THIRTY-SIXTH ANNUAL REPORT OF THE NATIONAL LABOR RELATIONS BOARD

FOR THE FISCAL YEAR ENDED JUNE 30

1971

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ANNUAL REPORT

OF THE

NATIONAL LABOR RELATIONS BOARD

FOR THE FISCAL YEAR

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[1] Appointed December 14, 1970, to succeed Frank W McCullock whose term expired August 27, 1970

[2] Named June 28, 1971, to succeed Eugene G Goslee, who succeeded William Feldesman.

[3] Designated June 25, 1971, to succeed Arnold Ordman whose term expired June 25, 1971.

LETTER OF TRANSMITTAL

NATIONAL LABOR RELATIONS BOARD,
Washington, D.C., January 3, 1972.

SIR: As provided in section 3(c) of the Labor Management Relations Act, 1947, I submit herewith the Thirty-sixth Annual Report of the National Labor Relations Board for the fiscal year ended June 30, 1971, and, under separate cover, lists containing the cases heard and decided by the Board during this fiscal year, and the names, salaries, and duties of all employees and officers in the employ or under the supervision of the Board.

Respectfully submitted.

EDWARD B. MILLER, *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 1971

A. Summary

The National Labor Relations Board in fiscal year 1971 (July 1, 1970, to June 30, 1971) closely approached the 40,000 case intake mark, receiving 37,212 cases, the highest 1-year total for the Agency. The 1971 case intake was 3,631 more than the 33,581 for the previous year. It might be noted that 10 years earlier, in fiscal 1961, the NLRB received 22,691 cases, about 61 percent of the 1971 load.

In 1971, the NLRB set a $1 million standard for the assertion of jurisdiction of cases involving private nonprofit colleges and universities. The first cases involving the standard raised mainly representation questions.

Intake for fiscal 1971 included 23,770 unfair labor practice cases, a substantial increase above the 21,038 of the previous year. There was also an increase in representation petitions—12,965 for fiscal 1971 compared with the 12,077 of the year before.

These two classes of cases amounted to 98.7 percent of the 1971 intake. The remaining 1.3 percent included union-shop deauthorization petitions (0.5 percent), amendments to certification petitions (0.2 percent), and unit clarification petitions (0.6 percent). (Chart 1.)

In closing cases, the Agency made a record in fiscal 1971. It closed 37,200 cases, of which 23,840 involved unfair labor practice charges and 13,360 affected employee representation. (Tables 7, 8, 9, and 10 give statistics on stage and method of closing by type of case.)

The major portion of cases are closed at the NLRB's 31 regional offices, significantly contributing to administration of the National Labor Relations Act. In fiscal 1971, about 92.9 percent of the 23,840 unfair labor practice cases were closed by regional offices, making formal decisions unnecessary. At the regional offices 23.5 percent of the total closed by the Agency were settled or adjusted voluntarily by the parties; 35.5 percent were withdrawn voluntarily by the charging parties; and 33.9 percent were dismissed administratively. Another

1.7 percent were disposed of by other means, without Board adjudication. Remaining was 5.4 percent, which went to the Board as contested cases. (Chart 3.)

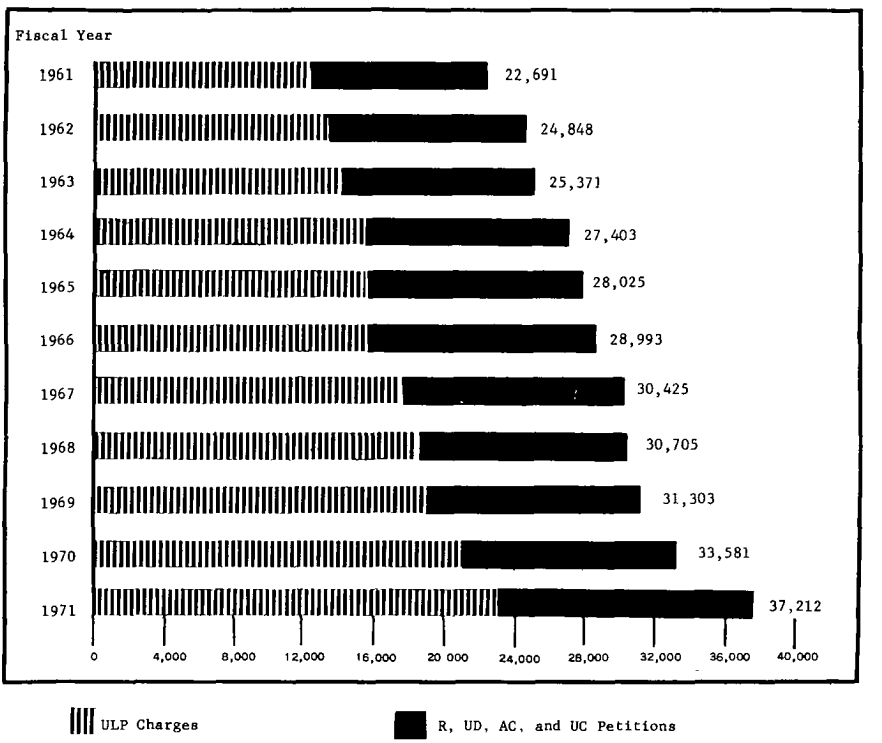
In fiscal 1971, the Agency conducted 8,459 secret ballot elections of all types, a gain over the 8,161 of the previous year. In 1971 elections, 80 percent were arranged by agreement of the parties as to the appropriate unit, date, and place of election.

Statistical tables on the Agency's activities in fiscal 1971 will be found in Appendix A of this report, along with a glossary of terms used in the tables and a subject index. An index of cases discussed in this report precedes Appendix A.

1. NLRB Administration

The National Labor Relations Board is an independent Federal agency created by Congress in 1935 to administer the National Labor Relations Act. The Act was amended in 1947 (Taft-Hartley Act) and in 1959 (Landrum-Griffin Act).

CASE INTAKE BY UNFAIR LABOR PRACTICE CHARGES AND REPRESENTATION PETITIONS

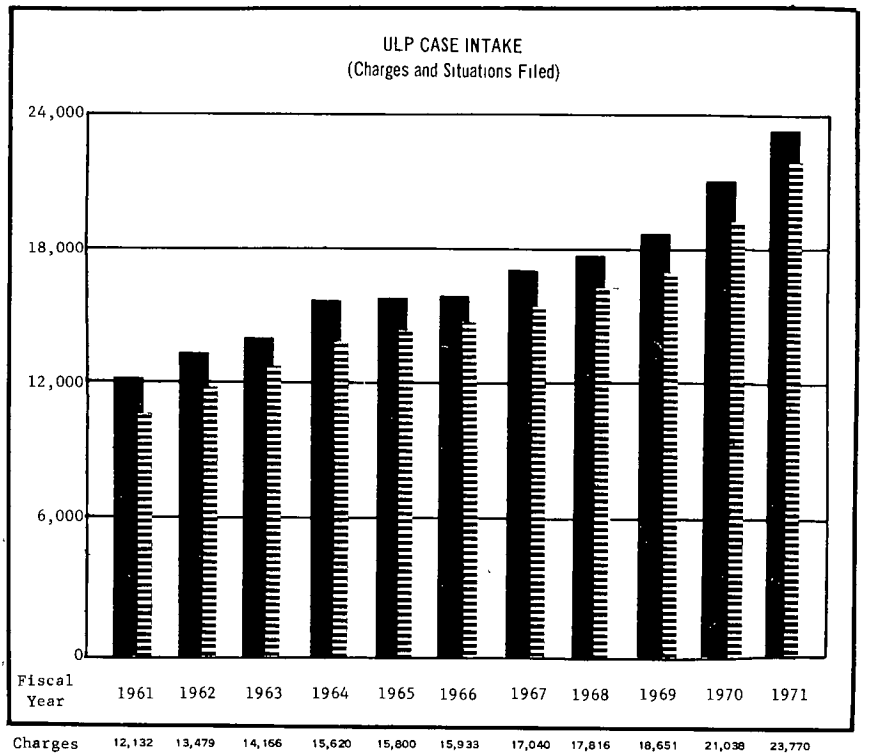


Board Members in fiscal 1971 were Chairman Edward B. Miller of Illinois, John H. Fanning of Rhode Island, Gerald A. Brown of California, Howard Jenkins, Jr., of Colorado, and Ralph E. Kennedy of California. Arnold Ordman of Maryland was General Counsel.

Edward B. Miller of Illinois became Board Chairman on June 3, 1970. Mr. Frank W. McCulloch, former Chairman, remained a Board Member until expiration of his term on August 27, 1970. Mr. Brown remained a Board Member until expiration of his term on August 27, 1971. Mr. Kennedy became a Board Member December 14, 1970.

Although the Act administered by the NLRB has become complex, a basic national policy remains the same. Section 1 of the Act concludes, as it has since 1935, that:

> It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and



Fiscal Year	1961	1962	1963	1964	1965	1966	1967	1968	1969	1970	1971
Charges	12,132	13,479	14,166	15,620	15,800	15,933	17,040	17,816	18,651	21,038	23,770
Situations	10,592	11,877	12,719	13,978	14,423	14,539	15,499	16,343	17,045	19,402	22,098

designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

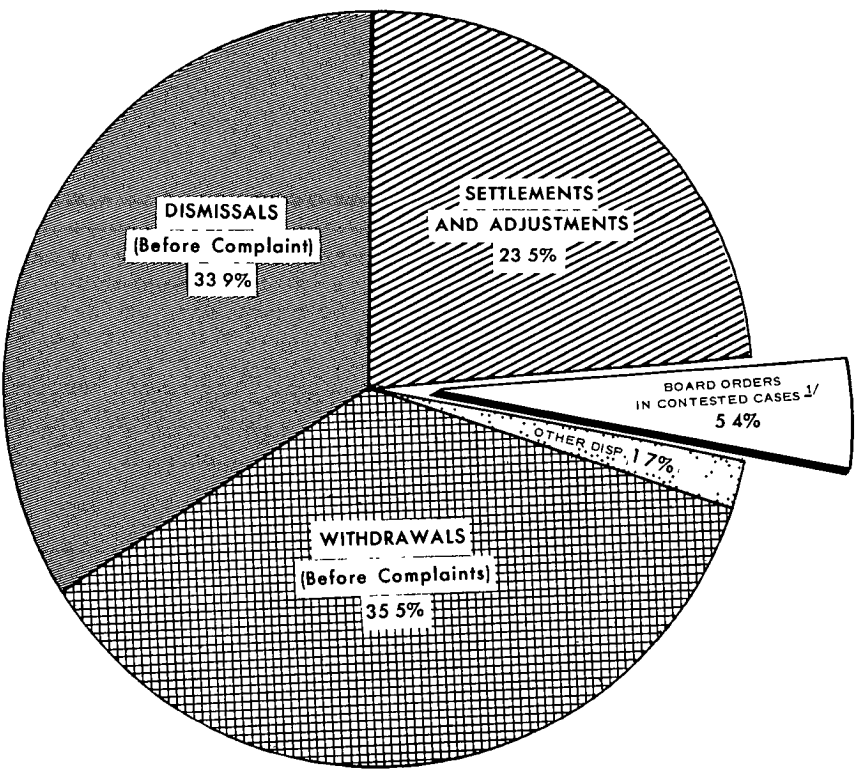
Under the statute the NLRB has two primary functions—(1) to determine by agency-conducted secret ballot elections whether employees wish to have unions represent them in collective bargaining, and (2) to prevent and remedy unfair labor practices whether by labor organizations or employers.

The Act's unfair labor practice provisions place certain restrictions on actions of both employers and unions in their relations with em-

DISPOSITION PATTERN FOR UNFAIR LABOR PRACTICE CASES

(BASED ON CASES CLOSED)

FISCAL YEAR 1971

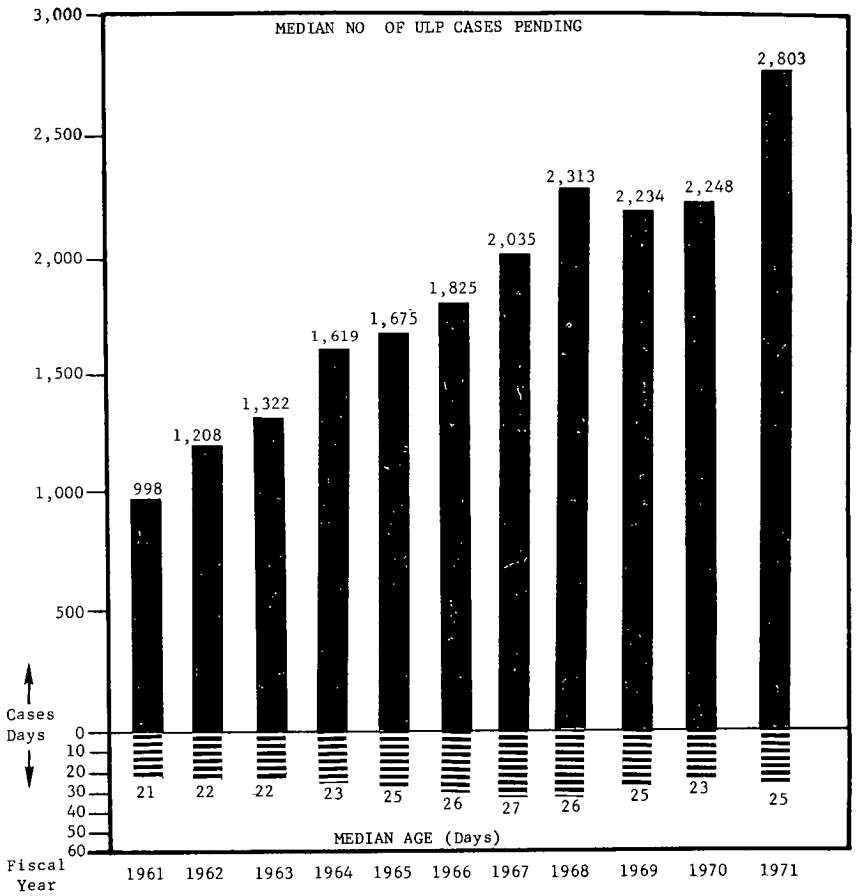


1/ CONTESTED CASES REACHING BOARD MEMBERS FOR DECISIONS

ployees, as well as with each other, and its election provisions provide mechanics for conducting and certifying results of representation elections to determine collective-bargaining wishes of employees, including balloting on petitions to decertify unions as bargaining agents as well as voting to determine whether a union shall continue to have the right to make a union-shop contract with an employer.

In handling unfair labor practice cases and petitions for elections, the Agency is concerned with the adjustment of labor disputes either by way of settlements or through its quasi-judicial proceedings, or by way of elections. Congress created the Agency in 1935 because labor disputes could and did threaten the health of the economy. In the 1947 and 1959 amendments to the Act, Congress increased the scope of the Agency's regulatory powers.

NUMBER AND AGE OF UNFAIR LABOR PRACTICE CASES PENDING UNDER PRELIMINARY INVESTIGATION, MONTH TO MONTH

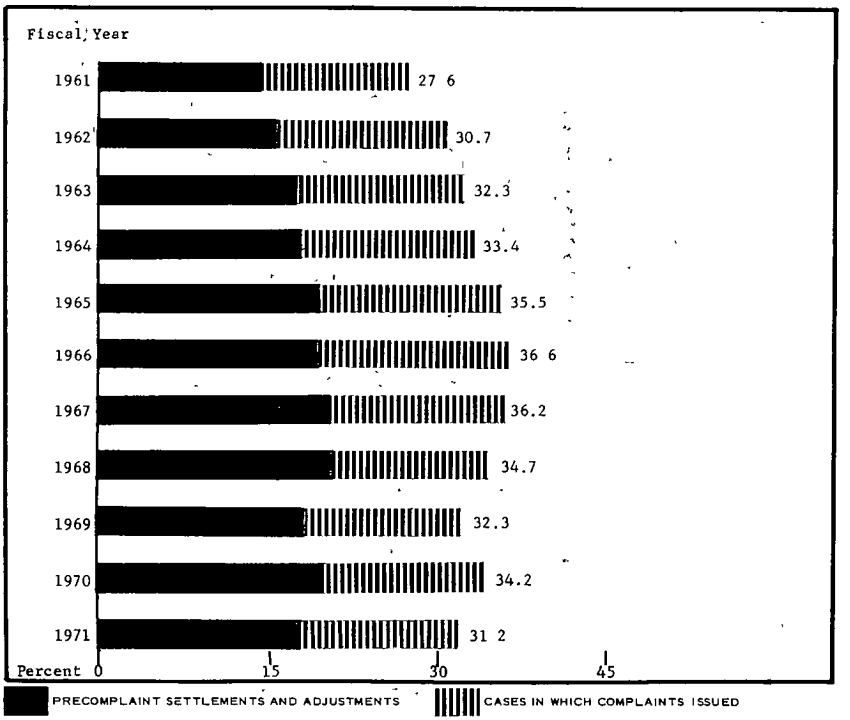


The NLRB has no statutory independent power of enforcement of its orders but may seek enforcement in the U.S. courts of appeals. Similarly, parties may seek judicial review.

Agency authority is divided by law and by delegation. The Board Members primarily act as a quasi-judicial body in deciding cases upon formal records. The General Counsel is responsible for the issuance and prosecution of formal complaints and for prosecution of cases before the courts and has general supervision of the NLRB regional offices.

For the conduct of its formal hearings in unfair labor practice cases, the NLRB employs trial examiners who hear and decide cases. Trial examiners' decisions may be appealed to the Board in the form of exceptions taken, but, if no exceptions are taken, under the statute the trial examiners' recommended orders become orders of the Board.

UNFAIR LABOR PRACTICE MERIT FACTOR

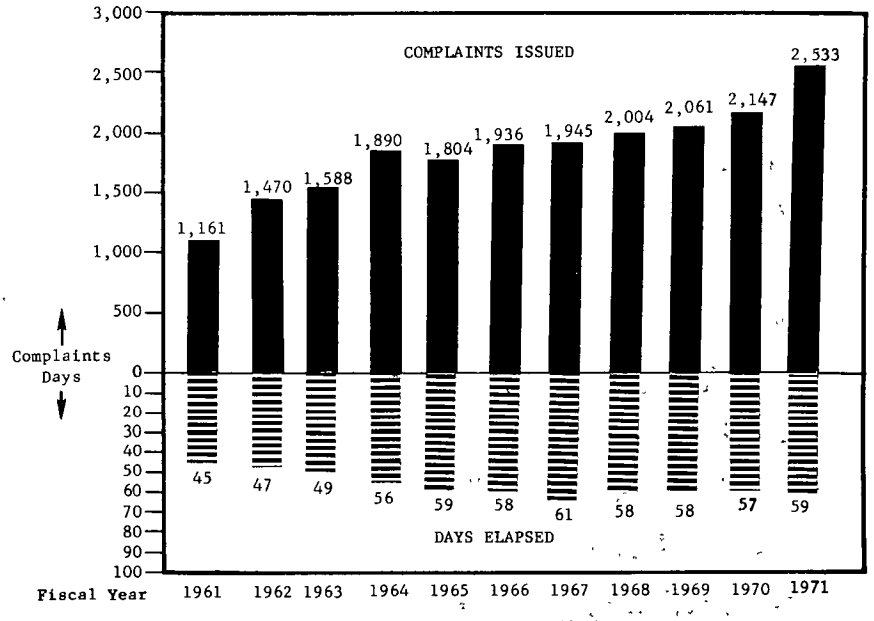


	1961	1962	1963	1964	1965	1966	1967	1968	1969	1970	1971
PRECOMPLAINT SETTLEMENTS AND ADJUSTMENTS (%)	14.1	15.3	17.5	17.8	19 4	19 4	20.5	20 2	18.4	20.4	17 7
CASES IN WHICH COMPLAINTS ISSUED (%)	13.5	15.4	14.8	15.6	16 1	17 2	15 7	14 5	13.9	13 8	13 5
TOTAL MERIT FACTOR (%)	27 6	30.7	32.3	33 4	35.5	36.6	36 2	34 7	32.3	34 2	31.2

All cases coming to the Agency begin their processing in NLRB regional offices, either through filing of unfair labor practice charges or employee representation petitions. Since the NLRB may not act on its own motion in either type of case, charges and petitions are initiated at regional offices by employers, individuals, or unions.

In addition to their processing of unfair labor practice cases in the initial stages, regional directors also have the authority to investigate employee representation petitions, determine appropriate employee units for collective-bargaining purposes, conduct elections, and pass on objections to conduct of elections. There are provisions for appeal of representation and election questions to the Board.

COMPLAINTS ISSUED IN UNFAIR LABOR PRACTICE PROCEEDINGS AND MEDIAN DAYS FROM FILING TO COMPLAINT



2. Case Activity Highlights

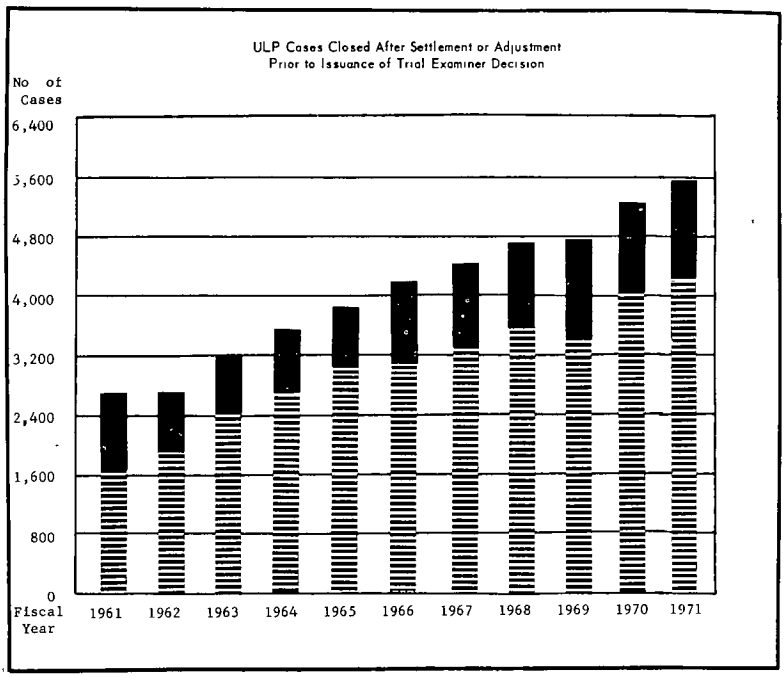
NLRB caseload, in fiscal 1971, showed record high numbers in intake of cases, case closures (particularly those involving unfair labor practice charges), Board decisions issued, as well as increases in a number of other areas.

NLRB activity in 1971, coming from employers', employees', and labor organizations' requests for adjustments of labor disputes and answers to questions concerning employee representation, included:

478-027 O—72——2

- Intake—a total of 37,212 cases, of which 23,770 were unfair labor practice charges and 13,442 were representation petitions and related cases.
- Closed—a total of 37,200, with a record number, 23,840, involving unfair labor practice charges.
- Board decisions issued—1,239 unfair labor practice decisions and 2,962 representation decisions and rulings, the latter by Board and regional directors.
- General Counsel's office (and regional office personnel) —issued 2,533 formal complaints

UNFAIR LABOR PRACTICE CASES SETTLED



Fiscal Year	Precomplaint	Postcomplaint	Total
1961	1,693	1,038	2,731
1962	2,008	744	2,752
1963	2,401	796	3,197
1964	2,750	846	3,596
1965	3,003	821	3,824
1966	3,085	1,176	4,261
1967	3,390	1,072	4,462
1968	3,608	1,089	4,697
1969	3,451	1,266	4,717
1970	4,054	1,174	5,228
1971	4,277	1,322	5,599

—closed 1,090 initial unfair labor practice hearings, including 65 hearings under section 10(k) of the Act (job assignment disputes).

- Regional directors issued 1,947 initial decisions in representation cases.
- Trial examiners issued 930 initial decisions plus 35 on backpay and supplemental matters.
- There were 5,599 unfair labor practice cases settled or adjusted before issuance of trial examiners' decisions.
- Regional offices distributed $4,594,650 in backpay to 6,770 employees. There were 4,068 employees offered reinstatement; 2,763 accepted.
- Regional office personnel sat as hearing officers at 2,397 representation hearings—2,161 initial hearings and 236 on objections and/or challenges.
- There were 519,619 employees who cast ballots in NLRB-conducted representation elections.
- Appeals courts handed down 371 decisions related to enforcement and/or review of Board orders—87 percent affirmed the Board in whole or in part.

B. Operational Highlights

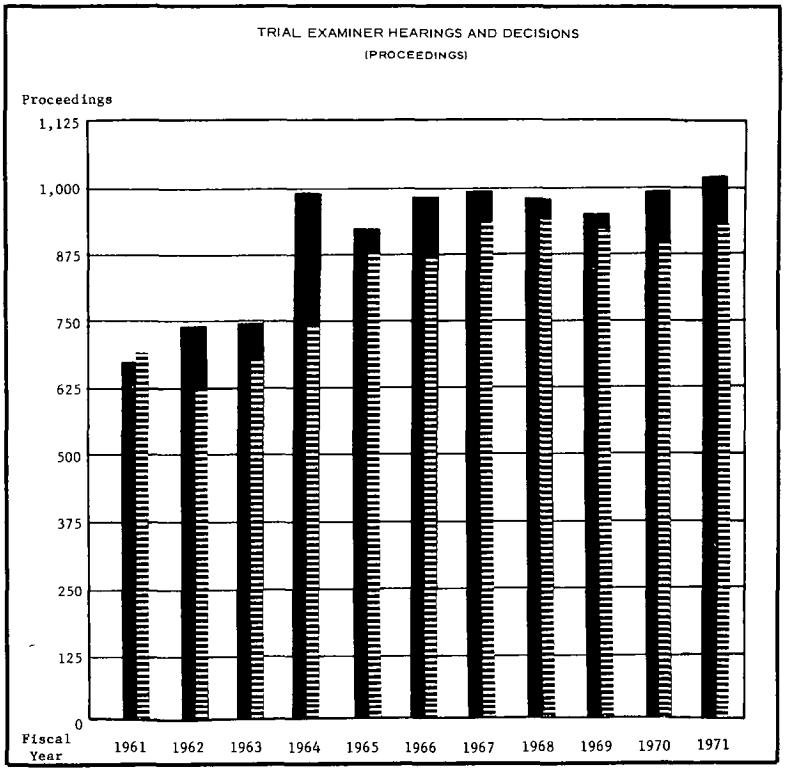
1. Unfair Labor Practices

In fiscal 1971 there were 23,770 unfair labor practice cases filed with the NLRB, a considerable increase of 2,732 over the 21,038 filed in fiscal 1970. The cases filed in 1971 were more than a 95-percent increase over those filed 10 years ago. In situations, in which related charges are counted as a single unit, there was a 13.9 percent increase over fiscal 1970. (Chart 2.)

In 1971, alleged violations of the Act by employers increased to 15,467 cases, an almost 14-percent rise from the 13,601 of 1970. Charges against unions rose more than 12 percent, to 8,250 in 1971 from the 7,330 of 1970.

There were 53 charges of violations of section 8(e) of the Act, which bans hot cargo agreements: 39 against unions and 14 against both unions and employers. (Tables 1 and 1A.)

Regarding 1971 charges against employers, 10,368 (or 67 percent of the 15,467 total) alleged discrimination or illegal discharge of employees. There were 5,018 refusal-to-bargain allegations in about one-third of the charges. (Table 2.)

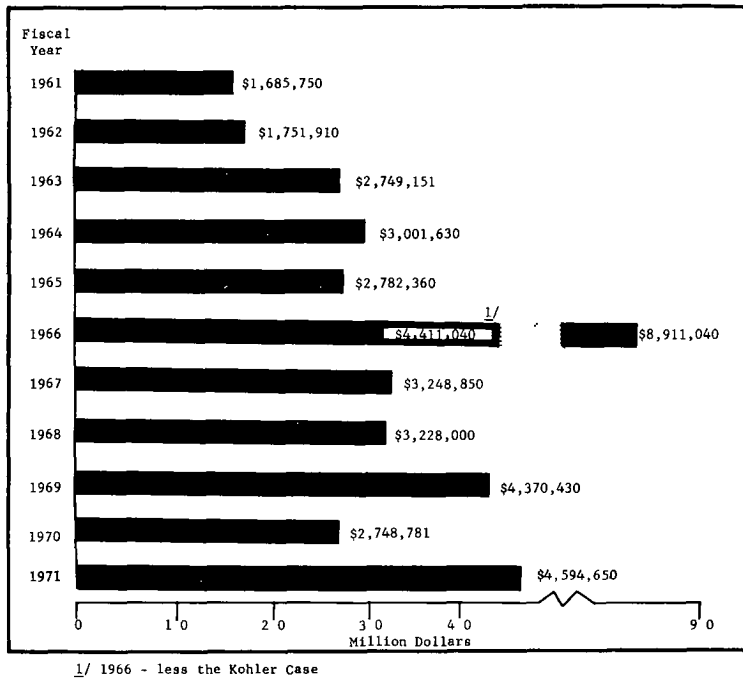


On charges against unions in 1971 there were 4,755 alleging illegal restraint and coercion of employees, about 58 percent as against the 55 percent of similar filings in 1970. There were 2,427 charges against unions for illegal secondary boycotts and jurisdictional disputes, 6.0 percent more than the 2,290 of 1970.

There were 1,921 charges of illegal union discrimination against employees in 1971. There were 472 charges of unions picketing illegally for recognition or for organizational purposes, an increase from the 409 such charges in 1970. (Table 2.)

In charges against employers in 1971, unions led by filing 62 percent. Unions filed 9,563; individuals filed 5,893 charges (38 percent); and employers filed 11 charges against other employers.

AMOUNT OF BACKPAY RECEIVED BY DISCRIMINATEES

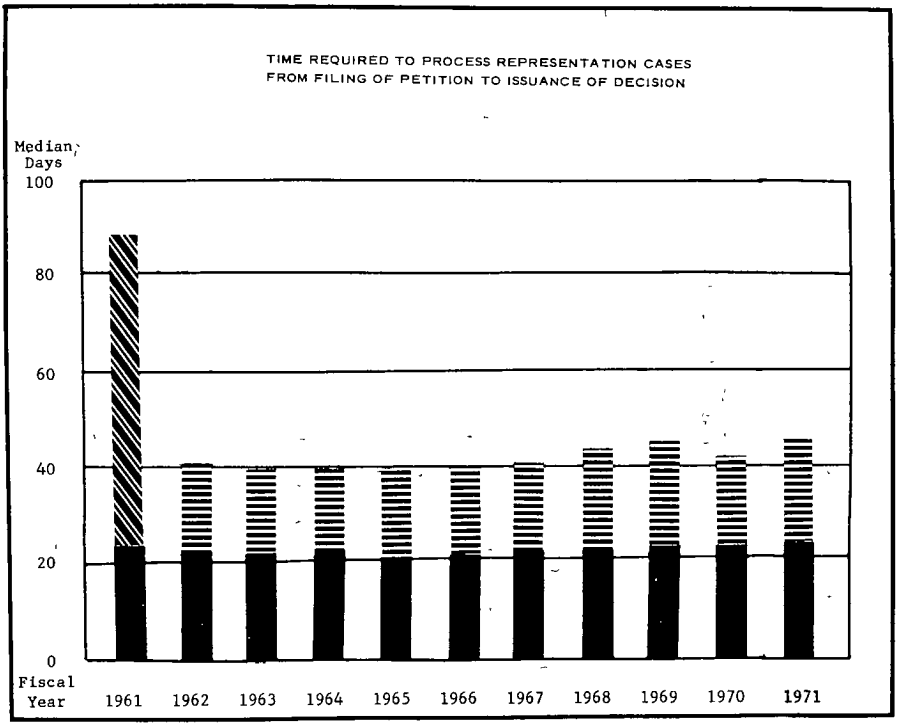


1/ 1966 - less the Kohler Case

More than half the charges against unions were filed by individuals—4,166—or 50.5 percent of the 1971's total of 8,250. Employers filed 3,792 or 46 percent of the charges. Other unions filed the 292 remaining charges. Of the 53 hot cargo charges against unions and/or employers (involving the Act's section 8(e)) 44 were filed by employers, 2 by individuals, and 7 by unions.

As to the record high 23,840 cases closed in 1971, about 92.9 percent were closed by NLRB regional offices, as compared with 92.3 percent in 1970. In 1971 there were 23.5 percent of cases settled or adjusted before issuance of trial examiners' decisions; 35.5 percent by withdrawal; and 33.9 percent by administrative dismissal. In 1970 the percentages were 25, 36.2, and 29.8, respectively.

The number of unfair labor practice charges found to have merit is important to the evaluation of regional workload. In fiscal 1958, 20.7 percent of cases were found to have merit. The highest level was 36.6 percent in fiscal 1966. In fiscal 1971 it was 31.2 percent.



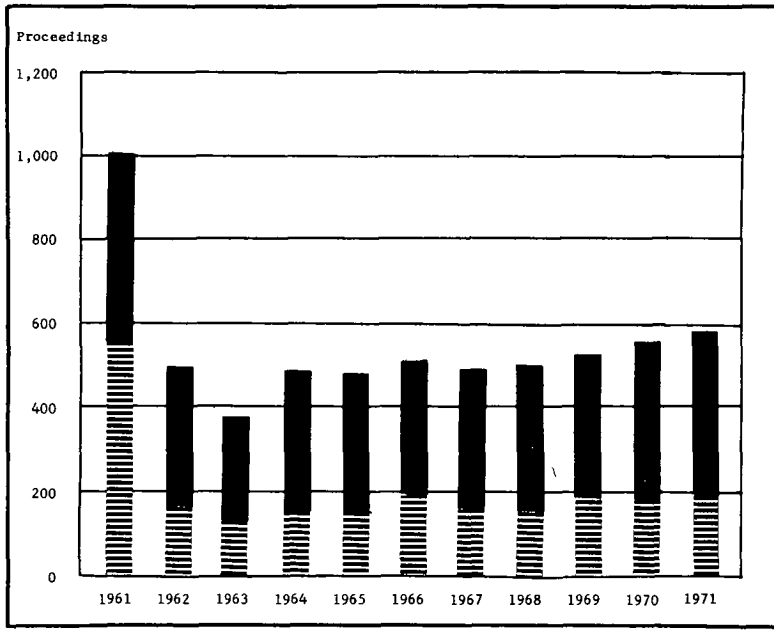
FISCAL YEAR	FILING TO CLOSE OF HEARING	CLOSE OF HEARING TO BOARD DECISION	CLOSE OF HEARING TO REGIONAL DIRECTOR DECISION
1961	24	65	-
1962	23	-	18
1963	22	-	17
1964	22	-	17
1965	21	-	18
1966	21	-	19
1967	22	-	20
1968	22	-	22
1969	23	-	22
1970	23	-	20
1971	24	-	23

In 1971 the merit factor in charges against employers was 31.2 percent as against 33.8 percent in 1970. In charges against unions the merit factor was 31.3 percent in fiscal 1971; it was 35 percent in fiscal 1970.

Since 1962 (see chart 5) more than 50 percent of merit charges have resulted in precomplaint settlements and adjustments; these amounted to 57 percent in fiscal 1971.

In 1971 there were 3,245 merit charges which caused issuance of complaints, and 4,277 precomplaint settlements or adjustments of meritorious charges. The two totaled 7,522, or 31.2 percent, of the unfair labor practice cases. (Chart 5.)

BOARD CASE BACKLOG



Proceedings	1961	1962	1963	1964	1965	1966	1967	1968	1969	1970	1971
C	460	323	256	344	336	323	343	352	356	382	390
R	549	165	122	142	148	190	146	144	171	171	196
Totals	1,009	488	378	486	484	513	489	496	527	553	586

In fiscal 1971 NLRB regional offices issued 2,533 complaints, about 18 percent more than the 2,147 issued in 1970. (Chart 6.)

Of complaints issued, 76.3 percent were against employers, 20.2 percent against unions, and 3.5 percent against both employers and unions.

In 1971, NLRB regional offices processed cases from filing of charges to issuance of complaints in a median of 59 days, just 2 more than in 1970. The 59 days included 15 days in which parties had the opportunity to adjust charges and remedy violations without resort to formal NLRB processes. (Chart 6.)

Trial examiners in 1971 conducted 1,025 initial hearings involving 1,453 cases, compared with 990 hearings involving 1,347 cases in 1970. (Chart 8 and table 3A). Also, trial examiners conducted 33 additional hearings in 1971 in supplemental matters.

At the end of fiscal 1971 there were 8,206 unfair labor practice cases pending before the Agency, 1 percent less than the 8,276 cases pending at the end of fiscal 1970.

In fiscal 1971 the NLRB awarded backpay to 6,770 workers, in total amounting to $4.6 million. The backpay was 67 percent more than in fiscal 1970. (Chart 9.)

Employees in fiscal 1971 received $230,925 in reimbursement for fees, dues, and fines as a result of charges filed with the NLRB.

During fiscal 1971, in 1,248 cases there were 4,068 employees offered reinstatement, and 2,763, or 68 percent, accepted reinstatement. In fiscal 1970, about 72 percent of the employees accepted offered reinstatement.

