969	4,564	1,830	564	11	----------
Pending June 30, 1954	1,889	797	426	102	564	0	1,506	984	367	154	1	----------
	CB cases [1]						RM cases [1]					
Pending July 1, 1953	428	30	14	8	285	91	85	----------	----------	----------	----------	85
Received July 1, 1953–June 30, 1954	1,257	74	25	28	864	266	568	----------	----------	----------	----------	568
On docket July 1, 1953–June 30, 1954	1,685	104	39	36	1,149	357	653	----------	----------	----------	----------	653
Closed July 1, 1953–June 30, 1954	1,052	52	28	23	699	250	546	----------	----------	----------	----------	546
Pending June 30, 1954	633	52	11	13	450	107	107	----------	----------	----------	----------	107
	CC cases [1]						RD cases [1]					
Pending July 1, 1953	60	0	2	1	0	57	82	1	0	0	81	----------
Received July 1, 1953–June 30, 1954	250	1	4	2	8	235	480	0	1	1	478	----------
On docket July 1, 1953–June 30, 1954	310	1	6	3	8	292	562	1	1	1	559	----------
Closed July 1, 1953–June 30, 1954	202	1	3	2	6	190	460	1	1	1	457	----------
Pending June 30, 1954	108	0	3	1	2	102	102	0	0	0	102	----------
	CD cases [1]											
Pending July 1, 1953	17	2	0	0	0	15						
Received July 1, 1953–June 30, 1954	85	8	3	0	0	74						
On docket July 1, 1953–June 30, 1954	102	10	3	0	0	89						
Closed July 1, 1953–June 30, 1954	72	6	2	0	0	64						
Pending June 30, 1954	30	4	1	0	0	25						

[1] See table 1, footnote 1, for definitions of types of cases.

Table 2.—Types of Unfair Labor Practices Alleged, Fiscal Year 1954

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] 4,373	[1] 100 0	8 (a) (3)	3,072	70 2
			8 (a) (4)	99	2.3
			8 (a) (5)	1,212	27.7
8 (a) (1)	[2] 4,373	[2] 100 0			
8 (a) (2)	445	10.2			

B. CHARGES FILED AGAINST UNIONS UNDER SEC. 8 (b)

Total cases	[1] 1,592	[1] 100.0	8 (b) (4)	335	21.0
			8 (b) (5)	15	.9
			8 (b) (6)	18	1.1
8 (b) (1)	989	62.1			
8 (b) (2)	954	59 9			
8 (b) (3)	173	10.9			

C. ANALYSIS OF 8 (b) (1) AND 8 (b) (4)

Total cases 8 (b) (1)	[1] 989	[1] 100.0	Total cases 8 (b) (4)	[1] 335	[1] 100 0
8 (b) (1) (A)	964	97.5	8 (b) (4) (A)	234	69.9
8 (b) (1) (B)	34	3.4	8 (b) (4) (B)	70	20 9
			8 (b) (4) (C)	21	6 3
			8 (b) (4) (D)	85	25 4

[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

Table 3.—Formal Actions Taken, by Number of Cases, Fiscal Year 1954

Formal action taken	All cases	Unfair labor practice cases			Representation cases
		All C cases	CA cases [1]	Other C cases [1]	
Complaints issued	821	821	591	230	----------
Notices of hearing issued	4,805	27	----------	27	4,778
Cases heard	2,919	669	493	176	2,250
Intermediate reports issued	556	556	429	127	----------
Decisions issued, total	2,372	523	372	151	1,849
Decisions and orders	398	398	[2] 295	[3] 103	----------
Decisions and consent orders	125	125	77	48	----------
Elections directed	1,407	----------	----------	----------	1,407
Rulings on objections and/or challenges in stipulated election cases	96	----------	----------	----------	96
Dismissals on record	346	----------	----------	----------	346

[1] See table 1, footnote 1, for definition of types of cases.

[2] Includes 47 cases decided by adoption of intermediate report in absence of exeptions

[3] Includes 10 cases decided by adoption of intermediate report in absence of exceptions.

Table 4.—Remedial Action Taken in Unfair Labor Practice Cases Closed, Fiscal Year 1954

A BY EMPLOYERS [1]

	Total	By agreement of all parties	By Board or court order
	Cases		
Notices posted	1,003	748	255
Recognition or other assistance withheld from employer-assisted union	98	73	25
Employer-dominated union disestablished	36	22	14
Workers placed on preferential hiring list	86	83	3
Collective bargaining begun	230	144	86
	Workers		
Workers offered reinstatement to job	1,438	1,044	394
Workers receiving back pay	2,292	1,687	605
Back-pay awards	$891,556	$460,156	$431,400

B BY UNIONS [2]

	Cases		
Notices posted	226	178	48
Union to cease requiring employer to give it assistance	42	36	6
Notice of no objection to reinstatement of discharged employees	54	44	10
Collective bargaining begun	10	10	0
	Workers		
Workers receiving back pay	122	[3] 88	[4] 34
Back-pay awards	$37,890	$16,010	$21,880

[1] In addition to the remedial action shown, other forms of remedy were taken in 30 cases.
[2] In addition to the remedial action shown, other forms of remedy were taken in 22 cases
[3] Includes 56 workers who received back pay from both employer and union
[4] Includes 12 workers who received back pay from both employer and union

Table 5.—Industrial Distribution of Unfair Labor Practice and Representation Cases Received, Fiscal Year 1954

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	14,041	4,373	1,257	250	85	7,028	568	480
Manufacturing	8,523	2,733	488	75	23	4,569	314	321
Ordnance and accessories	70	26	5	1	0	34	1	3
Food and kindred products	1,181	298	73	16	3	704	45	42
Tobacco manufacturers	21	6	1	0	0	12	0	2
Textile mill products	384	148	17	4	0	196	7	12
Apparel and other finished products made from fabrics and similar materials	484	231	45	11	0	148	37	12
Lumber and wood products	394	156	24	5	2	167	25	15
Furniture and fixtures	310	120	12	4	3	144	17	10
Paper and allied products	280	65	8	1	4	180	10	12
Printing, publishing, and allied industries	351	105	25	0	0	180	16	25
Chemicals and allied products	539	138	23	6	2	333	17	20
Products of petroleum and coal	131	44	6	1	0	62	3	15
Rubber products	71	21	1	1	0	42	3	3
Leather and leather products	134	49	8	1	0	64	6	6
Stone, clay, and glass products	346	127	23	5	1	168	11	11
Primary metal industries	426	134	24	1	0	246	10	11
Fabricated metal products (except machinery and transportation equipment)	782	241	47	6	0	442	27	19
Machinery (except electrical)	891	281	42	2	2	506	27	31
Electrical machinery, equipment, and supplies	565	173	34	5	3	310	10	30
Transportation equipment	550	176	45	3	2	281	17	26
Aircraft and parts	236	83	14	2	0	115	8	14
Ship and boat building and repairing	83	20	13	0	1	45	2	2
Automotive and other transportation equipment	231	73	18	1	1	121	7	10
Professional, scientific, and controlling instruments	137	47	6	0	1	77	3	3
Miscellaneous manufacturing	476	147	19	2	0	273	22	13
Agriculture, forestry, and fisheries	22	16	0	1	0	4	1	0
Mining	189	63	21	4	1	82	10	8
Metal mining	57	15	0	0	1	41	0	0
Coal mining	36	19	14	1	0	1	0	1
Crude petroleum and natural gas production	25	6	0	0	0	7	9	3
Nonmetallic mining and quarrying	71	23	7	3	0	33	1	4
Construction	905	278	330	74	38	174	9	2
Wholesale trade	1,031	239	43	18	3	617	61	50
Retail trade	1,336	444	68	17	2	676	77	52
Finance, insurance, and real estate	88	19	4	2	0	60	2	1
Transportation, communication, and other public utilities	1,552	448	264	56	17	652	75	40
Highway passenger transportation	99	30	11	1	0	48	4	5
Highway freight transportation	469	151	70	18	6	180	33	11
Water transportation	330	99	144	22	6	56	3	0
Warehousing and storage	201	42	9	11	3	116	14	6
Other transportation	52	24	3	0	0	24	1	0
Communication	246	66	18	3	1	134	14	10
Heat, light, power, water, and sanitary services	155	36	9	1	1	94	6	8
Services	395	133	39	3	1	194	19	6

[1] Source. Standard Industrial Classification, Division of Statistical Standards, U. S. Bureau of the Budget, Washington 1945

[2] See table 1, footnote 1, for definitions of types of cases.