Work stoppages ended in 349 of the cases closed in fiscal 1971. Collective bargaining was begun in 1,620 cases. (Table 4.)

2. Representation Cases

In fiscal 1971 the NLRB received 13,442 representation petitions. These included 12,023 collective-bargaining cases; 942 decertification petitions; 168 union-shop deauthorization petitions; 86 petitions for amendment of certification; and 223 petitions for unit clarification. The NLRB's total representation intake was about 7 percent, or 899 cases, above the 12,543 of fiscal 1970.

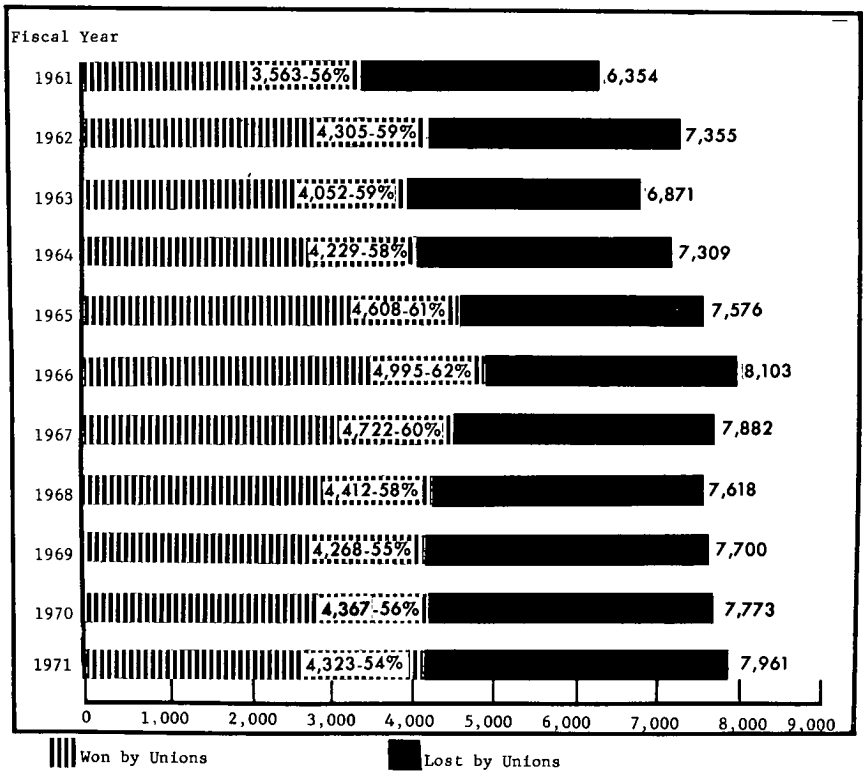
There were 13,360 representation cases closed in fiscal 1971, about 6.9 percent above the 12,502 closed in fiscal 1970. Cases closed in 1971 included 11,989 collective-bargaining petitions, 907 petitions for elections to determine whether unions should be decertified, 163 petitions for employees to decide whether unions should retain authority to make union-shop agreements with employers, and 301 unit clarification and amendment of certification petitions. (Chart 14 and tables 1 and 1B.)

There were 13,059 representation and union-deauthorization cases closed in fiscal 1971. About 66 percent, or 8,611 cases, were closed after elections. There were 3,281 withdrawals, 25 percent of the total number of cases, and 1,167 dismissals.

Of the 8,611 cases closed, 6,922, or 80 percent (80 percent in 1970), were conducted under election agreements.

The NLRB regional directors ordered elections following hearings in 1,563 cases, or 18 percent of those closed by elections. There were 28 cases which resulted in expedited elections pursuant to the Act's 8(b)(7)(C) provisions pertaining to picketing. Board elections in 98 cases, about 1 percent of election closures, followed appeals or transfers from regional offices. (Table 10.)

COLLECTIVE-BARGAINING ELECTIONS CLOSED



3. Elections

There were 8,459 conclusive elections in cases closed in fiscal 1971. Of those, 7,961 (94 percent) were collective-bargaining elections. (Chart 12.) During the year there also were 401 elections conducted to determine whether incumbent unions would continue to represent employees, and 97 elections to decide whether unions would continue to have authority to make union-shop agreements with employers.

Unions lost the right to make union-shop agreements in 57 of the 97 deauthorization elections, while they maintained the right in 40 other elections, which covered 4,088 employees. (Table 12.)

By voluntary agreement of parties involved, 6,750 stipulated and consent elections were conducted. These were 80 percent of the total elections, compared with 80 percent in fiscal 1970. (Table 11.)

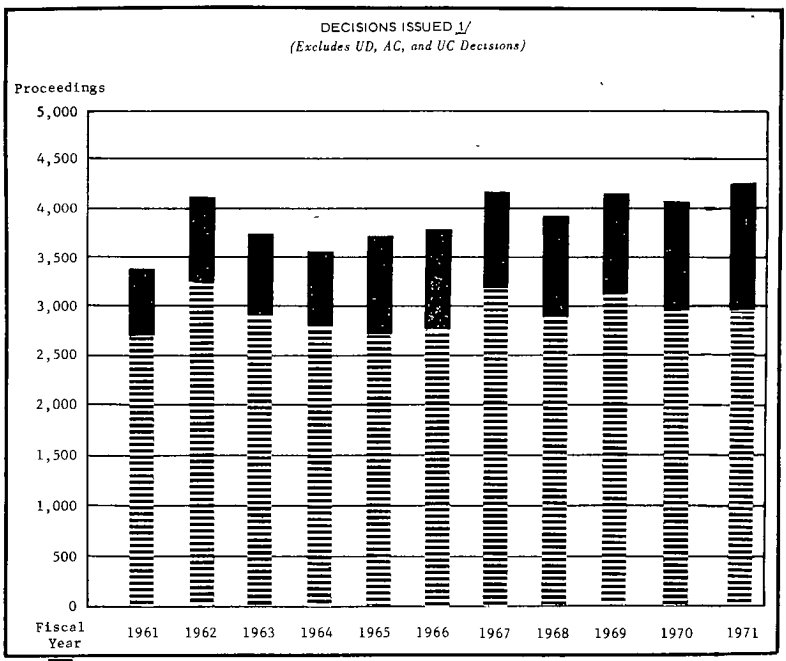
With less elections won by unions in 1971 as compared with 1970, less employees (514,284 in 1971; 531,402 in 1970) exercised their right to vote. For all types of elections, the average number of employees

voting, per establishment, was 62 (4 less than in 1970). In about three-fourths of collective-bargaining elections each involved 59 or fewer employees. There was about the same average of 59 employees for the decertification elections. (Tables 11 and 17.)

In decertification elections, unions won in 122, lost in 279. Unions retained the right of representation of 9,953 employees in the 122 elections won. Unions lost the right of representation of 10,773 employees in the 279 in which they did not win. As to size of bargaining units involved, unions won in units averaging 82 employees and lost in units averaging 39 employees. (Table 13.)

4. Decisions Issued

There were 4,369 decisions issued by the Agency in fiscal 1971, a 1-percent increase from the 4,327 decisions of fiscal 1970. Board Members issued 1,958 decisions in 2,500 cases—54 less decisions than the 2,012 of 1970. Regional directors issued 2,411 decisions in 2,576 cases, an increase of 96 over the 2,315 decisions in 1970.



Fiscal Year	1961	1962	1963	1964	1965	1966	1967	1968	1969	1970	1971
C	655	903	854	776	1,000	991	1,023	1,033	1,063	1,167	1,239
R	2,718	3,211	2,857	2,812	2,707	2,769	3,155	2,869	3,108	2,927	2,962
Totals	3,373	4,114	3,711	3,588	3,707	3,760	4,178	3,902	4,171	4,094	4,201

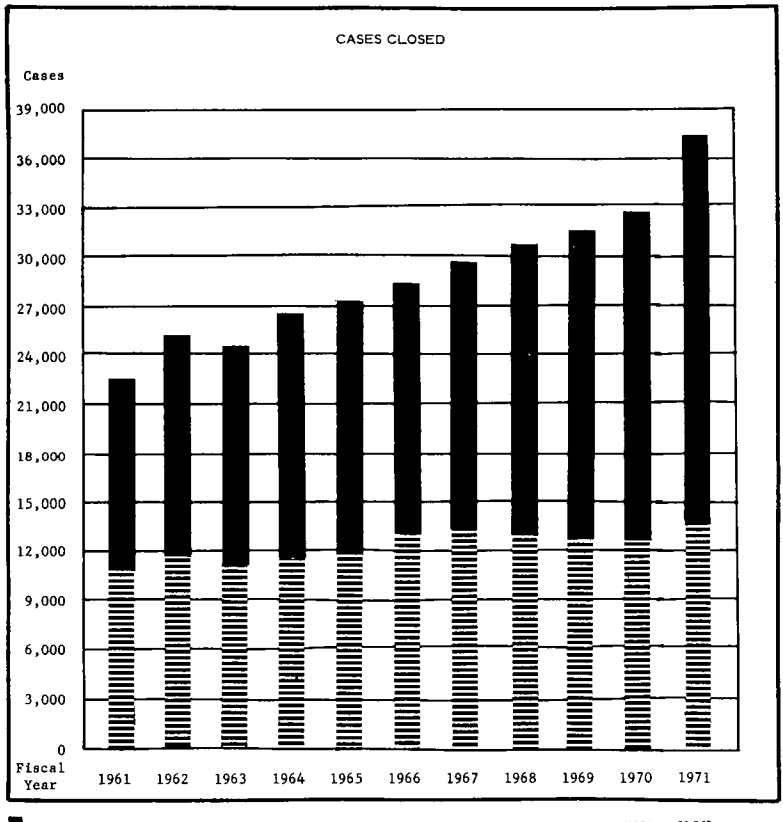
1/ Includes supplemental decisions in unfair labor practice cases and decisions on objections and/or challenges in election cases

Trial examiners issued 930 decisions and recommended orders in fiscal 1971, a 4-percent increase from the 894 of fiscal 1970. (Chart 8.)

Trial examiners in 1971 also issued 24 backpay decisions (20 in 1970) and 11 supplemental decisions (20 in 1970). (Table 3A.)

In 1971 Board Members and regional directors issued 4,201 decisions involving 4,884 unfair labor practice and representation cases. (Chart 13.) The Board and regional directors issued 168 decisions in 192 cases regarding clarification of employee bargaining units, amendments to union representation certifications, and union-shop deauthorization cases.

Parties contested the facts or application of the law in 1,242 of the 1,958 Board decisions.



	1961	1962	1963	1964	1965	1966	1967	1968	1969	1970	1971
C CASES	12,526	13,319	13,605	15,074	15,219	15,587	16,360	17,777	18,939	19,851	23,840
R, UD, AC, AND UC CASES	10,289	11,708	11,073	11,641	11,980	12,917	13,134	12,973	12,658	12,502	13,360
TOTALS	22,815	25,027	24,678	26,715	27,199	28 504	29,494	30,750	31,597	32,353	37,200

The contested decisions follow:

Total contested Board decisions	1,242
Unfair labor practice decisions	850
Initial (includes those based on stipulated record)	743
Supplemental decisions	26
Backpay decisions	12
Determinations in jurisdictional disputes	69
Representation decisions total	371
After transfer by regional directors for initial decisions	109
After review of regional directors' decisions	31
Decisions on objections and/or challenges	231
Clarification of bargaining unit decisions	15
Amendment to certification decisions	3
Union deauthorization decisions	3

This talley left 716 decisions which were not contested before the Board.

A relatively small number of contested cases reach the Board Members. This is accounted for by case settlements, adjustments, withdrawals, and dismissals. (Chart 3 and Tables 7 and 7A.) These processes effectively dispose of a vast bulk of charges filed with the Agency without the need of extended litigation.

A number of related cases may be covered in Board decisions. In fiscal 1971, the 743 initial contested unfair labor practice decisions were concerned with 1,019 cases. The Board found violations of the Act in 814 of the latter, or 80 percent. In 1970 violations were found in 734, or 83 percent, of the 886 contested cases.

In terms of *cases* involved, the contested decisions by the Board showed the following results:

1. *Employers*—During fiscal 1971 the Board ruled on 774 contested ULP cases against employers, or 5 percent of the 15,514 ULP cases against employers disposed of by the Agency and found violations in 637 cases or 82 percent as compared with 86 percent in 1970. The Board remedies in these cases included ordering employers to reinstate 1,066 employees with or without backpay; to give backpay without reinstatement to 56 employees; to cease illegal assistance to or domination of labor organizations in 18 cases; and to bargain collectively with employee representatives in 220 cases.

2. *Unions*—In fiscal 1971 Board rulings encompassed 245 contested ULP cases against unions including four "hot-cargo" cases. These amounted to 3 percent of the 8,326 union cases closed in fiscal 1971. Of these 245 cases, violations were found in 177 cases or 72 percent, the same percentage as in fiscal 1970. The remedies in the 177 cases included orders to unions in 4 cases to cease picketing and to give 197 employees backpay. Unions and employers were held jointly liable for backpay for 7 of the 197 employees.

At the close of fiscal 1971, there were 586 decisions pending issuance by the Board—390 dealing with alleged unfair labor practices and 196 with employee representation questions. The total was a 6-percent increase over the 553 decisions pending at the beginning of the year. (Chart 11.)

5. Court Litigation

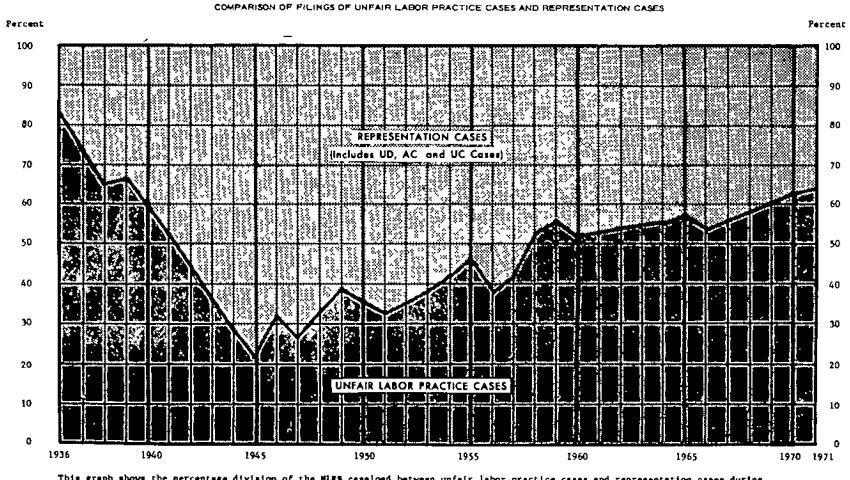
In fiscal 1971, U.S. courts of appeals handed down 371 decisions in NLRB-related cases, 49 more decisions than in fiscal 1970. In the 371 decisions NLRB was affirmed in whole or in part in 87 percent. This was an increase over the 84 percent in the 322 cases of the prior year.

A breakdown of appeals courts rulings in fiscal 1971 follows:

Total NLRB cases ruled on	371
Affirmed in full	275
Affirmed with modification	46
Remanded to NLRB	15
Partially affirmed and partially remanded	1
Set aside	34

In 21 contempt cases (16 in the prior year) before the appeals courts, the respondents in 7 cases complied with the NLRB order after the contempt petition had been filed but before court decision. In 13, the courts held the respondents in contempt, and in 1 a court denied the Agency's petitions. (See tables 19 and 19A.)

The U.S. Supreme Court affirmed in full two NLRB orders. In another case the Board order was set aside. In a fourth case, the case was remanded to the circuit court of appeals. The NLRB appeared as *amicus curiae* in two cases. The position the NLRB supported was sustained in both cases.



This graph shows the percentage division of the NLRB caseload between unfair labor practice cases and representation cases during fiscal years 1936 - 1971

U.S. District Courts is fiscal 1971 granted 118 contested cases litigated to final order on NLRB injunction requests filed pursuant to section 10(j) and 10(l) of the Act. This amounted to 93 percent of the contested cases, compared with 97 cases granted in fiscal 1970, or 87 percent.

The following shows NLRB injunction activity in district courts in fiscal 1971:

Granted	118
Denied	9
Withdrawn	14
Dismissed	19
Settled or placed on courts' inactive docket	103
Awaiting action at end of the fiscal year	6

There were 252 NLRB-related injunction petitions filed with the district courts in 1971, as against 228 in 1970. The NLRB in 1971 also filed six petitions for injunctions in appeals courts pursuant to provisions of the Act's section 10(e). The appeals courts ruled on four petitions involving that same section of the Act, denying all four. (See table 20.)

In fiscal 1971 there were 43 additional cases involving miscellaneous litigation decided by appellate and district courts, 35 of which upheld the NLRB's position. (See Table 21.)

C. Decisional Highlights

In the course of the Board's administration of the report year, it was required to consider and determine complex problems arising from the many factual patterns in the various cases reaching it for decision. In some cases new developments in industrial relations, as presented by the factual situation, required the Board's accommodation of established principles to those developments. Chapter II on Jurisdiction of the Board, chapter III on Effect of Concurrent Arbitration Proceedings, chapter IV on Board Procedure, chapter V on Representation Proceedings, and chapter VI on Unfair Labor Practices discuss some of the more significant decisions of the Board during the fiscal year. The following summarizes briefly some of the decisions establishing basic principles in certain areas.

1. Units for Bargaining

During the year the Board was for the first time required to make a unit determination for faculty members at institutions of higher learning. In *C. W. Post Center of Long Island University*,[1] the Board

[1] 189 NLRB No. 109, *infra*, p. 43.

concluded that the policy making and quasi-supervisory authority over the academic program and academic personnel of the university "which adheres to full-time faculty status but is exercised by them only as a group" did not establish the faculty members individually as supervisors or as managerial employees who must be separately represented. Applying the usual principles for unit determinations—which it considered suitable for evaluating the various attributes of faculty status—the Board found that all full-time faculty, adjunct faculty, and professional librarians, excluding deans and department chairmen as supervisors, comprised an appropriate professional unit.

2. The Bargaining Obligation

The scope of the bargaining obligations was further defined by Board decisions concerning the employer's obligation upon receipt of a bargaining demand, and the bargaining obligation created by a prehire agreement valid under section 8(f) of the Act. In *Linden Lumber*,[2] the Board considered the question of whether an employer, who expresses a preference for an election rather than recognizing a union upon a demand supported by authorization cards or other objective evidence of majority status, is thereby obligated to initiate such an election by his own petition. In the case before the Board the employer had refused to accept the proferred authorization cards on grounds of supervisory solicitation; had refused to enter into a consent election upon the union's petition; and had continued to refuse to recognize the union even after the employees struck. It did not, however, engage in conduct which might have precluded a fair election. The Board held that the employer, absent election interference, was not obligated to initiate the election by his own petition, since any contrary rule would require the Board to appraise the employer's good faith in rejecting the demand. It emphasized that the employer had never voluntarily agreed to any means of resolution of the majority status question other than by a Board election and that the preferred route of an election would always be available when the parties did not voluntarily resolve the issue.

The Board's extended examination in the *R. J. Smith Construction Co.*, case[3] of the legislative history of section 8(f) caused it to conclude that the section "was enacted to immunize employers in the building and construction industry from the strictures of section 8(a) of the Act in situations where they recognize and enter into [prehire] agreements," but that it was not intended to render a union so recog-

[2] *Linden Lumber Div., Summer & Co.*, 190 NLRB No. 116, *infra*, p. 66.
[3] 191 NLRB No. 135, *infra*, p. 90.

nized as fully immune from challenge to its majority status during the contract term as a union recognized after demonstration of majority support. It therefore held that, since an 8(f) contract did not itself give rise to a presumption of majority status, an employer did not violate its bargaining obligation when, during the term of a prehire contract, it withdrew recognition from the union and made unilateral changes in working conditions, in a situation where the union had concededly never achieved majority status during the contractual relationship. In a companion case,[4] the Board found that a prehire agreement describing in only broad general terms the geographic areas in which it was applicable was not sufficient to support a refusal-to-bargain charge for failure to abide by its terms. It viewed such an agreement as "merely a preliminary step that contemplates further action for the development of a full bargaining relationship"—such action to include the execution of supplemental agreements identifying specific projects or covering specified areas.

3. Union Fines

Issues concerning the legality of fines imposed by unions upon their members to enforce union discipline continued to require Board consideration during the report year, including issues concerning the reasonableness of fines imposed and the legality of fines levied for actions engaged in after resignation from the union. In *Arrow Development*[5] the Board held that the reasonableness of the amount of a court-collectible fine imposed on a union member for failure to honor his union's picket line was not relevant to a determination of whether the imposition violated section 8(b)(1)(A). It concluded that Congress did not intend for the Board to regulate the size and reasonableness of such fines, but rather that the question of reasonableness was an equitable consideration more appropriately administered by the state courts in suits to collect the fines. And in the *Boeing* case,[6] where

[4] *Ruttmann Construction Co.*, 191 NLRB No. 196, *infra*, p. 90.

[5] *Intl. Assn of Machinists & Aerospace Workers, AFL–CIO, Local 504* (*Arrow Development Co.*), 185 NLRB No. 22 (1970).

[6] *Booster Lodge 405, Intl. Assn. of Machinists & Aerospace Workers, AFL–CIO* (*The Boeing Co.*), 185 NLRB No. 23 (1970).

fines were imposed by the union upon all strikebreaking employees, regardless of whether, or when, they had resigned from the union, the Board held the fines violative of section 8(b)(1)(A) to the extent imposed upon individuals for conduct engaged in after they had resigned from the union. The Board found that the protection accorded the union's actions by the proviso to section 8(b)(1)(A) terminated with the termination of the membership of the employee. Therefore, although under the contract theory of membership the union was entitled to assert subsequent to the resignation causes of action occuring prior to the resignation, it's further authority over the members was extinguished by the resignation, and fines levied for actions subsequent to the resignation were coercive and prohibited by section 8(b)(1)(A).

4. Remedy

In the *Ex-Cell-O Corporation* case[7] the Board held that it was not within its authority to impose compensatory monetary damages to employees as a remedy for an employer's refusal to bargain with a union certified by the Board until it had tested the validity of that certification in court. The Board viewed such monetary damages as coming close to a form of punishment of the employer "for having elected to pursue a representation issue beyond the Board and to the courts." The Board emphasized the dispositive significance of the fact that computation of such a monetary award would have to be based on a presumed contractual agreement which would have been reached by the parties but for the employer's intransigence. It would be imposed on him in computing his obligation even though he had not agreed to it. In the Board's view, this would be compelling the employer to agree to contract proposals, an action clearly beyond the Board's authority since prohibited by section 8(d) of the Act, as recently construed by the Supreme Court in the *H. K. Porter* case.

[7] 185 NLRB No. 20, *infra*, p. 91.

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D. Financial Statement

The obligations and expenditures of the National Labor Relations Board for fiscal year ended June 30, 1971, are as follows:

Personnel compensation	$32,968,199
Personnel benefits	2,798,777
Travel and transportation of persons	1,797,648
Transportation of things	70,606
Rent, communications, and utilities	1,359,916
Printing and reproduction	499,924
Other services	1,528,890
Supplies and materials	335,183
Equipment	133,272
Insurance claims and indemnities	26,792
Subtotal, obligations and expenditures [1]	41,519,207
Transferred to other accounts (GSA)	21,728
Total Agency	41,540,935

[1] Includes reimbursable obligations distributed as follows:

Personnel compensation	22,588
Personnel benefits	1,791
Travel and transportation of persons	601
Total obligations and expenditures	24,980

II

Jurisdiction of the Board

The Board's jurisdiction under the Act, as to both representation proceedings and unfair labor practices, extends to all enterprises whose operations "affect" interstate or foreign commerce.[1] However, Congress and the courts [2] have recognized the Board's discretion to limit the exercise of its broad statutory jurisdiction to enterprises whose effects on commerce is, in the Board's opinion, substantial. Such discretion is subject only to the statutory limitation [3] that jurisdiction may not be declined where it would have been asserted under the Board's self-imposed jurisdictional standards prevailing on August 1, 1959.[4] Accordingly, before the Board takes cognizance of a case, it must first be established that it has legal or statutory jurisdiction; i.e., that the business operations involved "affect" commerce within the meaning of the Act. It must also appear that the business operations meet the Board's applicable jurisdictional standards.[5]

Enterprises Over Which the Board Will Assert Jurisdiction

A. Activities Related to Educational System

During the past year, the Board had occasion to delineate further the extent to which it would assert jurisdiction in the area of educa-

[1] See secs. 9(c) and 10(a) of the Act and also definitions of "commerce" and "affecting commerce" set forth in secs 2(6) and (7), respectively. Under sec. 2(2), the term "employer" does not include the United States or any wholly owned Government corporation, any Federal Reserve Bank, any State or political subdivision, any nonprofit hospital, any person subject to the Railway Labor Act, or any labor organization other than when acting as an employer. "Agricultural laborers" and others excluded from the term "employee" as defined by sec. 2(3) of the Act are discussed, *inter alia,* in the Twenty-ninth Annual Report (1964), pp. 52–55, and Thirty-first Annual Report (1966), p. 36.

[2] See Twenty-fifth Annual Report (1960), p. 18.

[3] See sec. 14(c)(1) of the Act.

[4] These self-imposed standards are primarily expressed in terms of the gross dollar volume of business in question; Twenty-third Annual Report (1958), p. 18. See also *Floridan Hotel of Tampa,* 124 NLRB 261 (July 30, 1959), for hotel and motel standards.

[5] While a mere showing that the Board's gross dollar volume standards are met is ordinarily insufficient to establish legal or statutory jurisdiction, no further proof of legal or statutory jurisdiction is necessary where it is shown that its "outflow-inflow" standards are met. Twenty-fifth Annual Report (1960), pp. 19–20. But see *Sioux Valley Empire Electric Assn.,* 122 NLRB 92 (1958), as to the treatment of local public utilities.

tional institutions. In *Pacifica Foundation—KPFA*,[6] the Board, having recently decided to assert jurisdiction over private colleges and universities,[7] found no substantial justification for withholding exercise of its discretionary jurisdiction over an employer whose operations were adjunctive to the educational system. The evidence revealed that Pacifica's operation of its educational radio stations, though nonprofit, grossed annually approximately $1 million. The Board found that Pacifica's operations exerted a substantial impact on commerce and met the Board's discretionary standards for jurisdiction over similar commercial ventures.[8] Accordingly, the Board overruled *United States Book Exchange*,[9] and similar cases to the extent inconsistent therewith.

The Board also reversed its policy of declining jurisdiction over an employer engaged in the business of furnishing food services to educational institutions.[10] In *ITT Canteen Corp., a subsidiary of Intl. Telephone & Telegraph Co.*,[11] the Board asserted jurisdiction over the food service operations which the Employer provided to Bradley University on a flat-fee basis. The Board found the employer's operations met the applicable standards whether they be considered retail, furnishing meals directly to students; nonretail, furnishing restaurant services to Bradley University; or mixed retail and nonretail.

In *Trustees of the Corcoran Gallery of Art*,[12] jurisdiction was asserted over a private, nonprofit, art gallery operating an art school and workshop in Washington, D.C. The Board noted that the employer employs approximately 129 persons, sells paintings and reproductions of paintings, and charges admission to its gallery. The employer receives income from its $3,600,000 endowment, and approximately $525,000 in tuitions from its school of art. In view of its recently announced policy of asserting jurisdiction over educational institutions, the Board asserted jurdisdiction over the gallery.

B. Activities of Railway Labor Act Employer

In *Pan American World Airways*,[13] the Board asserted jurisdiction in a decertification proceeding involving Pan American's office clerical employees at its nuclear rocket development station, Jackass Flats and Las Vegas, Nevada. In ruling on the question of whether

[6] 186 NLRB No 120.
[7] *Cornell University*, 183 NLRB No. 41 (1970).
[8] *Raritan Valley Broadcasting Co.*, 122 NLRB 90 (1958).
[9] 167 NLRB 1028 (1967).
[10] See, e.g , *Crotty Brothers, N.Y., Inc.*, 146 NLRB 755 (1964).
[11] 187 NLRB No. 7.
[12] 186 NLRB No. 83.
[13] 188 NLRB No. 75.

the Board has statutory jurisdiction over the employer whose airline operations are subject to the Railway Labor Act, the Board accepted the finding of the United States Court of Appeals for the Ninth Circuit [14] in a prior proceeding that the Railway Labor Act and its disputes settlement procedures do not apply where, as here, there is no relationship of the airline employees' work to transportation. Pan American held a contract from the United States Atomic Energy Commission for "housekeeping" and general support services at the installation. The court held that the Railway Labor Act was not intended to apply to all work of an employer merely because the company carrying on the work included carrier activities within its company functions.

C. Child Care Services

During the past year, the Board had occasion to determine whether institutions which provide residential care and education for emotionally disturbed and other dependent children of school age are statutorily exempt hospitals.

In *Children's Village* [15] and in *Jewish Orphan's Home of Southern Calif. a/k/a Vista Del Mar Child Service*,[16] the Board held that neither employer fell within any acceptable usage of the term "hospital," and that their revenues and expenditures were sufficient to meet any of the Board's jurisdictional standards. In absence of any specific standards for this type of operation, the Board applied existing standards. However, the question of whether or not to establish a specific standard for such cases was left open.

D. Political Subdivisions

Early in its history the Board held that the section 2(2) exemption of political subdivisions from coverage of the Act applied to public bodies created: (1) directly by a State and governed by state officials appointed by the State; or (2) by election by voters of a state-created district.[17]

During the past year, the Board held in *City of Austell Natural Gas System* [18] that the gas system created by a special act of the gen-

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[14] *Pan American World Airways, Inc.* v. *United Brotherhood of Carpenters, etc.*, 324 F.2d 217, cert denied 376 U.S. 964.

[15] 186 NLRB No. 137.

[16] 191 NLRB No. 11.

[17] See *Mobile Steamship Assn*, 8 NLRB 1297 (1938); *Oxnard Harbor Dist.*, 34 NLRB 1285 (1941).

[18] 186 NLRB No. 44.

eral assembly of the State of Georgia was a political subdivision of that State and as such not an employer within the meaning of section 2(2) of the Act and not subject to the jurisdiction of the Board. The Board found that the system, which was located on land owned by the city of Austell, was administered by a five-man city gas board and that such board was required to submit monthly reports of the system's operation and its annual budget to the mayor and city council for approval. The Board noted that the city finances the operation of the system through the sale of certificates which must be authorized by a city ordinance.

In *Lewiston Orchards Irrigation Dist.*,[19] however, the Board held that the irrigation district was an employer within the meaning of the Act rather than a political subdivision of the State of Idaho. The Board found that the district was established pursuant to state statute for the purpose of supplying water to residents or landowners within the district, and that the state's control over the Disetrict's operations was no more extensive than that exercised over a typical public utility. The Board did not find persuasive the mere possession by the district of the right to sell public bonds, the power to levy and collect assessments, and the district's tax-exempt status. The Board found that such powers were conferred in the aid of a venture which was essentially private in nature. The Board noted that many electric cooperatives over which the Board asserts jurisdiction may also qualify as organizations exempt from Federal income tax. Accordingly, the Board found that it would effectuate the purposes of the Act to assert jurisdiction.

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[19] 186 NLRB No. 121.

III

Effect of Concurrent Arbitration Proceedings

It is clear that the jurisdiction of the Board over unfair labor practices is exclusive under section 10(a) of the Act and is not "affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise." However, consistent with the congressional policy to encourage utilization of agreements to arbitrate grievance disputes,[1] the Board, in the exercise of its discretion, has under appropriate circumstances withheld its processes in deference to an arbitration procedure.[2]

Appropriateness of Deferral

In *Terminal Transport Co.*,[3] a Board panel, Member Jenkins dissenting, honored an arbitration award and dismissed a complaint alleging that the employer violated section 8(a)(1) of the Act by discharging an employee for engaging in protected grievance activity. The employer claimed that the employee was unable to perform the duties of his mechanic classification and therefore was discharged for cause. The Board, without passing on the merits, found that the trial examiner exceeded his authority under the *Spielberg* doctrine[4] in rejecting the

[1] E.g., *Textile Workers Union* v. *Lincoln Mills*, 353 U.S. 448 (1957); *United Steelworkers* v. *Warrior & Gulf Navigation Co.*, 363 U S. 574, 578–581 (1960).

[2] In *Spielberg Mfg. Co.*, 112 NLRB 1080, 1082 (1955), the Board concluded that encouragement of voluntary settlement of labor disputes would best be served by recognition of an arbitrator's award where "the proceedings appear to have been fair and regular, all parties had agreed to be bound, and the decision of the arbitration panel is not clearly repugnant to the purposes and policies of the Act" *Id.* at 1082.

[3] 185 NLRB No. 96. Member Jenkins was of the opinion that deferral was not proper in this case as (1) the dischargee, the party principally concerned, had not consented to have his case determined by arbitration; (2) there was no indication in the record that the grievance committee considered or decided the issue of discrimination; and (3) the committee was not, properly speaking, engaged in arbitration and the making of a binding impartial award in that it was composed solely of representatives of the employer and the union, the disputants.

[4] See fn. 2, *supra*.

arbitration panel's award. The Board noted that under established policy, the validity of an award is not to be determined on the basis of whether the Board would reach the same result on the record made before an arbitrator.[5] The Board found that the arbitration proceeding met the *Spielberg* standards in that (1) the issue specifically raised before the grievance panel was identical to that alleged in the unfair labor practice charge; (2) the multistate grievance committee, although operating without a neutral member, met the *Spielberg* standards of fairness; (3) there was no claim of fraud or collusion in the arbitral process; and (4) while the aggrieved employee was not present at the grievance hearing, he was represented by the union, whose interest in successful prosecution of the grievance appeared identical to his own.

In *Englehardt, Inc.*,[6] however, the Board did not defer to arbitration. The issue involved was whether an employee was discharged in reprisal for his having sought the union's assistance in his premium pay dispute with the employer. The premium pay dispute arose initially under a provision of the collective-bargaining contract between the respondent employer and the union, which the employer contended permitted it to discontinue the employee's premium pay. The Board found, however, that the employee's discharge resulted in substantial part from his protected activity under the Act. Member Brown, dissenting in part, was of the opinion that the matters considered were more properly relegated to the contract grievance and arbitration procedures than to the complaint machinery of the Act.

The Board also found deferral inappropriate in *Peerless Publications*,[7] a representation proceeding in which the employer petitioned the Board for unit clarification after the dispute had been heard by an arbitrator. The employer took the position that the arbitrator was without jurisdiction to hear the dispute because the issue of the status of two alleged independent contrators was a representation matter within the exclusive jurisdiction of the Board. The Board found the arbitrator's award, that the two individuals were employees covered by the collective-bargaining contract, repugnant to the purposes and policies of the Act. The Board held that the issue of the individuals' status could not be resolved through an interpretation of contractual provisions by either an arbitrator or the Board as it involved definition of statutory terms and application of Board unit standards. Chairman Miller, dissenting, found the dispute had been settled by the arbitration proceeding, and the award was not repugnant to the Act.

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[5] *Howard Electric Co.*, 166 NLRB 338, 341 (1967).
[6] 186 NLRB No. 81.
[7] 190 NLRB No 130.

IV

Board Procedure

A. Limitation of Section 10(b)

Section 10(b) of the Act precludes the issuance of a complaint based on any unfair labor practice occurring more than 6 months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom the charge is made.

In *Barrington Plaza & Tragniew Inc.*,[1] the Board had occasion to determine the validity of a successor employer's claim, in defense of an 8(a)(5) charge, that the union had not represented a majority of the employees in the appropriate unit at the time of its initial recognition by the predecessor employer 4 years earlier. The Board held that the 10(b) limitations proviso precluded a challenge, even in this indirect manner, to the legality of the union's initial recognition. Chairman Miller concurred on the basis of the majority's alternative finding that, in any event, insufficient evidence had been presented to overcome the presumption of the union's continuing majority status.

B. Settlement Procedures

The Board has long had the policy of encouraging settlements which effectuate the purposes of the Act. In *United Mine Workers of America & United Mine Workers of America, Dist. 6 (James Brothers Coal Co.)*,[2] the Board considered the charging party's objection to the approval of a settlement stipulation because it included a so-called non-admission clause and a trial examiner's decision finding unfair labor practices had issued. The charging party contended that the Board's Rules and Regulations and Statements of Procedure do not permit settlement after issuance of a trial examiner's decision. In finding the charging party's objections without merit, the Board noted the well-established principle that inclusion in a settlement agreement of a non-

[1] 185 NLRB No 132.
[2] 191 NLRB No. 34.

admission clause is not a valid basis for objection where the settlement effectuates the policies of the Act.[3] The Board found that the remedy provided by the settlement in the instant case was an appropriate one for the violations alleged and the settlement would make possible prompt court enforceability of that order. The Board concluded that, under all the circumstances, it would best effectuate the policies of the Act to vacate the trial examiner's decision and accept the settlement agreement.

In *United Steelworkers of America, AFL–CIO (Poloron Products of Mississippi)*,[4] the Board considered and found without merit objections to a settlement agreement purporting to remedy 8(b)(1)(A) violations. The Board found that the broad remedy sought by the charging party with respect to barring the respondent union from filing another representation petition for at least a year was not justified, and that the charging party's argument that a record hearing is constitutionally required was not in accord with existing law or Board policy.[5] The Board concluded that there was no basis for rejecting the settlement stipulation and denied the request for a record hearing.