Table 6.—Geographic Distribution of Unfair Labor Practice and Representation Cases Received, Fiscal Year 1954

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]
Total	14,041	4,373	1,257	250	85	7,028	568	480
New England	807	279	48	18	8	393	31	30
Maine	44	16	5	0	0	20	0	3
New Hampshire	39	11	0	0	1	25	2	0
Vermont	13	4	0	0	0	7	0	2
Massachusetts	446	159	22	8	2	224	19	12
Rhode Island	69	17	8	3	2	32	1	6
Connecticut	196	72	13	7	3	85	9	7
Middle Atlantic	3,331	1,000	366	78	29	1,619	140	99
New York	1,913	581	241	55	12	873	104	47
New Jersey	629	176	46	6	6	355	17	23
Pennsylvania	789	243	79	17	11	391	19	29
East North Central	2,835	863	245	22	20	1,511	91	83
Ohio	742	203	55	6	2	422	30	24
Indiana	422	146	45	2	2	198	13	16
Illinois	759	241	72	10	11	386	28	11
Michigan	632	201	60	2	5	324	16	24
Wisconsin	280	72	13	2	0	181	4	8
West North Central	1,176	296	64	11	1	723	41	40
Iowa	104	20	8	0	0	68	5	3
Minnesota	239	37	10	2	1	169	9	11
Missouri	583	169	41	8	0	335	20	10
North Dakota	22	3	0	0	0	14	4	1
South Dakota	35	7	0	0	0	28	0	0
Nebraska	67	21	0	0	0	44	0	2
Kansas	126	39	5	1	0	65	3	13
South Atlantic	1,241	436	91	28	7	572	54	53
Delaware	19	5	0	0	0	14	0	0
Maryland	145	34	17	6	1	71	8	8
District of Columbia	77	22	4	0	2	42	3	4
Virginia	149	52	9	2	1	68	8	9
West Virginia	102	40	17	5	1	39	0	0
North Carolina	185	90	5	2	0	70	6	12
South Carolina	60	31	3	0	0	22	3	1
Georgia	200	66	20	3	1	97	8	5
Florida	304	96	16	10	1	149	18	14
East South Central	720	228	52	11	4	379	21	25
Kentucky	159	47	9	4	2	88	3	6
Tennessee	347	111	32	3	1	185	5	10
Alabama	155	46	10	4	1	76	11	7
Mississippi	59	24	1	0	0	30	2	2
West South Central	1,024	315	55	25	6	532	46	45
Arkansas	113	46	0	0	0	52	7	8
Louisiana	217	67	18	3	2	112	9	6
Oklahoma	93	25	7	2	0	45	6	8
Texas	601	177	30	20	4	323	24	23
Mountain	484	174	37	6	4	221	25	17
Montana	37	9	8	0	3	12	5	0
Idaho	76	37	5	0	0	26	3	5
Wyoming	14	5	4	0	0	5	0	0
Colorado	119	33	4	5	0	60	12	5
New Mexico	84	47	8	0	0	24	3	2
Arizona	82	26	4	0	0	47	2	3
Utah	37	8	1	0	0	28	0	0
Nevada	35	9	3	1	1	19	0	2
Pacific	1,950	612	245	45	5	859	102	82
Washington	305	114	44	8	1	105	22	11
Oregon	229	85	21	4	1	91	14	13
California	1,416	413	180	33	3	663	66	58
Outlying areas	473	170	54	6	1	219	17	6
Alaska	77	19	25	1	0	29	3	0
Hawaii	65	12	1	1	0	48	2	1
Puerto Rico	331	139	28	4	1	142	12	5

[1] The States are grouped according to the method used by the Bureau of the Census, U. S. Department of Commerce.
[2] See table 1, footnote 1, for definitions of types of cases.

Table 7.—Disposition of Unfair Labor Practice Cases Closed, Fiscal Year 1954

Stage of disposition	All C cases		CA cases		CB cases		CC cases		CD cases	
	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	Number of cases	Percent of cases closed
Total number of cases closed	[4] 5,962	100.0	4,618	100 0	1,052	100 0	202	100 0	[3] 72	100 0
Before issuance of complaint	4,975	83 4	3,837	83 1	904	85 9	163	80 7	[3] 71	98 6
After issuance of complaint, before opening of hearing [1]	333	5 6	243	5 3	70	6 7	19	-9 4	1	1 4
After hearing opened, before issuance of intermediate report [1]	104	1 7	79	1 7	19	1 8	6	3 0	0	0
After intermediate report, before issuance of Board decision	53	.9	51	1 1	2	2	0	0	0	0
After Board order adopting intermediate report in absence of exceptions	54	9	52	1 1	1	.1	1	5	0	0
After Board decision, before court decree	[5] 258	4 3	204	4 4	34	3 2	10	4 9	0	0
After Board order adopting intermediate report followed by circuit court decree	3	1	3	.1	0	0	0	0	0	0
After circuit court decrees, before Supreme Court action	[6] 155	2 6	129	2 8	17	1 6	2	1 0	0	.0
After Supreme Court action [2]	[7] 27	5	20	4	5	5	1	5	0	.0

[1] Includes cases in which the parties entered into a stipulation providing for Board order and consent decree in the circuit court
[2] Includes either denial of writ of certiorari or granting of writ and issuance of opinion
[3] Includes 25 cases in which a notice of hearing issued pursuant to sec 10 (k) of the act Of these 25 cases, 11 were closed after notice, 2 were closed after hearing, and 12 were closed after Board decision.
[4] Includes 18 NLRA cases.
[5] Includes 10 NLRA cases.
[6] Includes 7 NLRA cases.
[7] Includes 1 NLRA case

Table 8.—Disposition of Representation Cases Closed, Fiscal Year 1954

Stage of disposition	All R cases		RC cases		RM cases		RD cases	
	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	7,975	100 0	6,969	100 0	546	100 0	460	100 0
Before issuance of notice of hearing	3,294	41 3	2,802	40 2	282	51 7	213	46 3
After issuance of notice of hearing, before opening of hearing	2,498	31.3	2,207	31 7	165	30 2	131	28 5
After hearing opened, before issuance of Board decision	346	4 4	317	4 5	17	3 1	14	3 0
After issuance of Board decision	1,837	23 0	1,643	23 6	82	15 0	102	22.2

Table 9.—Analysis of Methods of Disposition of Unfair Labor Practice Cases Closed, Fiscal Year 1954

Stage and method of disposition	All C cases		CA cases		CB cases		CC cases		CD cases	
	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	Number of cases	Percent of cases closed
Total number of cases closed	[1] 5,962	100 0	4,618	100.0	1,052	100 0	202	100.0	72	100 0
Before issuance of complaint	4,975	83.4	3,837	83 1	904	85 9	163	80 7	71	98 6
Adjusted	799	13 4	651	14 1	109	10 4	19	9 4	[7] 20	27 8
Withdrawn	2,493	41 8	1,849	40 0	497	47 2	106	52 5	[8] 41	56 9
Dismissed	1,673	28 0	1,332	28 9	293	27 8	38	18 8	[9] 10	13 9
Otherwise	10	.2	5	.1	5	5	0	.0	0	.0
After issuance of complaint, before opening of hearing	333	5 6	243	5 3	70	6.7	19	9 4	1	1.4
Adjusted	151	2 5	123	2 7	23	2 2	5	2 5	0	.0
Compliance with stipulated decision	8	1	3	1	3	3	1	5	[10] 1	1 4
Compliance with consent decree	81	1 4	55	1 2	19	1 8	7	3 4	0	0
Withdrawn	72	1 2	47	1 0	19	1 8	6	3 0	0	.0
Dismissed	20	.4	15	.3	5	.5	0	.0	0	0
Otherwise	1	(11)	0	.0	1	.1	0	.0	0	.0
After hearing opened, before issuance of intermediate report	104	1.7	79	1 7	19	1 8	6	3 0	0	.0
Adjusted	43	.7	35	7	8	.8	0	.0	0	0
Compliance with consent decree	50	.8	37	.8	9	.8	4	2 0	0	.0
Withdrawn	6	.1	4	.1	0	.0	2	1 0	0	0
Dismissed	5	1	3	.1	2	.2	0	0	0	0
After intermediate report, before issuance of Board decision	53	.9	51	1 1	2	2	0	.0	0	.0
Compliance	46	7	44	.9	2	2	0	0	0	0
Withdrawn	3	1	3	1	0	0	0	0	0	.0
Dismissed	3	1	3	1	0	.0	0	.0	0	0
Otherwise	1	(11)	1	(11)	0	.0	0	.0	0	0
After Board order adopting intermediate report in absence of exceptions	54	.9	52	1 1	1	.1	1	.5	0	.0
Compliance	14	2	14	3	0	.0	0	.0	0	.0
Dismissed	39	7	37	8	1	1	1	5	0	0
Otherwise	1	(11)	1	(11)	0	0	0	0	0	0