C. Comity With U.S. District Court

The issue of whether a union's hiring practices were discriminatory on the basis of race and national origin was presented to the Board in *Intl. Assn. of Heat & Frost Insulators & Asbestos Workers Loc. 53 (McCarty & Armstrong)*.[6] The Board majority declined to rule on this allegation of the complaint as a matter of comity between branches of the Federal Government, pointing out that similar issues were before the United States District Court for the Eastern District of Louisiana in two civil actions. Member Jenkins dissented, expressing the view that violations of the National Labor Relations Act were the primary responsibility of the Board; Member Jenkins would resolve any conflict with the district court order at the compliance level.

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[3] *Concrete Materials of Ga.* v. *N.L.R.B.*, 440 F.2d 61 (C.A. 5).

[4] 187 NLRB No. 24.

[5] *Roselle Shoe Corp.*, 135 NLRB 472 (1962), set aside and remanded *Textile Workers Union of America, AFL–CIO [Roselle Shoe Corp.]* v. *N.L R B.*, 294 F.2d 738 (C.A.D.C, 1961), enfd. after remand 315 F.2d 41 (C.A.D.C., 1963).

[6] 185 NLRB No. 89.

V

Representation Proceedings

The Act requires that an employer bargain with the representative designated by a majority of his employees in a unit appropriate for collective bargaining.[1] In this connection, the Act authorizes the Board to conduct representation elections.[2] The Board may conduct such an election after a petition has been filed by or on behalf of the employees, or by an employer confronted with a claim for recognition from an individual or one or more labor organizations. Incident to its authority to conduct elections, the Board has the power to determine the unit of employees appropriate for collective bargaining[3] and formally to certify a collective-bargaining representative on the basis of the results of the election. Once certified by the Board, the bargaining agent is the exclusive representative of all employees in the appropriate unit for collective bargaining with 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 who have been previously certified, or who are being currently recognized by the employer. Decertification petitions may be filed by employees, by individuals other than management representatives, or by labor organizations acting on behalf of employees.

This chapter concerns some of the Board's decisions during the past fiscal year in which the general rules governing the determination of bargaining representatives were adapted to novel situations or reexamined in light of changed circumstances.

A. Existence of Questions Concerning Representation

Section 9(c)(1) empowers the Board to direct an election and certify the results thereof, provided the record of an appropriate hearing before the Board[4] shows that a question of representation exists.

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[1] Secs. 8(a)(5) and 9(a).

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

[3] Sec. 9(b).

[4] Sec 9(c)(1) provides that a hearing must be conducted if the Board "has reasonable cause to believe that a question of representation . . . exists. . . ."

However, petitions filed under the circumstances described in the first proviso to section 8(b)(7)(C) are specifically exempted from these requirements.[5] During the report year the Board was called on to resolve in a variety of contexts the issue of the existence of a question concerning representation.

1. Merger Resulting in New Operation and Bargaining Unit

In directing an election at the employer's newly consolidated and expanded Oakland service shop, the Board, in *General Electric Co.*,[6] rejected the intervenor-union's contention that the petition should be dismissed as not being coextensive with the existing multiplant unit which included the Oakland shop and for which it was the recognized bargaining representative. The Board found that the closing of the employer's older and larger San Francisco service shop, where employees had long been represented by the petitioner (IBEW), and the transfer of these operations and employees to the employer's expanded Oakland service shop facility, where employees had long been represented by intervenor (UE) in a multiplant unit, created a new and vastly enlarged operation with major personnel changes at the Oakland facility and the petition, therefore, raised a question concerning representation. Relying on *National Carloading Corp.*[7] and *Panda Terminales, Inc.*,[8] the Board reasoned that it would be inconsistent with the basic principles of the Act to hold, as UE suggested, that the employees from the San Francisco shop, who substantially outnumbered the Oakland employees, must accept UE as their bargaining representative. Rather, it believed "... that influences disruptive to industrial peace and a satisfactory bargaining relationship will be elminated only if the conflicting representation claims are resolved through the processes of a Board-conducted election." In these circumstances, the Board held that the existing representation question is unaffected by, and may therefore be independently resolved without regard to, UE's multiplant unit contention.[9]

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[5] See also NLRB Statements of Procedure, Series 8, as amended, Sec. 101.23(b).

[6] 185 NLRB No. 4.

[7] 167 NLRB 801, 802 (1967), Thirty-third Annual Report (1968), p. 39.

[8] 161 NLRB 1215, 1223 (1966), Thirty-second Annual Report (1967), p. 61.

[9] Members McCulloch and Brown, concurring, were of the view that the changes resulting from the consolidation were not so susbtantial as to require establishing a separate unit for the new operation if UE won the election. Rather, in the event of a UE victory, they would have ordered the merged operation, as was the Oakland operation before merger, included within the exising multiplant unit represented by UE.

2. Accretion to Unit

In *Public Service Co. of New Hampshire*,[10] a panel majority concluded that a question concerning representation had not been raised by the employer's petition for an election in a unit composed of employees in the employer's consolidated Monadnock district. That district was created by combining, for efficiency reasons, the operations of the Jaffrey district, whose employees were unrepresented, with those of the Peterborough district, whose employees were covered by a union contract. The Jaffrey district was phased out and all of its employees and equipment moved to the building occupied by the Peterborough operation. The consolidated Monadnock district, consisting of an equal number of employees from the Jaffrey and Peterborough districts, serviced all of the towns previously serviced by the Peterborough district plus two towns formerly within the Jaffrey district. Rejecting the employer's contention that the consolidation created a new operating unit different in character and function from the previous Peterborough and Jaffrey districts, the Board found that the consolidation, in effect, was an expansion of the geographic responsibilities of the Peterborough district with the concurrent expansion of its staff to provide and improve services to the customers of the district. In these circumstances, the Board concluded that the addition of the employees of the former Jaffrey district to the unit previously called the Peterborough district was an accretion to an existing unit.[11] And, as a valid contract existed with the union covering the classifications of employees at Monadnock/Peterborough, the Board dismissed the petition.

In a somewhat different situation, another panel majority held that a group of previously unrepresented and relocated division clerical employees may not be treated as an accretion to an existing plant clerical unit covered by a current contract with the union without first affording them a self-determination election.[12] The Board concluded that a question concerning representation had been raised by the employer's petition for an election in a unit of clerical employees in the employer's division marketing and accounting departments since the existing clerical unit covered by the union's contract was

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[10] 190 NLRB No. 68

[11] Chairman Miller, dissenting, stated that he could "see no more warrant for holding the five unrepresented employees an accretion to the IBEW unit than for finding the five employees in the IBEW unit an accretion to the unrepresented group."

[12] *Remington Rand Div. of Sperry Rand Corp.*, 190 NLRB No. 92. Member Brown, dissenting, would have distinguished the instant facts from those in *Patterson-Sargent Div. of Textron, Inc.*, 173 NLRB 1290 (1968) Thirty-fourth Annual Report (1969), p. 37, relied on by the majority, and would have found an accretion here.

never intended to include the employer's division clerical employees but was at all times expressly limited to the employer's plant clerical employees at its Herkimer, New York, plant. While conceding that a substantial community of interest exists between unit clerical employees and the division clerical employees, the Board rejected the union's contention that the division clericals therefore were an accretion and ordered a self-determination election, wherein they could decide whether or not they wished to be represented in the existing unit.

B. Bars to Conducting an Election

In certain situations the Board, in the interest of promoting the stability of labor relations, will conclude that circumstances appropriately preclude the raising of a question concerning representation. In this regard, the Board has adhered to a policy of not directing an election among employees currently covered by a valid collective-bargaining agreement, except under special circumstances. The question whether a present election is barred by an outstanding contract is determined in accordance with the Board's contract-bar rules. Generally, these rules require that to operate as a bar a contract must be in writing, properly executed, and binding on the parties; that it must be of definite duration and in effect for no more than a "reasonable period" (i.e., no more than 3 years); and that it must also contain substantive terms and conditions of employment which, in turn, must be consistent with the policies of the Act.

Established Board policy provides that a valid contract for a fixed term of up to 3 years constitutes a bar to an election during the contract term.[13] Agreements for a longer, or an indefinite, term are treated as if they were for a fixed 3-year term and bar an election during the first 3 years but thereafter will not bar the petition of a rival labor organization.[14] As the period during the contract term when a petition may be timely filed is calculated in relation to the expiration, or third anniversary, date of a contract,[15] the Board's contract-bar rules do not permit the parties to avoid this filing period by executing an amendment or new contract term which prematurely extends the expiration date of that contract.[16] In the event of such

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[13] *General Cable Corp.*, 139 NLRB 1123 (1962); Twenty-eighth Annual Report (1963), p. 48.

[14] *Montgomery Ward & Co.*, 137 NLRB 346 (1962); Twenty-seventh Annual Report (1962), p. 53.

[15] A petition is timely when filed not more than 90 nor less than 60 days before the terminal date of an outstanding contract; *Leonard Wholesale Meats*, 136 NLRB 1000 (1962); Twenty-seventh Annual Report (1962), pp. 58–59.

[16] *DeLuxe Metal Furniture Co*, 121 NLRB 995 (1958).

premature extension, the new contract will not bar an election, except where it was executed at a time when the existing contract would not have constituted a bar due to the operation of one of the Board's other contract-bar requirements.

The Board adhered to and applied the foregoing principles in deciding several unusual cases involving premature extensions of contracts with longer than 3-year terms. In one such case, *Union Carbide Corp.*,[17] the Board found that the existing contract of unreasonable duration between the employer and incumbent union, although a premature extension of their prior contract of unreasonable duration, barred a rival labor organization's petition since that petition was not timely filed in relation to the antecedent contract. The Board cited an earlier case, *H. L. Klion, Inc.*, 148 NLRB 656, 660 (1964), where the Board explained:

> The primary purpose of the premature-extension rule is to protect petitioners in general from being faced with prematurely executed contracts at a time when the Petioner would normally be permitted to file a petition. However, the Board's rule is not an absolute ban on premature extensions, but only subjects such extensions to the condition that if a petition is filed during the open period calculated from the expiration date . . . the premature extension will not be a bar.

In another case, *Penn-Keystone Realty Corp.*,[18] the Board held that an existing 6-year contract between the employer and incumbent union did not bar a rival union's petition which was timely filed 61 days before the third anniversary date of said contract. The Board rejected the employer's contention that the wage reopening and renegotiation provisions converted the 6-year agreement, effective November 5, 1967, to November 5, 1973, into 1-year and 2-year contracts, and that the petition, therefore, was untimely filed during the effective period of one such 2-year contract. This conclusion was based on the Board's earlier decision in the *Deluxe Metal* case,[19] in which the Board had held that a midterm modification provision, regardless of its scope, will not remove a contract as a bar unless the parties actually terminate the contract, except where a notice is given immediately prior to the automatic renewal date of such contract.[20]

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[17] 190 NLRB No. 40.

[18] 191 NLRB No. 105.

[19] *Supra.*

[20] See also *J. N. Ellison and H. R. Ellison d/b/a Ellison Brothers Oyster Co.*, 124 NLRB 1225 (1959), where a contract provision for midterm modification of wages only did not remove the contract as a bar.

In a factually distinguishable situation, the Board held [21] that an existing agreement between a union and the employer's predecessor did not bar the employer's petition for an election, where the employer, after purchasing the business and substantially adhering to the contract, made substantial changes in the nature of the business itself which required the employment of specially trained personnel not covered in the predecessor's contract.

C. Qualification of Representative

The Board will not conduct or certify an election where the proposed bargaining agent fails to qualify as a bona fide representative of the employees, or where its interests are found to conflict with those of the employees whom it would represent. In the past the Board has held that an association of wholesale apparel salesmen whose trade show activities are in direct competition with the employer's business is not a bona fide labor organization qualified to represent the employer's traveling salesmen.[22] The Board has also refused to entertain petitions filed jointly by such disqualified association and the petitioner with which it affiliated.[23] However, in *R. & M. Kaufmann, a Div. of Russ Toggs*,[24] where the petitioner alone sought to represent a unit of the employer's traveling commission salesmen, the Board directed an election despite the petitioner's affiliation with the disqualified association. The Board rejected the contention that by affiliating with the disqualified association, the petitioner also became disqualified to represent the employer's employees, finding that the petitioner has continued to exist as a separate labor organization, having its own constitution, officers, and organizational structure, and that it has continued separately to represent employees for collective-bargaining purposes. The Board cautioned, however, that its processes properly might be invoked to examine the certification if at any time it appears that the petitioner, in representing the employees, is not acting independently but is acting as an agent of the association.

In another representation case,[25] the intervenor labor organization's business agent had a substantial business interest in a company engaged in promoting and selling certain brand name products to retail outlets, including the employer. The Board held that although this did not disqualify the union generally from representing employees, it was incompatible with its disinterested representation of

[21] *Forestam Realty Corp. d/b/a Riverdale Manor Home for Adults,* 189 NLRB No. 27.
[22] *Bambury Fashions,* 179 NLRB 447 (1969) ; Thirty-fifth Annual Report (1970), p. 30.
[23] *Ibid.*
[24] 187 NLRB No. 20.
[25] *Harlem River Consumer Cooperative,* 191 NLRB No. 48.

the employer's employees. Accordingly, the Board ruled that, if the intervenor wins the election, it should not be certified so long as its busines agent remained in that capacity in the employer's geographical area.

D. Units Appropriate for Bargaining Purposes

1. Employee Status

A bargaining unit may include only individuals who are "employees" within the meaning of section 2(3) of the Act. The major categories expressly excluded from the term "employee" are agricultural laborers, independent contractors, and supervisors. In addition, the statutory definition excludes domestic servants, or anyone employed by his parent or spouse, or persons employed by an employer subject to the Railway Labor Act or by any person who is not an employer within the definition of section 2(2).

The statutory exclusions have continued to require determinations as to whether the employment functions or relations of particular employees precluded their inclusion in a proposed bargaining unit.

a. Agricultural Laborers

A continuing rider to the Board's appropriations act requires the Board to determine "agricultural laborer" status so as to conform to the definition of the term "agriculture" in section 3(f) of the Fair Labor Standards Act. Although the Board must make its own determination as to the status of any group of employees, as a matter of policy the Board gives great weight to the interpretation of section 3(f) by the Labor Department, in view of that agency's responsibility and experience in administering the Fair Labor Standards Act. Thus, relying in part on the Labor Department's interpretative rulings, the Board held that the employer's eggbreaking and separating operations are not agricultural activities, even assuming, *arguendo*, that the employer is a farmer because it is a subsidiary of a company whose employees were recently found to be agricultural laborers.[26] The fact that most other farmers in the State do not perform this work was considered by the Board as an indication that the practice is not agricultural.

In another case,[27] the Board viewed the totality of the situation and found that the employer's egg-processing operations are not per-

[26] *Adams Egg Products*, 190 NLRB No 51.
[27] *Cherry Lane Farms*, 190 NLRB No 57.

formed as part of the farm operation but rather as part of a distinct business activity; namely, the wholesale egg distribution network of the employer's sister subsidiary company. The Board noted that, unlike the situation in *McAnally Enterprises*,[28] relied on by the employer, the employer here also processed the eggs of other producers, together with its own, on a commingled basis.

b. "Managerial" Employees

Upon remand by a circuit court of appeals,[29] the Board held [30] that "managerial" employees, traditionally excluded from bargaining units because their interests are more allied with management than with the rank-and-file employees in a proposed production and maintenance unit, might nevertheless be "employees" within the meaning of the Act and entitled to the Act's protection. In the underlying Decision and Order,[31] the Board had found that the electrification advisor was not a managerial employee and that his discharge for engaging in union activities violated section 8(a) (3) and (1) of the Act. The court disagreed with the finding of nonmanagerial status and remanded the case on the issue of whether, in these circumstances, the discharge violated the Act. The Board noted, in its Supplemental Decision and Order (185 NLRB No. 83), that the category of "managerial employees" was created by the Board in representation proceedings to define workers who, while not supervisors, were akin to management because they did not share a community of interest with employees in the proposed bargaining unit. The Board stated: "An employee may not have the requisite community of interest with other employees to be included with them in a proposed unit, and yet clearly be an employee entitled to the protection of the Act as a Section 2(3) 'employee.' On the other hand, some persons we have traditionally excluded as 'managerial' might more accurately have been termed 'employers' within the definition of Section 2(2), which defines employers as including 'any person acting as an agent of an employer.' " A precise definition of the term "managerial employee," outside the area of unit determination, can be made only on a case-to-case basis. In the case at hand, the Board concluded that although the employee "exercised discretion in the performance of his duties and responsibilities, was paid on a monthly basis, received no extra pay for overtime work, participated in semiannual meetings concerning programs for attracting and retaining customers, and occasionally spoke for the

[28] 152 NLRB 527 (1965).
[29] *N L R B* v *North Arkansas Electric Cooperative*, 412 F.2d 324 (C.A 8, 1969).
[30] *North Arkansas Electric Cooperative*, 185 NLRB No 83.
[31] *North Arkansas Electric Cooperative*, 168 NLRB 921 (1967).

Employer in his dealings with customers and advertisers, there is nothing in the record to suggest that he participated in the formulation, determination, or effectuation of policy *with respect to employee relations matters*." Nor was it shown that his status was such as to lead the employer's rank-and-file employees reasonably to believe that he had substantial responsibilities in this area. Finally, the Board found nothing in the "record to suggest an inconsistency or conflict of interest between [the employee's] proper performance of his job and the implementation of his right to engage in or refrain from engaging in concerted activity."

Applying *North Arkansas Electric Cooperative*, *supra*, to a representation proceeding, the Board rejected the employer's contention that a proposed unit of buyers, employed in the employer's purchasing and procurement department, are "managerial" employees and, as such, not entitled to representation under the Act.[32] Having found in *North Arkansas Electric Cooperative*, *supra*, that, within the limitations there noted, "managerial" employees are employees within the meaning of the Act and entitled to its protection, the Board further held that their "*prima facie* status as employees under the Act . . . entitles them not only to the protection of the Act, but to the full benefits of the Act and the right to be represented for the purposes of collective bargaining."

c. Employee Versus Independent Contractor Status

The Board applied the "right of control" test in resolving issues of employee versus independent contractor status of insurance agents,[33] opinion poll interviewers,[34] and truckdrivers.[35] The test provides that: where the person for whom services are performed retains the right to control the manner and means by which the result is to be accomplished, the relationship is one of employment; where, on the other hand, control is reserved only as to the result sought, the relationship is that of independent contractor. Determination of the relationship depends on all the facts of each case, and no single factor is determinative. Applying this test to the cases at hand, the Board evaluated the facts in each case and concluded that the relationship in each was that of employment.[36] The factors cited to support a finding

[32] *Bell Aerospace Co , Div of Textron,* 190 NLRB No. 66. Member Jenkins found no record support for the employer's contention that the buyers exercise managerial functions Member Kennedy on the other hand expressed the view that the Board must find them managerial to support its finding of separate appropriate units.

[33] *Farmers Insurance Group,* 187 NLRB No. 123.

[34] *National Opinion Research Center,* 187 NLRB No. 93.

[35] *Deaton, Inc.,* 187 NLRB No 102.

[36] Chairman Miller dissented in two of the cases, finding in *Farmers Insurance Group, supra,* insufficient evidence to establish that the employer prescribed the manner or means by which the agents' work is performed and in *Deaton, Inc., supra,* that the owners of the leased equipment there involved were likewise independent contractors.

of independent contractor status in each case were found to be outweighed by stronger evidence that the person for whom the services were performed retained the right to control the manner and means by which the services were to be rendered.

d. Guards

A question of whether certain nonuniformed investigative employees were guards within the meaning of the Act was considered, upon a petition for unit clarification, in *Burns Security Systems.*[37] The disputed employees (classified as complaints and survey sergeants) investigate and analyze breakins of locked desks, breakin thefts of vending machines, and thefts of women's purses; they use electronic detection devices and check for fingerprints; and they prepare theft prevention reports which are submitted to the chief of guards for transmittal to an official of the employer's client. They also investigate all automobile accidents occurring at the client's premises. Based on these facts, the Board found that the work of the disputed investigators was clearly within the statutorily described guard functions and therefore included them within the existing guard unit.[38]

2. Retail Store Units

Although the Board has approved less than storewide units in certain circumstances, it has consistently held that storewide units of selling and nonselling employees in retail establishments are inherently appropriate.[39] In considering retail department store unit issues in two similar cases [40] this year, the Board dismissed petitions which sought employees in several smaller than storewide units and concluded, on the facts, that only storewide units were appropriate.

In one of these cases [41] 3 labor organizations sought to represent different segments of the employer's employees in 3 separate bargaining units; i.e., one petitioned for 7 service station employees, another sought a warehouse plus shipping and receiving unit of about 50 employees, while the third petitioned for a unit of 160 sales, 55 clerical, and 5 maintenance employees. There was no bargaining history for any of the employees and no labor organization sought to represent all of the employees in a single-storewide unit. The employer's operation,

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[37] 188 NLRB No. 25.

[38] To the extent inconsistent herewith, the decision in *Pinkerton's Natl. Detective Agency,* 124 NLRB 1076 (1959), was overruled.

[39] Thirtieth Annual Report (1965), pp. 48–50.

[40] *Sears, Roebuck and Co.,* 191 NLRB No. 84 and 191 NLRB No. 85.

[41] *Sears, Roebuck and Co.,* 191 NLRB No. 84.

with some 260 selling and nonselling employees, exclusive of guards and supervisors, consists of a three-story retail store, an adjacent service station, and a warehouse about 1 mile removed. The Board dismissed the petitions, finding that a strong community of interest existed among all selling, nonselling, clerical, and maintenance employees at the service station, warehouse, and retail store based on common and direct supervision, uniform working conditions, substantial integration of operations, and overlapping job functions. In these circumstances, the Board held, "these employees can only exercise their rights to self-organization and collective bargaining to the fullest extent by means of a single overall unit."

Under similar circumstances in another *Sears* case,[42] a like result was reached. In that case the Board dismissed a petition for alternative units of the employer's service building employees, or such employees plus certain nonselling service employees normally assigned to the retail store, located 1½ miles from the service building, and found that only a storewide unit was appropriate. There was no bargaining history and no labor organization sought to represent all of the employer's employees in a single unit. The record established, and the Board concluded, that the retail store and service building employees shared "a strong community of interest based on common and direct supervision, uniform working conditions, common job functions, temporary interchange of job duties, and integration of normal work activities between the two facilities."

3. College Faculty Units

The Board's recent decision to assert jurisdiction over nonprofit educational institutions [43] has given rise to a number of questions concerning the appropriate unit or units for collective bargaining in such institutions. The first case in which the Board was called upon to make unit determinations with respect to university teaching staffs was *C. W. Post Center of L.I. University.*[44] In finding appropriate a unit of all professional employees, including all professors, adjunct professors, instructors, lecturers, professional librarians, guidance counselors, and research associates, the Board was required to pass upon a variety of threshold issues involving the full-time faculty's alleged supervisory or managerial status and the inclusion and exclusion of certain employees on supervisory and other grounds. At the outset the Board rejected the employer's contention that because the univer-

[42] *Sears, Roebuck and Co.,* 191 NLRB No. 85.

[43] *Cornell University,* 183 NLRB No. 41 (1970), Thirty-fifth Annual Report (1970), pp. 22, 26.

[44] 189 NLRB No. 109.

sity's statutes permit full-time faculty members to participate in making certain policy decisions and in the selection, promotion, and retention of faculty members, the full-time faculty members are either supervisors within the meaning of the Act or managerial employees who should be represented in a separate unit. In rejecting this contention, the Board said: "Mindful that we are to some extent entering into an uncharted area, we are of the view that the policymaking and quasi-supervisory authority which adheres to full-time faculty status but is exercised by them only as a group does not make them supervisors within the meaning of Section 2(11) of the Act, or managerial employees who must be separately represented." Next, the Board considered the employer's contention that various attributes of faculty status require the application of new principles, different from those normally applied by the Board in making unit determinations in other enterprises. The Board rejected this argument, saying "we are not persuaded that such principles will prove to be less reliable guides to stable collective bargaining in this field than they have proven to be in others . . . ." Applying these established principles to the facts, the Board found that the adjunct faculty members are regular part-time professional employees whose qualifications and chief function, teaching, are identical with those of the full-time faculty. The Board therefore found it appropriate to include them in the same unit. As to the alleged supervisory status of certain individuals, the Board concluded from the facts that deans and department chairmen, as well as division chairmen who are also department chairmen, exercise the authority to make effective recommendations as to the hiring and change of status of faculty members and other employees and, therefore, are supervisors within the meaning of section 2(11) of the Act.

Contrary to the employer's contention that they should be excluded, the Board found that the professional librarians all have master's degrees in library science, are designated in the university catalog as "with the rank of" instructor or assistant professor, have all of the benefits and privileges of faculty members of similar rank (except that none is tenured or receives sabbatical leave), and participate in faculty meetings. On these facts, the Board found that the librarians are professional employees within the meaning of section 2(12) of the Act who are appropriately included in the unit.[45]

In another case,[46] the employer-petitioner requested an election in a faculty unit, including all full-time and part-time faculty members, while the labor organizations involved sought to exclude the adjunct (part-time) faculty. The Board agreed with the employer-petitioner's

[45] See also *Long Island University (Brooklyn Center)*, 189 NLRB No. 110, which involved similar unit issues.

[46] *University of New Haven*, 190 NLRB No. 102.

unit position and, since none of the labor organizations sought to represent the faculty in such a unit, dismissed the petition.

4. Units for Decertification

Despite a recent bargaining history in a broader, systemwide, unit, the Board entertained decertification petitions with respect to three steam powerplants where each of these plants would constitute a separate appropriate unit.[47] The Board had certified the union at two of the steam plants in separate units, and the employees were not given the option to choose at that time whether they wished to be associated with the larger collective-bargaining unit. Moreover, all of these steam plants had only recently been included within the coverage of the systemwide bargaining agreement. In light of the above, the Board concluded that an insufficient time had elapsed since certification or recognition as separate appropriate units to warrant the finding that these steam plants had been irrevocably amalgamated into the larger collective-bargaining unit.

E. Conduct of Representation Elections

Section 9(c)(1) of the Act provides that where a question concerning representation is found to exist pursuant to the filing of a petition, the Board shall resolve it through a secret ballot election. The election details are left to the Board. Such matters as voting eligibility, timing of elections, and standards of election conduct are subject to rules laid down by the Board in its Rules and Regulations and in its decisions. Elections are conducted in accordance with strict standards designed to insure that the participating employees have an opportunity to register a free and untrammeled choice in the selection of a bargaining representative. Any party to an election who believes that the standards have not been met may file timely objections to the election with the regional director under whose supervision it was held. The regional director may either make an administrative investigation of the objections or hold a formal hearing to develop a record as the basis for a decision, as the situation warrants. If the election was held pursuant to a consent-election agreement authorizing a determination by the regional director, he will then issue a final decision.[48] If the election was held pursuant to a stipulated consent agreement authorizing a determination by the Board, the regional director will issue a report on objections which is subject to exceptions by the parties and decision by

[47] *Duke Power Co., Lee Steam Station,* 191 NLRB No. 41.
[48] Rules and Regulations, Sec. 102.62(a).

the Board.[49] However, if the election was originally directed by the Board,[50] the regional director may either (1) make a report on the objections, subject to exceptions, with the decision to be made by the Board, or (2) issue a decision, which is then subject to limited review by the Board.[51]

1. Name and Address Lists of Eligible Voters

The Board requires an employer to submit a list of the names and addresses of all eligible voters to the regional director to be furnished to all parties to an election so that voters may have an opportunity to be informed of the issues. *Excelsior Underwear Inc.*[52] This rule was challenged on procedural grounds and reached the Supreme Court in *N.L.R.B.* v. *Wyman-Gordon Co.*[53] The Court held that the rule was substantively valid and that when the Board specifically directs production of an "*Excelsior* list" in an adjudicatory proceeding its order is enforceable.

Although the Board has held that the *Excelsior* rule is not to be mechanically applied, it found in one case[54] that the employer failed substantially to comply with its requirements where the list for the most part provided only first name initials and, more significantly, designated only the cities or towns where the employees lived. Omitted from the list were the employees' street addresses and/or post office box numbers although the employer had this information in its files and, in fact, used it in mailing its own campaign propaganda to the employees. The Board found irrelevant the fact that the petitioner made no attempt to use the *Excelsior* list, noting that any attempt on the part of the petitioner to use the list as a means of effectively communicating with the electorate would have been a futile act.

In another case,[55] however, the Board found that although 16 out of the 97 addresses on the *Excelsior* list were faulty, the employer did not omit the names of any eligible voters, and the number of errors was not so substantial as to require setting the election aside without further inquiry as to the employer's good faith and diligence in supplying the list. Generally, the Board will not set an election aside because of insubstantial failure to comply with *Excelsior* if the employer has not been grossly negligent and has acted in good faith.[56] While the

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[49] Rules and Regulations, Secs 102.62(b), 102 69(c).
[50] Rules and Regulations, Secs 102 62, 102 67
[51] Rules and Regulations, Secs. 102.69(c), 102.69(a)
[52] 156 NLRB 1236 (1966).
[53] 394 U S. 759 Thirty-fourth Annual Report (1969), pp. 111–113.
[54] *Rite-Care Poultry Co* . 185 NLRB No 10.
[55] *The Lobster House,* 186 NLRB No. 27.
[56] *Telonic Instruments,* 173 NLRB 588 (1968). Thirty-fourth Annual Report (1969), p. 66.

employer may have been negligent in not supplying several address changes it received from employees before the election, it otherwise supplied its own best list, and its errors, in the circumstances here, may not be attributed to bad faith.

In a consolidated objections-unfair labor practice proceeding, the Board refused to set aside an election which the petitioner won because of the employer's failure to supply the *Excelsior* list.[57] In the preelection campaign period, the employer had committed numerous violations of section 8(a) (1), (2), (3), and (4) of the Act aimed at encouraging employees to vote for the intervenor and to discourage employees from voting for the petitioner. Despite the unfair labor practices, the petitioner won the election. In these circumstances, the purposes of the *Excelsior* rule would be defeated if the unlawfully assisted unions, having lost the election, could now have that election set aside because of the employer's failure to comply with *Excelsior*. Such a result would have permitted the employer to benefit from its own illegal action.

2. Resolution of Eligibility of Voters

The Board permits parties to a representation proceeding to resolve as between themselves issues of eligibility prior to an election if they clearly evidence their intention to do so in writing. Such an arrangement is final and binding upon the parties unless it is, in part or in whole, contrary to the Act or established Board policy.[58] In *Fisher-New Center Co.*[59] the Board held that the union's signing of the *Norris-Thermador* eligibility list before the election did not preclude it from challenging the ballots of two employees whose names appeared on that list on the grounds of their supervisory status and statutory exclusion. The Board concluded that it would be contrary to the Act and established Board policy for the Board knowingly to permit the ballots of supervisors to determine the results of the election. In another stipulated unit case,[60] however, the Board overruled the challenge to a ballot where nothing in the record or the stipulation indicated that the parties intended to exclude the challenged employee and where the employee's inclusion in the unit would not violate any statutory provision or settled Board policy. The Board explained that its role with respect to determining the appropriateness of a bargaining unit differs in stipulated unit cases from that which prevails in other cases where the Board initially determines the appropriate unit. In

[57] *Nathan's Famous of Yonkers*, 186 NLRB No. 19.
[58] *Norris-Thermador Corp.*, 119 NLRB 1301 (1958)
[59] 184 NLRB No 92
[60] *The Tribune Co*, 190 NLRB No. 65.

order to secure expeditious resolution of questions concerning representation, the Board permits parties to stipulate to the appropriateness of the unit and to various inclusions and exclusions, so long as (a) their agreement is approved by the regional director, and (b) their agreement does not violate any express statutory provisions or established Board policies. Thus, in stipulated unit cases, the Board's function is solely to ascertain the parties' intent with regard to the disputed employee and then to determine whether such intent is inconsistent with any statutory provision or established Board policy.[61]

3. Cutoff Date for Objections to Conduct

The Board adhered to its *Ideal Electric* [62] rule that the cutoff date for consideration of alleged objectionable conduct is the date on which the petition which resulted in the election was filed. The Board rejected the contention that where a number of petitions are filed and withdrawn, *seriatim*, before the final and operative petition is filed, the cutoff date should be the date on which the initial petition was filed.[63]

4. Election Propaganda

In determining whether the election propaganda of one of the parties has exceeded permissible bounds and requires setting an election aside, the Board balances the right of the employees to a free and informed choice of a bargaining representative against the right of the parties to wage a vigorous campaign with all the normal tools of legitimate electioneering. Threats of reprisal and promises of benefit are, of course, forbidden. An election will also be set aside, however, when there has been misrepresentation or campaign trickery involving a substantial, material departure from the truth, but will not be set aside on the basis of propaganda, where the message was merely inartistically or vaguely worded or subject to different interpretations.[64] These principles were applied by the Board in a number of cases during the year, of which the following are representative examples.

In *Packerland Packing Co.*,[65] the Board held that an employer's statements in opposition to both competing unions—the petitioner and the intervenor—alike, does not constitute grounds for objection by one

[61] Member Fanning concurred in the result on the basis of the particular facts presented Member Brown dissented, preferring to apply the Board's traditional unit placement tests rather than to speculate as to the parties' intent

[62] *Ideal Electric and Mfg Co.*, 134 NLRB 1275 (1961).

[63] *R Dakin & Co*, 191 NLRB No 65.

[64] *Hollywood Ceramics Co*, 140 NLRB 221 (1962).

[65] 185 NLRB No. 97.

union where the other won the election. The Board rejected the contentions that the antiunion statements had an unequal impact on the losing union's adherents[66] and that the employer's antiunion speech to a captive audience within 24 hours of the election, even if directed equally against both unions, *per se* constitutes grounds for setting aside the election. The Board is not committed to so mechanical an application of its *Peerless Plywood* rule[67] in situations where, as here, its application would tend only to provide the erring employer another opportunity to defeat the unions.

In *Oxford Pickles*[68] the Board held that the employer's letters, containing questions and answers regarding the possible effects of unionization on the employees' rights and the employer's obligations, constituted legitimate campaign propaganda. The answers to the questions accurately stated the law and facts and did not amount to an implied threat of reprisal. With respect to the employer's statement that it "does have the power to make good its promises and the Union does not," the Board noted that this statement was not made in the context of any unlawful promises or threats but merely sought to advise employees that all union promises are not attainable without prior employer assent.

In another case,[69] the Board found that the employer's notice to employees, advising them that wage increases were being withheld because of the pendency of the election, was objectionable in the extant circumstances and warranted setting the election aside. Since the employer had no fixed practice obligating it to grant wage increases whenever its local competitors did so, and since the employees had not inquired about the matter, the employer's notice that it could not then consider making similar increases because of the pending election clearly conveyed the impression that, but for the presence of the union, the employees would have received wage increases.

The Board also held that an employer's announcement that it was withholding the results of its recently completed area wage survey because of the pending election constituted an implied promise of benefit which interfered with the employees' free choice in the election.[70] Having told its employees when to expect the wage survey results, the announcement that it was withholding same so that the union may not claim benefits therefor was not only a departure from

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[66] *Showell Poultry Co.*, 105 NLRB 580 (1953).

[67] *Peerless Plywood Co.*, 107 NLRB 427 (1953)

[68] *Oxford Pickles, Div of John E Cain Co.*, 190 NLRB No. 24. Member Brown, dissenting, would have found that the disputed materials contained misrepresentations of law and fact and threats of reprisals if the union won the election.

[69] *Cotton Producers Assn d/b/a Gold Kist Poultry Growers*, 188 NLRB No. 122.

[70] *Dynatronics, an operation of the Electronics Div. of the General Dynamics Corp*, 186 NLRB No 141. Chairman Miller, dissenting, would find that the announcement contained neither promise nor threat but was intended merely to maintain the employer's credibility.

what would have been normal practice had the union not been on the scene,[71] but was also an attempt to place the blame for possible loss of benefits upon the union.

An employer's preelection announcement that it was putting its "call-in pay" policy into effect, and its subsequent implementation of such policy, was held in another case [72] to constitute an unlawful grant of benefits in order to induce employees to reject the union. Although the "call-in pay" policy had been adopted some years earlier, it had not been applied since 1965. The employer's announcement of intention to give effect to the policy was made in response to an employee's inquiry at a meeting which the employer called to dissuade employees from voting for the union. The Board also found unlawful election interference by the employer's statement that its regularly scheduled wage increases and appraisals were temporarily frozen because of the pending election. The Board repeated its well settled rule that the employer's legal duty is to proceed as it would have done had the union not been on the scene.

In *Cross Baking Co.*,[73] the employer alleged that the union's preelection letter to employees misrepresented facts concerning an increase in wages and benefits which it had obtained for its members in another plant. Applying the tests set forth in *Hollywood Ceramics Co.*, *supra*, the Board concluded that the letter, while perhaps exaggerating the truth somewhat, did not contain misrepresentations of the types proscribed therein.

5. Other Objectionable Conduct

An election will be set aside and a new election directed if the election campaign was accompanied by conduct which, in the Board's view, created an atmosphere of confusion or fear of reprisals or which interfered with the employees' exercise of their freedom of choice of a representative as guaranteed by the Act. In evaluating the interference resulting from specific conduct, the Board does not attempt to assess its actual effect on the employees, but rather concerns itself with whether it is reasonable to conclude that the conduct tended to prevent the free formation and expression of the employees' choice. In making this evaluation the Board treats each case on its facts, taking an *ad hoc* rather than a *per se* approach in resolution of the issues.

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[71] *Gates Rubber Co*, 182 NLRB 95 (1970).

[72] *Montgomery Ward & Co.*, 187 NLRB No. 126. Chairman Miller, dissenting, would find no violation or interference by the foregoing conduct, as he viewed the employer's action as the lawful attempt to correct an internal error, rather than an unlawful effort to influence the results of the election.

[73] 186 NLRB No. 28.

In *Bona Allen, Inc.*,[74] the employer's objection alleged that the threatening remarks of one fervent prounion employee so charged the preelection atmosphere as to make a free election impossible. The Board overruled the objection, finding that the employee was not an agent of the petitioner and that in all but one of his exchanges with fellow employees he addressed himself not to the election but to events which might follow a union victory in the election. Thus, he threatened employees with physical violence if the union, having won the election, called a strike and the employees refused to honor the picket line. The threatened employees also indicated they did not seriously consider these remarks as reflecting petitioner's position. The Board found "that the incidents merely represented exchanges between individuals of the kind frequently encountered in the milieu of the workplace," and concluded that the conduct of the prounion employee "did not tend to destroy the atmosphere necessary to the employees' exercise of a free choice in the election."

The Board did not find objectionable an employer's announcement of wage increases made after one petition was withdrawn and before it learned that a substitute petition had been filed by another local union.[75] In these circumstances the Board found no evidence that the timing of the employer's announcement of benefits was tainted by an unlawful purpose.[76] Although the second petitioner had earlier expressed a generalized interest in representing the Employer's employees when it attended the conference on the first petitioner's petition, "it failed to fortify this by thereafter making known and substantiating a supported interest in them." When the first petitioner subsequently withdrew its petition, the Board held, the employer was not obligated to inquire as to whether it could anticipate a substitution.

In another case,[77] the Board overruled an objection alleging that a luncheon for employees given by the union before and during the time the polls were open interfered with the election. The election was held in the YMCA, and the luncheon was given on the floor below the polling area. Employees were not compelled to attend and those who did had to go out of their way to do so. In these circumstances, the

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[74] 190 NLRB No 37 Chairman Miller, dissenting, viewed the employee's remarks more seriously, particularly where, as here, the election resulted in a relatively narrow union victory. In a situation involving election interference, rather than responsibility for unfair labor practices, Chairman Miller would not regard as controlling whether the offending employee was or was not, technically, the union's agent.

[75] *Connor Trading Co.*, 188 NLRB No. 43.

[76] *Baltimore Catering Co.*, 148 NLRB 970, 973 (1964).

[77] *Lach-Simkins Dental Laboratories*, 186 NLRB No. 116. Chairman Miller, dissenting, would have set the election aside by extending the rationale of *Milchem, Inc.*, 170 NLRB 362 (1968), to the facts here. In Chairman Miller's opinion, the providing of a free lunch by either party at the time the election is occurring constitutes "that kind of potential for distraction, last minute pressure, and unfair advantage" which was condemned in *Milchem*.

Board concluded that the luncheon was not held so close to the polling area that it interfered with the election. Nor was the value of the sandwiches and soft drinks sufficient to interfere with the election.

In *EFCO Corp.*[78] the Board held that a union's announcement of a dues reduction on the eve of a deauthorization election does not so improperly influence the outcome of the election as to require that the results be set aside. In so holding, the Board relied on its rationale in *Dit-Mco*,[79] where the Board found that a union's waiver of initiation fees, whether or not conditioned upon the outcome of the election, did not constitute a basis for setting aside a representation election, and in *Primco*,[80] where the Board found unobjectionable a union's discontinuance of a strike fund and refund of strike fund payments before a representation election. Although these decisions involved representation elections, the Board found the same considerations applicable to deauthorization elections. Thus, neither a reduction in dues nor a waiver of initiation fees constitutes inducement to those who would reject entirely all mandatory requirements to pay membership dues, for the option to avoid all such mandatory membership obligations remains open to the employees in both situations. The Board cited its reasoning in *Primco*, to the effect that an otherwise permissible change in a union's position, made in response to legitimate employee demands, cannot be condemned as objectionable simply because it is motivated by the union's desire to present itself as a more attractive candidate.

F. Unit Clarification Issues

The issue of whether the Board has statutory authority, in unit clarification proceedings, to merge single-plant units which are separately represented by the petitioning union, with a multiplant unit which is also represented by that union, by means of directing self-determination elections in the smaller units, was once more presented in two cases involving *Libbey-Owens-Ford Co.*[81] In an earlier unit clarification proceeding involving the same company [82] a Board majority directed self-determination elections among the employer's employees in two single-plant unit represented separately by the same union to determine whether they wished to be represented as part of an existing multiplant unit in which the same union also was the cer-

[78] 185 NLRB No 78.

[79] *Dit-Mco, Inc.*, 163 NLRB 1019 (1967); 171 NLRB 1458 (1968), enfd. 428 F.2d 775 (C A 8, 1970)

[80] *Primco Casting Corp.*, 174 NLRB 244 (1969)

[81] 189 NLRB No. 138 and 189 NLRB No. 139.

[82] *Libbey-Owens-Ford Glass Co*, 169 NLRB 126 (1968). Thirty-third Annual Report (1968), pp. 57–58, 177. Members Fanning and Jenkins dissented.

tified bargaining representative.[83] Subsequently, a majority of the employees in each of the two single-plant units having voted in favor of representation as part of the multiplant unit, the Board issued a Supplemental Decision and Order [84] clarifying the certified multiplant unit by including therein the employees at the employer's Brackenridge, Pennsylvania, and Lathrop, California, plants.

In the two cases decided this report year, the Board reversed its holding in 169 NLRB 126 and vacated the clarification granted in 173 NLRB 1231. In the first case the Board dismissed the union's petition to further clarify the certified multiplant unit by including therein the employees separately represented by it at the employer's Mason City, Iowa, plant, through the same election process utilized in the prior clarification proceeding.[85] The other case [86] was a direct outgrowth of the unit clarification granted in 173 NLRB 1231, and involved the employer's alleged violation of section 8(a)(5) of the Act by refusing to bargain with the union for the Brackenridge employees as part of the multiplant unit. The employer, however, at all times was willing to bargain with the union concerning the Brackenridge plant employees as a separate single-plant unit, and contested the proceedings which resulted in its merger with the broader multiplant unit. The Board found merit in the employer's contention and dismissed the complaint in a decision marked by four separate opinions.[87]

In another unit clarification proceeding,[88] the employer requested clarification of either the IAM or IBEW certification to determine the unit placement of employees who perform high voltage testing on its gas turbine engines. Although employees represented by IBEW in a

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[83] 10 NLRB 1470 (1939).

[84] *Libbey-Owens-Ford Glass Co*, 173 NLRB 1231 (1968).

[85] *Libbey-Owens-Ford Co*, 189 NLRB No 138. Members Fanning and Jenkins relied on the reasons stated in their dissenting opinion in 169 NLRB 126, 129 Chairman Miller, concurring, relied on his separate opinion in 189 NLRB No 139, adding only that the matter of merging appropriate single-plant units in larger multiplant units should be decided on a consensual basis by the parties to the bargaining relationship Member Kennedy, concurring, would have dismissed on the ground that the union sought certification of the single-plant unit and was certified in such unit at a time when a prior unit clarification petition was pending before the Board.

[86] *Libbey-Owens-Ford Co.*, 189 NLRB No. 139.

[87] Members Fanning and Jenkins relied on the reasons stated in their dissenting opinion in 169 NLRB 126, 129. Chairman Miller, concurring, welcomed the Board's return to the principle that changes in multiplant bargaining units should be based on agreement of the parties. He disagreed, however, with the proposition that the Board is without authority to merge separate appropriate units. Member Brown, dissenting, adhered to the majority view in 169 NLRB 126 and therefore would have found the violation here Member Kennedy, dissenting, agreed with the decisions and determinations in the unit clarification proceedings and would therefore have found the refusal to bargain violative of section 8(a)(5) of the Act.

[88] *Solar, Div of Intl. Harvester Co*, 187 NLRB No 105. Member Jenkins, dissenting, viewed the instant proceeding as a work assignment dispute rather than as a representational matter and would have dismissed the unit clarification petition

unit of maintenance electricians had been doing this work for some years, IAM claimed that the work belongs to the production and maintenance employees whom it represented. The IAM and IBEW were certified in 1943 and 1948, respectively, before the employer became involved, in 1952, in work involving high voltage testing. Before reaching the merits of the dispute, the Board had to satisfy itself that the issue presented in the employer's petition raised an accretion or unit placement question over which the Board has jurisdiction under section 9(b) of the Act, and that it was not merely a controversy involving the assignment of disputed work. On the merits, the Board noted the fact that the work in dispute arose after both unions were certified and that the employees represented by IBEW had performed the work in question for about 15 years. In these circumstances, the Board concluded "that the resolution of the representational question made by the parties themselves is an acceptable one, and that the interests of industrial stability would best be served by construing the certifications as the parties have long construed them."

The Board dismissed a unit clarification petition in which the union sought to add a certified unit of firemen represented by it, to a much larger uncertified production and maintenance unit also represented by it, either without or after a self-determination election among the firemen to determine their preference.[89] A majority of the Board, without reaching other questions that may be present, would have dismissed the petition on the ground of untimeliness, as the union's clarification petition was filed less than 1 year after the Board had certified the union as the representative of the employer's firemen and before, so far as appears, the union had made a genuine effort to negotiate a separate bargaining contract covering employees in the certified unit. The majority therefore applied to clarification petitions the same rules[90] which require the dismissal of representation petitions filed during the certification year.[91]

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[89] *Firestone Tire & Rubber Co.,* 185 NLRB No. 11.

[90] *Centr-O-Cast & Engineering Co.,* 100 NLRB 1507 (1952).

[91] Members Fanning and Jenkins would also have rested dismissal on the grounds stated in their opinions in *Libbey-Owens-Ford Co , supra,* and *P.P G. Industries, Inc ,* 180 NLRB 477 (1969). Members McCulloch and Brown, dissenting, would have granted clarification (Member Brown without directing a self-determination election) on the grounds that the Board has customarily held, in cases where a unit of firemen has been in dispute, that such firemen *must* be grouped with production and maintenance employees for purposes of collective bargaining See *Magma Copper Co ,* 115 NLRB 1 (1956) ; *Wilson & Co., Inc.,* 101 NLRB 1755, 1756 (1952). They also disagreed with the majority's extension of the *Centr-O-Cast* rule. *supra,* to clarification petitions.

G. Amendment of Certification Issues

Issues involving changes in the certified bargaining representative were considered in three cases upon petitions to amend certification. In *Montgomery Ward & Co.*,[92] the Board amended the certification on finding that the merger of the certified local union with a sister local of the same international union resulted in no substantial change in the identity of the bargaining representative. The obligations owed by employee-members of the bargaining unit to the international union were found to have remained the same; the business agent of the certified local continued to service the unit employees and to represent their interests within the consolidated local; and, lastly, employee members of each bargaining unit previously represented by the certified representative continued to exercise significant control over their own destiny by retaining the power to ratify bargaining contracts and to make decisions on similar matters affecting their own units without intervention by other members of the petitioner. The Board also granted amendments to certifications in two cases involving a change in, or transfer of, affiliation by the certified representative.[93] In these cases, the employer alone opposed the requested amendment of certification arguing, *inter alia*, that it violated contract-bar rules; that the petitioner assisted and participated in the transfer of affiliation; and that the procedures used to achieve affiliation did not comply with standards of due process or provide adequate safeguards and failed to conform with the certified local's constitution and by-laws. The Board rejected these contentions finding that contract-bar rules do not apply to petitions to amend certifications, and that the employer's other contentions were not substantiated in the record. The Board concluded that the amendments requested "would insure to employees the continuity of their present organization and representation."

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[92] 188 NLRB No. 87 Member Jenkins, while approving the amendment here because he viewed it as substantially a technical change, adhered to his view, expressed in *North Electric Co*, 165 NLRB 942, 943 (1967), that whenever there is a substantive change in the bargaining representative, all employees in the unit—members and nonmembers alike—must be afforded an opportunity to participate in determining that bargaining representative

[93] *East Dayton Tool & Die Co.*, 190 NLRB No. 115. Member Jenkins, dissenting, would not have amended the certification for the reasons stated in his dissent in *North Electric Company*, 165 NLRB 942, 943 (1967) *In Hamilton Tool Co*, 190 NLRB No 114, Chairman Miller, concurring, agreed with the result because it conformed with the Board's precedent in this area He questioned, however, the premise that the newly affiliated local really is the same entity as the former independent union; if not, in Chairman Miller's view, the amendment to certification procedure here might well be considered a violation of settled contract-bar rules. Member Jenkins dissented, once again, for the reasons stated in his dissent in *North Electric Co., supra.*

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VI

Unfair Labor Practices

The Board is empowered under section 10(a) of the Act "to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce." In general, section 8 prohibits 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 an unfair labor practice has been filed with it. Such charges may be filed by an employer, an employee, a labor organization, or any other person irrespective of any interest he might have in the matter. They are filed with the regional office of the Board in the area where the alleged unfair labor practice occurred.

This chapter deals with decisions of the Board during the 1971 fiscal year which involved novel questions or set precedents which may be of substantial importance in the future administration of the Act.

A. Employer Interference With Employee Rights

Section 8(a)(1) of the Act forbids an employer "to interfere with, restrain, or coerce" employees in the exercise of their rights as guaranteed by section 7 to engage in or refrain from engaging in collective-bargaining and self-organizational activities. Violations of this general prohibition may be a derivative or byproduct of any of the types of conduct specifically identified in paragraphs (2) through (5) of section 8(a),[1] or may consist of any other employer conduct which independently tends to interfere with, restrain, or coerce employees in exercising their statutory rights. This section treats only decisions involving activities which constitute such independent violations of section 8(a)(1).

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

1. Limitations on Solicitation

Limitations upon solicitation and distribution activities by employees during worktime in work areas are usually valid absent special circumstances. In *Gooch Packing*,[2] the Board held that the requirement of an employer that management approval be obtained before employees engaged in worktime solicitation for the union did not render the employer's no-solicitation rule invalid. The Board found that the same requirement was made for all other forms of worktime solicitation, and that the employees and the union did not view the rule as requiring permission for nonworktime solicitation. Moreover, employees were shown to have engaged in union solicitation during nonworktime without interference from management. While the record revealed instances of permission being granted for other forms of worktime solicitation, there was no evidence that an employee or a union request to engage in worktime solicitation for union membership would have been refused.

In *Farah Mfg. Co.*[3] the Board had occasion to determine whether an employer may ban the signing of union authorization cards in work areas during the employees' nonworktime. Initially, the Board had to decide whether the presentation to an employee of a union authorization card for signature, in the course of oral solicitation, was an act of distribution of literature or an act of solicitation within the meaning of the Board's relevant standards. The Board standard applicable to the distribution of literature permits an employer to ban literature distribution in working areas even when engaged in on the employees' free time "because it carries the potential of littering the employer's premises, [and thus] raises a hazard to production whether it occurs on working time or nonwork time."[4] On the other hand, however, solicitation is subject to clearly lawful regulation and restraint by an employer only if the solicitation takes place on the employees' worktime. Applying these principles, the Board rejected the respondent employer's contention that its employees' "signing up" of others was an act of literature distribution, and concluded that its maintenance of a rule banning such activity, as well as oral solicitation, in work areas during nonworktime was a violation of section 8(a)(1) of the Act.

2. Limitations on Wearing Insignia

The Board in determining whether employees' section 7 rights have been infringed upon must frequently strike a balance between the

[2] 187 NLRB No. 44.
[3] 187 NLRB No. 83.
[4] *Stoddard-Quirk Mfg. Co.*, 138 NLRB 615, 619 (1962).

employees' right to engage in activity designed for mutual aid and protection, and the employer's right to establish plant rules consistent with his property rights and in support of discipline and plant safety. In *Andrews Wire Corp.*,[5] the Board upheld the validity of an employer's requirement that employees not apply union insignia to their safety hats. At the time of the asserted unfair labor practice, the employees were required to wear safety glasses and hard hats at all times. The hats were made of metal and had a bright aluminum color. The particular hat was chosen by respondent because of its bright lustre, which made it easier to spot the mill where lighting was poor, and because it protected the employee from falling objects. Employees were permitted to wear union insignia on their clothing without restriction. The Board concluded that the employer had a legitimate concern about the threat to safety posed by the use of unauthorized decorations on work hats, and made reasonable efforts to persuade the employees to comply with the rule and to remove the union insignia from the hats before resorting to disciplinary measures for refusing to comply therewith.

In another decision,[6] the Board dealt with the wearing of union insignia by an employee whose work functions carried him to the premises of another employer. The issues presented were (1) whether a fabric manufacturer violated section 8(a)(1) of the Act by requiring an employee of the telephone company to remove his union pocket protector as a condition to performing services at its plant, and (2) whether the telephone company violated the Act by instructing the employee to comply with the manufacturer's requirement. The Board rejected, as without merit, the manufacturer's defense that because it was not the employee's employer, it could not, as a matter of law, be found to have violated section 8(a)(1) of the Act by its action toward him. The Board found that the manufacturer's demand constituted a direct interference with and restraint of the employee's protected right to wear a union insignia at work. The Board further found that the telephone company, by instructing the employee to remove his union pocket protector and return to the manufacturer's plant to complete his assignment, in practical and legal effect adopted the manufacturer's unlawful rule as a prohibitory rule of its own without making any inquiry or investigation to determine whether the manufacturer had any legitimate reason to justify the stand it had taken. The Board concluded that both employers thereby violated section 8(a)(1) of the Act.

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[5] 189 NLRB No. 24

[6] *Fabric Services*, 190 NLRB No. 105.

3. Discharge for Participation in Unprotected Activity

The rights guaranteed to employees by section 7, in the exercise of which they are protected by section 8(a)(1), include the right "to engage in . . . concerted activities for the purpose of collective bargaining or other mutual aid or protection. . . ." In several cases decided last year, the Board concluded that the employees' activities were not protected by section 7, and therefore employer actions complained of were not prohibited by the Act.

In *Emerson Electric Co., U.S. Electrical Motors Div.*,[7] the Board held that section 7 does not create a right to insist, to the point of insubordination, on having fellow employees present as witnesses to a meeting in a private management office at which it is expected that some measure of discipline will be meted out. The Board concluded that the employer did not violate section 8(a)(1) by discharging an employee for such conduct and reprimanding two other employees for leaving their work station without permission to be present at the disciplinary meeting.

In *Sunbeam Corp.*,[8] the Board found unprotected the concerted activity of an employee who distributed a leaflet to fellow employees in which he set forth his various grievances, made numerous assertions and accusations reflecting on the honor, honesty, and intelligence of both company and union officials, and stated that on a specified date he would march in protest at the company's premises. The employee was suspended and later discharged for seeking to encourage a strike and product boycott. The Board [9] concluded that the employee's conduct was in conflict with the basic intent of the no-strike clause of the collective-bargaining agreement, inasmuch as it employed economic pressure in support of a grievance contrary to the contractually stated intent that such matters be settled only within the grievance-arbitration procedure to which employees were individually committed.

In *Montana-Dakota Utilities Co.*,[10] the Board found protected the concerted activity of employees who refused to cross an informational picket line established at a project to which they were sent by a union other than their own and directed against an employer other than their own. In finding that the employer violated section 8(a)(1) by imposing a 30-day disciplinary suspension on the employees, the

[7] 185 NLRB No. 71.

[8] 184 NLRB No 117.

[9] Members Fanning and McCulloch Member Brown would have deferred to the result reached through the grievance procedure, under which the discharge was upheld. Member Jenkins found the employee's activity protected.

[10] 189 NLRB No. 111.

Board applied the principle that the employees' protected right to engage in concerted activity must be balanced against the specific business interest of the employer and that it is only when the employer's business need to replace the employees is such as clearly to outweigh the employees' right to engage in protected activity that an invasion of the statutory right is justified.[11] The Board concluded that the employer had not met this test.[12]

B. Employer Assistance to Labor Organizations

Several cases decided by the Board during the fiscal year involved the applicability of principles established in the *Midwest Piping* line of cases.[13] In two of these cases, the Board overruled, insofar as inconsistent, its decision in *Air Master Corp.*,[14] in which the Board found an 8(a)(2) violation where the employer contracted with a disaffiliating local despite the incumbent international union's demand that the employer not recognize that local.

In *American Cystoscope Makers*,[15] the Board found no violation where the employer recognized and entered into a union-security contract with a newly formed independent union which was the same organization that had represented the employees as a local of the incumbent international. The Board noted that the officers and a substantial majority of the former local had voted to disaffiliate from the international, and that the new union had proved its majority status prior to the execution of the contract. In these circumstances, the Board concluded that the employer had not been faced with a *Midwest Piping* situation.

In *Environmental Control Systems, a Div. of The Pall Corp.*,[16] the Board similarly found no violiation where the employer recognized and entered into a contract with a newly formed independent union during the term of a contract which had been executed by the same organization when it was an affiliated local union of the incumbent international. The Board found that the situation was at best a pseudo-schism resulting in a disaffiliation brought about by a disagreement between an international and an affiliated local union.

[11] *Redwing Carriers*, 137 NLRB 1545 (1962), modifying 130 NLRB 1208 (1961), affd. *sub nom Teamsters, etc, Local 79 v. N.L.R B.*, 325 F.2d 1011 (C.A.D C., 1963)

[12] Member Kennedy, dissenting, would have found the informational picketing to have been something other than a strike; hence he would find there were no protected activities which Respondent's employees could be said to have joined.

[13] *Midwest Piping*, 63 NLRB 1060 (1945), holds that an employer, confronted with rival representation claims from two unions, unlawfully interferes with basic employees' rights when he attempts to resolve the question concerning representation himself by recognizing and bargaining with one of the two unions.

[14] 142 NLRB 181 (1963).

[15] 190 NLRB No. 118.

[16] 190 NLRB No. 119.

As such, the change in name and status of the bargaining representative, the Board found, did not present the employer with rival claims of representation from different organizations. The Board also based its decision on the finding that the Independent was shown to have had valid majority support.

In *Plant & Field Service Corp.*,[17] the Board considered whether an employer engaged in plant and oilfield maintenance work unlawfully assisted the union, with which it had a collective-bargaining contract containing union-security and dues checkoff provisions, by distributing checkoff authorization cards to eight employees as part of its hiring process at an oilfield facility when the employer replaced another contractor as the maintenance contractor at that facility. The forms indicated on their face that execution was voluntary and employment was not conditioned on execution. The Board held that whatever improper effect the initial distribution might have had was promptly and fully remedied when the employer sent a letter to all employees which emphasized that the checkoff authorization was voluntary. Initially the Board had to determine whether the employer unlawfully assisted the union by extending its contract to cover its employees at this facility. The Board found no violation as it concluded that the respondent was not the successor to the former contractor's bargaining obligation with another union; the contract covered all of the respondent's employees; and the particular location where they were assigned to work was not controlling. The Board found the *Midwest Piping* doctrine inapplicable in these circumstances, as the employer had a contract covering all of its employees and that contract had not been found to be invalid. The Board noted that *Midwest Piping* is applicable only where a valid question concerning representation has been raised.

In *Peter Paul, Inc.*,[18] the Board held *Midwest Piping* applicable, even though the rival union did not demand recognition, as the employer continued to bargain with the incumbent union after the rival union filed an election petition which raised a real question concerning representation. The regional director based his finding that the petition was supported by an adequate showing of interest on the number and presumed validity of the authorization cards and the union's estimate of the size of the contractual unit. Applying the principles enunciated in *Shea Chemical*,[19] the Board found that the

[17] 184 NLRB No 100.

[18] 185 NLRB No 64

[19] In *Shea Chemical Corp*, 121 NLRB 1027 (1958), the Board found a real question concerning representation was raised by the rival union's petition, supported by an adequate administrative showing of interest, and that no adverse implication could be drawn from the union's exercise of its statutory right to file an unfair labor practice charge. The Board held that upon presentation of a rival or conflicting claim which raises a real question concerning representation, an employer may not go so far as to bargain collectively with the incumbent or any other union unless and until the question concerning representation has been settled by the Board.

regional director properly determined that a real question concerning representation existed, particularly in view of the employer's failure to provide the requested payroll list. The Board concluded that the employer's continued bargaining in the face of such question concerning representation constituted unlawful assistance to the incumbent union in violation of section 8(a)(2) of the Act.

C. Employer Discrimination in Conditions of Employment

Section 8(a)(3) of the Act prohibits an employer from discriminating against employees "in regard to hire or tenure of employment or any term or condition of employment" for the purpose of encouraging or discouraging membership in any labor organization. However, the union-security provisions of section 8(a)(3) and 8(f) create exceptions to this blanket prohibition which permit an employer to make an agreement with a labor organization requiring union membership as a condition of employment, subject to certain limitations.

During the fiscal year, the Board had occasion, in *Builders' Assn. of Kansas City*,[20] to pass on the issue of disparate treatment in the application by the builders' association of their most recent 8(f) agreement with one of two local unions which had been joint parties to an earlier agreement. Pursuant to the new agreement, the contractors made larger contributions to the welfare and pension fund on behalf of Kansas-based local 18 members working in Missouri than it made on behalf of Missouri-based local 4 members. Local 4 claimed that the old contract conferred exclusive jurisdiction on that local in the Missouri area. The Board found that the old agreement was a prehire agreement under section 8(f) which permits such agreements in the construction industry and does not require the union to establish its majority status via the usual section 9 route. The Board noted that no presumption of majority status and recognition on an exclusive basis is raised by such an agreement. In addition, the Board found that this particular prehire agreement did not purport to grant exclusive recognition to either of the two locals, and that they had become the joint representative of the unit employees. The Board further found that, thereafter, the employers and local 4 had acquiesced in local 18's withdrawal from the latter's joint bargaining responsibility under the old agreement, thereby freeing it to enter into a new prehire agreement with the builders' association. The Board concluded that the apparent disparate treatment which the association accorded those represented by local 4 was without discriminatory intent to encourage or discourage union membership, and that it was normal

[20] 186 NLRB No 123.

to the industry and consistent with the requirements of the prehire contract exemption specifically authorized in section 8(f) for this industry.

D. The Bargaining Obligation

An employer and the representative of its employees, as designated or selected by a majority of employees in an appropriate unit pursuant to section 9(a), have a mutual obligation to bargain in good faith about wages, hours, and other terms and conditions of employment.[21] An employer or labor organization respectively violates section 8(a)(5) or 8(b)(3) if it does not fulfill its bargaining obligation.

1. Obligation to Recognize Upon Initial Demand

The question of what circumstances give rise to an obligation to recognize a labor organization in the absence of Board certification is still not completely settled.

In its 1969 decision in *Gissel*,[22] the Supreme Court held that authorization cards were a valid basis for determining a union's majority status, but noted that a Board-conducted election was the preferred method. It also recognized several modifications which the Board had made to its own *Joy Silk*[23] doctrine; in *Joy Silk*, the Board had focused its attention on whether an employer, which refused to recognize a union on a claimed doubt of its majority status, had done so in good or bad faith. In *Gissel*, the Supreme Court focused rather on the impact of the employer's conduct on the Board's election processes.

The Court in *Gissel* broadly outlined three standards governing bargaining orders.[24] A bargaining order is required where the unfair labor practices are "so coercive that, even in the absence of a section 8(a)(5) violation, a bargaining order would have been necessary to repair the unlawful effect. . . ." Secondly, the Board in its discretion may issue a remedial bargaining order in "less extraordinary cases marked by less pervasive practices which nonetheless still have the tendency to undermine majority strength and impede the election processes." Finally, the Court noted a third category where the unfair

[21] The scope of mandatory collective bargaining is set forth generally in sec. 8(d). It includes the mutual duty of the parties "to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party . . ." However, neither party is compelled to agree to a proposal or to make a concession

[22] *N L R B* v *Gissel Packing Co*, 395 U S. 575.

[23] *Joy Silk Mills*, 85 NLRB 1263 (1949), enfd. as modified 185 F.2d 732 (C.A.D.C, 1950)

[24] *Gissel, supra*, 614–615.

labor practices, "because of their minimal impact on the election machinery, will not sustain a bargaining order."

The Board considered numerous cases during the fiscal year involving the appropriateness of a bargaining order. They ranged from a straightforward application of the *Gissel* standards to considerably more difficult questions concerning impact and underlying philosophy, including questions specifically left open by the Supreme Court.

In an almost classic section 8(a)(5) case, an employer who had committed wholesale 8(a)(1) violations and had discharged two employees because of their union activities was ordered to recognize and bargain wtih a majority union. Because of the pervasiveness of the unfair labor practices, it was unlikely that their coercive effect could be neutralized by traditional remedies; employee sentiment as expressed by authorization cards was judged a more reliable measure of employee desires than an election. Although the employer also violated section 8(a)(5), the Board concluded that, in any event, a bargaining order would have been required to remedy the employer's flagrant and coercive conduct.[25]

In another case, the Board set aside an election and held that an employer's promise of benefits if its employees rejected the union, later fulfilled, and threats of economic reprisals should the union win, violated section 8(a)(1), made a fair rerun election a slight possibility, and required a bargaining order as a remedy. A majority also held that the employer's refusal to recognize the union violated section 8(a)(5). The Board applied *Gissel's* instruction to analyze such cases on the bases of "the extensiveness of an employer's unfair practices in terms of their past effect on election conditions and the likelihood of their recurrence. . . ."[26] Finding the unfair practices substantial and pervasive, the Board concluded that the authorization cards were a more reliable expression of employee sentiment than a rerun election would be.[27] Even though an employer has not resorted to extreme antiunion measures, a bargaining order may still be required to vindicate the employees' right to free choice of a bargaining representative. Citing the Supreme Court's holding in *Gissel* that authorization cards "may be the most effective—perhaps the only way of assuring employee choice where the employer has engaged in conduct disruptive of the election process," the majority of a Board panel found that a bargaining order was necessary where an employer's conduct

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[25] *Medley Distilling Co.*, 187 NLRB No. 12.

[26] *Gissel, supra* at 614.

[27] *United Packing Co of Iowa*, 187 NLRB No. 132. Chairman Miller concurred in the bargaining order, but would have held that it was required only because of the 8(a)(1) violations. In his view, finding an 8(a)(5) violation was superflous.

had tended to undermine the union's majority and impede the election process. *Essex Wire Corporation.*[28] The panel majority adopted the trial examiner's finding that the employer had violated section 8(a)(1) by linking the union with a projected deterioration of their economic and working conditions. In addition, the majority found, contrary to the trial examiner, that the employer had also violated section 8(a)(1) by interrogating employees. In concluding that a bargaining order was warranted, the majority members rejected the dissent's reliance on the allegedly marginal size of the union's majority.

The Board also held a violation of section 8(a)(5) may not be found based on an employer's unfair labor practices which follow a union's loss of majority.[29] Applying this principle, the Board overruled a trial examiner's contrary holding and concluded that an employer's 8(a)(1) and (3) violations following a strike was not sufficient to establish that its refusal to bargain a month earlier violated section 8(a)(5). During the strike the employer had adopted a position of neutrality, and the Board found that from the date recognition was requested until the end of the strike the employer's refusal to rely on a card check and insistence on a Board-conducted election was based on a desire to determine the union's majority status. Following the strike the union lost its majority and thus the employer was under no obligation to bargain when it committed the unfair labor practices.

In one case involving no independent unfair labor practices, an 8(a)(5) violation was found where the record contained evidence, in addition to cards, sufficient to communicate to the employer convincing knowledge of majority status, and insufficient evidence that its refusal to grant recognition was based on a genuine willingness to resolve any doubts concerning majority status through the Board's election process. In *Wilder Mfg. Co.*[30] the Board concluded that the employer did in fact know of the union majority in view of the strike by the card signers, who constituted 11 of the 18 employees in the unit, and the testimony of one of the employer's officers that he had told the other officers that the union "had 10 or 11" of the employees. There was no evidence in the record of a genuine willingness to resolve any lingering doubts of the union's majority status by means of a Board election. The Board noted that if the employer had in good faith indicated a willingness to utilize Board election procedures it

[28] 188 NLRB No 59. Chairman Miller concurred in many of the majority's 8(a)(1) findings, and agreed that the election should be set aside. However, he did not view a bargaining order as appropriate, contending that at most it was a minimal case under *Gissel* and that the union's narrow majority, which in any event he found suspect, was insufficient to support a finding that authorization cards better reflected employee sentiment than would a second election following compliance with a standard remedial order

[29] *Seven-Eleven Super Markets,* 189 NLRB No 127

[30] *Arthur F. Derse, Sr., President & Wilder Mfg Co.,* 185 NLRB No. 76. But see 198 NLRB No 123, issued after the end of the fiscal year, overruling 185 NLRB No. 76.

would not be inclined to enter a bargaining order, absent unfair labor practices, in the interest of encouraging parties to avail themselves of Board election procedures.

As in *Wilder*, the issue in *Redmond Plastics*[31] concerned the circumstances under which an employer incurs an obligation to recognize a union even though it does not commit any independent unfair labor practices. The employer's president, Redmond, had examined the union's authorization cards, acknowledged the union's majority, and agreed to recognize it. At the suggestion of one of the union representatives, Redmond had also agreed that there should be an interim agreement pending negotiations. However, after the agreement was drafted, he announced that he would have to talk to the Chicago officers of the company before signing. Following a discussion with the company's majority stockholder and with its counsel, Redmond advised the union he had been told to seek a consent election. A panel majority held that the specific issue was whether an employer who has satisfied himself of a union's majority and agreed to recognize and bargain with it may thereafter insist on a Board election on advice of counsel based on doubt of that majority. In the view of the panel majority, *Snow & Sons*[32] was dispositive of this issue. There the Board had held that an employer which had agreed to an independent card check violated section 8(a)(5) when it reneged on its agreement, since its continued refusal to recognize the union and insistence on an election lacked a valid basis.[33]

Issues similar to those posed in *Wilder* and *Redmond* arose again in *Linden Lumber*,[34] where a Board majority held that an employer did not violate section 8(a)(5) when it insisted on a Board-conducted election in the face of the union's claim of a card majority, even though, because it claimed supervisory taint, it refused to proceed to a consent election. Following refusal of recognition, based on cards and on an unsuccessful attempt to resolve majority status through the aforementioned consent-election route, the employees struck for 3 months. The majority found that the strike was economic, but that a refusal to reinstate two employees was violative of section 8(a)(3). Nonetheless, the majority concluded that a bargaining order was not warranted on the basis of *Gissel*, because the violations did not have

[31] 187 NLRB No 60.

[32] 134 NLRB 709 (1961), enfd 308 F.2d 687 (C A 9, 1962).

[33] Chairman Miller dissented on a different view of the facts In his opinion, although the employer's representative indicated an initial willingness to accept the cards, he advised the union that he could not grant recognition without consultation. Therefore, in Chairman Miller's view, there was no final commitment for recognition and *Snow & Sons* was inapplicable.

[34] *Linden Lumber Div, Summer & Co.*, 190 NLRB No 116.

such an impact that a fair and representative election could not be conducted. The violations did not suggest far-reaching union animus, as each was occasioned by a mistake of fact: one employee was thought to be a supervisor, the other to have engaged in picket line misconduct.

Still open, however, was the question whether the employer violated section 8(a)(5) by refusing to recognize the union following its offer of authorization cards signed by a majority of employees. The majority noted that in *Wilder* the Board had held that mere refusal to recognize based on authorization cards did not violate the Act, but had found a violation there because the employer had independent knowledge of the union's majority and had made no effort to resolve any possible issue of majority through the Board's procedures. The majority further noted that the issue here, whether an employer who insists on an election must initiate the petition, was one not reached by the Supreme Court in *Gissel.*

Compelled by the facts to reassess the policy of attempting to determine employer knowledge and intent at the time recognition is refused, the majority concluded that, in the absence of a mutually agreed-upon method for determining majority, it would not attempt to divine employer knowledge. Similarly it rejected any attempt to judge an employer's "willingness" to resolve doubts through a Board election. In summary, the majority stated that it would not "reenter the 'good faith' thicket of *Joy Silk*"[25] and held that an employer should not be found guilty of violating the Act solely because it had refused to accept evidence of majority status other than a Board election. The Board emphasized that the employer and the union had never agreed on any mutually acceptable and legally permissible means for resolving the issue of majority other than a Board election.[26]

2. Bargaining Conduct

During the year the Board evaluated a wide variety of situations involving the attitudes, conduct, and positions of parties engaged in collective bargaining in the light of the "good faith" standard of

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[25] *Joy Silk Mills, supra.*

[26] Members Fanning and Brown dissented based on a different view of both the facts and the law The dissent would have found that the employer knew the union represented a majority, never questioned that majority, and did not insist on or even want an election In their view the issue posed by the majority, whether an employer who insists on an election must initiate the election by filing a petition, was not raised As seen by the dissent, the majority quietly overruled *Wilder,* ignored the guidelines set down in *Gissel,* and confined section 8(a)(5) bargaining obligations, absent an election, to situations where the employer has gone back on his agreement to abide by the results of some extra Board procedure for determining majority, as in *Snow & Sons, supra.*

section 8(d).[27] In resolving the issues, the Board gave further definition to the scope of conduct that standard permits or requires.