After Board decision, before court decree	258	4.3	204	4.4	34	3.2	10	4.9	0	.0
Compliance	131	2.2	104	2.3	20	1.9	7	3.4	0	.0
Withdrawn	1	(11)	1	(11)	0	.0	0	0	0	.0
Dismissed	[2] 110	1.8	88	1.9	13	1.2	3	1.5	0	.0
Otherwise	[3] 16	.3	11	.2	1	.1	0	.0	0	0
After Board order adopting intermediate report followed by circuit court decree: Compliance	3	.1	3	.1	0	0	0	0	0	.0
After circuit court decree, before Supreme Count action	155	2.6	129	2.8	17	1.6	2	1.0	0	.0
Compliance	[4] 99	1.7	81	1.8	13	1.2	2	1.0	0	.0
Dismissed	[5] 49	.8	43	9	4	4	0	.0	0	.0
Otherwise	[5] 7	.1	5	.1	0	.0	0	.0	0	.0
After Supreme Court denied writ of certiorari	22	.4	16	.3	5	.5	1	.5	0	.0
Compliance	20	.4	15	.3	5	.5	0	.0	0	.0
Withdrawn	1	(11)	0	.0	0	.0	1	.5	0	0
Dismissed	1	(11)	1	(11)	0	.0	0	.0	0	.0
After Supreme Court opinion	5	.1	4	.1	0	.0	0	0	0	.0
Compliance	4	.1	4	.1	0	0	0	.0	0	.0
Dismissed	[6] 1	(11)	0	.0	0	.0	0	0	0	0

[1] Includes 18 NLRA cases.
[2] Includes 6 NLRA cases.
[3] Includes 4 NLRA cases
[4] Includes 3 NLRA cases.
[5] Includes 2 NLRA cases.
[6] One NLRA case.
[7] Includes 2 cases adjusted after issuance of notice of hearing pursuant to section 10 (k) of the act, and 10 cases closed by compliance with Board decision.
[8] Includes 8 cases withdrawn after 10 (k) notice of hearing and 2 cases withdrawn after hearing.
[9] Includes 1 case dismissed after 10 (k) notice of hearing and 2 cases dismissed by Board decision.
[10] All 10 (k) actions and issuance of complaint waived by Board
[11] Less than one-tenth of 1 percent.

Table 10.—Analysis of Methods of Disposition of Representation Cases Closed, Fiscal Year 1954

Method and stages of disposition	All R cases		RC cases		RM cases		RD cases	
	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	7,975	100 0	6,969	100 0	546	100 0	460	100.0
Consent election	2,422	30 3	2,247	32 2	117	21.5	58	12 6
Before notice of hearing	1,376	17 2	1,278	18 3	75	13 8	23	5.0
After notice of hearing, before hearing opened	939	11 8	866	12 4	40	7 3	33	7.2
After hearing opened, before Board decision	107	1 3	103	1 5	2	.4	2	.4
Stipulated election	1,071	13 4	984	14 1	63	11 5	24	5 2
Before notice of hearing	454	5 7	406	5 8	36	6 6	12	2.6
After notice of hearing, before hearing opened	535	6 7	502	7 2	22	4 0	11	2 4
After hearing opened, before Board decision	73	9	68	1 0	4	7	1	2
After post-election hearing and decision	9	.1	8	1	1	.2	0	.0
Recognition	104	1 3	87	1 2	17	3 1	--------	--------
Before notice of hearing	44	5	37	.5	7	1 3	--------	--------
After notice of hearing, before hearing opened	60	8	50	.7	10	1 8	--------	--------
Withdrawn	2,023	25 3	1,694	24 3	174	31.9	155	33 7
Before notice of hearing	975	12 2	803	11 5	94	17.2	78	17.0
After notice of hearing, before hearing opened	811	10 2	668	9 6	73	13.4	70	15 2
After hearing opened, before Board decision	138	1 7	128	1 8	5	9	5	1 1
After Board decision and direction of election	99	1 2	95	1 4	2	4	2	4
Dismissed	1,005	12 7	734	10 6	117	21 4	154	33 5
Before notice of hearing	443	5 6	275	4 0	69	12 6	99	21 5
After notice of hearing, before hearing opened	152	1 9	115	1 7	20	3 7	17	3.7
After hearing opened, before Board decision	28	4	16	.2	6	1 1	6	1.3
By Board decision	[1] 382	4 8	328	4 7	22	4 0	32	7 0
Board-ordered election	1,347	16 9	1,221	17.5	58	10.6	68	14 8
Otherwise	3	.1	2	.1	0	.0	1	.2

[1] Includes 11 RC, 9 RM, and 9 RD cases dismissed by Board order after a direction of election issued but before an election was held.

Table 11.—Types of Elections Conducted, Fiscal Year 1954

Type of case	Total elections	Type of election			
		Consent [1]	Stipulated [2]	Board ordered [3]	Regional director directed [4]
All elections, total	4,832	2,421	1,048	1,350	13
Eligible voters, total	522,529	169,988	154,668	197,592	281
Valid votes, total	459,554	148,059	138,031	173,211	253
RC cases,[5] total	4,445	2,250	969	1,226	
Eligible voters	494,620	160,666	146,029	187,925	
Valid votes	434,736	139,881	129,966	164,889	
RM cases,[5] total	218	110	54	54	
Eligible voters	16,810	6,415	5,948	4,447	
Valid votes	14,937	5,500	5,545	3,892	
RD cases[5], total	150	58	23	69	
Eligible voters	10,244	2,829	2,218	5,197	
Valid votes	9,089	2,603	2,078	4,408	
UD cases,[5] total	19	3	2	1	13
Eligible voters	855	78	473	23	281
Valid votes	792	75	442	22	253

[1] Consent elections are held by an agreement of all parties concerned. Post-election rulings and certifications are made by the regional director.
[2] Stipulated elections are held by an agreement of all parties concerned, but the agreement provides for the Board to determine any objections and/or challenges
[3] Board-ordered elections are held pursuant to a decision and direction of election by the Board. Post-election rulings on objections and/or challenges are made by the Board.
[4] These elections are held pursuant to direction by the regional director. Post-election rulings on objections and/or challenges are made by the Board.
[5] See table 1, footnote 1, for definitions of types of cases.

Table 12.—Results of Union-Shop Deauthorization Polls, Fiscal Year 1954

Affiliation of union holding union-shop contract	Number of polls					Employees involved (number eligible to vote)					Valid votes cast			
	Total	Resulting in deauthorization		Resulting in continued authorization		Total eligible	Resulting in deauthorization		Resulting in continued authorization		Total	Percent of total eligible	Cast for deauthorization	
		Number	Percent of total	Number	Percent of total		Number	Percent of total	Number	Percent of total			Number	Percent of total eligible [1]
Total elections	19	12	63 2	7	36 8	855	204	23 9	651	76 1	792	92 6	378	44 2
A. F. L.	13	8	61 5	5	38 5	299	121	40 5	178	59 5	273	91 3	134	44 8
C. I. O.	3	2	66 7	1	33 3	103	55	53 4	48	46 6	99	96. 1	52	50. 5
Unaffiliated	3	2	66 7	1	33. 3	453	28	6. 2	425	93 8	420	92 7	192	42 4

[1] Sec. 8 (a) (3) of the act requires that, to revoke a union-shop provision, a majority of the employees eligible to vote must vote in favor of deauthorization.

Table 13.—Collective-Bargaining Elections [1] by Affiliation of Participating Unions, Fiscal Year 1954

Union affiliation	Elections participated in			Employees involved (number eligible to vote)			Valid votes casts			
	Total	Won	Percent won	Total eligible	Employees in units selecting bargaing agent		Total	Percent of total eligible	Cast for the union	
					Number	Percent of total eligible			Number	Percent of total cast
Total	[2] 4, 663	3, 060	65 6	[2] 511, 430	343, 092	67 1	[2] 449, 673	87. 9	314, 701	70. 0
A. F. L.	3, 309	1, 925	58. 2	305, 266	136, 587	44 7	266, 999	87. 5	128, 100	48 0
C. I. O.	1, 487	780	52. 5	289, 545	117, 473	40 6	259, 092	89. 5	118, 138	45 6
Unaffiliated	554	355	64 1	142, 710	89, 032	62 4	121, 311	85 0	68, 463	56 4

[1] The term "collective-bargaining election" is used to cover representation elections requested by a union or other candidate for employee representative or by the employer This term is used to distinguish this type of election from a decertification election, which is one requested by employees seeking to revoke the representation rights of a union which is already certified or which is recognized by the employer without a Board certification.

[2] Elections involving 2 or more unions of different affiliations are counted under each affiliation, but only once in the total. Therefore, the total is less than the sum of the figures or the 3 groupings by affiliation.

Table 13A.—Outcome of Collective-Bargaining Elections [1] by Affiliation of Participating Unions, and Number of Employees in Units, Fiscal Year 1954

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	4,663	1,925	780	355	1,603	511,430	136,587	117,473	89,032	168,338
1-union elections										
A. F. L.	2,579	1,559			1,020	142,127	72,259			69,868
C. I. O	962		567		395	122,475		52,339		70,136
Unaffiliated	261			194	67	21,678			18,802	2,876
2-union elections										
A. F. L.-C. I. O	371	147	156		68	81,613	32,188	30,685		18,740
A. F. L.-unaffiliated	134	53		70	11	33,167	13,328		18,479	1,360
A. F. L.-A. F. L	171	147			24	15,526	13,737			1,789
C. I. O.-unaffiliated	106		39	58	9	59,161		24,854	33,447	860
C. I. O.-C. I O	3		3		0	346		346		0
Unaffiliated-unaffiliated	19			18	1	1,786			1,782	4
3-union elections:										
A. F. L.-C. I. O.-unaffiliated	21	6	6	8	1	19.236	553	5,809	12,745	129
A. F. L.-A. F. L.-A. F. L	3	1			2	1,539	140			1,399
A. F. L.-A. F. L.-C. I. O	20	8	8		4	5,094	1,,661	3,175		258
A. F. L.-A. F. L.-unaffiliated	5	1		4	0	3,064	5		3,059	0
A. F. L.-unaffiliated-unaffiliated	1	1		0	0	2,000	2,000		0	0
C. I. O -C. I. O.-unaffiliated	1		0	1	0	89		0	89	0
C. I. O -unaffiliated-unaffiliated	1		0	1	0	591		0	591	0
Unaffiliated-unaffiliated-unaffiliated	1			1	0	38			38	0
4-union elections										
A. F L.-A. F L.-A. F. L.-unaffiliated	2	1		0	1	960	41		0	919
A F. L.-A F. L -C I O.-unaffiliated	1	1	0	0	0	675	675	0	0	0
A. F. L -C. I. O.-C. I O -unaffiliated	1	0	1	0	0	265	0	265	0	0

[1] For definition of this term, see footnote 1, table 13

Table 13B.—Voting in Collective-Bargaining Elections [1] in Which a Representative Was Chosen, Fiscal Year 1954

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	343,092	295,949	86 3	82,892	70,009	53,438	19,838	22,424	13,467	33,881
1-union elections:										
A. F. L	72,259	61,562	85 2	48,310						13,252
C. I. O	52,339	46,590	89 0		34,014					12,576
Unaffiliated	18,802	15,485	82.4			12,478				3,007
2-union elections:										
A. F. L.-C. I. O	62,873	55,907	88.9	18,040	17,849		7,788	9,711		2,519
A. F. L.-unaffiliated	31,807	25,602	80.5	6,204		10,821	5,163		3,038	376
A. F. L.-A. F. L	13,737	11,343	82 6	7,693			3,231			419
C. I. O.-unaffiliated	58,301	51,043	87.6		13,228	18,032		10,222	8,995	566
C. I. O.-C. I. O	346	294	85.0		210			2		82
Unaffiliated-unaffiliated	1,782	1,475	82.8			1,112			321	42
3-union elections:										
A. F. L.-C. I. O.-unaffiliated	19,107	17,122	89.6	313	2,773	8,391	2,421	2,050	622	552
A. F. L.-A. F. L.-A. F. L	140	128	91.4	85			43			0
A. F. L.-A. F. L.-C. I. O	4,836	4,134	85.5	849	1,766		795	323		401
A. F. L.-A. F. L.-unaffiliated	3,064	2,568	83 8	4		2,204	343		0	17
C. I. O.-unaffiliated-unaffiliated	591	555	93.9		0	330		48	177	0
C. I. O.-C. I. O.-unaffiliated	89	83	93.3		0	48		35	0	0
A. F. L.-unaffiliated-unaffiliated	2,000	1,143	57.2	965		0	0		124	54
Unaffiliated-unaffiliated-unaffiliated	38	36	94.7			22			14	0
4-union elections:										
A. F. L.-A. F. L.-A. F. L.-unaffiliated	41	36	87.8	30		0	2		0	4
A. F. L.-A. F. L.-C. I. O.-unaffiliated	675	644	95.4	399	0	0	48	30	157	10
A. F. L.-C. I. O.-C. I. O.-unaffiliated	265	199	75.1	0	169	0	4	3	19	4

[1] For definition of this term, see footnote 1, table 13

Table 13C.—Voting in Collective-Bargaining Elections[1] in Which a Representative Was Not Chosen, Fiscal Year 1954

Affiliation of participating unions	Employees eligible to vote	Total valid votes cast	Percent casting valid votes	Valid votes cast for losing unions			Valid votes cast for no union
				A F L. affiliates	C I O. affiliates	Unaffiliated unions	
Total	168,338	153,724	91 3	25,370	25,705	1,558	101,091
1-union elections:							
A. F. L	69,868	63,875	91 4	20,597			43,278
C. I. O	70,136	63,885	91 1		22,353		41,532
Unaffiliated	2,876	2,512	87 3			821	1,691
2-union elections:							
A. F. L.-C. I. O	18,740	17,559	93.7	3,220	3,213		11,126
A. F. L.-unaffiliated	1,360	1,242	91 3	104		456	682
A. F. L.-A. F. L	1,789	1,541	86 1	593			948
C. I. O.-unaffiliated	860	714	83 0		98	182	434
Unaffiliated-unaffiliated	4	2	50.0			2	0
3-union elections:							
A. F. L.-C. I. O.-unaffiliated	129	118	91 5	2	13	34	69
A. F. L.-A. F. L.-A. F. L	1,399	1,299	92 9	448			851
A. F. L -A. F. L.-C. I. O	258	245	95 0	105	28		112
4-union elections:							
A. F. L.-A. F. L.-A. F. L.-unaffiliated	919	732	79 7	301		63	368

[1] For definition of this term, see footnote 1, table 13.

Table 14.—Decertification Elections by Affiliation of Participating Unions, Fiscal Year 1954

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	150	48	32.0	102	68 0	10,244	4,309	42 1	5,935	57 9	9,089	88 7	4,315	47 5
A. F L	97	29	29 9	68	70 1	4,255	1,958	46.0	2,297	54 0	3,847	90.4	1,814	47.2
C. I O	34	14	41 2	20	58 8	3,611	2,019	55 9	1,592	44 1	3,252	90 1	1,742	53 6
Unaffiliated	19	5	26 3	14	73 7	2,378	332	14 0	2,046	86 0	1,990	83 7	759	38.1

Table 14A.—Voting in Decertification Elections, Fiscal Year 1954

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	4,309	3,972	92 2	2,552	1,420	5,935	5,117	86 2	1,763	3,354
A. F. L	1,958	1,824	93 2	1,146	678	2,297	2,023	88 1	668	1,355
C. I. O	2,019	1,855	91 9	1,206	649	1,592	1,397	87 8	536	861
Unaffiliated	332	293	88 3	200	93	2,046	1,697	82 9	559	1,138

Table 15.—Size of Units in Collective-Bargaining and Decertification Elections, Fiscal Year 1954

A. COLLECTIVE-BARGAINING ELECTIONS

Size of unit (number of employees)	Number of elections	Percent of total	Elections in which representation rights were won by—						Elections in which no representative was chosen	
			A. F L affiliates		C I O. affiliates		Unaffiliated unions			
			Number	Percent	Number	Percent	Number	Percent	Number	Percent
Total	4,663	100 0	1,924	100 0	781	100 0	355	100 0	1,603	100 0
1–9	1,079	23 1	603	31 3	110	14 1	58	16 3	308	19 2
10–19	856	18 4	405	21 0	118	15 1	46	13 0	287	18 0
20–29	545	11 7	219	11 4	86	11.0	41	11 5	199	12 4
30–39	322	6 9	126	6 5	61	7 8	21	5 9	114	7 1
40–49	249	5 3	102	5 3	42	5 4	15	4 2	90	5 6
50–59	196	4 2	68	3 5	43	5 5	18	5 1	67	4 2
60–69	160	3 4	55	2 9	34	4 3	20	5 6	51	3 2
70–79	123	2 6	38	2 0	26	3 3	10	2 8	49	3 1
80–89	102	2 2	36	1 9	17	2 2	10	2 8	39	2 4
90–99	92	2 0	27	1 4	17	2 2	14	4 0	34	2 1
100–149	273	5 9	78	4 0	56	7 2	21	5 9	118	7 4
150–199	161	3 4	47	2 4	35	4 5	14	4 0	65	4 0
200–299	179	3 8	38	2 0	53	6 8	18	5 1	70	4 4
300–399	92	2 0	28	1 5	24	3 1	11	3 1	29	1 8
400–499	41	9	12	.6	8	1 0	6	1 7	15	.9
500–599	41	.9	11	6	14	1 8	4	1 1	12	7
600–799	45	1 0	7	4	11	1 4	5	1 4	22	1 4
800–999	27	.6	7	.4	8	1 0	2	6	10	6
1,000–1,999	50	1 1	11	6	13	1 7	8	2 2	18	1 1
2,000–2,999	16	3	3	2	3	4	7	2 0	3	.2
3,000–3,999	6	1	1	(1)	1	1	3	.8	1	.1
4,000–4,999	3	.1	0	.0	0	0	1	3	2	.1
5,000–9,999	4	1	2	1	0	.0	2	.6	0	.0
10,000–15,000	1	(1)	0	0	1	.1	0	.0	0	.0