Where an employer insisted to impasse on changing long-established contract provisions providing for grievance and arbitration over incentive rates, a Board majority adopted the trial examiner's conclusion that the employer was not bargaining in good faith. Most of the employees were not paid at the base rate established by contract, but at a higher incentive rate. The majority held that, in effect, the employer had insisted on unilateral control over employee wages by removing the union's voice in their determination.[28]

In another case the Board held that an employer who refused to meet with a union grievance committee, because it included employees of competitors, had violated section 8(a)(5). The holding was premised on the Act's guaranty to employees of the right to select their own representative. The Board did not reach a subsidiary issue argued by the parties, the circumstances under which an employer might be required to supply confidential information to such a committee, because it was not raised by the facts of the case.[29] However, an employer does not violate the Act by refusing to accept an incumbent labor organization's designation of another union as its representative. Following unsuccessful attempts before the Board to have the new union substituted as bargaining representative, the incumbent's membership had voted unanimously to retain the outside union as the incumbent's representative. On the facts, the trial examiner concluded that what had been attempted was not the securing of an agent, but, as before, the substitution of one union for another. Since the incumbent was the statutory representative, the employer had not violated the Act by refusing to accept the designation, but would have violated its duty to bargain only with the legal representative of its employees had it acted otherwise.[30]

3. Duty to Furnish Information

Bargaining in good faith includes a duty on the employer's part to supply information requested by the bargaining representative which

[27] Sec 8(d) defines the obligation to "bargain collectively," imposed by secs 8(a)(5) and 8(b)(3), as the parties mutual obligation "to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party . . ."; by its terms, it does not compel agreement to a proposal or require concessions.

[28] *Moore of Bedford, Inc.*, 187 NLRB No. 87. Chairman Miller, dissenting, did not consider it unlawful for an employer to insist that changes above a negotiated base-earning level be left to the employer's discretion, and, in any event, would have found that it was the union, not the employer, which created the impasse.

[29] *North Bros. Ford*, 187 NLRB No. 106.

[30] *Sherwood Ford*, 188 NLRB No. 16.

is "relevant, material, and necessary" to the intelligent performance of its collective-bargaining functions.

During the fiscal year the Board was presented with three cases in this area involving separate facilities of the same company.[31] All three involved wage data collected by the employer and requested by the bargaining representative. In the first case, a national contract provided that wage rates were to be set by local negotiations and that local conditions were to be considered. Pursuant to a grievance, the employer conducted an area wage survey and provided the union with most of the data it had obtained, but refused to correlate it to particular plants on the ground the information had been obtained in confidence. Since the employer ultimately rejected the grievance, partially in reliance on the survey, the Board held it was obligated to provide the information to the union. Otherwise the union would be unable to analyze the employer's position intelligently. The Board rejected the argument that such a holding would deprive employers of access to accurate information, noting that the employer was here being required to provide only correlated wage data in its possession on which it had relied. The Board stated that the decision was not necessarily applicable to all factual situations.

The second case differed in the respect that no grievance had been filed when the data was requested. The employer's shop manager had announced that an area wage survey revealed wages were below the local scale, and that there would probably be a retroactive wage increase. There was no such increase, but about 6 months later the shop manager told union representatives that there had been a second survey. The union's request for a copy was denied on the basis that the employer had never used such data to support pay rates. The Board concluded that the employer did make use of such data and that there was a consequent duty to furnish it to the union. Although no grievance had been filed, the Board found this was because the union had been lulled into a false sense of security by the announcement of the original survey and the prediction of retroactive raises. In the circumstances, the Board deemed the information requested necessary and relevant to the proper performance of the union's duties.

The third case, like the first, involved a union request for correlated wage data obtained in confidence by the employer in conjunction with a grievance. A Board majority concluded that the union needed the data to check the accuracy of the survey and inferred, contrary to the trial examiner, that even if the employer had obtained the data for reasons not related to the grievance, as it asserted, it had nonetheless

[31] *General Electric Co. (Dover Wire & Fabrication Operation)*, 188 NLRB No 105, and *General Electric Co.*, 188 NLRB No. 107 and 192 NLRB No. 9.

made use of the data in taking or maintaining its position on the grievance. The majority specifically declined to hold, however, that any information which could have relevance to determining a party's position with respect to a matter under negotiation, or to be negotiated, must be revealed upon request.[32]

4. Subjects for Bargaining

As previously indicated, the Act requires both an employer and his employees' statutory representative to bargain collectively with respect to "wages, hours, and other terms and conditions of employment." [33] In addition to these mandatory subjects, the parties may bargain with respect to other matters. But neither party may insist that the other agree with respect to such nonmandatory or permissive matters, nor may a party condition performance of his mandatory bargaining obligation on agreement by the other party with respect to such matters.[34] A frequent issue before the Board is whether a particular subject or specific proposal is mandatory or permissive.

In one such case the Board held that a union's insistence on contract provisions restricting the right of employers to obtain strike insurance, which would indemnify the employers in the event of a strike or lockout, violated the Act. The Board concluded that the union's proposals neither set a term or condition of employment nor regulated the employer-employee relation, but instead regulated the employers' economic strength and relative bargaining position. The Board therefore held these were not mandatory bargaining subjects.[35]

Some subjects may become nonmandatory through agreement of the parties. The union had sought to require the employer to discuss the transfer of employees from one shift to another. However, examination of the contract's management rights clause and a supplemental agreement revealed that the parties had agreed that the employer had the exclusive right to make such changes. Under these circumstances, the employer was held not to have been required to bargain, during the contract term, about proposed transfers.[36]

In its *Phelps Dodge* decision the Board concluded on the facts that the union's insistence on simultaneous settlements of contracts in other bargaining units was an attempt to engage in companywide bargaining. Since the conduct of negotiations on a broader basis than the

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[32] 192 NLRB No. 9, *supra*. Chairman Miller dissented on the ground that the employer had not been shown to have relied on the survey in this case

[33] Sec 8(d) of the Act.

[34] *N L R B* v *Wooster Div. of Borg-Warner*, 356 U.S 342 (1958).

[35] *Intl. Union of Operating Engineers, Loc 12 (Associated General Contractors of America)*, 187 NLRB No. 50.

[36] *Bloomsburg Craftsmen*, 187 NLRB No. 68.

bargaining unit, whether that unit is established voluntarily or by Board certification, is not mandatory, the unions were found to have violated the Act.[37]

5. Subcontracting and Plant Relocation

Under the Supreme Court's decision in *Fibreboard* an employer is required to bargain over the contracting out of work previously performed by members of the bargaining unit.[38] However, it is not a hard and fast rule to be rigorously and mechanically applied regardless of the context in which the question arises. In one case during the year a panel majority found that an employer had not violated the Act by subcontracting work and laying off employees even though it was done without notice to the bargaining representative. In reaching this conclusion the majority noted a number of unique factors, among which were: the absence of any willful disregard of the Act; the singularity of this occurrence in a 20-year bargaining history; the slight likelihood of recurrence; a minimal impact on employees; and a lack of evidence that the union ever requested bargaining.[39]

Even as subcontracting is a condition of employment, and thus a mandatory subject for bargaining, the effects of a decision to relocate also constitute a mandatory bargaining subject. One case involving this issue arose in a somewhat unusual form when an employer, which relocated its plant 25 miles away, prematurely recognized another union which had formerly represented employees at that site and refused to consider proposals that its old employees be permitted to follow their jobs. In affirming the trial examiner's finding that section 8(a) (5) had been violated, as well as section 8(a) (2) and (3), the majority noted that the substance of the violation was unlawful discrimination against old employees in favor of the constituents of the newly recognized union based solely on the identity of their collective-bargaining representatives. To remedy the employer's unlawful actions, the majority ordered the employer to make whole those employees terminated as a result of the relocation, remit dues and initiation fees deducted for the new union, and withdraw recognition from that union. Since the new operation was a continuation of the old and a majority of the employees had requested transfers, the employer was also ordered to recognize the

[37] *AFL–CIO Joint Negotiating Committee for Phelps Dodge, et al*, 184 NLRB No. 106. Member Brown dissented on a different view of the facts.

[38] *Fibreboard Paper Products Corp* v *N.L R.B*, 379 U.S. 203 (1964)

[39] *Tellepsen Petro-Chem Constructors*, 190 NLRB No. 76 Member Brown, dissenting, noted the employer's action was without precedent and would have found that the employees were adversely affected In Member Brown's opinion, this was the classic situation involved in *Fibreboard*.

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old unions as collective-bargaining representatives pursuant to the preexistent collective-bargaining agreements. The majority noted that, although the reinstated unions might lack a substantial constituency at the new location, it was a fair inference that they would have had sufficient support to compel continued bargaining but for the unfair labor practices.[40]

6. Survival of Terms of Expired Contract

Twice during the year the Board had occasion to consider whether arbitration provisions survived the expiration of the contract incorporating them, and, on different facts, reached different results. In *Hilton-Davis*[41] a majority concluded that an employer's refusal to honor an expired contract's arbitration provisions did not violate the Act. Both the majority and the concurrence bottomed their conclusion on the fact that arbitration is a consensual matter, and that, while the culmination of a grievance procedure, it does not stand on the same footing. Although an employer may not unilaterally change established grievance procedures following the lapse of a contract, it does not follow that its obligation with respect to an arbitration provision, which has its source in contract and is not specifically mandated by the Act, is identical. Since arbitration provisions are rooted in the contract incorporating them, they may not survive its demise.

The second case, reaching a contrary conclusion, is only superficially similar. In *Taft Broadcasting Co.*,[42] the Board found as a matter of fact that the parties had concluded an interim agreement providing that grievance and arbitration procedures would remain in effect following the expiration of the contract. The Board concluded, therefore, that whether or not arbitration provisions survive expiration of a contract was irrelevant and that, in view of the interim agreement, the employer's subsequent notification to the union that it would no longer recognize the arbitration procedure violated section 8(a)(5).

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[40] *Fraser & Johnston Co.*, 189 NLRB No. 17. Chairman Miller concurred in the majority's legal conclusions, though on a different rationale, and dissented in part of the remedy. Citing the difficulties inherent in attempting to restore the *status quo ante*, he would have limited the remedy to withdrawal of recognition, remittance of dues, reinstatement without backpay, and resolution of questions of representation through Board elections following compliance.

[41] *Hilton-Davis Chemical Co.*, 185 NLRB No. 58, Member Brown concurring separately Member McCulloch dissented in part, essentially on the basis that arbitration is a mandatory bargaining subject and that unilateral changes may not be made, despite expiration of the contract, without notifying the union and giving it an opportunity to bargain on the subject.

[42] 185 NLRB No. 68.

7. Obligation of Successor Employer to Assume Contract

Under the Board's view a collective-bargaining agreement is not an ordinary contract but a generalized code binding on successors who continue essentially the same enterprise.[43] Refinement of this principle occurred during the year as the Board examined its applicability in varying factual situations.

Where the successor to an employer subject to a multiemployer contract refused to honor it, although a continuing business entity in the same employing industry, the Board found that the successor's refusal violated the Act. The contract substantially recognized the separate identity of the employer's business, a separate unit was appropriate, and there were no administrative impediments to application of the basic contract terms. The Board rejected the trial examiner's conclusion that the multiemployer contract could not be applied to a single-store unit and that it was, therefore, unnecessary to determine successorship.[44]

On the other hand, the Board found no obligation to adopt a predecessor's contract when it was entered into pursuant to section 8(f) of the Act. Section 8(f)(1) permits parties in the construction industry to enter into collective-bargaining agreements without establishing majority status. Such a contract, the Board held, cannot give rise to a presumption of continuing majority and thus there is no duty to recognize the predecessor's bargaining obligation absent independent proof of actual majority.[45]

Even though an employer is found to be a successor, exceptional circumstances may exonerate its refusal to honor its predecessor's contract. Where an employer's successful bid on work to be performed on an air base relied on wage data provided by the Government, and that data did not take into account future wage increases already built into the collective-bargaining agreement, its refusal to assume the agreement was found to be lawful. Although the employer met the *Burns* standards, the Board concluded that the case was one of the exceptions anticipated in *Burns*. To do otherwise would work a hardship on the successor and force it to the unpalatable alternatives of abandoning the contract, refusing to employ its predecessor's work force, or jeopardizing its well being and the jobs of its employees. In *Burns* the Board had concluded that no great hardship would be worked in normal situations by requiring contract assumption because

[43] *William J. Burns Intl. Detective Agency,* 182 NLRB No. 50, Thirty-fifth Annual Report, p. 60.

[44] *Solomon Johnsky d/b/a Avenue Meat Center,* 184 NLRB No. 94.

[45] *Davenport Insulation,* 184 NLRB No. 114.

the successor could make any necessary adjustments during negotiations. However, no such negotiations take place with respect to Government contracts.[46]

E. Union Interference with Employee Rights and Employment

1. Fines to Enforce Union Rules

The applicability of section 8(b)(1)(A) as a limitation on union actions, and the types of those actions protected by the proviso to that section,[47] continued to pose questions for the Board this year as in prior years.[48] Several cases involving disciplinary action by unions against their members for crossing their union's or another union's lawful picket line required the Board once again to reconcile unions' statutory right to prescribe their own rules respecting "the acquisition or retention of membership" with the public policy expressed in section 7 of permitting employees to refrain from engaging in concerted activities. Previously, the Board in *Allis-Chalmers*,[49] with Supreme Court approval, had held that a union does not violate section 8(b)(1)(A) by imposing and seeking to collect a fine upon its members for crossing its authorized picket line. In *The Boeing Co.*,[50] where during an authorized strike certain union members resigned from the union prior to returning to work, the Board majority held that a union violates section 8(b)(1)(A) when it imposes a court-collectible fine on its members for strikebreaking conduct engaged in by them after they had effectively resigned from the union. The majority decision explained that upon joining a union, the individual member becomes a party to a contract-constitution and thereby consents to the possible imposition of union discipline upon his exercise of the section 7 right to refrain from concerted activities. But, the majority stated, upon his resignation the contract between the member and the union becomes a nullity and the attempted imposition of discipline by the

[46] *Emerald Maintenance*, 188 NLRB No. 139.

[47] Sec 8(b)(1)(A) provides · "It shall be an unfair labor practice for a labor organization or its agents—(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein. . . "

[48] See, e.g, Thirty-fifth Annual Report (1970), pp. 61–64; Thirty-first Annual Report (1966), pp 97–98; Thirtieth Annual Report (1965), pp. 82–87; Twenty-ninth Annual Report (1964), pp. 83–85.

[49] *Local 248, et al., United Automobile, Aerospace & Agricultural Implement Workers of America, AFL–CIO (Allis Chalmers Mfg Co)*, 149 NLRB 67 (1964), affd. 388 U.S. 175 (1967).

[50] *Booster Lodge 405, Machinists*, 185 NLRB No. 23. See also *Granite State Joint Board, Textile Workers, Loc. 1029, AFL–CIO (Intl. Paper Box Machine Co.)*, 187 NLRB No. 90.

union for conduct subsequent thereto is beyond the union's powers and thus violative of section 8(b)(1)(A).[51]

In several subsequent cases the Board refined the rule enunciated in *Boeing*. Thus, it held that where a member resigns by mailing his membership card to the union, it will be presumed that the union received it on the date immediately following the date of mailing with the resignation becoming effective on the date of receipt.[52] In a series of cases the Board concluded that where all the operative facts necessary to make out a claimed violation of section 8(b)(1)(A), i.e., resignation of memberships, crossing of picket lines, and unlawful fines, occurred more than 6 months prior to the filing of charges, it would dismiss the complaint pusuant to section 10(b) and not find a violation based on a union's pre-10(b) levied fine.[53]

In two related areas the Board held that a union does not violate section 8(b)(1)(A) by fining a member who had not resigned from the union prior to crossing a sister local's authorized picket line,[54] or by fining a member for engaging in like conduct where the union's collective-bargaining agreement contained a "no-strike—no-lockout" clause which nevertheless permitted the union to honor another union's authorized picket line.[55]

In *Intl. Assn. of Machinists, Local Lodge 504 (Arrow Development Co.)*, 185 NLRB No. 22, a majority of the Board held that a union did not violate section 8(b)(1)(A) by imposing and enforcing an allegedly unreasonable fine on a member who had not resigned before crossing his union's authorized picket line. The majority explained, after reviewing the Supreme Court's recent decisions in this area of the

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[51] Member Brown, dissenting in part, would have dismissed the complaint allegation with respect to conduct engaged in subsequent to a member's resignation. In Member Brown's view a member's duty of loyalty to his union during a strike arises when that strike is authorized and begins, and therefore his subsequent "resignation" constitutes conduct subject to the lawful imposition of union discipline.

[52] *Communications Workers, Loc. 6135 (Southwestern Bell Telephone Co.)*, 188 NLRB No. 144.

[53] *Intl. Assn. of Machinists (Union Carbide Corp.)*, 180 NLRB 875 (1970), reaffd. 186 NLRB No. 138; *United Steelworkers of America, AFL–CIO, Loc 1114 (Harnischfeger Corp)*, 187 NLRB No. 4; *Communications Workers, Loc. 9511 (Pacific Telephone & Telegraph Co.)*, 188 NLRB No 63 In the latter case, certain members appealed the imposition of the fines to the union's convention per the union constitution within the 10(b) period and, since this was a procedural step necessary to establish with finality the propriety of the fines themselves, the Board held that the cause of action was not based solely on pre-10(b) conduct and it reached the merits.

Section 10(b) in pertinent part provides:

> . . . no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made . . . .

[54] *Communications Workers, Loc. 6222 (Southwestern Bell Telephone Co.)*, 186 NLRB No. 50.

[55] *Intl. Assn of Machinists, Oakland Lodge 284 (Morton Salt Co.)*, 190 NLRB No. 32. Compare *Loc. 12419, Intl Union of Dist. 50, United Mine Workers of America (Natl. Grinding Wheel Co)*, 176 NLRB 628 (1969).

law;[56] that it could not conclude Congress intended the Board to regulate the size of otherwise lawful fines and establish standards with respect to their reasonableness.[57]

In prior years the Board has considered the problem of insuring unimpeded access to the Board for the filing of petitions and unfair labor practice charges.[58] In a somewhat related case the Board held that a union violates section 8(b)(1)(A) by fining a member for giving testimony adverse to the union's position before an arbitrator. The Board also found that such a fine violates section 8(b)(3) because, were either the employer or the union permitted to take reprisal against a witness before an abritrator, the integrity of the arbitration process would be destroyed and the grievance-arbitration clause in the collective-bargaining agreement perverted.[59]

2. The Dues Obligation

Section 8(a)(3) and 8(b)(2) make it an unfair labor practice for an employer to discriminate, and for a labor organization to cause or attempt to cause an employer to discriminate, against an employee under a valid union-security agreement for nonmembership in the union if such membership was denied or terminated for reasons other than the employee's failure "to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership." During the previous year the Board decided several cases involving these sections of the Act.

Where a union charges different rates for initiation fees and dues based on an employee's job classification, the Board held the union does

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[56] See, e g., *Allis-Chalmers Mfg. Co* v. *N L R.B.*, 388 U S 175; *N L R B.* v *Industrial Union of Marine & Shipbuilding Workers [U S. Lines]*, 391 U.S 418; *Scofield* v. *N L R B.*, 394 U S 423.

[57] Member McCulloch dissented on the ground that the Court's use of the term "reasonable fine" throughout its above-cited decisions indicated affirmatively that the Court regarded court-collectible fines which were unreasonable, either in their nature or size, as not serving a legitimate union interest, and therefore not privileged from the proscription of sec 8(b)(1)(A).

[58] See discussion in Thirty-fifth Annual Report (1970), pp. 61-63.

[59] *Cannery Warehousemen, Food Processors, Drivers & Helpers Loc 788, Teamsters (San Juan Islands Cannery)*, 190 NLRB No. 5

In relevant part, sec. 8(b)(3) provides:

> It shall be an unfair labor practice for a labor organization or its agents—(3) to refuse to bargain collectively with an employer . .

In an analogous case, the Board majority held that a union violates sec 8(b)(1)(A) by refusing to process an employee's grievance unless she withdrew unfair labor practice charges against the employer *Assn of Packers & Drivers Union (Guy's Foods)*, 188 NLRB No 85. Member Brown concurred, noting that the union nonetheless in good faith was attempting to avoid duplicative proceedings Chairman Miller dissented on the ground that there is no coercion when a union reasonably exercises legitimate discretion by requesting or insisting that a discharged employee withdraw an individual 8(a)(3) charge prior to its processing a grievance.

not violate section 8(b)(1)(A) by threatening to cause an employee's discharge for his failure to make a further initiation fee payment upon his promotion from a lower to a higher paying job classification within the bargaining unit.[60] The Board explained that different rates which are based on reasonable, nondiscriminatory classifications and uniformly required of all employees in the class are lawful. On the other hand, the Board held that a union violates section 8(b)(1)(A) and (2), and an employer section 8(a)(1) and (3), by refusing to recall an employee from layoff status, pursuant to the union's request, because the employee-member had refused to pay the union $5 for missing two of three union meetings during the quarter.[61] The Board explained that the $5 payment was neither "periodic dues" nor an "initiation fee" and therefore the union-security clause was unlawfully utilized in effectuating the employee's discharge. And, in *Missile & Electronic Dist. Lodge 508, IAM (Lockheed Missiles & Space Co.)*, 190 NLRB No. 22, the Board held that a union violates section 8(b)(1)(A) and (2) by requesting that the employer terminate a member-employee who tendered his current and back dues and a reinstatement fee after his membership had been canceled but before the union had demanded that he be discharged under the union-security clause.

3. The Referral Obligation

During the past fiscal year the Board had occasion to protect employees' right to the nondiscriminatory use of hiring halls. In *United Brotherhood of Carpenters & Joiners of America, Loc. 1913 (Fixtures Unlimited)*, 189 NLRB No. 81, a member had been fined for engaging in improper behavior at the hiring hall but refused to pay the fine. The union thereafter declined to accept his dues. The Board found that the union violated section 8(b)(1)(A) and (2), and the employer violated section 8(a)(3), by refusing to refer the member to a job through the exclusive hiring hall and by removing his name from the job register. The Board explained that the underlying reason for the member's loss of "good standing" was the nonpayment of the fine and not his dues delinquency, the former being an impermissible reason for denying referral or employment under the statute.

Similarly, under a union-security clause and an exclusive hiring hall arrangement, the Board held that a union violated section 8(b)(1)(A) and (2) by failing to register an individual on its out-of-work list and thereby denying him referral to a job. There, although the worker

[60] *Aluminum Workers Trades Council & IBEW, Loc 768 (Anaconda Aluminum)*, 185 NLRB No. 16.

[61] *Thermador Div of Norris Industries*, 190 NLRB No. 88.

had, nearly 2 years earlier, deliberately refused to join the union pursuant to the contract and thus was discharged from his employment, the Board explained that the union had been derelict in not advising him in explicit terms exactly what was required to qualify for registry on the list and referral from its hiring hall.[62] The Board also noted that the individual's prior flouting of the union-security clause did not permit the union forever thereafter unconditionally to deny him employment in the industry by prohibiting his use of its exclusive hiring hall. The Board also held, in another case, that a union violated section 8(b)(1)(A) when it refused to refer a member from its nonexclusive hiring hall because he had engaged in the protected section 7 activity of opposing the reelection of incumbent union officials.[63]

4. Other Aspects

The Board has held with court approval that enforcement by coercive means of a union rule requiring exhaustion of internal union remedies before a member may resort to the Board for redress of grievances violates section 8(b)(1)(A).[64] In two cases this year the Board reaffirmed this well-established rule but held, however, that the mere presence of such provisions in a union's constitution or bylaws does not constitute restraint and coercion under section 8(b)(1)(A) and thus is not a *per se* violation of the Act.[65]

In certain miscellaneous cases involving union interference with employee rights and employment the Board was called on to decide several novel issues. In *National Cash Register Co.*, 190 NLRB No. 117, the Board held that a union violates section 8(b)(1)(A), and an employer section 8(a)(1), by permitting certain members and nonmembers to work during an authorized economic strike only if they agree to pay to the union a portion of their wages in return for passes through the picket line. The Board reasoned that the exaction was not a fine upon members for strikebreaking, but rather a fee coercively and unlawfully imposed upon employees for working.

In a proceeding involving section 8(b)(2) the Board majority held that a union's removal of a member from a priority list, thus resulting in his layoff, was lawful because its conduct was motivated by the

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[62] *Intl. Assn of Heat & Frost Insulators & Asbestos Workers, Loc. 5 (Insulation Specialties Corp.)*, 191 NLRB No 38 Chairman Miller concurred in the result.

[63] *Hoisting & Portable Engineers, Loc 4 (Carlson Corp)*, 189 NLRB No 52

[64] *N L R B v Industrial Union of Marine & Shipbuilding Workers [U S Lines]*, 391 U S 418, *Loc 138, Intl Union of Operating Engineers (Charles S. Skura)*, 148 NLRB 679

[65] *Operative Plasterers' & Cement Masons' Intl Assn of the U S & Canada (Arthur G McKee & Co)*, 189 NLRB No 68; *Intl Brotherhood of Teamsters (Red Ball Motor Freight)*, 191 NLRB No. 95. In the latter case, Member Brown dissented from another portion of the majority's opinion, as he would have found that the union did not threaten by coercive means to enforce the rule in question.

member's embezzlement of more than $35,000 from the union while he was its treasurer.[66] The majority explained that although under section 8(a)(3) and 8(b)(2) specific proof of intent to encourage or discourage union membership is not always necessary, and in some situations may be inferred, motivation is a material consideration in such cases. In the instant case the union was motivated by the member's conduct as treasurer, conduct "so inconsistent with ordinary concepts of honesty as to dispel any notion that the Union's interference might be construed as having a foreseeable consequence of encouraging union membership."

And in *Teamsters & Chauffeurs Loc. 729, Teamsters (Penntruck Co.)*, 189 NLRB No. 83, the Board held, *inter alia*, that a union violates section 8(b)(1)(A) by resorting to violence against employees who breached the collective-bargaining agreement's no-strike clause, in an attempt to persuade them to return to work. The Board noted that while the employees were then engaged in unprotected strike activity, and thus could lawfully be disciplined or discharged by the parties, that fact did not permit the union to engage in violent conduct, pointing out that that would not further the integrity of agreements or industrial relations stability. The Board refused to apply the "unprotected" concept, injected into section 7, in so mechanical a way.[67]

F. Union Coercion of Employer in Designation of Representative

Section 8(b)(1)(B) provides: "It shall be an unfair labor practice for a labor organization or its agents—(1) to restrain or coerce . . . (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances." During the past several years this section has been the subject of increasing litigation. In *Loc. 103, Intl. Assn. of Bridge, Structural & Ornamental Iron Workers (AGC, Evansville Ch.)*, 190 NLRB No. 145, the Board majority held that a union does not violate section 8(b)(1)(B) by bargaining to impasse and striking over the subject of submitting jurisdictional disputes to the National Joint Board, held to be a mandatory subject of bargaining. The majority explained that the union was not coercing the employer in his selection of a representative for bar-

[66] *Philadelphia Typographical Union No 2 (Triangle Publications)*, 189 NLRB No. 105. Member Brown dissented on the ground that since the employer elected to retain the embezzling official in its employ, the union's action was an arbitrary display of power and inherently a restraint on employees' exercise of section 7 rights In Member Brown's view, the employee's misconduct was irrelevant to the issue before the Board

[67] Member Jenkins would have found further that the union's representative of one of the striking employees was in breach of its duty of fair representation, under *Miranda Fuel Co, Inc*, 140 NLRB 181 (1962), enforcement denied 326 F 2d 172 (C.A. 2); and *Vaca* v. *Sipes*, 386 U.S. 171.

gaining purposes or for such purposes as the handling of all grievances. Rather the union was seeking the employer's agreement to a mechanism for the resolution of jurisdictional disputes. However, the majority held that the union violated section 8(b)(3) because it bargained with a closed mind and was unwilling to divert from its fixed, inflexible position and seriously consider alternative proposals made by the employer.[68]

G. Union Bargaining Obligation

Section 8(b)(3) prohibits a labor organization from refusing "to bargain collectively with an employer, provided it is the representative of his employees subject to the provisions of section 9(a)." The requisites of good-faith collective bargaining set forth in section 8(d) of the Act include that "where there is in effect a collective-bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification—(1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the . . . time it is proposed to make such termination or modification."

During the year the Board decided several cases involving a union's failure to comply with section 8(d) in violation of section 8(b)(3). In *Telephone Workers Union of New Jersey, Loc. 827, IBEW (New Jersey Bell Telephone Co.)*, 189 NLRB No. 107, the contract had no wage reopening clause but the parties agreed to discuss a possible supplemental agreement upgrading wages rates. The union sought an across-the-board increase but the company wanted to limit the raises to the lower rated classifications. Without complying with section 8(d) and having reached no agreement, the union thereafter engaged in a moratorium on all overtime work for 1 week and staged a 1-day work stoppage, as well as a general strike a few days later. The Board held that the union thereby violated section 8(b)(3) by not complying with the procedures set forth in section 8(d), notwithstanding the argument that the union was merely protesting the company's bad-faith bargaining and take-it-or-leave-it approach to the negotiations.[69]

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[68] Members Jenkins and Kennedy concurred in the sec. 8(b)(3) finding but they also would have found that the union violated sec 8(b)(1)(B) since in their view the Act protects the employer's right to choose his representative for the settlement of jurisdictional disputes as well as grievances

[69] See also *Communications Workers (N Y. Telephone Co.)*, 186 NLRB No 91, where pursuant to the collective-bargaining agreement the company was permitted once during the term of the contract to submit proposals for adjusting wage rates which would become effective only if the parties mutually agreed within 30 days The Board observed that the company had not violated sec. 8(a)(5) by failing to comply with sec. 8(d) in making

In *Brotherhood of Painters, Decorators & Paperhangers of Amer., Dist. Council 9* (*Westgate Painting & Decorating Corp.*), 186 NLRB No. 140, the Board majority decided the novel question whether a union violates section 8(b)(3) by unilaterally implementing and enforcing a rule limiting the amount of work its members may perform. There, painters who were paid a weekly salary and who had been painting an average of 11 to 11.5 rooms per man per week, were informed by the union that no journeyman painter should paint more than 10 rooms a week. This effected changes in wages and in the work-week. The majority held that inasmuch as this conduct was neither sanctioned by the collective-bargaining agreement then in force (although it had been discussed during the bargaining sessions) nor accepted by the employers, it constituted a unilateral change in violation of section 8(b)(3).[70]

H. Prohibited Strikes and Boycotts

The Act's prohibitions against certain types of strikes and boycotts are contained in section 8(b)(4). Clause (i) of that section forbids unions to strike, or to induce or encourage strikes or work stoppages by any individual employed by any person engaged in commerce, or in any industry affecting commerce, and clause (ii) makes it unlawful for a union to threaten, coerce, or restrain any such person, in either case for any of the objects proscribed by subparagraphs (A), (B), (C), or (D). A proviso to the section exempts from prohibitions "publicity, other than picketing."

1. Neutral Employers

The prohibition against secondary boycotts is intended to protect neutral or secondary employers from being drawn into a primary dispute between a union and another employer. Therefore, the identification of the employer with whom the union has its primary dispute frequently becomes the crucial issue in secondary boycott cases. This past year, the Board considered for the first time the issue of whether separately controlled and independently operated unincorporated divisions of a corporation are, *vis-à-vis* one another, separate "persons" and therefore entitled to the protection of section 8(b)(4)(B).

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the contractually provided-for wage proposals However, the Board found that the union violated sec 8(b)(3) by seeking to enforce its counterproposals by means of a work stoppage, without complying with the notice requirement of sec 8(d), since the contract gave the union only the right to agree or disagree with the company's proposals.

[70] Member Fanning dissented, citing the Supreme Court's decision in *Scofield* v. *N.L R B.*, 394 U.S 423, and finding further that the Union had engaged in substantial good-faith bargaining about the change.

Two cases[71] with similar facts presented this issue to the Board. In the *San Francisco Examiner* case, the unions were engaged in an economic strike against the Los Angeles Herald-Examiner, a Hearst newspaper. In furtherance of this strike the unions also picketed the San Francisco Examiner division of the Hearst Corporation, as well as other Hearst companies in San Francisco. The trial examiner based his finding that the unions did not violate section 8(b)(4)(B) by the aforementioned conduct on the ground that the San Francisco Examiner division and the Los Angeles Herald-Examiner division were not separate persons.

The Board disagreed. It found that the corporation does not exercise actual, or active, control over these divisions which operate independently of the corporation and each other as separate autonomous newspaper enterprises. Citing decisions holding that in similar circumstances separate corporate subsidiaries are separate persons, each entitled to the protection of section 8(b)(4)(B) from the labor disputes of the other,[72] the decision reasons that as these two divisions, if they were corporate subsidiaries instead of divisions, would be entitled to the protection of section 8(b)(4)(B) from each other's labor disputes, "to deprive them of the protection of the statute on the technical ground that they are merely divisions of the Corporation would exalt from over substance, a result which we are convinced is not required by the statute."

In the companion *Baltimore News American* case, the Board adopted the trial examiner's decision, which applied similar reasoning in finding that the union violated 8(b)(4)(i) and (ii)(B).[73]

The Board also interpreted its "ally" doctrine during the past year. An employer who has made common cause with a primary employer by knowingly doing work which would otherwise be done by the striking employees of the primary employer is viewed as an "ally" of the primary, rather than a neutral, for the purposes of identifying the "unconcerned" employer who was intended to be protected by section 8(b)(4)(B) of the Act.[74] The issue was presented to the Board in *Sterling Drug*[75] where the refusal of truckdrivers to cross the union's lawful picket line had caused difficulties for the primary em-

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[71] *Los Angeles Newspaper Guild, Loc. 69 (San Francisco Examiner)*, 185 NLRB No 25; *American Federation of Television & Radio Artists Washington-Baltimore Loc (Baltimore News American)*, 185 NLRB No 26

[72] *Miami Newspaper Printing Pressmen Loc 46 (Knight Newspapers)*, 138 NLRB 1346 (1962), enfd 322 F 2d 405 (C A D C); *Drivers, Chauffeurs & Helpers, Loc 639, I B T (Poole's Warehousing)*, 158 NLRB 1281 (1966) Compare *J G Roy & Sons Co.* v. *N.L R B*, 251 F 2d 771 (C A 1); *Bachman Machine Co* v *N L R B*, 266 F 2d 599 (C A 8).

[73] Member Brown dissented in both cases, disagreeing with the conclusion of the majority that the Hearst corporate enterprise is to be regarded as a neutral, unoffending employer with respect to labor disputes involving its various operating segments

[74] See Thirtieth Annual Report (1965), pp 97–98.

[75] Loc. 61, *Intl. Chemical Workers Union*, 189 NLRB No 11

ployer in obtaining deliveries of supplies. The primary made an agreement with a moving and transportation company whereby the supplies would be delivered by truck to the latter, whose employees would then transfer the supplies bound for the primary employer to railroad cars which would then be delivered by the railroad to the primary employer. The union thereupon picketed the moving and transportation company. Although the purpose of the agreement was to assist the primary employer in combatting the strike, the Board did not invoke its "ally" doctrine because the picketed employer was not doing work which would otherwise have been done by the primary employer and his striking employees.

In another case,[76] the Board rejected a picketed employer's contention that it was a neutral employer. *Uni-Coat*, a painting subcontractor, in seeking a contract, specified that it would use a certain paint. In order to obtain the rights to use this paint, the subcontractor had to agree to adhere to the manufacturer's standards and specifications which provided, in pertinent part, that the paint was to be applied only by spraying. The subcontractor was awarded the contract and commenced work. The union representing the subcontractor's employees opposed the spraying as a violation of its bargaining agreement and picketed the jobsite, causing the services of the subcontractor to be terminated. The General Counsel argued that under the "right to control" test,[77] the subcontractor and the general contractor were neutral secondary employers. The Board found to the contrary, stating "We do not believe that Uni-Coat can be deemed such an 'unoffending employer' in view of its active role in seeking a license and subcontract which it knew would cause it to breach its collective-bargaining contract with the Respondent. We therefore conclude that this case does not present 'appropriate circumstances' for application of the 'right-to-control' test."

2. Other Aspects

In *Strip Clean Floor Refinishing & Painting Corp.*,[78] the Board of Education of the City of New York had contracted for certain work to be done at a public school site. The contractor had a dispute with a union which advised the board of education in effect that if the contractor continued to work, the union would picket, and also urged cancellation of other contracts with the contractor. The trial examiner found, with Board approval, that through the various communications the union made clear to the board of education, a "person" as defined

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[76] *Painters Dist Council 20 (Uni-Coat Spray Painting)*, 185 NLRB No. 136

[77] See Thirty-Fifth Annual Report (1970), pp 65–66.