B. DECERTIFICATION ELECTIONS

Total	150	100 0	29	100 0	14	100 0	5	100 0	102	100 0
1–9	30	20 0	3	10 3	0	0	1	20 0	26	25 5
10–19	31	20 7	4	13 8	0	0	0	0	27	26 5
20–29	16	10 7	5	17 2	4	28 6	0	0	7	6 8
30–39	14	9 3	1	3 4	1	7 1	1	20 0	11	10 8
40–49	9	6 0	0	.0	2	14 3	0	0	7	6 8
50–59	5	3.3	1	3 4	0	0	0	0	4	3 9
60–69	6	4 0	5	17 2	1	7 1	0	.0	0	0
70–79	7	4 7	1	3 5	1	7 2	1	20 0	4	3 9
80–89	8	5 3	5	17 2	0	0	1	20 0	2	2 0
90–99	3	2 0	1	3 5	0	0	0	0	2	2 0
100–149	8	5 3	1	3 5	1	7 2	1	20 0	5	4 9
150–199	2	1 3	0	0	0	0	0	0	2	2 0
200–299	5	3 3	1	3 5	2	14 3	0	0	2	2 0
300–399	1	7	0	0	1	7 1	0	0	0	0
400 and over	5	3 4	1	3 5	1	7 1	0	.0	3	2 9

[1] Less than one-tenth of 1 percent.

Table 16.—Geographic Distribution of Collective-Bargaining Elections, Fiscal Year 1954

Division and State [1]	Number of elections— Total	In which representation rights were won by— A. F. L. affiliates	C. I. O. affiliates	Unaffiliated unions	In which no representative was chosen	Employees eligible to vote	Total valid votes cast	Valid votes cast for— A. F. L. affiliates	C. I. O. affiliates	Unaffiliated unions	No union	Employees in units choosing representation
Total	4,663	1,925	780	355	1,603	511,430	449,673	128,100	118,138	68,463	134,972	343,092
New England	281	98	57	21	105	51,677	46,220	7,171	16,578	10,073	12,398	37,101
Maine	12	4	0	0	8	3,652	3,115	344	780	0	1,991	297
New Hampshire	15	4	5	0	6	2,191	2,025	229	884	0	912	1,580
Vermont	6	2	1	0	3	382	373	171	49	0	153	315
Massachusetts	152	60	28	15	49	32,362	28,959	3,987	11,223	9,254	4,495	27,552
Rhode Island	29	8	5	3	13	5,333	4,747	875	1,651	363	1,858	3,472
Connecticut	67	20	18	3	26	7,757	7,001	1,565	1,991	456	2,989	3,885
Middle Atlantic	932	376	176	95	285	114,206	101,258	32,700	23,563	15,993	29,002	74,742
New York	461	209	79	40	133	53,870	46,766	21,012	8,177	2,489	15,088	32,834
New Jersey	195	68	45	20	62	23,822	21,142	5,300	6,711	4,289	4,842	16,752
Pennsylvania	276	99	52	35	90	36,514	33,350	6,388	8,675	9,215	9,072	25,156
East North Central	1,084	418	223	82	361	130,428	115,083	29,569	36,105	17,597	31,812	93,339
Ohio	318	129	61	24	104	35,543	32,006	7,493	10,223	3,756	10,534	22,908
Indiana	134	49	25	9	51	21,471	18,988	4,093	7,022	1,902	5,971	13,649
Illinois	266	113	39	24	90	39,878	34,507	12,574	6,972	7,711	7,250	33,293
Michigan	227	52	84	19	72	26,545	23,229	2,720	10,793	3,665	6,051	18,911
Wisconsin	139	75	14	6	44	6,991	6,353	2,689	1,095	563	2,006	4,578
West North Central	535	289	60	37	149	32,320	28,520	11,036	6,974	2,839	7,671	23,768
Iowa	56	27	8	1	20	7,224	6,246	2,458	1,572	56	2,160	5,090
Minnesota	134	74	23	9	28	5,400	4,921	1,758	1,227	977	959	4,438
Missouri	236	124	22	21	69	11,755	10,432	4,835	2,129	509	2,959	8,308
North Dakota	10	7	0	0	3	142	128	78	0	0	50	107
South Dakota	25	18	0	0	7	357	333	215	0	0	118	248
Nebraska	25	12	2	1	10	3,044	2,653	623	590	1,010	430	2,432
Kansas	49	27	5	5	12	4,398	3,807	1,069	1,456	287	995	3,145

South Atlantic	341	118	64	6	153	38,760	35,475	8,402	8,548	352	18,173	15,275
Delaware	7	1	1	1	4	975	923	69	191	26	637	395
Maryland	62	17	10	2	33	5,753	5,165	1,257	1,563	34	2,311	3,296
District of Columbia	29	16	1	0	12	572	530	269	12	0	249	229
Virginia	39	12	10	1	16	6,974	6,245	1,419	2,293	94	2,439	4,273
West Virginia	27	11	7	1	8	4,169	3,884	166	1,264	97	2,357	763
North Carolina	38	9	11	0	18	4,532	4,166	1,152	707	0	2,307	1,410
South Carolina	23	9	3	0	11	5,986	5,700	1,756	491	0	3,453	1,705
Georgia	57	15	12	0	30	5,634	5,092	912	1,250	19	2,911	1,184
Florida	59	28	9	1	21	4,165	3,770	1,402	777	82	1,509	2,020
East South Central	261	94	41	10	116	33,043	30,310	7,184	7,341	3,160	12,625	16,553
Kentucky	66	27	8	3	28	8,415	7,696	2,329	1,992	1,160	2,215	5,754
Tennessee	124	48	23	6	47	15,775	14,406	3,212	3,690	1,800	5,704	8,350
Alabama	46	13	7	0	26	5,355	4,906	862	997	181	2,866	1,325
Mississippi	25	6	3	1	15	3,498	3,302	781	662	19	1,840	1,124
West South Central	379	156	61	18	144	40,365	35,661	13,983	9,566	3,356	8,756	30,380
Arkansas	45	15	15	1	14	5,218	4,746	1,020	1,632	41	2,053	2,897
Louisiana	87	38	14	3	32	11,497	10,050	5,295	2,796	271	1,688	10,263
Oklahoma	48	19	3	0	26	4,087	3,598	1,694	309	160	1,435	2,112
Texas	199	84	29	14	72	19,563	17,267	5,974	4,829	2,884	3,580	15,108
Mountain	142	72	18	10	42	16,508	13,682	1,821	3,338	6,330	2,193	13,710
Montana	6	2	1	2	1	10,406	8,185	40	2,292	5,645	208	10,385
Idaho	19	10	3	0	6	1,128	1,026	492	200	0	334	633
Wyoming	3	1	1	0	1	69	62	3	26	0	33	14
Colorado	46	28	5	0	13	806	757	282	223	0	252	599
New Mexico	14	9	0	1	4	775	591	446	0	62	83	707
Arizona	34	14	2	7	11	2,648	2,442	354	422	623	1,043	1,045
Utah	17	7	6	0	4	487	442	173	145	0	124	318
Nevada	3	1	0	0	2	189	177	31	30	0	116	9
Pacific	552	242	69	34	207	34,361	30,062	11,391	5,542	2,469	10,660	19,962
Washington	56	28	4	3	21	2,887	2,550	1,243	191	386	730	1,991
Oregon	62	30	5	1	26	2,377	2,062	979	452	55	576	1,589
California	434	184	60	30	160	29,097	25,450	9,169	4,899	2,028	9,354	16,382
Outlying areas	156	62	11	42	41	19,762	13,402	4,843	583	6,294	1,682	18,262
Alaska	23	14	1	6	2	4,388	3,092	226	25	2,715	126	4,374
Hawaii	37	19	0	5	13	1,068	1,021	443	0	149	429	690
Puerto Rico	92	29	6	31	26	14,230	9,225	4,174	496	3,430	1,125	13,122
Virgin Islands	4	0	4	0	0	76	64	0	62	2,113	2	76

[1] The States are grouped according to the method used by the Bureau of the Census, U. S. Department of Commerce.