[78] *New York Dist. Council 9, Painters*, 185 NLRB No. 33.

in section 8(b)(4) of the Act, that it intended to picket and that an object of such picketing would be to get the board of education to cease doing business with the contractor because of the union's labor dispute with the contractor, such conduct being violative of section 8(b)(4)(ii)(B). Picketing thereafter at the board of education's premises was likewise found to be for a prohibited object and in violation of section 8(b)(4)(ii)(B).[79] However, the picketing was found not in violation of section 8(b)(4)(i)(B) since the evidence failed to demonstrate that any neutral employees were induced or encouraged by the union to engage in a work stoppage.

In another case,[80] the Board found that the union violated section 8(b)(4)(1) and (ii)(B) by threatening secondary employers that their employees would refuse to work overtime and by inducing and encouraging those employees to refuse to work overtime, the object being to force the secondary employers to cease doing business with the primary employer. The Board rejected the view that because these stoppages of work occurred largely during overtime periods which were voluntary under the contract, the motive therefor was irrelevant. "That the overtime was designated as voluntary in the contract does not, in our view, render the concerted refusal to perform it any the less a strike, or less coercive, particularly where, as here, the uncontradicted evidence shows it had been the employees' practice to work overtime during these hours. . . ."

I. Jurisdictional Dispute Proceedings

Section 8(b)(4)(D) prohibits a labor organization from engaging in or inducing strike action for the purpose of forcing any employer to assign particular work to "employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work."

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 parties to a jurisdictional dispute be given 10 days, after notice of the filing of the charges with the Board, to adjust their dispute. If at the end of that time they are unable to "submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of,

[79] Member Brown did not find that the union's communications were sufficient to convert respondent's otherwise lawful picketing into unlawful secondary conduct.

[80] *Loc P–575, Meat Cutters (Iowa Beef Packers)*, 188 NLRB No. 2.

the dispute," the Board is empowered to hear the dispute and make an affirmative assignment of the disputed work.[81]

Section 10(k) further provides that pending 8(b)(4)(D) charges shall be dismissed where the Board's determination of the underlying dispute has been complied with, or the parties have voluntarily adjusted the dispute. An 8(b)(4)(D) complaint issues if the party charged fails to comply with the Board's determination. A complaint may also be issued by the General Counsel in the event recourse to the method agreed upon to adjust the dispute fails to result in an adjustment.

1. Existence of Jurisdictional Dispute

In order for the Board to proceed with a determination under section 10(k), the record made at the hearing must show that a work assignment dispute within the meaning of sections 8(b)(4)(D) and 10(k) exists. A dispute to be subject to determination under section 10(k) must concern the assignment of particular work to one group of employees rather than to members of another group. If the dispute is not of this kind, a determination will not be made. Thus a majority of the Board dismissed a 10(k) proceeding where the evidence showed that the alleged dispute arose from the employer's termination of its contract with a subcontractor for economic reasons, and the assignment of this work to the employer's own employees who were members of another union. The Board found that the union's picketing of the employer was solely for the object of preserving work for the employees who had been doing it and who had selected the union to represent them, and that such a dispute is not the type of controversy Congress intended the Board to resolve pursuant to sections 8(b)(4)(D) and 10(k) of the Act.[82] Sections 8(b)(4)(D) and 10(k) were also held inapplicable where the union picketed to obtain reemployment of former employees of a previous contractor, whom the employer had chosen not to utilize, and to compel the employer to negotiate a collective-bargaining agreement covering such employees.[83]

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[81] *N L R B.* v. *Radio & TV Broadcast Engineers Union, Loc. 1212* [*C.B.S.*], 364 U.S. 573 (1961).

[82] *Intl Longshoremen's & Warehousemen's Union Loc. 8* (*Waterway Terminals Co.*), 185 NLRB No 35 Chairman Miller and Member McCulloch dissented, finding that the union's picketing also sought continued recognition of the union as the representative of the employees performing the work previously done by the subcontractor, and that the union was really claiming jurisdiction over the work performed by some of the employer's own employees to further its own interests.

[83] *Transport Workers Union of America, AFL–CIO & Loc. 504* (*Triangle Maintenance Corp.*), 186 NLRB No. 71.

2. Agreed-Upon Methods of Settling Dispute

As previously described, section 10(k) specifically precludes the Board from determining a dispute which gave rise to 8(b)(4)(D) charges if the parties to the dispute, within 10 days, submit to the Board "satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute."

This limitation is intended to afford the parties an opportunity to settle jurisdictional disputes among themselves without government intervention whenever possible. To give full scope to the statutory objective, the Board ordered that the notice of hearing be quashed in a number of cases where it was held the parties had agreed to resolve jurisdictional disputes through the procedures of the National Joint Board for the Settlement of Jurisdictional Disputes. Thus the Board declined to determine a dispute where the employer clearly desired to have the Joint Board determine the dispute in the first place, and merely withdrew its request for Joint Board intervention when the Board assumed jurisdiction of the case.[84] In a series of cases[85] the Board determined not to assert jurisdiction under section 10(k) where employers had individually agreed to be bound by the decisions of the Joint Board, notwithstanding their membership in the Associated General Contractors of America which was not a member of the interim or newly reconstituted National Joint Board. In yet another case,[86] the Board found that the builders association to which the employer belonged had not effectively rescinded its legal obligation under the Laborers collective-bargaining agreement and, in any event, the employer was independently bound to resolve jurisdictional disputes through the National Joint Board procedures.

The question was again raised[87] whether the Act permits the institution of an 8(b)(4)(D) complaint proceeding without a prior hearing and determination under section 10(k), when there exists a method of voluntary adjustment agreed to by the parties but resort to the agreed-upon method has failed to bring about a voluntary adjustment of the dispute. The respondent urged that since the parties had agreed to be bound by the decision rendered by the Joint Board, the award can only be enforced through self-help by the union. The

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[84] *Loc 112, Iron Workers (O. Frank Heinz Construction Co)*, 187 NLRB No 55

[85] *Intl. Assn. of Heat & Frost Insulators & Asbestos Workers, Loc. 28 (Paul Jensen, Inc)*, 186 NLRB No. 20; *Reinforced Iron Workers Loc 426 (Jasinski Builders)*, 188 NLRB No 30 But see *Bricklayers, Masons, et al, Loc 1 (Lembke Construction Co)*, 194 NLRB No 98, issued after close of the fiscal year, overruling the aforementioned cases.

[86] *Laborers Intl Union of North Amer. AFL–CIO, Loc 670 (Southern Illinois Builders Assn)*, 189 NLRB No 98

[87] *Intl. Assn of Bridge, Structural & Ornamental Iron Workers, Loc 125 (Ralph M. Parsons Co)* 186 NLRB No. 128 See also Twenty-ninth Annual Report (1964), pp. 95–96.

trial examiner, with Board approval, rejected this argument citing *McCloskey & Co.*,[88] where the Board found that the agreed-upon method, namely, submission of the dispute to the Joint Board, failed to produce an adjustment of the dispute since the losing party did not accept the determination. Issuance of the 8(b)(4)(D) complaint was therefore considered appropriate without a prior Board determination of the dispute through a 10(k) hearing.

J. Excessive and Discriminatory Union Initiation Fees

Section 8(b)(5) makes it an unfair labor practice for a union to charge employees covered by a valid union-security agreement a fee "in an amount which the Board finds excessive or discriminatory under all the circumstances." The section further provides that "In making such a finding, the Board shall consider, among other relevant factors, the practices and customs of labor organizations in the particular industry, and the wages currently paid to the employees affected."

The prohibition against excessive and discriminatory fees was involved in a case decided during the past year.[89] Adopting the trial examiner's finding that the respondent union's $1,000 initiation fee was both discriminatory and excessive within the meaning of section 8(b)(5), the Board directed the union to discontinue the unlawful requirement and reimburse employees for sums paid in excess of $500—the union's former fee—since the date of the adoption of the higher amount. As noted by the trial examiner, the Board had previously held that section 8(b)(5) was intended to prevent unions from maintaining a closed shop through the imposition of an initiation fee sufficiently high to discourage entrance into the industry.[90] The trial examiner concluded that the $1,000 fee charged in this case, admittedly designed to discourage the entrance of casuals into the stevedoring industry in New Orleans, was discriminatory within the meaning of the Act. The trial examiner also found that the fee, which amounted to nearly 6 weeks' wages, was excessive when viewed against the fact that it was twice that of its sister local in the port of New Orleans.

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[88] *Electrical Workers Local 26, IBEW*, 147 NLRB 1498 (1964).

[89] *General Longshore Workers, I.L.A., Loc. 1419 (New Orleans Steamship Assn.)*, 186 NLRB No 94

[90] *Motion Picture Screen Cartoonists, Loc. 839, I.A.T S.E. (Animated Film Producers Assn)*, 121 NLRB 1196 (1958).

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K. Work Preservation Clauses

Section 8(e) makes it an unfair labor practice for an employer and a union to enter into any contract or agreement, express or implied, whereby such employer ceases or refrains, or agrees to cease or refrain, from handling, using, selling, transporting, or otherwise dealing in any of the products of any other employer, or to cease doing business with any other person. It also provides that any contract "entered into heretofore or hereafter containing such an agreement shall be to such extent unenforceable and void." Exempted by its provisos, however, are agreements between unions and employers in the "construction industry relating to the contracting or subcontracting of work to be done at the site of the construction, alteration, painting, or repair of a building, structure, or other work," and certain agreements in the "apparel and clothing industry."

During the past fiscal year the Board had occasion to determine whether various contract clauses came within the purview of section 8(e). The proper standard for evaluation of such clauses had earlier been set forth by the Supreme Court in *Natl. Woodwork Manufacturers*,[91] where the Court held that section 8(e) does not prohibit agreements made between an employee representative and the primary employer to preserve for the employees work traditionally done by them and that in assessing the legality of a challenged clause "[t]he touchstone is whether the agreement or its maintenance is addressed to the labor relations of the contracting employer *vis-a-vis* his own employees." [92]

In a case [93] involving the United Mine Workers of America, the Board, in a decision on remand from the United States Court of Appeals for the District of Columbia (399 F. 2d 977), was required to rule on the lawfulness under section 8(e) of the "80-cent clause" incorporated into the National Bituminous Coal Wage Agreement of 1950 (as amended in 1964), as a successor to the protective wage clause established in that agreement.[94] A majority of the Board held that the clause did not violate the Act. The majority found that the evidence established: "(1) that the intent of the parties in adopting the 80-cent clause was to equalize the differences in the costs of wage and fringe benefits generally existing between mines signatory to the National

[91] *Natl. Woodwork Manufacturers Assn.* v. *N.L.R.B.*, 386 U.S. 612, Thirty-second Annual Report (1967), p. 139.

[92] *Id.* at 645.

[93] *Intl Union, UMW (Dixie Mining Co.)*, 188 NLRB No. 121.

[94] The "80-cent clause" in essence requires a signatory to the national agreement to pay 80 cents a ton royalty into the United Mine Workers welfare and retirement fund on all bituminous coal "purchased or acquired" for use or sale from nonsignatory operators; the welfare-retirement royalty is only 40 cents per ton for coal produced or acquired from signatories.

Bituminous Coal Wage Agreement and those which are not in order to protect the work opportunities and standards provided UMW members employed by signatory operators; (2) that wage, fringe, and working condition standards of employees in nonsignatory mines are generally lower than those established in the National Bituminous Coal Wage Agreement; and (3) that the 80-cent payment to which signatories are obligated on nonsignatory coal purchases bears a reasonable relationship to the wage and fringe benefit differentials between employees of signatory and nonsignatory operators." On the basis of the above findings, the Board majority concluded that the 80-cent clause functioned as a union standards clause in protecting and preserving the work of employees working under the UMW agreement by removing the economic incentive to subcontract such work stemming from the lower wage and fringe benefit costs of nonsignatory mines.[95]

In another case, [96] the Board interpreted the scope of the construction industry proviso to section 8(e). Article 28 of two collective-bargaining agreements provided that employers would not seek or obtain work as a general contractor of subcontractor on any site of construction within the geographical jurisdiction of the Building and Construction Trades Council, on which site work was to be performed which was normally performed under the jurisdiction of local unions affiliated with the council, unless those performing work on the site had signed collective-bargaining agreements with the local union, affiliated with the council, claiming jurisdiction over said work. Section 2 (c) and (d) of that article provided that the association employers in certain circumstances would not subcontract any of said work to any employer who had not agreed to contract restrictions similar to those in article 28 even though such other employer had signed a collective-bargaining agreement with the local union having jurisdiction over said work. The Board agreed with the trial examiner that the article in question did not exceed the limitations of the construction industry proviso to section 8(e), even though no reference is made to a particular jobsite where a signatory proposes to do business with another party.

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[95] Chairman Miller and Member Brown dissented, being of the view that the 80-cent clause was an implied union signatory clause, and not a union standards clause. They noted that signatories are required to make the 80-cent payment of coal purchased from nonsignatories even though the wage and fringe benefit standards of the nonsignatory may be comparable to or even better than those established in the UMW contract

[96] *United Assn. of Journeymen & Apprentices of the Plumbing & Pipefitting Industry of the U S & Canada) Loc 48 (Mechanical Contractors Assn. of Md.)*, 190 NLRB No. 77.

L. Prehire Agreements

Section 8(f) allows prehire agreements in the construction industry by permitting an employer "engaged primarily in the building and construction industry" to enter into a collective-bargaining agreement covering employees "engaged (or who, upon their employment, will be engaged)" in that industry. Such an agreement may be entered into only with a labor organization "of which building and construction employees are members" and is valid notwithstanding that the majority status of the union has not been established, or that union membership is required after the seventh day of employment, or that the union is required to be informed of employment opportunities and has opportunity for referral, or that it provides for priority in employment based on specified objective criteria. Such an agreement is not, however, a bar to a petition filed pursuant to section 8 (c) or (e).

Among the cases involving section 8(f) considered by the Board was *R. J. Smith Construction Co.*,[97] where the employer was charged with violating section 8(a)(5) and 8(d) by unilaterally changing existing wage rates as set forth in the agreement of the parties, executed pursuant to section 8(f). The Board, in agreeing with the trial examiner that the employer had not violated section 8(d) or 8(a)(5), examined the legislative history of the section and the final proviso, and concluded that "Inasmuch as Congress clearly intended to permit a test, by petition, of majority status and unit appropriateness at any time during the contract, it would be anomalous, indeed, to hold that section 8(f) prohibits examination of those questions in the litigation of refusal-to-bargain charges." The Board concluded that whatever presumption (of majority status) might arise from this 8(f) contract has clearly been rebutted by fresh, current evidence of little or no employee support for the union, and thus the contract was not enforceable through 8(a)(5) proceedings.[98]

In another case,[99] the Board in dismissing 8(a) (1), (2), (3), and (5) allegations stated that the nationwide prehire agreement there involved was merely a preliminary step that contemplated further action for the development of a full bargaining relationship. "Congress merely permitted parties to enter into such prehire agreements without violating the Act. It does not mean that a failure to abide by such an agreement is automatically a refusal to bargain."

[97] 191 NLRB No. 135.

[98] Members Fanning and Brown dissented, expressing the opinion that, once lawfully entered into, a valid prehire agreement differs from other bargaining agreements only in the fact that, under the second proviso to section 8(f), it is not a bar to a representation petition filed under section 9(c) or 9(e). The dissenting members found no indication that "Congress intended by Section 8(f) to modify or abrogate the existing law with respect to good-faith bargaining"

[99] *Ruttmann Construction Co. & Ruttman Corp.*, 191 NLRB No. 136.

Member Fanning concurred in the result, stating that he could not find that the contract was a valid prehire contract extending to all employees to be hired by the respondent at future locations and unscheduled jobsites. He was unable to conclude that the contract clearly and unambiguously covered the employees at the project involved. In his view, the validity of an 8(f) contract turns finally on whether the union's majority may be tested by a Board election as envisioned by the final proviso to that section, and the contract in question was not susceptible to such a challenge.[1]

M. Remedial Order Provisions

In this classification, of particular interest were cases involving remedies for violations of the bargaining obligation.

1. Make-Whole Remedies

The *Ex-Cello-O* case [2] stemmed from the Board's certification of a union, following the union's victory in a Board-conducted election. Thereafter, the employer advised the union that it would refuse to bargain in order to secure a court review of the Board's action. The union filed section 8(a) (5) and (1) charges and also asked for a compensatory remedy for the alleged refusal to bargain. The trial examiner found that the employer had unlawfully refused to bargain in violation of section 8(a) (5) and (1) and recommended the standard bargaining order as a remedy. In addition, he ordered the employer to compensate the employees for monetary losses incurred as a result of its unlawful conduct. The Board unanimously affirmed the trial examiner's conclusions that the employer violated section 8(a) (5) and (1) of the Act, but was divided concerning the compensatory remedy recommended by the trial examiner.

The majority agreed that the current remedies of the Board designed to cure violations of section 8(a) (5) are inadequate, but nevertheless concluded that the Board could not approve the trial examiner's recommended order. The majority was guided, in part, by the recent decision of the Supreme Court in *H. K. Porter Co.* v. *N.L.R.B.*, 397 U.S. 99, in which the Court held that the Board had power to require employers and employees "to negotiate" but that the Board was without power to compel a company or a union to agree to any substantive contractual provision of a collective-bargaining agreement. The Board

[1] Member Brown dissented, citing his dissenting opinion in *R. J. Smith Construction Co., supra.*

[2] *Ex-Cell-O Corp*, 185 NLRB No 20.

majority found any distinction between *H. K. Porter* and the instant case "more illusory than real," stating there is no basis for a compensatory remedy unless the Board finds, as a matter of fact, that a contract would have resulted from bargaining. In order for the Board to make such a finding, it would be "required to engage in the most general, if not entirely speculative, inferences to reach the conclusion that employees were deprived of specific benefits as a consequence of their employer's refusal to bargain." Thus, the majority concluded that "as the law now stands, the proposed remedy is a matter for Congress, not the Board." The majority did suggest that section 8(a)(5) cases be given the highest possible priority combined with full resort to the injunctive relief provisions of section 10 (j) and (e) of the Act.

Members McCulloch and Brown would have granted the compensatory remedy. They argued that section 10(c) provides the Board with such authority, and that the Supreme Court has consistently interpreted that section as allowing the Board wide discretion in fashioning remedies. Nor is this type of compensatory remedy forbidden by section 8(d), according to the dissenters, "The remedy contemplated in no way 'writes a contract' between the employer and the union, for it would not specify new or continuing terms of employment and would not prohibit changes in existing terms and conditions," thus distinguishing the case from *H. K. Porter.* Therefore, the dissenters would order the employer to make its employees whole for their measurable losses, if any, resulting from the unlawful refusal to bargain.[3]

2. Bargaining Orders

The Board considered a case [4] on remand from the Court of Appeals for the Second Circuit, involving the question of whether alleged strike misconduct by the union was such as to disqualify the union from the benefit of a bargaining order under the criteria outlined in the court's *United Mineral* decision.[5] The Board concluded that the misconduct of the union was not of such an extreme nature as to require the withholding of a bargaining order. The conduct involved included name calling, carrying of sticks and a bat (never used in an assault), an attempt to prevent ingress and egress of trucks, and two shoving incidents. The Board stated that the misconduct of the union was less grave than that of the employer, who refused to recognize the

[3] See the following companion cases: *Zinke's Foods, Inc.,* 185 NLRB No. 109; *Rasco Olympia, Inc, d/b/a 5–10–25¢,* 185 NLRB No. 110; *Herman Wilson Lumber Co.,* 185 NLRB No. 125.

[4] *World Carpets of New York,* 188 NLRB No. 10.

[5] *N.L R.B.* v. *United Mineral & Chemical Corp.,* 391 F.2d 829, 838–841 See also *Laura Modes Co,* 144 NLRB 1592 (1963).

union when faced with conclusive evidence of the union's majority, and who effectively destroyed the union's majority by committing various violations of section 8(a)(1). In addition, the employer's unlawful conduct in derogation of its employees' section 7 rights was clearly a contributing cause of the strike, and the continuance of that unlawful conduct destroyed the strike's effectiveness.[6]

In another case,[7] remanded to the Board from the Court of Appeals for the Fifth Circuit, the Board, considering the guidelines laid down by the Supreme Court in *N.L.R.B.* v. *Gissel Packing Co.*,[8] affirmed its initial decision [9] in this case which included the issuance of a bargaining order. The Board noted its disagreement with the interpretation of *Gissel* given by the Fifth Circuit in *N.L.R.B.* v. *American Cable Systems*,[10] stating "that in determining whether the employer's unfair labor practices are of such a nature as to preclude a fair election and thus necessitate a bargaining order based on a past card showing of majority status, the situation must be appraised as of the time of the commission of the unfair labor practices, and not currently." Since the union had been entitled to a bargaining order at an earlier time, it was irrelevant to the Board that the union may have lost its majority status between the time of the commission of the employer's unfair labor practices and the Board's decision.

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[6] Chairman Miller dissented, and would have adopted the trial examiner's view that, because of the union's misconduct which he found to be grave, the union should be required to demonstrate its majority at a free and fair election

[7] *Gibson Products Co. of Washington Parish, La.*, 185 NLRB No. 74.

[8] 395 U.S 575 (1969).

[9] 172 NLRB No. 243 (1968).

[10] 427 F.2d 446 (1970).

VII

Supreme Court Litigation

During fiscal 1971, the Supreme Court decided three cases involving review of Board orders. In addition, the Board participated as *amicus curiae* in one case involving the power of a state court to resolve a dispute arguably subject to the Board's jurisdiction.

A. Secondary Pressure to Change Work Assignment Policies Prohibited by Section 8(b)(4)(B)

In *Burns & Roe*,[1] the Court [2] upheld the Board's decision [3] that, by striking neutral employers on a construction project in order to force the general contractor (Burns) to require a subcontractor (White) to change his work assignment policies, the union violated section 8(b)(4)(B) as well as section 8(b)(4)(D) of the Act. The court of appeals had accepted the Board's finding that the union's conduct violated section 8(b)(4)(D), but it rejected the 8(b)(4)(B) finding on the ground that, since the union's objective was to force Burns to cause a change in White's work assignment policies rather than to break off business relations entirely with White, the required "cease doing business" objective was not shown. The Supreme Court found "[s]uch a reading [to be] too narrow." It stressed that the congressional concern in enacting section 8(b)(4)(B) was to shield neutral employers from controversies not their own, and it concluded that the union's attempt "to obtain . . . capitulation by [White, the offending subcontractor] by forcing neutrals to compel White to meet union demands" was the kind of "flagrant secondary conduct" which section 8(b)(4)(B) was enacted to prevent. "The clear implication of the demands was that Burns would be required either to force a change in White's policy or to terminate White's contract." The Court also

[1] *N.L.R.B. v. Loc. 825, Intl. Union of Operating Engineers, AFL–CIO*, 400 U.S. 297, reversing and remanding 410 F.2d 5 (C.A. 3, 1969).

[2] Justice Marshall wrote the opinion for the Court, and Justice Douglas, joined by Justice Stewart, filed a dissent.

[3] 162 NLRB 1617 (1967).

rejected the contention that section 8(b)(4)(D) provided the exclusive remedy for the unlawful conduct found, and it remanded the case to the court of appeals for consideration of whether a broad remedial order was warranted.

B. Plenary Board Review Not Mandatory With Respect to Representation Determinations Delegated to the Regional Director Under Section 3(d) of the Act

In *Magnesium Casting*,[4] the Court upheld the Board's practice of granting review of a regional director's determination in representation proceedings "only where compelling reasons exist therefor," rejecting the company's contention that, where the representation proceeding culminated in an unfair labor practice proceeding, plenary Board review must be granted at some point before the company could be held to have committed an unfair labor practice. The Court pointed out that section 3(b) of the Act authorizes the Board to delegate its powers to make unit determinations to the regional directors, subject to a discretionary right of review by the Board. The culmination of the representation proceeding in an unfair labor practice proceeding does not add a requirement of plenary Board review, because "[h]istorically, the representation issue once fully litigated in the representation proceeding could not be relitigated in an unfair labor practice proceeding." In sum, the Court concluded, "the fact that the Board has only discretionary review of the determination of the regional director creates no possible infirmity within the range of our imagination."

C. "Political subdivision" Exemption Under Section 2(2) of the Act Defined

The third case reviewing a Board order involved the issue whether a county natural gas utility district could properly refuse to recognize the union representing a majority of its employees on the ground that it fell within the exemption provided in section 2(2) of the Act for "any State or political subdivision thereof."

Rejecting the lower court holding that state law controlled whether the Natural Gas Utility Dist. of Hawkins County was a political subdivision of Tennessee, the Supreme Court held that Federal law is

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[4] *Magnesium Casting Co.* v. *N.L.R.B.*, 401 U S 137, affg. 427 F.2d 114 (C.A. 1, 1970), enfg. 175 NLRB 397 (1969).

determinative.[5] The Court, however, affirmed the lower court's holding that the natural gas district was a political subdivision of the State because it found that even under the Board's criteria the district would so qualify. Thus, the Court noted that the Board limits the exemption to " 'entities that are either (1) created directly by the State, so as to constitute departments or administrative arms of the government, or (2) administered by individuals who are responsible to public officials or to the general electorate.' " Noting that the "District's commissioners are initially appointed . . . by the county judge, who is an elected public official" and that they are subject to removal under the State's "General Ouster Law," the Court concluded, contrary to the Board, that the Hawkins County gas district was in fact administered by individuals who are responsible to public officials.

D. Exclusive Board Jurisdiction Over Conduct Arguably Subject to the Act

Again this term,[6] the Board participated as *amicus curiae* in a case involving preemption of State court jurisdiction over controversies subject to the Act. Reaffirming *Garmon*,[7] the Court, in *Lockridge*,[8] upheld the Board's view that the State court lacked jurisdiction to adjudicate an employee's claim for damages against the union predicated on the ground that it had procured his discharge from employment pursuant to a union-security agreement at a time when, although behind in dues payments, he was not yet subject to loss of union membership under applicable union bylaws and regulations. The Supreme Court noted that, although the Act permits a union-security arrangement, section 8(b)(2) precludes a union from securing an employee's discharge thereunder if union membership has been terminated for reasons other than nonpayment of dues. Accordingly, depending on the validity of the union's action in requesting Lockridge's discharge, the Act "at least arguably either permit[s] or forbid[s]" the union's conduct. Under the *Garmon* principle that, " 'when an activity is arguably subject to § 7 or § 8 of the Act,' " state and Federal courts

[5] *N.L.R.B.* v. *Natural Gas Utility Dist. of Hawkins County, Tenn.*, 402 U.S. 600, affg. 427 F.2d 312 (C.A. 6, 1970), denying enforcement of 170 NLRB 1409 (1968). Justice Brennan wrote the opinion for the Court, from which Justice Stewart dissented.

[6] See 35th Annual Report 74–75 (1970) for preemption cases in the prior term of the Court.

[7] *San Diego Building Trades Council* v. *Garmon*, 359 U.S. 236 (1959).

[8] *Amalgamated Assn. of Street, Electric, Railway & Motor Coach Employees of Amer.* v. *Lockridge*, 403 U.S. 274, reversing 93 Idaho 294, 460 P.2d 719. Justice Harlan wrote the opinion for the Court. Justice Douglas and Justice White, who was joined by Chief Justice Burger, filed separate dissenting opinions. Justice Blackmun also dissented, for the basic reasons set forth in the dissents of Justices Douglas and White.

must defer to the Board's jurisdiction, Lockridge's state court claim was thus barred.

Nor, in the Court's view, was a different conclusion warranted on the ground that Lockridge's state court complaint charged a breach of contract, rather than an unfair labor practice, by the union. "It is the conduct being regulated, not the formal description of governing legal standards, that is the proper focus of concern." It cannot be said, the court added, that the state court was dealing with conduct to which the Federal Act does not speak. The Board "routinely and frequently" has been required "to inquire into the proper construction of union regulations in order to ascertain whether the union properly found an employee to have been derelict in his dues-paying responsibilities, where his discharge was procured on the asserted grounds of nonmembership in the union."

The Court also held that the exception for state court jurisdiction recognized in *Gonzales* [9] was inapplicable here. *Gonzales* " 'was focused on purely internal union matters,' " whereas here the crux of the action concerned alleged interference with the employment relation.[10]

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[9] *Intl Assn of Machinists* v. *Gonzales,* 356 U.S 617 (1958).

[10] The dissenting Justices would not have applied *Garmon* to the grievances of individual employees against a union Justice Harlan responded that this position seems to imply that "giving the National Labor Relations Board jurisdiction to enforce federal law regulating the use of union security clauses was largely, if not wholly, without rational purpose."

VIII

Enforcement Litigation

Board orders in unfair labor practice proceedings were the subjects of judicial review by the courts of appeals in 392 court decisions during fiscal 1971.[1]

Some of the more important issues decided by the respective courts are discussed in this chapter.

A. Board Procedure

One case decided during the fiscal year presented the issue of the rights of a charging party who objects, after issuance of a complaint, to a settlement agreement between the regional director and the respondent. In *Concrete Materials of Ga.*,[2] the Fifth Circuit affirmed the Board's approval of a settlement agreement in an 8(b)(4) case over the objections of the employer who insisted on a hearing on its objections which urged the Board to hold an evidentiary hearing on the 8(b)(4) complaint. Such hearing, the employer contended, would facilitate the employer's contemplated section 303 damage action against the union by saving it the expense of discovery proceedings. The court affirmed the right of a charging party to contest any proposed settlement between the regional director and the charged party. The court stated that, in its view, a charging party must be afforded an evidentiary hearing on any material issue of disputed fact presented by his objections and a presentation of reasons for acceptance of the settlement agreement as the basis for the Board's order notwithstanding his objection. The court found that no hearing was required in the instant case and that the Board adequately gave its reasons for accepting the proposed settlement. The court then went on to uphold the Board's action as not being an abuse of discretion since the employer is not entitled to a Board hearing simply for use in an ancillary

[1] The results of enforcement and review litigation are summarized in table 19 of Appendix A.

[2] *Concrete Materials of Ga.* v. *N.L.R.B.*, 440 F 2d 61.

law suit and the Board's remedial order was proper. The court also noted its disagreement with the apparent view of the Third Circuit [3] that no settlement agreement can be effectuated without the consent of the charging party.

In *Horn & Hardart*,[4] the Second Circuit dealt with the issue of the Board's deference to arbitration awards in the context of a representation proceeding. The employer and an incumbent union representing the employer's restaurant employees submitted to arbitration the question of whether a group of cashiers had been inadvertently omitted from coverage under the applicable collective-bargaining agreement. The cashiers were not notified of, nor did they participate in, the arbitration. The arbitrator found that the cashiers were meant to be included in the unit. In the meantime, another union petitioned the Board for an election in a separate unit of cashiers. The election was held and the petitioning union won. After Board certification, the employer refused to bargain in the cashiers' unit relying on the contrary arbitration award. The Board found that the employer's refusal to bargain violated section 8(a)(5) and (1) of the Act. In enforcing the Board's order the court discussed the *Spielberg* case [5] and its progeny. Stating that the Board's rule of deference is self-imposed and that where there is a conflict the Board's ruling would take precedence, the court made clear that the Board's decisions in this area would not be overturned absent an abuse of discretion. Also observing that the cashiers' position had not been adequately presented to the arbitrator, that the cashiers had in the past been consistently excluded from the unit of restaurant employees represented by the incumbent union, and concluding that the award was not responsive to established Board representation policies, the court found no such abuse of discretion in the Board's refusal to defer to the arbitration award.

One case decided in this fiscal year involved application of the Board's *Excelsior* [6] rule. In *Delaware Valley Armaments*,[7] the Third Circuit upheld a district court's enforcement of a Board subpena directing an employer to furnish to the union names and addresses of employees eligible to vote in a Board election. In response to the regional director's order that such a list be filed, the employer had filed only a partial list, stating that a number of employees had asked the

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[3] *See Marine Engineers' Beneficial Assn. No. 13* v. *N.L.R.B* [*Taylor & Anderson*], 202 F.2d 546, cert denied 346 U S. 819 ; *Leeds & Northrup Co.* v. *N.L.R B.*, 357 F 2d 527.

[4] *N L R B* v *Horn & Hardart Co* ; 439 F 2d 674

[5] In *Spielberg Mfg. Co.*, 112 NLRB 1080, 1082, the Board set forth standards under which it would defer to arbitration awards ; i e , where the proceedings appeared to have been fair, all parties agreed to be bound and the award was not repugnant to the purpose and policies of the Act.

[6] 156 NLRB 1236.

[7] *N.L.R.B.* v. *Delaware Valley Armaments*, 431 F.2d 494, cert. denied 400 U.S. 957.

employer not to produce their names and addresses for fear of unspecified union harassment. The union lost the election and, on the union's objection, the regional director ordered a second election as well as the full production of the eligibility list. In the interim, the Supreme Court decided and handed down its decision in *Wyman-Gordon*,[8] upholding the validity of the Board's *Excelsior* rule. After denying the employer's request for a hearing on the matter, the Board issued a *subpoena duces tecum* for the required information. The employer then responded by filing a petition to revoke the subpena and asking for a hearing on the issue of whether it was required to produce the list. The Board denied the employer's request on the ground that special circumstances were not shown why the *Elcelsior* list should not be furnished and applied to the district court for an order requiring the employer to comply. The district court ordered the list furnished. On review, the Third Circuit rejected the employer's contention that it was not afforded an "adjudicatory hearing" with resultant denial of due process before entry of the Board's order directing it to file the list and again when the Board denied its petition to revoke the *subpoena duces tecum*. The court relied on the Supreme Court's decision in *Wyman-Gordon* in holding that Board representation proceedings following a union's petition are "adjudicatory proceedings" and that the Board's order in the instant case was entered in accordance with *Wyman-Gordon*. The court also held that since the Board actually reviewed the objection to issuance of the Board's directive and no mandatory hearing was required on the issue, there was no merit to the employer's due process contention.

B. Representation Proceeding Issues

1. Unit Determinations

In *Scott Paper Co.*,[9] the First Circuit agreed with the Board that a unit of woodsmen would include bonded Canadian citizens working for the company pursuant to the Immigration and Nationality Act, but rejected the Board's further finding that Canadian tractor owners were employees rather than supervisors and properly within the unit. With regard to the propriety of including Canadians in the unit, the court agreed with the Board that the immigration laws and Labor Department regulations governing bonded workers were not incompatable with the "instruments of national labor policy, free collective bargaining and the right to strike." Although conceding that the

[8] *N L R.B.* v. *Wyman-Gordon Co*, 394 U S 759.
[9] *N.L.R.B* v. *Scott Paper Co.*, 440 F 2d 625.

immigration laws and regulations posed problems in extending collective bargaining to the Canadians, the court found that the problems were "inherent in this employment situation and they are not exacerbated by the prospect of collective bargaining." Similarly, the court agreed with the Board that the regulations, which *inter alia* required the establishment of minimum working conditions for bonded workers, did not preempt most subjects of collective bargaining. Pointing out that the regulations did not cover all bargainable subjects and that the parties could negotiate improvements over and above the minimum working conditions required by the regulations, the court concluded that the Board did not abuse its discretion in finding that the Canadians could feasibly be brought within the protection of the national labor laws. However, the court determined that the Board's inclusion of the Canadian tractor owners in the unit was erroneous because the tractor owners had effective authority to discharge employees. Since the power to discharge, as exercised by tractor owners, required the use of their independent judgment, the court concluded that the tractor owners were supervisors within the meaning of section 2(11) of the Act and therefore improperly included in the unit.

2. Election Propaganda

In two cases the Fifth Circuit considered whether union preelection campaign propaganda contained such material misrepresentations that it exceeded permissible boundaries and therefore improperly affected election results. In *S. H. Kress & Co.*,[10] the union distributed a leaflet on election eve alleging that all contracts it negotiated contained improved wages, vacations, and hospital and pension plans; provided that seniority would govern layoffs, promotions, and vacation scheduling; and always prohibited discharges without just cause and required issuance of a warning letter prior to discipline. The leaflet also contained representations as to the amount of dues and initiation fees and asserted that a $1,000 death benefit would be immediately paid by the union whenever a member died. Although agreeing with the Board that no misrepresentations were proven concerning the union's claims concerning its dues and initiation fees, the court rejected the Board's further findings that the remaining allegations, albeit untrue, were "puffing" and susceptible of evaluation by the employees. Testing the statements as to whether they were (1) a material misrepresentation of a material fact; (2) made by a party in an authoritative position to know the facts; (3) without employees' independent knowledge of the facts; and (4) timed to prevent reply,

[10] *S. H. Kress & Co.* v. *N L R B*; 430 F 2d 1234.

the court found that allegations contained in the union's leaflet met all four criteria. Thus, as the statements were made when the company was unable to effectively reply, concerned items contained in union contracts within the union's special knowledge and outside the scope of the employees' independent knowledge, and were demonstrably false since the union was party to several contracts which did not contain the various benefits alleged to be present in all union contracts, the Court concluded that the misrepresentations, taken as a whole, interfered with the employees' freedom of choice and warranted setting aside the election results.

Although the court in *S. H. Kress* carefully pointed out that any one of the misrepresentations there, standing alone, might have been insufficient to invalidate the election, the court in another case,[11] applying the same tests, set aside an election on the basis of a single union campaign misrepresentation. In the latter case, a postscript to a union mailing, received the day before the election, asserted that a competitive employer, whose employees were represented by the union, had offered more in wages and benefits during collective-bargaining negotiations than the wages and benefits paid to the employees being organized. The statements were erroneous. Finding that the misrepresentation was material since it concerned wages and fringe benefits, "the stuff of life" for employees, that the union was in authoritative position to know of the bargaining negotiations while the employees were without independent knowledge of them, and that the statements were made at a time when the company was unable to effectively reply, the court concluded that the employees were prevented from exercising their free choice of bargaining representative, set aside the election results, and refused to enforce the Board's order.

C. Employer Interference With Employee Rights

The question whether confidential employees are afforded the protections of the Act was at issue in a case in the Fourth Circuit.[12] When a union representing striking employees, established a picket line at the company's premises, a confidential employee, in sympathy with the strikers, refused to cross the picket line and was discharged for it. Although the Board has traditionally excluded confidential employees from bargaining units containing other types of employees, it takes the view that they fall within the protection of the Act, and hence it held that the company in this instance violated section 8(a)(1) by discharging the confidential employee. The court reversed the

[11] *N.L.R.B* v. *Southern Foods*, 434 F 2d 717.
[12] *N.L.R.B* v. *Wheeling Electric Co*, 444 F.2d 783.

Board, relying on a construction of the statutory history of the Taft-Hartley amendments to the Act, and held that confidential employees are excluded entirely from the Act's coverage. Although the result reached by the court is contrary to that reached in an earlier Fifth Circuit case [13] it distinguished the earlier case on the ground that there the issue had not been fully litigated, and that the Fifth Circuit had merely followed an earlier precedent which preceded the 1947 amendments.

In *Central Hardware* [14] the court affirmed the Board's decision that the employer violated section 8(a)(1) of the Act by forbidding nonemployee organizers to distribute union literature in parking lots adjacent to two of the company's stores. Each store was in a large building containing 70,000 square feet of floorspace, and was separated from the street by a parking lot for over 300 cars. The lots were owned by the company, but were unfenced and unguarded and were "accessible to the public without limitation," including patrons of nearby establishments. The court, in agreement with the Board, held that these facts distinguished the case from *Babcock & Wilcox* [15] which held that an employer could validly post his property against nonemployee distribution of union literature in the absence of special circumstances. Instead, the court held that the case was governed by *Logan Valley* [16] which held that the First Amendment prohibits the application of state trespass laws to bar a labor organization, seeking to organize employees of a store, from picketing a privately owned shopping center complex where the store was located.

In another case the Third Circuit held that an employer may enforce a rule barring off-duty employees from returning to or remaining on the plant premises to solicit union memberships in nonwork areas.[17] In reversing the Board's findings that the rule was an improper abridgment of the employees' rights under section 7 of the Act, the court emphasized the employer's private property interests which were involved, and held that since the employer could lawfully deny off-duty employees access to its premises, it is not required to grant them access for purposes of union solicitation. In reaching its conclusion, the court relied on the fact that the company did not have a no-solicitation or a no-distribution rule, and on-duty employees were permitted to engage in union solicitation and distribution during nonwork hours in all nonwork areas.

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[13] *N.L R B* v *Southern Greyhound Lines, Div. of Greyhound Lines,* 426 F.2d 1299.
[14] *Central Hardware Co* v. *N.L R B* , 439 F.2d 1321 (C.A. 8).
[15] *N L R B* v *Babcock & Wilcox Co* , 351 U S 105.
[16] *Amalgamated Food Employees Union Loc 590* v. *Logan Valley Plaza,* 391 U.S. 308.
[17] *Diamond Shamrock Co.* v. *N.L.R.B* , 443 F 2d 52

D. Employer Discrimination in Employment

1. Discharge for Refusal to Cross Picket Line

An employee who refuses to cross a picket line at his own place of employment is engaged in protected, concerted activity even though the union maintaining the picket line is not his collective-bargaining representative, and an employer's discharge of such an employee violates section 8(a)(1) of the Act.[18] In two cases in the past year, the Fourth Circuit considered the question whether the protection of the Act extends to an employee who refuses to cross a picket line not out of sympathy for the pickets but for personal reasons such as fear. In the first case,[19] the court held that an employee motivated solely by fear is not protected, reasoning that such an employee does not act on principle, makes no common cause, and contributes nothing to mutual aid or protection in the collective-bargaining process. On the other hand, in the second case,[20] the court concluded that an employee who stated only that he acted out of fear was nonetheless protected because—unknown to the company—he was a union advocate and supporter.

2. Lockout of Employees

In two 1965 decisions, *American Ship Building*[21] and *Brown*,[22] the Supreme Court recognized an employer's right to lock out his employees during contract negotiations in order to bring economic pressure on the bargaining representative to accept the employer's proposals. Two decisions in fiscal 1971 examined and rejected employer variations on this technique. In *Inland Trucking*[23] the employer locked out his employees after negotiations for a new contract reached an impasse, but continued to operate by hiring temporary substitutes.[24] The Seventh Circuit agreed with the Board that this conduct violated section 8(a) (1) and (3) of the Act. The court pointed out that this action, unlike a simple lockout, foreclosed the employees' opportunity to earn without surrendering the corresponding opportunity of the employer, and that the employees were forced to watch other workers

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[18] *N.L R B* v. *Southern Greyhound Lines*, 426 F.2d 1299, 1301 (C.A. 5).
[19] *N L R B.* v. *Union Carbide Corp*, 440 F 2d 54
[20] *Virginia Stage Lines* v. *N L.R.B.*, 441 F.2d 499.
[21] *American Ship Building Co* v. *N.L R.B.*, 380 U.S. 380.
[22] *N.L R B* v *Brown*, 380 U S. 278.
[23] *Inland Trucking Co* v. *N.L R.B.*, 440 F.2d 562 (C.A. 7)
[24] The lawfulness of this procedure was expressly reserved in *American Ship Building, supra*, where the Supreme Court said: "We intimate no view whatever as to the consequences which would follow had the employer replaced its employees with permanent replacements or even temporary help." 380 U.S. 308.

enjoy the earning opportunities over which the locked-out employees were endeavoring to bargain. For these reasons, the court concluded that the use of temporary replacements in connection with a bargaining lockout was "inherently distructive"[25] of important employee rights and was therefore an 8(a) (1) and (3) violation irrespective of the employer's motives or reasons. The court also concluded that even if the adverse effect of the employer's conduct was deemed "comparatively slight" (*N.L.R.B.* v. *Great Dane Trailers*, *supra*), thus allowing the employer to establish business reasons for what he did, the employer's desire to avoid a strike during his busiest season was insufficient by itself to justify his conduct.

In the second case,[26] 2 weeks after their contract expired, the employer and union reached an impasse in negotiations for a new one. The employer then advised the union that it proposed to cancel a number of fringe benefits contained in the expired contract—and continued in the employer's proposal for a new contract—including paid holidays, premium pay for Saturdays, vacation pay, reporting pay, and pay for jury duty. These changes were intended, the employer advised, to force the union to accept the employer's contract terms or to call a strike at that point rather than during a busy season several months later. A week later, over the union's objections, the changes were put into effect. After the parties bargained 6 weeks more without agreement, the employer locked out the bargaining unit employees. The lockout ended 3 months later when a new agreement was signed. The District of Columbia Circuit sustained the Board's finding that the company, by instituting the temporary reduction in benefits, violated section 8(a) (1), (3), and (5) of the Act. The court rejected the employer's contention that its action amounted to a "partial lockout," which was lawful under the *American Ship Building* decision. The court pointed out that the right to strike and the right to refrain from striking are equally guaranteed under section 7 of the Act. The court found that the intent and effect of the employer's action was to interfere improperly with the union's statutorily protected initiative with respect to strikes. Since this conduct was in the court's view "inherently destructive" of important employee rights (*N.L.R.B.* v. *Great Dane Trailers*, *supra*), it violated section 8(a) (1) and (3) even in the absence of antiunion motivation and even though the employer offered certain legitimate business reasons. The conduct also violated the company's bargaining obligation under section 8(a) (5), the court agreed, since the use of a bargaining tactic designed to provoke a strike was incompatible with bargaining in good faith.

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[25] *N.L.R.B.* v. *Great Dane Trailers*, 388 U.S. 26, 34.

[26] *Loc. 155, Intl. Molders & Allied Workers Union* [*U.S. Pipe & Foundry Co.*] v. *N.L.R.B.*, 442 F.2d 742 (C.A.D.C.).

3. Discrimination Against Strikers

The interplay between the right of employees to strike and the right of employers to establish legitimate employment conditions is illustrated in three cases decided by the courts of appeals during the fiscal year. In *Duncan Foundry* [27] the Seventh Circuit approved the Board's findings that the employer violated section 8(a)(3) by refusing to pay strikers vacation pay they had earned prior to the strike and by denying seniority to some 40 strikers recalled as "temporary" employees after the strike. Even if the employer had been able to prove the existence of a work rule requiring active working status as a condition precedent to the payment of accrued vacation benefits, the court held that the denial of vacation pay to strikers would still have been unlawful since the employer had failed to show any substantial economic justification for the alleged rule. The court further rejected the employer's contention that strikers were properly denied accrued vacation pay because the loss of business during the strike had resulted in the elimination of their jobs. Under section 2(3), strikers retain their status as employees until they obtain other regular and substantially equivalent employment; and the question whether particular strikers lost their employee status by securing such employment prior to the date on which their vacation benefits accrued is appropriately deferred to supplemental compliance proceedings. Finally, the court upheld the Board's finding that the 40 strikers who returned to work after the strike were recalled "for an indefinite, indeterminate period, and had a reasonable expectancy of continued employment." By labeling returned strikers as "temporary" employees for purposes of future layoffs, the employer in effect granted superseniority to nonstrikers, thereby engaging in discrimination "inherently destructive of important employee rights," without any substantial business justification. Applying the same principles in *Transport Company of Texas*,[28] the Fifth Circuit upheld the Board's finding that the employer discriminated against returned strikers, in violation of section 8(a)(3), by selecting employees for economic layoff exclusively from the ranks of reinstated strikers and selecting first those strikers who were recalled last. The court rejected the employer's defense that (1) it had made a commitment to striker replacements that their jobs would be permanent and (2) since strikers were recalled in the order of their "desirability," those recalled last were least competent. Although an employer need not discharge permanent replacements to make room for returning economic strikers, the strikers are entitled to full rein-

[27] *N L R B* v *Duncan Foundry & Machine Works*, 435 F.2d 612
[28] *N.L R B.* v. *Transport Co. of Texas*, 438 F 2d 258.

statement as jobs become available; and, once reinstated, they must be treated uniformly with nonstrikers and permanent replacements.

In *System Council T-4*,[29] the last case in this trilogy, the Seventh Circuit upheld the Board's finding that the employer did not violate section 8(a)(3) by adjusting strikers' "net credited service dates" to reflect their absence from work for more than 30 consecutive days. Net credited service was used to determine length of vacations and entitlement to pensions, sick benefits, termination pay, and telephone concessions. Emphasizing that the strikers' seniority had not been reduced, the court held that adjustment of the net credited service dates amounted to no more than a refusal to pay strikers benefits for time not worked. The court affirmed the continued vitality of the Board's *General Electric*[30] doctrine that, although an employer may not suspend the accumulation of seniority during a strike, he may halt the accrual of vacation and pension benefits since he is not required to remunerate strikers for work not performed. The court noted that there are two major categories of benefits an employer may not withhold from striking employees under section 8(a)(3). The first category includes any benefit that will give a nonstriking employee a preferred position over a striker on a long-term basis, e.g., superseniority given to replacements and returning strikers as insurance against future layoffs; the second category consists of benefits earned by the employee before the strike; e.g., accrued vacation pay. As the employer's adjustment of the strikers' net credited service dates here merely inhibited strikers from earning during the strike economic benefits, traditionally related to work actually performed, the court approved the Board's finding that the conduct did not fall into either of the proscribed categories and upheld dismissal of the complaint.

4. Discrimination for Participating in Board Proceeding

In the *Scrivener* case,[31] the Eighth Circuit declined an opportunity to modify its restrictive view of the scope of section 8(a)(4)[32] of the Act. Earlier, in the *Ritchie Mfg.* case,[33] the court set aside a Board finding that section 8(a)(4) was violated when the employer discharged an employee because he met with a Board agent in order to prepare to testify in a Board hearing. *Scrivener* involved the dis-

[29] *System Council T-4, IBEW [Illinois Bell Telephone Co.] v N.L.R.B.*, 446 F.2d 815, cert denied 404 U.S. 1059.

[30] *General Electric Co*, 80 NLRB 510

[31] *N.L.R.B. v. Robert Scrivener, d/b/a AA Electric Co.*, 435 F 2d 1296.

[32] Sec. 8(a)(4) makes it an unfair labor practice for an employer "to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under [*the*] Act."

[33] *N.L R.B v Ritchie Manufacturing Co.*, 354 F 2d 90, 101.

charge of three employees because they gave statements to a Board agent who was investigating unfair labor practice charges filed against the employer. The court refused to enforce the Board's 8(a)(4) finding, noted its statement in *Ritchie* that "We are reluctant to hold that § 8(a)(4) can be extended to cover preliminary preparations for giving testimony," and stated, without further explanation, "This reluctance continues."

E. The Bargaining Obligation

1. Successor Employer's Obligation to Assume Contract

Two circuit courts of appeals reached opposite conclusions concerning the Board's newly imposed obligation on successor employers to assume, absent unusual circumstances, the collective-bargaining agreement of the predecessor in effect at the time of the change of ownership.[34] While the Tenth Circuit [35] enforced a Board order imposing this obligation, the Second Circuit [36] refused to do so.

Ranch-Way was the successor to part of a larger company's grain processing operation which was subject to a master collective-bargaining agreement and appendix thereto relating to the grain processing plant. The company sought review of the Board order requiring it to honor the collective-bargaining agreement. The Tenth Circuit's analysis was short and to the point. It held that "Where there has been a lock, stock and barrel sale of a going concern, resulting in a substantial continuity of identity, the purchaser is bound by the collective bargaining provisions of an agreement between its predecessor and a union." [37] Although the court's holding was in direct conflict with the Second Circuit's decision reached 2 months earlier in *Burns*, the Tenth Circuit did not deal with *Burns* in its decision.

Burns was a successor to a contract to provide plant security services at a facility in Ontario, California. It sought review of the Board's order requiring it to honor the predecessor's collective-bargaining agreement in effect at the time of the takeover. The Second Circuit held that the Board exceeded its powers in ordering *Burns* to honor the contract and, accordingly, refused to enforce that part of the

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[34] Formerly, the Board held that a successor employer was bound by the predecessor's collective-bargaining agreement only when he was in "privity of contract" or when he expressly assumed the contract. See *Rohlik, Inc*, 145 NLRB 1236, 1242, fn 15; *Stubnitz Greene Spring Corp*, 113 NLRB 226, 228; *Jolly Giant Lumber Co.*, 114 NLRB 413, 414; *M. B. Farrin Lumber Co.*, 117 NLRB 575; *General Extrusion Co*, 121 NLRB 1165, 1168. Under this rule the successor's obligation was only to bargain with the incumbent union

[35] *Ranch-Way, Inc.* v. *N.L.R B*, 445 F 2d 625, enfg. 183 NLRB No. 116

[36] *Wm J Burns Intl Detective Agency, Inc* v *N L R.B.*, 441 F.2d 911

[37] *Ranch-Way, Inc.* v. *N.L.R.B.*, *supra* at 627.

Board's order.[38] The gravamen of the court's disagreement with the Board was that the Act permits the Board only to oversee and referee the collective-bargaining process;[39] that the imposition of a contract on a nonassuming successor was contrary to the national labor policy of free collective bargaining embodied in section 8(d) of the Act. Moreover, in the court's view, the Board's action was "contrary to the letter as well as the spirit" of the Supreme Court's recent *H. K. Porter* decision[40] which held the Board without power to compel a company or union to agree to a substantive term of a collective-bargaining agreement.[41] Nor did the Second Circuit find supportive of the Board's position the *Wiley*[42] requirement that a successor honor the arbitration provision of the predecessor's collective-bargaining agreement because that case arose in the context of a section 301[43] suit to compel arbitration and rested on recognition that arbitration occupied a "central role . . . in effectuating national labor policy"[44]—factors not present in the subject unfair labor practice case. Finally, the court perceived that the contract assumption obligation could result in serious inequities, as in the instance of a union making concessions to a failing employer only to find a financially viable successor taking over and reaping the advantages of such a contract. That the Board would not impose the contract assumption obligation in such "unusual circumstances,"[45] was insufficient, for, in the court's view, this "merely arrogates to the Board the additional power to pick and choose among the contractual provisions it will impose on non-contracting parties."[46]

2. Other Aspects

Other aspects of the bargaining obligation considered by the courts included the duty of an employer to supply information relevant to the proper performance of a union's collective-bargaining role and the subjects over which an employer and a union must bargain. In

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[38] The court did find, *inter alia*, that *Burns* was a successor employer and therefore bound to bargain with the incumbent union. *Burns Intl. Detective Agency* v. *N.L.R.B.*, *supra* at 914

[39] See sec. 8(a) (5) and 8(d) of the Act.

[40] *H. K. Porter Co., Inc* v. *N L R.B*, 397 U S. 99.

[41] The court implicitly rejected the Board's contention that *Porter* was inapposite because the contract assumption obligation only required the successor to abide by the terms of a contract which had been freely negotiated by the predecessor without intervention by the Board.

[42] *John Wiley & Sons* v. *Livingston*, 376 U.S. 543.

[43] Sec 301, Labor Management Relations Act (29 U.S.C. § 185).

[44] *Burns Intl. Detective Agency* v. *N.L R B.*, *supra* at 916, quoting from *Wiley & Sons* v. *Livingston*, *supra* at 549.

[45] See *Emerald Maintenance*, 188 NLRB No. 139.

[46] *Burns Intl. Detective Agency* v. *N.L R.B*, *supra* at 916.

Emeryville Research Center[47] the Ninth Circuit declined to enforce a Board order directing an employer to furnish information concerning its salary system in the form requested, although the court assumed, without deciding, that the data was relevant to the union's collective-bargaining role. The court held that where "the Company raises *bona fide* objections to the form in which information is requested and offers to provide information sufficient to meet the Union's needs in a mutually satisfactory form, the Union must do more than rely on general avowals of relevance in order to establish its right to the information." In these circumstances, the court continued, the union must specify "the uses to which the information is to be put so that the Company is afforded an opportunity to provide it on mutually satisfactory terms."

Some of the court decisions issued during the report year examined the subject matter embraced by the phrase "wages, hours, and other terms and conditions of employment," as it is set forth in section 8(d) of the Act to describe the matters subject to collective-bargaining determination. In *U.O.P. Norplex*[48] the Seventh Circuit sustained the Board's ruling that the scope of mandatory bargaining did not extend to an employer's demand that the union withdraw fines imposed on member-employees who crossed a union picket line. Overruling its *Allen Bradley* decision,[49] the court agreed with the Board that such fines were an internal union affair,[50] and that the employer's insistence upon their withdrawal to the point of impasse constituted a refusal to bargain in good faith concerning subjects of mandatory bargaining.[51] In another case [52] the Fifth Circuit affirmed the Board's holding that a union's bargaining demand was not within the scope of mandatory bargaining. Where the union and employer had agreed to all the provisions of a collective-bargaining agreement, it was found to be an unfair labor practice for the union to insist that the employees it represented would not return to work until the employer signed a contract with other groups of employees. The union's demand was an attempt to expand its power "beyond the bounds of the Board-authorized appropriate bargaining unit" and therefore not something a union is permitted to insist upon to impasse. Alternatively, the court held that the union refused to bargain in good faith by repudiating its duty to execute a written collective-bargaining contract with the employer after the terms of the contract had been agreed upon.[53]

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[47] *Emeryville Research Center, Shell Development Co.* v *N L.R.B.*, 441 F 2d 880.

[48] *U.O.P. Norplex, Div. of Universal Oil Products Co* v. *N.L.R.B.*, 445 F 2d 155

[49] *Allen Bradley Co* v. *N L R.B*, 286 F 2d 442

[50] Sustaining the legality of such fines, see *N.L.R.B.* v. *Allis-Chalmers Mfg. Co.*, 388 U.S. 175.

[51] Cf *N.L R.B.* v. *Wooster Div. of Borg-Warner Corp.*, 356 U.S 342.

[52] *N.L R.B.* v *South Atlantic & Gulf Coast Dist. Intl. Longshoremen's Assn*, 443 F.2d 218.

[53] Cf. *H. J. Heinz Co.* v. *N.L.R.B.*, 311 U.S. 514.

F. Union Interference With Employee Rights

1. Union Fines on Employees and Employer Representatives

Several decisions by courts of appeals during the year involved the question whether fines assessed by a union against its members were unlawfully coercive within the meaning of section 8(b)(1)(A) and its proviso. Section 8(b)(1)(A) makes it an unfair labor practice for a union to restrain or coerce employees in the exercise of the rights guaranteed in section 7, which includes the right not to engage in concerted activities or to be represented by a union, while the proviso permits some coercive union practices, such as fines or expulsion, if they are in support of legitimate interests of the union and do not contravene any policy inbedded in the Federal labor laws. In one case,[54] the Seventh Circuit upheld the Board's decision that a union had violated the Act by fining a member because she had circulated a petition seeking the decertification of the union as the employees' exclusive bargaining representative. The court noted that on the one hand, the proviso has been held not to protect a union's fine or expulsion of a member for filing charges against it with the Board,[55] while on the other hand, a union's expulsion of a member for petitioning the Board for the decertification of the union has been held privileged.[56] Observing that the latter cases rest on the defensive nature of the union's action, in that "[e]xpulsion eliminates the presence of an antagonistic member whose disloyalty would pose [security] problems to the union," the court, like the Board, reasoned that the imposition of a fine is not defensive, but punitive in nature, as the disloyal member "retains his membership and is able to attend meetings and learn of union strategy during the decertification, pre-election and election periods." The court concluded that since punishment of the member would discourage utilization of the Board's processes, it cannot be justified "in the face of the strong policy which allows union members unimpeded access to the Board." [57]

In another case, the First Circuit, disagreeing with the Board's conclusion, found that under the Supreme Court's *Allis-Chalmers* decision [58] a union did not violate section 8(b)(1)(A) when it fined

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[54] *N.L R.B.* v. *International Molders and Allied Workers Union, Local 125, AFL–CIO* [*Blackhawk Tanning Co.*], 442 F 2d 92.

[55] *Local 138, International Union of Operating Engineers* (*Charles S. Skura*), 148 NLRB 679; *N.L R B.* v. *Industrial Union of Marine & Shipbuilding Workers of America* [*United States Lines Co.*], 391 U S. 418.

[56] *Tawas Tube Products, Inc.*, 151 NLRB 46; *Price* v. *N.L.R.B.*, 373 F.2d 443 (C.A. 9), cert. denied 392 U.S. 904.

[57] *N L R.B.* v. *Granite State Joint Board, Textile Workers Loc 1029* [*Intl. Paper Box Machine Co.*], 446 F 2d 369 (C.A. 1).

[58] *N.L.R B* v. *Allis-Chalmers Mfg. Co.*, 388 U.S. 175.

employees who resigned their membership and then crossed its picket line to return to work. The Board, citing its decision in *The Boeing Co.*,[59] held that employees who resigned from the union could not legitimately be fined for returning to work after their resignation. The Board's decision in *Boeing* was founded on section 7's protection of employees' rights to refrain from concerted activities and the contractual nature of the union-member relationship,[60] and relied on the Supreme Court's assertion in *Scofield* v. *N.L.R.B.*[61] that ". . . § 8(b)(1) leaves a union free to enforce a properly adopted rule . . . against union members who are free to leave the union and escape the rule." In rejecting the Board's decision and rationale, the Court observed that the instant strike was approved by all but one member at a meeting attended by "practically all the members," and that shortly after the strike began, the union membership voted unanimously to fine any member who assisted the company during the strike. Analyzing the situation to "charitable subscription" cases, the Court concluded that in view of "the specific obligation to strike undertaken [by the employees] in this case," the employees had waived their section 7 right not to participate in the strike, and, therefore, were not "free to leave the union and escape the [union's] rule" during the strike's uninterrupted continuation.

2. Union Responsibility for Violence

Unlike section 8(b)(1)(A), which protects employees from union interference with their section 7 rights, section 8(b)(1)(B) of the Act protects employers from union coercion or restraint "in the selection of [their] representatives for the purposes of collective bargaining or the adjustment of grievances." During the past year, three courts of appeals had occasion to deal with the effect of union discipline of supervisor-members on the right of the employer to select its representatives. In each instance, the court agreed with the Board that the discipline of a supervisor in the circumstances present constituted an unlawful interference with the employer's right to select its grievance or bargaining representatives. In the first case,[62] the Tenth Circuit found that a union's fine against its supervisor-member for allegedly breaching the union's collective-bargaining agreement unlawfully restrained the employer. The court agreed with the Board that the supervisor, who had authority to represent the employer in grievance adjust-

[59] *Booster Lodge No. 405, Machinists,* 185 NLRB No. 23.
[60] *N.L.R.B.* v. *Allis-Chalmers Mfg. Co.,* 388 U.S. 175, 182, 192.
[61] 394 U.S. 423, 430.
[62] *N.L.R.B.* v. *Sheet Metal Workers' Intl. Assn., Loc. 49 [General Metal Products],* 430 F.2d 1348.

ments, was disciplined for engaging in the supervisory act of directing when, where, and by whom the work was to be performed. The court concluded that "[s]ince the effect of the Union's act of disciplining [supervisor] Jones [was] to change [the employer's] representative from one representing the viewpoint of management to a person responsive or subservient to the Union's viewpoint, the Union's act constitutes interference with an employer's control over its representative in violation of Section 8(b(1)(B)." The court rejected the union's contention that its conduct was protected under the *Allis-Chalmers* decision, observing that the discipline in *Allis-Chalmers* affected only the union's relationship with its member, whereas the discipline in the instant case concerned the interpretation of the collective-bargaining agreement and therefore affected the relationship between the union and the employer. Similarly, the Sixth Circuit [63] agreed that *Allis-Chalmers* was inapposite to union fines assessed against supervisors who allegedly violated the collective-bargaining agreement by working during a strike for longer hours and with smaller crews than the agreement permitted. The court noted that each of the supervisor-members fined had authority to settle employee grievances, and that one was likely to represent the company in future contract negotiations. The court, citing *General Metal Products*, *supra*, concluded that the fines, even though suspended, "could very well be considered as an endeaver to apply pressure on the supervisory employees . . . to interfere with the performance of the duties which the employer required them to perform during the strike, . . . to influence them to take action which the employer, might deem detrimental to its best interests . . . [and] to make the [supervisory] employees reluctant in the future to take a position adverse to the union . . . ."

Finally, the District of Columbia Circuit, after rehearing,[64] sustained the Board's findings that a union's expulsion of a supervisor-member was intended to coerce and restrain the employer in the choice of its foreman. Instead of following the mandatory grievance-arbitration procedures spelled out in the collective-bargaining agreement to resolve a dispute concerning the supervisor's direction of an employee in the performance of the latter's work, charges were brought and entertained by the union, resulting in the supervisor's expulsion from the union. Observing that the expulsion caused the supervisor's "loss of many valuable benefits," the court concluded that "[s]uch expulsion . . . could very well have a definite coerive influence on the man chosen by the Company as its representative."

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[63] *N L R B.* v *Toledo Locs 15–P & 272 of the Lithographers & Photo-Engravers Intl. Union* [*Toledo Blade Co*], 437 F 2d 55.

[64] *Dallas Mailers Union, Loc 143 & Intl. Mailers Union (Dow Jones Co.)* v. *N.L.R.B.*, 445 F.2d 730, on rehearing 445 F.2d 733

In *Bulletin Co.*[65] the Third Circuit upheld the Board's finding that the union was responsible for its members' harassment of fellow employees on the job. Following a dispute in which the union had prevented the Bulletin's efforts to hire employees directly without referral by the union, an unfair labor practice complaint issued against both the company and the union. The parties then stipulated that the Bulletin would offer employment to eight applicants and the union would not conduct a slowdown if they were hired. When new employees came to work in the pressroom, they were doused with ink, pelted with eggs, and threatened, and the company sent them home for their own protection. Although union officials were not directly implicated, the court observed that the misconduct was committed by men united by a common bond of membership in the union and that when officials stood passively by while their members fought to force their employer into a violation of law without taking affirmative action, "that passivity amounts to silent approbation."

G. Prohibited Boycotts

The District of Columbia Circuit has twice has occasion during the report year to rule on the validity of the Board's "right of control" test. In the first of the two,[66] the court held that the Board erred in concluding that the picketed employer was neutral solely because he did not have the power to alter the provisions of the contract which he had entered into, since the employer knew of the specifications in advance, and could have negotiated to have those specifications changed prior to binding itself to the contract. Moreover, the court asserted that the Board's use of the "right of control" test as a *per se* rule was inconsistent with the Supreme Court's teaching in *National Woodwork*[67] that in distinguishing primary from secondary activity, an inquiry must be made in to "whether, under all the surrounding circumstances, the Union's objective was preservation of work for [unit] employees, of whether the agreements and boycott were tactically calculated to satisfy union objectives elsewhere."[68] Finally, the court noted that where, as in that case, the union had negotiated a valid work-preservation agreement with the employer and was enforcing that agreement, the union's activity must be considered primary. In the second case,[69]

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[65] *N.L.R.B.* v. *Bulletin Co.*, 443 F.2d 863.

[66] *Loc. 636, Plumbers [Mechanical Contractors Assn. of Detroit]* v *N L R B*, 430 F 2d 906.

[67] *National Woodwork Manufacturers Assn.* v. *N.L R.B.*, 386 U.S. 612.

[68] *Id* at 644–645.

[69] *Loc 742, Carpenters [J L. Simmons Co]* v. *N L.R B*, 444 F. 2d 895.

the court reaffirmed its earlier decision that the Board could not rely solely on its "right of control" test in determining whether union conduct is primary or secondary, since the test focused only on whether the employer was immediately able to grant the union what it wanted, and ignored the substance of the dispute, its history, and other relevant surrounding circumstances. The court further found that the absence of a valid work preservation clause in the contract was not dispositive, since the work in question was traditional unit work. The court remanded both cases to the Board with instructions to consider all of the surrounding circumstances, of which one—but not the only one—might be the employer's "right of control."

In an interesting case involving the proper application of the "common situs" doctrine, the Fifth Circuit held that the picketing of a warehouse where the primary employer stored its product was secondary activity proscribed by the Act.[70] The Board had found that the warehouse, which was owned by another employer and was located away from the primary employer's premises, constituted a "common situs" because the primary employer maintained a "presence" there by virtue of (1) its longstanding contractual arrangement with the owner to store its frozen product there, (2) the fact that the primary employer's employees arrived at the warehouse continually during peak periods (although not during the period in question) to pick up and deliver the product and to take it back to the plant for repackaging, (3) the fact that the storage of the frozen product was an integral part of the primary's production process, and (4) the fact that even while stored at the warehouse, the product remained for all practical purposes under the control of the primary employer. The court held that the case could not properly be decided by applying the "common situs" doctrine, since the real situs of the dispute was at the warehouse at the time of the dispute. Instead, the court looked to the real objective for picketing away from the true situs of the controversy, and found that it was the halting of operations of the warehouse, in which the stored products of other neutral employers constituted 90 percent of the total capacity of the facility, and therefore secondary.

The Ninth Circuit held that a union engages in secondary activity when it threatens to levy sanctions against members who work for employers with whom the union has a primary dispute.[71] In that case, the members were entertainers performing at the struck casinos. The Board, relying on *General Electric*[72] and *Carrier*,[73] had found that their work was part of the normal operation of the casinos and that the

[70] *Auburndale Freezer Corp.* v. *N.L.R.B.*, 434 F. 2d 1219.
[71] *N.L R B.* v. *Harrah's Club*, 403 F 2d 865.
[72] *Local 761, International Union of Electrical Workers* v. *N.L.R B.*, 366 U.S. 667.
[73] *United Steelworkers of America* v. *N L.R.B.*, 376 U S. 492.

union had sought to induce action only at the situs of the primary dispute and, accordingly, had dismissed the complaint. The court, however, found that the entertainers were secondary employers on grounds that they were independent contractors and not employees of the casinos. The court further found that the telegrams requesting the entertainer-members to refrain from crossing the picket line were intended to and did threaten them with an object of forcing or requiring them to cease doing business with the primary employer. Accordingly, the court found the union's action secondary without regard to the question whether the performers' work was part of the normal operations of the casinos.

In a case involving the "ally doctrine," the District of Columbia Circuit rejected the principle generally followed by the Board that an essential element of the ally doctrine is that the arrangement for the performance of struck work must be initiated by the struck employer.[74] In that case, when the primary employer was struck, customers made arrangements to have the product delivered to its situs by independent haulers; the union threatened to strike the customers and picketed the haulers making the deliveries. The court agreed with the Board that the customers were neutral employers who did not become allies simply because they arranged with independent contractors to have the product delivered to their jobsites. However, the court found that the independent haulers were allies, since, regardless of who initiated the arrangement, they were employers whose employees were performing work which would normally be performed by the striking employees. Accordingly, the court found that the union had the right to picket the haulers, and that such picketing violated the Act only insofar as it went beyond that allowed by *Moore Dry Dock* [75] and unnecessarily affected the neutral customers.

H. Remedial Order Provisions

In *Tiidee Products I*,[76] the District of Columbia Circuit held that the Board had the power to order the employer to make his employees whole for losses of pay suffered as a result of the refusal to bargain where the employer's refusal was based on patently frivolous objections to the election won by the union, violated the consent-election agreement whereby the employer had agreed that the regional director's decision on objections to the election would be final, and was accompanied by extensive violations of section 8(a)(1) and (3) of the

[74] *Laborers' Intl. Union of North America, Loc. 859 [McDonald Bros. Cast Stone Co.]* v. *N.L R B.*, 446 F.2d 1319.

[75] *Sailors' Union of the Pacific*, 92 NLRB 547.

[76] *I.U.E. [Tiidee Products I]* v. *N L.R.B.*, 426 F.2d 1243, cert. denied 400 U.S. 950.

Act. The court remanded the case to the Board with instructions that if the Board was unwilling to adopt the "make-whole" remedy requested by the union, it should on remand consider alternative remedies to insure meaningful bargaining.[77]

In a subsequent case,[78] however, the District of Columbia Circuit held that a "make-whole" remedy was not appropriate where the record revealed that the company's refusal to honor the union's demand for recognition based on authorization cards rested on a factually debatable question—whether the dismissal of eight employees, which took place *before* the union's demand, was for work-related reasons or to discourage union activities. Thus, the company did not raise the kind of spurious, patently frivolous defense raised in *Tiidee I*, and could not be held to have engaged in the litigation in order to delay the final resolution of the dispute, but, rather, desired only to obtain an authoritative determination of the validity of the Board's decision.[79]

In a similar case,[80] the employer refused to grant recognition based on authorization cards, and the union subsequently lost its majority status, as evidenced by its loss of a representation election. Although the District of Columbia Circuit agreed with the Board's conclusion that the company's section 8(a) (1) and (3) violations were serious and substantial and sufficient to establish that the company had as its purpose either the rejection of the collective-bargaining principle or the desire to gain time within which to undermine the union and dissipate its majority,[81] it nevertheless held that a "make-whole" remedy was not appropriate, since the majority representation by the union was factually debatable and the issues respecting such representation were not frivolous.

In another case,[82] where the employer refused to bargain with a certified union on the ground that the Board's single-plant unit determination was inappropriate, the District of Columbia Circuit dis-

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[77] In *I.U.E.* [*Tiidee Products II*] v. *N.L.R.B.*, 440 F.2d 298, where the same employer had committed additional violations of sec. 8(a)(1), (3), (4), and (5) of the Act, the court remanded the case to the Board for further consideration of the union's "make-whole" claim in light of its decision in *Tiidee I*.

[78] *United Steelworkers of America* [*Quality Rubber Mfg. Co.*] v. *N.L R.B*, 430 F.2d 519.

[79] The court noted that the Board's order was issued before the court's decision in *Tiidee I*, and stated that under that circumstance, it accepted the Board's explanation for refusing to order the further relief requested by the union, but warned that it would expect additional remedies or more complete explication in similar situations in cases decided after *Tiidee I*.

[80] *Southwest Regional Joint Board, Amalgamated Clothing Workers of Amer.* [*Levi Strauss & Co*] v. *N.L R.B.*, 441 F.2d 1027 (C.A.D.C.).

[81] The court also pointed out that it disagreed with the Board's conclusion in *Ex-Cell-o Corp.* 185 NLRB 20, disagreeing with *Tiidee I*, that the Board did not have the statutory power to issue "make-whole" remedies in sec. 8(a)(5) cases.