Table 17.—Industrial Distribution of Collective-Bargaining Elections, Fiscal Year 1954

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	4,663	1,925	780	355	1,603	511,430	449,673
Manufacturing	3,100	1,154	640	264	1,042	404,779	360,851
Ordnance and accessories	31	13	9	5	4	4,497	3,993
Food and kindred products	448	220	55	30	143	35,590	30,265
Tobacco manufacturers	7	4	1	0	2	1,346	1,186
Textile mill products	87	16	22	9	40	23,649	21,459
Apparel and other finished products made from fabrics and similar material	102	35	35	7	25	12,133	10,862
Lumber and wood products	118	43	22	4	49	9,830	8,573
Furniture and fixtures	103	30	29	10	34	10,603	9,543
Paper and allied products	125	54	21	7	43	18,511	15,712
Printing, publishing, and allied industries	123	57	21	9	36	3,497	3,166
Chemical and allied products	233	88	56	18	71	27,254	24,862
Products of petroleum and coal	49	18	9	9	13	5,743	5,350
Rubber products	32	6	13	2	11	6,167	5,595
Leather and leather products	44	9	6	3	26	8,565	8,780
Stone, clay, and glass products	101	47	19	5	30	6,997	6,109
Primary metal industries	166	58	37	20	51	19,684	17,675
Fabricated metal products (except machinery and transportation equipment)	318	124	67	20	107	21,771	19,878
Machinery (except electrical)	400	131	88	43	138	65,997	58,894
Electrical machinery, equipment, and supplies	208	70	36	32	70	65,410	58,326
Transportation equipment	205	59	55	15	76	35,970	31,404
Aircraft and parts	81	24	15	9	33	17,160	15,560
Ship and boat building and repairing	23	10	2	0	11	3,575	2,512
Automotive and other transportation equipment	101	25	38	6	32	15,235	13,332
Professional, scientific, and controlling instruments	46	14	13	5	14	7,613	6,758
Miscellaneous manufacturing	154	58	26	11	59	13,952	12,461
Fisheries	1	1	0	0	0	1,350	956
Mining	59	17	13	7	22	13,039	11,055
Metal mining	26	5	12	6	3	11,599	9,705
Coal mining	1	1	0	0	0	12	11
Crude petroleum and natural gas production	15	3	0	1	11	638	603
Nonmetallic mining and quarrying	17	8	1	0	8	790	736
Construction	86	59	2	3	22	6,446	4,401
Wholesale trade	409	200	35	14	160	11,934	10,654
Retail trade	466	214	41	18	193	39,308	33,620
Finance, insurance, and real estate	25	14	1	2	8	3,571	3,436
Transportation, communication, and other public utilities	418	216	34	35	133	28,371	22,448
Highway passenger transportation	21	8	1	3	9	1,015	918
Highway freight transportation	120	62	2	6	50	2,047	1,800
Water transportation	33	17	3	5	8	12,854	8,822
Warehousing and storage	81	46	7	5	23	2,565	2,285
Other transportation	12	4	0	2	6	1,051	946
Communication	98	49	13	11	25	5,726	4,788
Heat, light, power, water, and sanitary services	53	30	8	3	12	3,113	2,889
Services	99	50	14	12	23	2,632	2,252

[1] Source: Standard Industrial Classification, Division of Statistical Standards, U S Bureau of the Budget, Washington, 1945.

Table 18.—Injunction Litigation Under Sec. 10 (j) and (l), Fiscal Year 1954

Proceedings	Number of cases instituted	Number of applications granted	Number of applications denied	Cases settled, inactive, pending, etc
Under sec 10 (j)				
(a) Against unions	4	4	0	
(b) Against employers	2	0	1	1 alleged illegal, activity suspended
Under sec 10 (l)	66	30	3	17 settled, 6 alleged illegal, activity suspended, 6 withdrawn, 5 pending.
Total	72	34	4	35

Table 19.—Litigation for Enforcement or Review of Board Orders, Fiscal Year 1954 and July 5, 1935, to June 30, 1954

Results	July 1, 1953, to June 30, 1954		July 5, 1935, to June 30, 1954	
	Number	Percent	Number	Percent
Cases decided by United States courts of appeals	[1] 201	100 0	1,428	100 0
Board orders enforced in full	[1] 116	57 7	853	59.7
Board orders enforced with modification	36	17 9	300	21 0
Remanded to Board	1	5	25	1 8
Board orders partially enforced and partially remanded	2	1 0	7	.5
Board orders set aside	46	22 9	243	17 0
Cases decided by the United States Supreme Court	7	100 0	89	100.0
Board orders enforced in full	7	100 0	63	70.8
Board orders enforced with modification			11	12 4
Board orders set aside			7	7 9
Remanded to Board			1	1 1
Remanded to court of appeals			6	6.7
Board's request for remand or modification of enforcement order denied			1	1 1

[1] Includes 19 cases which were summarily enforced because of respondent's failure to take exception to the intermediate report

Table 20.—Record of Injunctions Petitioned for, or Acted Upon, Fiscal Year 1954

Case No.	Union and 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 Board decision and/or order
				Date issued	Date lifted				
13-CC-5, 7	AFL-Painters, Chicago Glaziers Local 27, et al (Joliet Contractors Assn et al.).	Sept. 28, 1948	10 (l)			Nov. 19, 1948		Oct. 30, 1953	June 26, 1950.
20-CD-28	Pacific Coast Dist. Metal Trades Council (McDowell Co , Inc.).	June 19, 1952	10 (l)	June 25, 1953				Nov. 10, 1953	
24-CC-14, 15, 16	AFL-Longshoremen (Puerto Rico Steamship Assn. et al.).	June 26, 1952	10 (l)	July 2, 1952	Sept. 26, 1952	Sept. 26, 1952		July 28, 1953	Jan. 16, 1953. (stip).
2-CC-230	AFL-Teamsters, Local 294 (Bonded Freightways, Inc)	Sept. 19, 1952	10 (l)			(1)		July 1, 1953	Charge withdrawn.
4-CC-37	AFL-Teamsters, Local 830 (Scott & Grauer)	Jan. 16, 1953	10 (l)					Sept. 14, 1953	July 28, 1953.
11-CC-3	Mine Workers, District 50 (Tungsten Mining Corp.).	Jan. 24, 1953	10 (l)			Feb 3, 1953		do	Aug. 26, 1953.
35-CC-22	AFL-Teamsters, Local 135 (Hoosier Petroleum Co.).	Feb. 4, 1953	10 (l)			(1)		Sept. 18, 1953	
2-CC-246	AFL-Longshoremen, Local 333 (New York Shipping Assn.).	Feb. 7, 1953	10 (l)	Feb. 7, 1953	Feb. 13, 1953	(1)		Feb. 9, 1954	Jan. 6, 1954.
2-CA-2554, 2907	Henry Heide, Inc., (CIO-Retail, Wholesale Department Store Union, Local 50).	Mar. 12, 1953	10 (j)			Oct. 14, 1953			Feb. 18, 1954.
24-CC-19	AFL-Longshoremen, Ports of P. R., et al. (Assn Azucarera Corp., Lafayette).	Mar. 17, 1953	10 (l)			Mar 25, 1953 (consent)		Sept 21, 1953	Aug. 3, 1953.
20-CD-33	AFL-Pile Drivers Bridge, Wharf and Dock Builders, Local 34 of California (Samuel A. Agnew, d/b/a Klamath Cedar Co.).	Apr. 5, 1953	10 (l)			May 14, 1953		Dec 17, 1953	June 18, 1953.
3-CC-27	AFL-Electrical Workers, Local 1574 (B. E. Shell Co)	Apr. 21, 1953	10 (l)			Apr. 28, 1953 (consent)		Sept. 18, 1953	Aug. 12, 1953.
4-CC-43	AFL-Garment Workers, Ladies (Josette Mfg. Co.).	Apr. 23, 1953	10 (l)			(1)		July 14, 1953	Settled.
5-CC-29	AFL-Baltimore Building & Construction Trades Council and Local 16 et al. (John A. Piezonki, d/b/a Stover Steel Service).	do	10 (l)			(1)			June 28, 1954.
3-CC-26, 28, 29	AFL-Electrical Works, Locals 79, 181, 35, and 1261 (Utica Builders Exchange).	Apr. 24, 1953	10 (l)			(1)		Sept. 18, 1953	Aug. 14, 1953.
5-CC-28, 30	AFL-Teamsters, Local 67 (Washington Coca Cola Bottling Works, Inc., and Buckingham Supermarkets, Inc).	do	10 (l)			May 11, 1953		Dec. 14, 1953	Dec. 10, 1953.
1-CC-88	AFL-Teamsters, Local 379 (Norfolk Waste Paper Co.).	do	10 (l)					July 28, 1953	Settled.
4-CC-39	CIO-Distributive Workers Local 95 (Poultrymen's Service Corp.).	Apr. 25, 1953	10 (l)			(1)		Nov. 24, 1953	do.
14-CC-44, 45	AFL-Teamsters, Local 600, 632, and 688 (Osceola Foods, Inc. and Atkins Pickle Co.).	Apr. 28, 1953	10 (l)			June 24, 1953			Nov. 25, 1953.

21-CC-157, 158	Food processors, Packers, Warehousemen and Clerical Employees, Local 567 (Spencer Food Co.).	May 7, 1953	10 (1)			May 27, 1953		Aug. 19, 1953	Withdrawn.
11-CC-4	AFL-Longshoremen, Local 1422 (James Doran Co., et al.).	do	10 (1)			May 11, 1953		Oct. 9, 1953	Aug. 7, 1953.
18-CC-19	United Mine Workers of America, District 50 and Local 12106 (Minnesota Linseed Oil Co.).	May 8, 1953	10 (1)			May 18, 1953		July 13, 1953	Withdrawn.
6-CC-82	AFL-Building & Construction Trades Council of Pittsburgh and Vicinity et al. (Perry Electric Co.).	May 22, 1953	10 (1)			(1)		July 20, 1953	Withdrawn.
13-CC-75	AFL-Teamsters, Local 442 (Wisco Hardware Co.).	May 28, 1953	10 (1)	June 8, 1953	Sept. 12, 1953		Sept. 12, 1953		
36-CD-11	International Longshoremen's & Warehousemen's Union, Local 12 (Upper Columbia River Towing Co., et al.).	June 1, 1953	10 (1)			June 11, 1953		Jan. 21, 1954	Aug 26, 1953.
3-CC-31, 32	AFL-Teamsters, Local 182 and AFL-Carpenters, Local 125 (Jay-K Independent Lumber Corp.).	June 2, 1953	10 (1)			(1)			June 15, 1954.
14-CC-47	AFL-Carpenters, Local 433, et al. (Markus Cabinet Manufacturing Co.).	do	10 (1)	June 12, 1953 (consent)				Nov 17, 1953	Sept. 3, 1953.
7-CC-20	AFL-Teamsters, Locals 406 and 415 (S. E. Overton Co.).	June 18, 1953	10 (1)					Dec. 5, 1953	Withdrawn.
1-CC-91	AFL-Teamsters, Local 379 (Blanchard Lumber Co.).	June 19, 1953	10 (1)			(1)		Sept. 21, 1953	Settled.
13-CC-77	AFL-Teamsters, Local 200 (Lincoln Warehouse Co.).	June 22, 1953	10 (1)				July 27, 1953		Withdrawn.
3-CC-34	AFL-Carpenters, Local 12 (Booher Lumber Co , Inc.).	July 31, 1953	10 (1)			Sept. 29, 1953		Mar. 3, 1954	Jan. 8, 1954.
19-CC-54, 55	AFL-Carpenters, Lumber & Sawmill Workers, Local 2781 (Everett Plywood & Door Corp).	July 27, 1953	10 (1)			(1)		Jan 22, 1954	Dec. 22, 1953.
9-CC-52	AFL-Electrical Workers, Local 1701 (Hartz & Kirkpatrick Constr. Co.).	July 1, 1953	10 (1)			July 14, 1953		Oct. 26, 1953	Sept. 17, 1954.
2-CC-253	AFL-Teamsters, Local 445 (Miron Bldg., Products Co).	July 6, 1953	10 (1)			(1)		Sept. 21, 1953	Aug. 6, 1953.
2-CC-255	AFL-Bldg Service Employees, Local 32-E (Winarick, Inc. & Jerris Sales Co).	July 24, 1953	10 (1)			(1)		Dec. 23, 1953	Settled.
15-CC-37	AFL-Plumbers, Local 106, et al. (Columbia-Southern Chemical Corp.).	July 16, 1953	10 (1)			(1)			
36-CC-28	AFL-Teamsters, Locals 911 and 508 (Lakeview Creamery Co.).	Aug. 4, 1953	10 (1)			Aug. 10, 1953 (consent)		Jan. 21, 1954	Dec. 29, 1953.
10-CC-60	AFL-Painters, Local 1730 (Painting & Decorating Contractors of America).	Aug. 24, 1953	10 (1)			Dec. 9, 1953			
13-CD-31, 32	AFL-Bridge, Structural Iron Workers, Machinery, Safe Movers and Riggers, Local 136 (J. A. Ross & Co).	Aug 13, 1953	10 (1)				Aug. 14, 1953		
39-CC-8	AFL-Teamsters, General Drivers, Warehousemen & Helpers Local 968 (Great Atlantic & Pacific Tea Co)	Sept. 16, 1953	10 (1)			(1)		Dec. 7, 1953	Settled.

See footnotes at end of table.

Table 20.—Record of Injunctions Petitioned for, or Acted Upon, Fiscal Year 1954—Continued

Case No	Union and 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 Board decision and/or order
				Date issued	Date lifted				
19-CD-16	AFL-Machinists, Local 1743 (Kaiser Engineers).	Sept 24, 1953	10 (l)	Sept. 24, 1953		(1)		Nov. 25, 1953	Withdrawn
20-CC-90	AFL-Teamsters, et al. (Orval W. Klein)	do	10 (l)			(1)		Oct. 5, 1953	Settled.
30-CC-20	AFL-Denver Bldg. & Construction Trades Council (John R. Pearse)	Sept. 4, 1953	10 (l)			Sept. 24, 1953		June 15, 1954	Apr 21, 1954.
6-CC-84, 87, 89, 90	AFL-Amalgamated Meat Cutters, et al. (Verscharen's Food Centers).	Sept. 8, 1953	10 (l)			(1)		Dec 31, 1953	Settled.
14-CD-39	AFL-Bridge, Structural Iron Workers, Local 595 (Bechtel Corp.).	Oct. 12, 1953	10 (l)	Oct. 12, 1953 (consent)					
20-CC-91	AFL-Technical Engineers, Local 3-E (Edwin W. Boonton).	Oct 26, 1953	10 (l)			Nov 3, 1953		May 25, 1954	Settled.
5-CC-33, 34	United Mine Workers, District 50, Local 12993 (Joseph M. Dignan & Sons, Inc & Transit Storage Corp).	Oct 28, 1953	10 (l)			(1)		Mar. 2, 1954	Jan. 6, 1954
3-CA-736	Genesee Foundry Co. (CIO-Steel Workers)	Oct 27, 1953	10 (j)			(1)			
2-CB-1024	International Longshoremen's Assn Locals 327-1 and 338-1 (AFL-Longshoremen).	Oct 20, 1953	10 (j)	Oct 20, 1953	Nov 2, 1953	Nov. 2, 1953		Apr 23, 1954	Mar. 9, 1954
14-CC-55	AFL-Murphysboro Central Labor Council (J. C. Penney Co , Store 309).	Oct. 29, 1953	10 (l)			(1)			
10-CC-62	AFL-Painters, Local 193 and District Council 38 (Pittsburgh Plate Glass).	Oct. 7, 1953	10 (l)	Oct 30, 1953		Nov. 3, 1953			
9-CC-58	AFL-Teamsters, Local 175 (Union Carbide & Carbon Co , et al.).	Oct 8, 1953	10 (l)			(1)		June 4, 1954	Settled.
21-CC-164	AFL-Painters, Paint Makers, Local 1232, et al. (Devoe & Raynolds, Inc).	Nov 27, 1953	10 (l)			(1)		Mar 18, 1954	Feb 8, 1954
14-CD-40	AFL-Plumbers, Local 553 (M. E. Fiterman Co).	Nov. 4, 1953	10 (l)			Nov. 9, 1953			Withdrawn.
36-CD-14	Longshoremen's & Warehousemen's Union, Local 140 (Upper Columbia River Towing & River Terminals Co.).	Nov 19, 1953	10 (l)			(1)		May 3, 1954	Mar 18, 1954.
2-CC-266	AFL-Teamsters, Local 816 (Bonded Paper Products Co , Inc)	Dec. 4, 1953	10 (l)			(1)			
21-CC-168, 169	AFL-Teamsters, Local 87, and AFL-Chemical Workers, Local 482 (Camp & Felder Compress Co)	Dec 2, 1953	10 (l)			(1)			
21-CC-167	AFL-Garment Workers, Los Angeles Cloak, Joint Board, et al. (Henry Leeker).	Dec. 16, 1953	10 (l)			(1)		May 5, 1954	Settled.
9-CC-60	AFL-Teamsters, Locals 505 and 175 (C I. Whitten Transfer Co)	Dec. 11, 1953	10 (l)			Jan. 5, 1954			
21-CC-162	AFL-Electrical Workers, Local 11 (Benjamin Electric Mfg Co.).	Dec. 30, 1953	10 (l)			(1)		Apr. 20, 1954	Feb. 15, 1954

13-CC-85	AFL-Teamsters, Local 200 (Lincoln Warehouse Co)	Jan 13, 1954	10 (l)			Mar 24, 1954			
6-CC-94	AFL-Teamsters, Local 249 (Crump Inc)	Feb. 23, 1954	10 (l)			Mar 5, 1954			
16-CC-21	AFL-Teamsters, Local 745 (Hildebrand Warehouse Co.).	Feb. 4, 1954	10 (l)			(1)			
2-CC-271	International Longshoremen's Assn , Local 996 (New York Tank Barge Co.)	Feb 17, 1954	10 (l)			(1)		Apr 22, 1954	Apr. 15, 1954.
39-CC-11	AFL-Teamsters, Local 968 (Otis Massey Co , Ltd).	Feb. 9, 1954	10 (l)			May 7, 1954			
16-CC-22	AFL-Teamsters, Local 568 (Red Ball Motor Freight).	Feb 16, 1954	10 (l) (La)			Feb 16, 1954			
16-CC-22	AFL-Teamsters, Local 968 (Red Ball Motor Freight)	Feb. 24, 1954	10 (l) (Texas)			May 4, 1954			
7-CC-22, 7-CD-8	AFL-Electrical Workers, Local 58 (R. W. Taylor Electric Co).	Feb. 9, 1954	10 (l)				Feb 26, 1954		Jan 29, 1954, in 7-CD-8
2-CC-277	Independent Brotherhood of Production, Maintenance & Operating Employees, Local 10 (Aiello Dairy Farms Co).	Mar. 18, 1954	10 (l)			Apr 19, 1954			
6-CC-95	AFL-Electrical Workers, Local 56 (American Sterilizer Co.).	Mar. 24, 1954	10 (l)			Apr 2, 1954		June 10, 1954	May 28, 1954.
5-CC-36	International Longshoremen's Assn (Steamship Trade Assn. of Baltimore).	do	10 (l)	Mar. 28, 1954	Mar. 30, 1954	Mar. 30, 1954			
1-CC-99, 1-CD-35	International Longshoremen's Assn. and Local 926 (City Lumber Co. of Bridgeport).	Mar. 29, 1954	10 (l)	Mar. 29, 1954	Apr 7, 1954	Apr 7, 1954			
15-CC-40	AFL-Teamsters, Local 270 (Gulf Shipside Storage Corp.)	Mar 19, 1954	10 (l)			(1)		June 16, 1954	May 13, 1954
16-CC-23, 24	AFL-Hod Carriers, Local 1202; AFL-Bridge, Structural Iron Workers, Local 584 (Hutton Construction Co.).	Mar 12, 1954	10 (l)			(1)		May 19, 1954	Apr. 15, 1954.
2-CC-287	International Longshoremen's Assn and Local 333 (Marine Towing & Trans. Empls Assn.).	Mar 30, 1954	10 (l)	Mar. 30, 1954					
2-CC-272	AFL-Teamsters, Local 138 (M. De Rosa, Inc.).	Mar. 5, 1954	10 (l)			(1)		Apr 16, 1954	Apr 13, 1954.
2-CC-279	International Longshoremen's Assn and Locals 791, 856, 824, 874, 895, 920, 975, and 1258 (New York Shipping Assn.).	Mar. 4, 1954	10 (l)	Mar. 4, 1954					
2-CC-288 (2)	International Longshoremen's Assn., Local 333 (New York Shipping Assn)	Mar. 30, 1954	10 (l)	Mar. 30, 1954					
4-CC-47	International Longshoremen's Assn. and Locals 1242, 1242-1, 1290, 1291, 1332, 1566, and 1694 (Phila. Marine Trade Assn).	do	10 (l)	do	Apr 5, 1954			June 4, 1954	Withdrawn
2-CB-1158, 1166, 1169.	International Longshoremen's Assn and Locals 1247 et al. (New York Shipping Assn , et al.)	Apr 1, 1954	10 (j) ED-NY	Apr. 1, 1954					
Do	do	do	10 (j) SD-NY	Apr 1, 1954					
Do	do	Apr 2, 1954	10 (j) D N. J.	Apr 2, 1954					

See footnotes at end of table.

Table 20.—Record of Injunctions Petitioned for, or Acted Upon, Fiscal Year 1954—Continued

Case No.	Union and 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 Board decision and/or order
				Date issued	Date lifted				
2-CC-276	CIO-Distributive Workers, Local-District 65 (Arlen Thread Co., Inc.).	Apr. 16, 1954	10 (l)			(1)		May 26, 1954	May 10, 1954.
1-CC-100	International Longshoremen's Assn. and Locals 805, 799, and 800, et al. (Boston Shipping Assn., Inc).	Apr. 2, 1954	10 (l)			(1)			Withdrawn.
4-CD-21	AFL-Plumbers, Local 420 (Frank W. Hake).	Apr. 21, 1954	10 (l)			May 5, 1954			
10-CC-64	AFL-Teamsters, Local 728 (National Trucking Co).	Apr. 30, 1954	10 (l)						
2-CC-290	International Longshoremen's Assn. and Local 327-1, et al. (New York Dock Co., et al.).	Apr. 23, 1954	10 (l)			(1)			
16-CC-22	AFL-Teamsters, Locals 568, et al. (Red Ball Motor Freight, Inc.).	Apr. 19, 1954	10 (l) (Ark)						
2-CC-284	International Longshoremen's Assn. and Locals 338 and 824 (Refined Syrups & Sugars Inc.).	Apr. 23, 1954	10 (l)			(1)			Withdrawn.
14-CC-56	AFL-Meat Cutters, Local 88 (Swift & Company).	Apr. 20, 1954	10 (l)						
11-CC-5, 6	AFL-Teamsters, Locals 391 and 71 (Thurston Motor Lines Inc.).	Apr. 30, 1954	10 (l)			June 1, 1954			
19-CC-60, 19-CB-311.	AFL-Pasco-Kennewick Building & Constr. Trades Council (Cisco Construction Co.)	May 25, 1954	10 (l)						
2-CC-293	AFL-Garment Workers, Ladies Local 66 (Gemsco, Inc.).	May 4, 1954	10 (l)			June 29, 1954			
10-CC-69	AFL-Teamsters, Local 612 (Goodyear Tire & Rubber Co. of Alabama).	May 28, 1954	10 (l)			June 9, 1954			
2-CC-294	AFL-Musicians, Local 802 (Gotham Broadcasting Corp.).	May 7, 1954	10 (l)			May 27, 1954			
2-CC-297	Independent Brotherhood of Production & Maintenance & Operating Employees, Local 10 (Pellio Dairy Products Co.).	May 18, 1954	10 (l)			May 25, 1954 (consent)			
2-CC-296	CIO-Electrical Workers, Local 459 (Royal Typewriter Co.).	May 13, 1954	10 (l)			June 15, 1954			
4-CC-50	AFL-Teamsters, Local 628 (American News Co.).	June 21, 1954	10 (l)						Withdrawn.
2-CD-95, 96	AFL-Bridge, Structural Iron Workers, Locals 11, 45, 373, 480, and 483 (Dravo Corp. & Merritt-Chapman & Scott Corp.).	June 28, 1954	10 (l)			(1)			

5-CC-37	AFL-Baltimore Bldg. Trades Council; AFL-Hod Carriers (Industrial Engineering Co.).	June 22, 1954	10 (l)			(1)			Settled.
20-CA-958	Pacific Telephone & Telegraph Co. (Order of Repeatermen & Toll Testboardmen).	June 8, 1954	10 (j)				June 24, 1954		
37-CC-3	AFL-Teamsters, Hawaii Local 996 (Waialua Dairy, etc.).	June 21, 1954	10 (l)						

[1] Because of suspension of unfair labor practice, case retained on court docket for further proceedings if appropriate.
[2] Consolidated with 2-CC-287.

NOTE.—Discretionary injunction indicated by 10 (j); mandatory injunction indicated by 10 (l).

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