[82] *International Union, UAW* [*Ex-Cello-O Corp.*] v. *N L.R.B.*, 449 F.2d 1046 (C.A.D.C.).

agreed with the Board's assumption that an employer seeking judicial review of an election could never be charged with a flagrant violation, absent discharge of employees for union activity or some other conduct in flagrant disregard of employee rights. Instead, the court held that an employer's refusal to bargain based on a frivolous challenge to an election was of itself a serious and manifestly unjustified repudiation of the employer's statutory duties and denial of employees' statutory rights to collective bargaining, and that "make-whole" compensation was a proper remedy in such circumstances. The court remanded the case to the Board for further proceedings not inconsistent with its opinion in *Tiidee I*, including express determinations whether the employer's objections to the certification were frivolous or fairly debatable, and whether "make-whole" compensation or some other special remedy was appropriate.[83]

[83] However, in a subsequent case involving the same union and same employer, *International Union, UAW [Ex-Cell-O Corp] v N.L.R B*, 449 F.2d 1058 (C A D.C), the court, having the full record of the certification and unfair labor practice proceedings before it, held that it was plain that the company's objections to the certification fell into the "fairly debatable" rather than the "frivolous" or "bad faith" category and that, even though the court believed that the Board erred in its analysis of the applicable legal rules, it would be a futile act to insist on a remand which could not meaningfully change the result.

IX

Injunction Litigation

Section 10(j) and (l) authorizes application to the U.S. district courts, by petition on behalf of the Board, for injunctive relief pending hearing and adjudication of unfair labor practice charges by the Board.

A. Injunctive Litigation Under Section 10(j)

Section 10(j) empowers the Board, in its discretion, after issuance of an unfair labor practice complaint against an employer or a labor organization, to petition a U.S. district court for appropriate temporary relief or restraining order in aid of the unfair labor practice proceeding pending before the Board. In fiscal 1971, the Board filed 13 petitions for temporary relief under the discretionary provisions of section 10(j): 8 against employers, 3 against unions, and 2 against both employer and union.[1] Injunctions were granted by the courts in eight cases and denied in two. Of the remaining cases, three were settled prior to court action, one was dismissed, and two were pending at the close of the report period.[2]

Injunctions were obtained against employers in four cases, against unions in two cases, and ran against both employers and unions in two cases. The cases against the employers variously involved alleged refusals to bargain with labor organizations representing their employees, refusals to reinstate strikers, threats, surveillance, and other alleged violations of section 8(a)(1). The cases against the unions involved allegations of refusal to bargain with employers, threatening reprisals and harassment by engaging in strikes and picketing, threats and acts of physical violence and blocking entrances to premises of the employers. In the two instances where the injunction was directed against both employer and union, one situation involved the employer's recognition of a union alleged to have been assisted in violation

[1] In addition three petitions filed during fiscal 1970 were pending at the beginning of fiscal 1971

[2] See table 20 in Appendix A.

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of the Act as well as threats and other acts of unlawful interference. In the other case the employer allegedly recognized, dominated, and supported the union despite the demands of a rival union.

1. Alleged Refusal-to-Bargain Cases

In one of the cases involving an alleged refusal to bargain [3] the employer participated in several bargaining sessions with the certified union without reaching agreement. Subsequently the union struck those employer installations where a contract had not been successfully negotiated. The employer after additional bargaining sessions unilaterally put into effect the contractual terms it had previously negotiated with the union, and refused to participate in further bargaining. Under these circumstances the court found that there was reasonable cause to believe that the employer had violated the Act, enjoined the unfair labor practices, and ordered the employer to bargain. In *Georgetown Steed Corp.*,[4] the court found that the regional director had reasonable cause to believe that the employer violated the Act by refusing to engage in collective bargaining during an economic strike and by demanding that the employees abandon the strike and return to work as a condition for the resumption of collective bargaining with the union. Accordingly the court issued an injunction and ordered the employer to bargain. And in the *Commercial Cab* case,[5] the district court ordered the respondents to bargain with the union concerning the effects on the employees in the bargaining unit of respondent's decision to terminate its business and sell the assets. Respondents were also ordered by the court to establish a special bank account and deposit therein $35,000 to protect the interests of the employees involved.

2. Other Section 10(j) Litigation

In the *Sassano* case,[6] the court issued a temporary injunction after finding that the regional director had reasonable cause to believe that the employer had violated the Act by refusing to offer strikers immediate and full reinstatement to their former or substantially equivalent positions of employment, and by engaging in acts of threats and surveillance designed to frustrate the concerted activities of the employees.

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[3] *Little* v. *Western Kentucky Gas Co.*, 77 LRRM 3027, 66 LC ¶ 12,018 (D.C Ky.).

[4] *Johnston* v. *Georgetown Steel Corp.*, 76 LRRM 2515, 64 LC ¶ 11,497 (D C S C)

[5] *Madden* v. *Commercial Cab Co.*, Civil No. 69 C–774 (D.C.Ill.), decided April 15, 1969 (unreported).

[6] *Brooks* v. *Sassano, d/b/a Hilltop Foods*, Civil No. 251 (D.C.Mich.), decided July 23, 1970 (unreported).

Applications for temporary injunctions were denied in two cases. In *Columbia Marine*,[7] the court concluded that the regional director did not sustain the charge. Moreover the court found no evidence of engaging in unfair labor practices within the meaning of section 8(a)(1), (2), and (5) of the Act since the evidence before the court did not sustain the charge. Moreover the court found no evidence that the employees and the charging union had suffered such irreparable injury as to make it just and proper to enjoin the employer pending final disposition by the Board. And in the *Emerald Maintenance* case,[8] the court held that a temporary injunction was not appropriate which would require the employer, who had a maintenance contract with the United States, to recognize a union and accept the terms of a collective-bargaining agreement negotiated between the union and a prior contractor. In the court's view, the case presented questions that should await full consideration by the Board and the courts as to whether the Board's decision in *Burns Intl. Detective Agency*, 182 NLRB No. 50, is binding; whether the employer was a successor employer; and whether the *Burns* decision should be given retroactive effect, if in fact it is binding.

Enforcement of a union's bargaining obligation was secured through section 10(j) proceedings in *Teamsters Loc. 70* [9] where the court enjoined the union from refusing to accept, implement, and be bound by contracts negotiated between its designated bargaining representative and members of the employer association. The union's threats and strike activities at the premises of the employer members were also enjoined.

In one case [10] strike violence by a union was enjoined by the court after petitions had been filed by the Board pursuant to section 10(j). The court found reasonable cause to believe that the union violated section 8(b)(1)(A) by blocking the plant entrances, attempting to prevent the employees from entering the plant, threatening and committing acts of violence against the person and property of the employees, and by other acts of restraint and coercion.

The actions of an employer and a union were enjoined by the court in the *Rockville Nursing Center* case [11] based on evidence that the parties executed a contract containing union-security provisions at a

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[7] *Getreu* v. *Columbia Marine Service*, Civil No. 2127 (D C.Ky.), decided Jan. 20, 1971 (unreported)

[8] *Potter* v. *Emerald Maintenance*, 76 LRRM 2119, 64 LC ¶ 11,368 (D.C Tex.).

[9] *Hoffman* v. *Brotherhood of Teamsters & Auto Truck Drivers, Loc 70*, Civil No. C-70 1380 (D C Calif), decided July 9, 1970 (unreported).

[10] *Seeler* v *Natl. Assn of Broadcast Employees & Technicians, Loc 25*, Civil No. 1971-204 (D C N Y.), decided May 14, 1971 (unreported)

[11] *Kaynard* v *Issac Putterman, d/b/a Rockville Nursing Center*, 70 Civil-1059 (D.C N.Y.), decided Sept. 1, 1970 (unreported).

time when the union did not represent an uncoerced majority of the employees and further more had committed other acts of restraint and coercion. Likewise in *Pangles Master Markets*,[12] the court enjoined the union and employer conduct upon finding that there was reasonable cause to believe that the employer had violated section 8(a) (1) and (2) by dominating and interfering with a union, permitted its supervisors to sit on the union negotiating committee, and executing a contract with the union despite a pending demand by a rival union. It also found the union violated section 8(b) (1) (A) by accepting recognition while a minority representative, and by using the supervisory personnel of the employer to solicit membership in the union.

B. Injunctive Litigation Under Section 10(l)

Section 10(l) imposes a duty on the Board to petition for "appropriate injunctive relief" against a labor organization or its agent charged with a violation of section 8(b) (4) (A), (B), and (C),[13] or section 8(b) (7),[14] and against an employer or union charged with a violation of section 8(e),[15] whenever the General Counsel's investigation reveals "reasonable cause to believe that such charge is true and a complaint should issue." In cases arising under section 8(b) (7), however, a district court injunction may not be sought if a charge under section 8(a) (2) of the Act has been filed alleging that the employer has dominated or interfered with the formation or administration of a labor organization and, after investigation, there is "reasonable cause to believe such charge is true and that a complaint should issue." Section 10(l) also provides that its provision shall be applicable, "where such relief is appropriate," to violations of section 8(b) (4) (D) of the Act, which prohibits strikes and other coercive conduct in support of jurisdictional disputes. In addition, under section 10(l) a temporary restraining order pending the hearing on the petition for an injunction may be obtained, without notice to the respondent, upon

[12] *Fusco* v. *Pangles Master Markets*, 76 LRRM 2738, 65 LC ¶ 11,585 (D C Ohio).

[13] Sec. 8(b)(4) (A), (B), and (C), as enacted by the Labor Management Relations Act of 1947, prohibited certain types of secondary strikes and boycotts, strikes to compel employers or self-employed persons to join labor or employer organizations, and strikes against Board certifications of bargaining representatives. These provisions were enlarged by the 1959 amendments of the Act (Title VII of Labor-Management Reporting and Disclosure Act) to prohibit not only strikes and the inducement of work stoppages for these objects but also to proscribe threats, coercion, and restraint addressed to an employer for these objects, and to prohibit conduct of this nature where an object was to compel an employer to enter into a hot cargo agreement declared unlawful in another section of the Act, sec. 8(e).

[14] Sec. 8(b)(7), incorporated in the Act by the 1959 amendments, makes organization or recognitional picketing under certain circumstances an unfair labor practice.

[15] Sec 8(e), also incorporated in the Act by the 1959 amendments, makes hot cargo agreements unlawful, with certain exceptions for the construction and garment industries.

a showing that "substantial and irreparable injury to the charging party will be unavoidable" unless immediate injunctive relief is granted. Such *ex parte* relief, however, may not extend beyond 5 days.

In fiscal 1971, the Board filed 239 petitions for injunctions under section 10(l). Of the total caseload, comprised of this number together with the 14 cases pending at the beginning of the period, 93 cases were settled, 18 dismissed, 7 continued in an inactive status, 14 were withdrawn, and 4 were pending court action at the close of the report year. During this period 117 petitions went to final order, the courts granting injunctions in 110 cases and denying them in 7 cases. Injunctions were issued in 47 cases involving secondary boycott action proscribed by section 8(b)(4)(B) as well as violations of section 8(b)(4)(C) to require recognition where the Board had certified another union as representative. Injunctions were granted in 32 cases involving jurisdictional disputes in violations of section 8(b)(4)(D) of which also involved proscribed activities under section 8(b)(4)(B). Injunctions were issued in five cases involving violations of section 8(e) of which also involved violations of section 8(b)(4)(B). Injunctions were also obtained in 26 cases to proscribe alleged recognitional or organizational picketing in violation of section 8(b)(7) of which also involved alleged violations of section 8(b)(4)(B).

Of the seven injunctions denied under section 10(l), one involved an alleged secondary boycott situation under section 8(b)(4)(B), four involved alleged jurisdictional disputes under section 8(b)(4)(D), and two cases arose out of charges involving alleged violations of section 8(b)(7) and section 8(e).

Almost without exception the cases going to final order were disposed of by the courts upon findings that the established facts under applicable legal principles either did or did not suffice to support a "reasonable cause to believe" that the statute had been violated. Such being the basis for their disposition, the precedence value of the case is limited primarily to a factual rather than a legal nature. The decisions are not *res judicata* and do not foreclose the subsequent proceedings on the merits before the Board.

One of the cases decided during the year was, however, noteworthy. In the *NMU* case,[16] the court held that the regional director was not entitled to a preliminary injunction under section 10(l) restraining a maritime union and an ocean shipping company from maintaining and enforcing an alleged unlawful clause in their collective-bargaining agreement. The clause provided that if the company sold any of its ships to be operated under the United States flag it would obtain from

[16] *McLeod* v. *Natl. Maritime Union of America, AFL–CIO,* 77 LRRM 2848, 66 LL ¶ 11,927 (D C.N.Y).

the purchaser a written undertaking, for the benefit of the union, that the agreement between the union and the company would continue to apply to the operation of the ship. The agreement which would there be carried over provided, *inter alia*, for recognition of the NMU as sole bargaining representative of the unlicensed seamen. The court concluded that the clause in question was for the objective of preserving the work and the work standards of the union members in the bargaining unit, and, in the absence of proof of motivation of enforcing the clause to satisfy other than work standards' objectives, the contract clause in issue was not in violation of section 8(e) of the Act. In making a preliminary determination for purposes of decision of the bargaining unit for whose members the clause sought to preserve work, the court concluded that since the contract negotiation was on an industrywide basis, notwithstanding that each fleet was separately contracted for and each ship operated as a discrete working unit, the bargaining unit was that section of the tanker industry which recognized the NMU. In this view of the appropriate unit, the clause was a work-preservation clause designed to retain the manning of the ship as unit work.

X

Contempt Litigation

During fiscal 1971, petitions for adjudication in contempt for noncompliance with decrees enforcing Board orders were filed in 16 cases: 15 for civil contempt and 1 for criminal contempt. In four of these the petitions were granted and civil contempt adjudicated;[1] in one, the court found disobedience of its decree requiring the reinstatement of employees but ordered a reference to identify those employees who were eligible for reinstatement;[2] two cases were discontinued upon full compliance;[3] while eight remain in various stages of litigation: Two awaiting disposition after trial or hearing before the court;[4] four being in process before Special Masters designated by the court to hear and report;[5] and three awaiting the appointment of Special Masters.[6]

Fifteen cases which were commenced prior to fiscal 1970 were also disposed of during this period. In nine, civil contempt was adjudi-

[1] *N.L.R.B.* v. *Fairview Hospital,* 443 F.2d 1217 (C.A. 7) (reinstatement); *N.L.R.B.* v. *Indianapolis Transit Mix Corp., et al.,* 77 LRRM 2979 (C.A. 7), June 11, 1971 (backpay); *N.L.R.B.* v. *Service Roofing Co.,* 77 LRRM 2962 (C.A. 9), May 26, 1971 (bargaining order); *N.L.R.B.* v. *Edward G. Partin* and *N.L.R.B.* v. *I.B.T., Local 5,* in civil contempt of post-decree discovery orders of Nov. 12, 1970, and June 2, 1971. See Twenty-ninth Annual Report, p. 134, for earlier proceeding.

[2] *N.L.R.B.* v. *Die Supply Corp.,* 77 LRRM 2188 (C.A. 1), April 13, 1971.

[3] Upon full reinstatement of discriminatees in *Avondale Shipyards, Inc.* v. *N.L.R.B.* in civil contempt of 391 F.2d 203 (C.A. 5); and upon full payment of backpay in *N.L.R.B.* v. *Nelson Manufacturing Co.* in criminal contempt of backpay judgment of May 25, 1970, No. 18,790 (C.A. 6).

[4] *N.L.R.B.* v. *Truck Drivers and Helpers, Local Union 676, I.B.T.,* on violation of secondary boycott purgation provisions of an earlier contempt adjudication issued Mar. 25, 1969, in No. 15,259 (C.A. 3); *N.L.R.B.* v. *International Association of Bridge, Structural and Ornamental Ironworkers, Local 86,* in civil contempt of order of Aug. 25, 1969, No. 24,510 (C.A. 9) (discriminatory hiring hall practices)

[5] *N.L.R.B.* v. *Lipsey, Inc.,* in civil contempt of order of Nov. 14, 1969, No. 28,149 (C.A. 5) refusal to reinstate 12 discriminatees); *J. P. Stevens & Co., Inc.* v. *N.L.R.B.* (*V*), in civil contempt of 417 F.2d 533 (C.A. 5) (discriminatory discharges and working conditions); *N.L.R.B.* v. *Loc. 80, Sheet Metal Workers Intl. Assn., AFL–CIO,* in civil contempt of order of Oct. 9, 1969, No. 19,904 (C.A. 6) (discriminatory hiring hall practices); and *N.L.R.B.* v. *Construction & General Laborers Union 1140,* in civil contempt of order of May 13, 1968, No. 19,297 (C.A. 8) (secondary boycott violations).

[6] *N.L.R.B.* v. *Arland Printing Co., Inc.,* in civil contempt of order of Oct. 8, 1970, No. 34,319 (C.A. 2) (refusal to bargain); *N.L.R.B.* v. *Larry Carnevale & Sons Transit Mix Corp.,* in civil contempt of order of Mar. 5, 1969, No. 33,331 (C.A. 2) (discriminatory discharges and layoffs); *Metlox Mfg. Co.* v. *N.L.R.B.* in civil contempt of 378 F.2d 728 (C.A. 9) (refusal to bargain).

cated,[7] and in four, proceedings were abated: Three upon full compliance by the respondents [8] and one upon the dissolution of the union after the Special Master's favorable report.[9]

In one case a writ of execution was issued and perfected to satisfy respondent's backpay liability; [10] and in one case the Board's petition was dismissed without prejudice because of the respondent's inability to pay backpay.[11]

Of the opinions which were rendered during this fiscal period, a number warrant comment. *Crown Laundry* [12] is of interest because of the extraordinary remedies prescribed by the Fifth Circuit. Noting that the company had twice deprived the employees of the opportunity to vote, free of employer coercion in Board-conducted elections, the court approved the Special Master's recommendation requiring the company to mail copies of the civil contempt notice to each of its employees and to post such notice for a period of 10 days preceding a future election. Additionally, the court sanctioned the "unusual" remedy of requiring the company to permit union representatives an opportunity to deliver a 15-minute speech to employees on company time within the 10 days preceding such election because of the need for "stronger medicine," the usual remedies having proved insufficient.

In *Southwire*,[13] the Fifth Circuit held the company and its president in contempt for engaging in what it characterized as "very nearly a text book model of union harassment techniques." The court found that the company's surveillance of employee union activities, which featured undercover agents masquerading as ordinary workers, was unlawful even though the company's spying was undetected by the employees. In adopting the findings of its Special Master of contu-

[7] *N.L.R.B.* v. *Loc. 254, Building Service Employees* [*University Cleaning Co.*], order of May 28, 1971, No. 6626 (C.A. 1) in civil contempt of 359 F.2d 289 (C.A. 1). For an earlier contempt adjudication against the same respondents, see Thirty-second Annual Report, p. 184; *N.L.R.B.* v. *Local 282, IBT*, order of Nov. 19, 1971. See 428 F.2d 994 (C.A. 2) and Thirty-fifth Annual Report, p. 135; *N.L.R.B.* v. *Crown Laundry & Dry Cleaners*, 437 F.2d 290 (C.A. 5); *N.L.R.B.* v. *Southwire Co.*, 429 F.2d 1050 (C.A. 5), cert. denied 401 U.S. 939; *N.L.R.B.* v. *Wayne Lee, et al.*, order of Nov. 30, 1970, No. 18,438 (C.A. 6) (backpay decree); *N.L.R.B.* v. *Nickey Chevrolet Sales*, 76 LRRM 2849 (C.A. 7); *N.L.R.B.* v. *Stafford Trucking*, 77 LRRM 2465, 2468 (C.A. 7) (bargaining decree); *N.L.R.B.* v. *Kay Electronics*, order of Dec. 7, 1970, No. 19,377 (C.A. 8) in civil contempt of 410 F.2d 499 reinstatement decree; *N.L.R.B.* v. *Ralph Printing & Lithographing Co.*, 433 F.2d 1058 (C.A. 8), cert. denied 401 U.S. 925.

[8] *N.L.R.B.* v. *Kotarides Baking Co.*, in civil contempt of 340 F.2d 587 (C.A. 4) (bargaining decree); *Avondale Shipyards* v. *N.L.R.B.*, in civil contempt of 391 F.2d 203 (C.A. 5) (discharges and coercion) (reinstatement decree); *N.L.R.B.* v. *Ripley Manufacturing Co.*, in civil contempt of order of May 7, 1964, No. 15,225 (C.A. 6) (bargaining decree).

[9] *N.L.R.B.* v. *Natl. Federation of Labor, Inc.*, in civil contempt of 387 F.2d 352 (C.A. 5) (disestablishment decree).

[10] *N.L.R.B.* v. *Patrick F. Izzi*, in civil contempt of 343 F.2d 753, and supplemental order of Feb. 11, 1970, No. 6459 (C.A. 1) (backpay decree).

[11] *N.L.R.B.* v. *E. E. Hubbard*, in civil contempt of order of Nov. 29, 1968, No. 22,520 (C.A. 9).

[12] 437 F.2d 290 (C.A. 5, 1971).

[13] *Supra.*

macious conduct, the court found it unnecessary to decide whether the Master could properly take judicial notice of the company's past violations of the Act which demonstrated its union animus. The company had claimed that the Master had improperly taken notice of prior proceedings, arguing that the Board's burden of proof was thereby improperly reduced from proving violations by clear and convincing evidence to merely that of substantial evidence. Assuming, *arguendo*, that it might be impermissible to take such notice, the court found that the Special Master had not relied on any previous proceedings to find union animus, and that the evidence independent of the prior labor history was "clear and convincing" in support of the Board's allegations.

Reversing a Special Master's factual finding in *Nickey Chevrolet*,[14] the Seventh Circuit held the company in contempt for discharging one of its salesmen, who was also the union president and its negotiator in meetings with the company, in retaliation for his union activities. The Master had concluded that no evidence existed to support the finding of unlawful discrimination. Noting, however, that the company's explanations for the discharge were insubstantial and pretextual, that it was opposed to a salesmen's union, and that the company general manager had often stated he wished to "get rid of" the employee because he was a "troublemaker" and was seeking an excuse for discharging him, the court, concluding that the Master's finding was "clearly erroneous," found clear and convincing evidence that the company was guilty of a willful violation of its decree.

In *Fairview Hospital*,[15] a civil contempt adjudication was premised on the hospital's refusal to reinstate a discriminatee. Fairview, a psychiatric hospital, claimed it was acting in good faith and in the "best interests of the patients" by refusing to rehire an employee allegedly guilty of stealing drugs and other misconduct. Initially noting that such defense had been raised and properly rejected in the enforcement proceedings, the Seventh Circuit, citing *McComb* v. *Jacksonville Paper Co.*, 336 U.S. 187 (1949), restated the proposition that a civil contempt sanction is remedial and designed to enforce compliance with an order of the Court. Therefore, the court concluded that it was irrelevant why the hospital chose to disobey the decree, its voluntary disobedience being sufficient to support a civil contempt adjudication.

In two cases, *Stafford Trucking*[16] and *Ralph Printing*,[17] the companies were held in contempt for refusing to sign collective-bargaining contracts embodying the terms of agreements which had been ne-

[14] *Supra.*
[15] 443 F 2d 1217 (C.A 7).
[16] 77 LRRM 2465 (C A. 7).
[17] *Supra.*

gotiated between them and the unions. To remedy such violations, the courts' purgation orders required the companies both to sign the contracts and to reimburse their employees for any loss of benefits, with interest, which would have accrued had the contracts been in effect. In both cases, it was claimed that the attorney representing the employer was without authority to bind his principal. Rejecting this argument, however, the courts found the attorneys to be clothed with apparent, if not actual, authority to conclude binding agreements with the unions.

XI

Special and Miscellaneous Litigation

Other court litigation during fiscal 1971 included cases involving the scope of direct judicial review of representation proceedings; the issuance on the petition of the Board of injunctions against state court proceedings; the obligation of the Board to seek injunctions upon charges of secondary boycott violations and the charging party's entitlement to participate in the settlement of such charges; the availability under the Freedom of Information Act of internal Board documents; and the scope of judicial review over the General Counsel's refusal to issue a complaint.

A. Judicial Review of Representation Proceedings

In *Templeton* v. *Dixie Color Printing Co.*[1] the Board, had under its policy of generally not conducting an election pending resolution of unfair labor practice charges against the union or employer, withheld action on an employee petition for a decertification election on the ground that it had instituted a proceeding in a court of appeals charging the employer with contempt of the court decree enforcing a Board unfair labor practice order. The contempt petition charged that in violation of the court decree directing reinstatement of striking employees, the employer had decimated the bargaining unit by unlawful coercion, harassment, and discrimination against strikers. Notwithstanding the pendency of that proceeding, the employees sought an injunction in a Federal district court requiring the Board to process their election petition which the court granted. On appeal by the Board, the Fifth Circuit affirmed. The court recognized that "generally a Federal district court lacks jurisdiction to review determinations of the Board in representation proceedings." [2] In the view of the court,

[1] 444 F.2d 1064 (C A. 5), pet. for rehearing denied 444 F.2d 1070 (C.A. 5).
[2] 444 F.2d at 1067.

however, the Board's underlying assumption—that the employer's alleged contemptuous conduct, until remedied after protracted hearings before a Special Master and the enforcement court, precluded a fair election—was negated by several factors, including the failure of the General Counsel to file a new unfair labor practice complaint, the remoteness in time of the conduct, the doubling in size of the bargaining unit since that conduct, and the apparent failure of the union to pursue its bargaining rights in the interim. The court concluded that the application of the blocking charge practice to hold the decertification petition in abeyance for over 3 years was, in all the circumstances, mechanical, and tantamount to a complete refusal to "consider and act on" an election petition in violation of the express language of section 9(e)(1) of the Act. Accordingly, the court held that the district court had jurisdiction to grant relief under the Supreme Court's holding in *Leedom* v. *Kyne* [3] authorizing Federal district court jurisdiction where the Board's ruling in a representation proceeding violates an express statutory mandate, obliterates a right guaranteed by the Act, and there is not other effective method of review.

In *Children's Village* v. *Edward B. Miller*,[4] the employer sought to enjoin an election in a bargaining unit of professional employees comprised of psychologists, caseworkers, and their aides. The employer asserted that, contrary to the Board's determination, the aides did not qualify as professionals and therefore could not be included in the unit until a self-determination election was held among the professionals, under section 9(b)(1), to determine if they desired to be included in a unit with nonprofessionals. The district court dismissed the action for lack of jurisdiction on the ground that *Kyne* did not authorize jurisdiction where, as in the case before it, the plaintiff merely alleged that the Board had made an erroneous application of the Act to a particular set of facts.

In *UAW* [*Thomas Engine Corp.*] v. *N.L.R.B.*,[5] the union brought suit in a Federal district court to require the Board to certify the results of an election won unanimously by the union. The election had been conducted among the employees of a predecessor employer. The Board, however, after the change of ownership directed a new election among the employees of the successor employer who had taken over the business and substantially reduced the work force. The Board reasoned that certifying the election among employees of the predecessor would give undue weight to the choice of employees no longer in the bargaining unit. The district court held that under the Board's

[3] 358 U S 184 (1958). See also *Boire* v. *Greyhound*, 376 U S. 473 (1964)
[4] 76 LRRM 2637, 64 LC ¶ 11477 (D C.N Y.).
[5] 317 F.Supp. 1162 (D.C.D C.)

successorship doctrine, which imposes the predecessor's bargaining obligation on the successor, the election results were binding on the successor and, as the election was otherwise valid, section 9(c)(1) of the Act required the Board to "certify the results thereof." Accordingly, the court ordered the Board to certify the election under holdings in the Circuit Court of Appeals for the District of Columbia. That court has found district court jurisdiction in related circumstances under the reasoning that section 9(c)(1) specifically prohibits the Board from refusing to certify an election which has not been set aside as invalidly conducted.[6]

B. Enjoining State Court Proceedings

In *N.L.R.B.* v. *Roywood Corp.*,[7] the Board sought a protective order from a Federal district court to prohibit the employer from enforcing a state court injunction. The state court had enjoined the union from engaging in peaceful picketing which was within the Board's exclusive jurisdiction and, moreover, was the subject of a settlement agreement which disposed of an unfair labor practice charge alleging that aspects of the picketing violated the Act. Both the district court and the Fifth Circuit held that a Federal court was not barred from enjoining state court proceedings by 28 U.S.C. 2283 since the exemption from the prohibition of that section to suits brought by the United States also applies to the Board. However, the Fifth Circuit reversed the district court's denial of an injunction, agreeing with the Board's claim that it was entitled to a protective order to nullify state court interference with activity arguably subject to regulation under, and hence preempted by, the Act. However, in *N.L.R.B.* v. *Nash-Finch Co., d/b/a Jack & Jill Stores*,[8] the Eighth Circuit affirmed the Federal district court's denial of the Board's request for a protective order against a similar state court injunction regulating picketing. Unlike the Fifth Circuit, the court held that section 2283 was a bar to an injunction against the state court proceeding, rejecting the view that the Board was within the exception to the section recognized for suits brought by the United States.

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[6] *Miami Newspaper Printing Pressmen's Union, Local 46 [Miami Herald Publishing Co.]* v *McCulloch*, 322 F 2d 993, 997–998 (1963).

[7] 429 F 2d 964 (C A. 5).

[8] 434 F 2d 971, cert granted 402 U.S. 928.

C. Secondary Boycott Proceedings—Settlements and Injunctions

In *Terminal Freight Handling Co.* v. *Joseph H. Solien*[9] the employers had filed unfair labor practice charges alleging that the union was violating the secondary boycott provisions of the Act. Upon the union's offer to enter into an informal settlement to discontinue conduct which the regional director had administratively determined to be unlawful, the director did not petition a Federal district court for an injunction under section 10(l) of the Act, which provides that if a regional director "has reasonable cause to believe" that a charge alleging a secondary boycott is "true and that a complaint should issue, he shall" petition the Federal district court "for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter." The employers brought suit in a Federal district court for a declaratory judgment that under section 10(l) the regional director is required to petition for injunctive relief in every case where reasonable cause is found, and that the Board's procedures and practice were invalid insofar as they grant a regional director discretion not to petition for an injunction on the ground that the union has already ceased the unlawful activity and is unlikely to resume it. The district court dismissed the suit as moot, since settlement negotiations with the union had broken down, and the regional director in fact petitioned for a 10(l) injunction. However, on appeal by the employers, the Eighth Circuit concluded that a declaratory judgment was appropriate. The court upheld the discretionary authority exercised by the Board. The court concluded that section 10(l), rather than being mandatory in all instances, gave the "regional director . . . a limited discretion so that he would not be required to perform the meaningless act of petitioning for injunctive relief when the union has already ceased the unlawful activity and it is unlikely that the conduct will resume, nor to proceed in a case where the acts complained of are so insignificant as to be unworthy of the Board's and the Court's attention."[10]

As stated above, in the cited case the regional director ultimately petitioned for a 10(l) injunction. However, before the date set for hearing on the injunction the regional director and the union entered into a stipulation providing for cessation of the union's unlawful conduct pending final determination of the charges by the Board. The employers objected to the stipulation, and moved to intervene as a full party litigant in the 10(l) proceeding. However, the district

[9] 444 F 2d 699 (C.A. 8).
[10] 444 F.2d at 708–709.

court denied the employers' motion to intervene, and approved the stipulation in lieu of entering an injunction against the union. The employers appealed this ruling.[11] The Eighth Circuit, in *Joseph H. Solien* v. *Miscellaneous Drivers & Helpers Loc. 610* [*Sears, Roebuck & Co.*],[12] sustained the district court's ruling that the charging party is not entitled to full party status or to intervene as of right. The court held that such status is precluded by section 10(l) and "the overall scheme of injunctive relief embodied in the National Labor Relations Act and the Norris-La Guardia Act," which does not give charging parties "the right to seek privately injunctive relief." [13]

D. Other Significant Issues

In *Sears, Roebuck & Co.* v. *N.L.R.B.*,[14] the plaintiff was a charged party whom the Board found committed violations of section 8(a)(1) of the Act. Following the Board's decision, it made a demand under the Freedom of Information Act, 5 U.S.C. § 552(a)(3), which the Board refused on the ground that information requested, relating to the Board's decisional processes and involving the production of documents, was privileged from disclosure. Suit was then brought in the Federal district court to enjoin the Board from further processing of the case and for a declaration that the Board's refusal to provide the information violated the Administrative Procedure Act. The district court dismissed the complaint for lack of jurisdiction on the basis that under the doctrine of *Myers* v. *Bethelem Shipbuilding Corporation* [15] the proper place to challenge the Board's withholding of information was in a court of appeals by a petition to review the Board's decision and order under section 10(e) and (f) of the Act. Moreover, the district court noted that the information requested impermissibly sought to delve into the mental processes of the Board's decision-making. On appeal the Sixth Circuit summarily affirmed on the same grounds.

In *Southern Calif. Dist. Council of Laborers* [*Christians Western Structures*] v. *Ordman*,[16] the Federal district court created an exception to the settled principle that the General Counsel's exclusive and final authority to process unfair labor practice charges and to refuse to issue complaints, under section 3(d) of the Act, is not subject to judi-

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[11] The employers also filed a petition for a unit of certiorari before judgment in the court of appeals, which the Supreme Court denied, *Sears, Roebuck & Co.* v *Solien*, 403 U.S. 905, No 781 October Term, January 11, 1971.

[12] 440 F 2d 124 (C A. 8).

[13] 440 F 2d at 130.

[14] 433 F 2d 210 (C A 6).

[15] 303 U.S. 41 (1938).

[16] 318 F Supp. 633 (D C. Calif.)

cial review. The plaintiffs brought suit to reverse the General Counsel's dismissal of plaintiffs' charges as time-barred under section 10(b) of the Act, which requires that no complaint shall issue upon any unfair labor practice occurring more than 6 months prior to the filing of the charge. The district court held that the General Counsel had erroneously applied section 10(b), and that the jurisdiction existed to require reinstatement of the charge and consideration on the merits since the proper application of a statute of limitations involved purely a legal question and not the General Counsel's exercise of his discretionary authority not to prosecute. Thus, the court specified that should the General Counsel determine the charge had no merit "no judicial review of [that] determination may be had." [17]

[17] 318 F.Supp. at 646.

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APPENDIX A

Statistical Tables for Fiscal Year 1971

Readers are encouraged to communicate with the Agency as to questions on the tables by writing to the Office of Statistical Reports and Evaluations, National Labor Relations Board, 1717 Pennsylvania Avenue NW., Washington, D.C. 20570.

GLOSSARY OF TERMS USED IN STATISTICAL TABLES

The definitions of terms contained in this glossary are not intended for general application but are specifically directed toward increasing comprehension of the statistical tables that follow. Thus the definitions are keyed directly to the terms used in such tables.

Adjusted Cases

Cases are closed as "adjusted" when an informal settlement agreement is executed and compliance with its terms is secured. (See "Informal Agreement," this glossary.) In some instances, a written agreement is not secured but appropriate remedial action is taken so as to render further proceeding unnecessary. A central element in an "adjusted" case is the agreement of the parties to settle differences without recourse to litigation.

Advisory Opinion Cases

See "Other cases—AO" under "Types of Cases."

Agreement of Parties

See "Informal Agreement" and "Formal Agreement," this glossary. The term "agreement" includes both types.

Amendment of Certification Cases

See "Other Cases—AC" under "Types of Cases."

Backpay

Amounts of money paid or to be paid employees as reimbursement for wages lost because they were discriminatorily discharged or unlawfully denied employment, plus interest on such money. Also included is payment for bonuses, vacations, other fringe benefits, etc., lost because of the discriminatory acts, as well as interest thereon. All moneys noted in table 4 have been

reported as paid or owing in cases closed during the fiscal year. (Installment payments may protract some payments beyond this year and some payments may have actually been made at times considerably in advance of the date a case was closed; i.e., in a prior fiscal year.)

Backpay Hearing

A supplementary hearing to receive evidence and testimony as to the amounts of backpay due discriminatees under a prior Board order or court decree.

Backpay Specification

The formal document, a "pleading," which is served on the parties when the regional director and the respondent are unable to agree as to the amounts of backpay due discriminatees pursuant to a Board order or court decree requiring payment of such backpay. It sets forth in detail the amounts held by the regional director to be owing each discriminatee and the method of computation employed The specification is accompanied by a notice of hearing setting a date for a backpay hearing.

Case

A "case" is the general term used in referring to a charge or petition filed with the Board. Each case is numbered and carries a letter designation indicating the type of case. See "Types of Cases."

Certification

A certification of the results of an election is issued by the regional director or the Board If a union has been designated as the exclusive bargaining representative by a majority of the employees, a certification of representatives is issued. If no union has received a majority vote, a certification of results of election is issued.

Challenges

The parties to an NLRB election are entitled to challenge any voter. At the election site, the challenged ballots are segregated and not counted when the other ballots are tallied. Most frequently, the tally of unchallenged ballots determines the election and the challenged ballots are insufficient in number to affect the result of the election. The challenges in such a case are never resolved, and the certification is based on the tally of (unchallenged) ballots.

When challenged ballots are determinative of the result, a determination as to whether or not they are to be counted rests with the regional director in the first instance, subject to possible appeal to the Board. Often, however, the "determinative" challenges are resolved informally by the parties by mutual agreement. No record is kept of nondeterminative challenges or determinative challenges which are resolved by agreement prior to issuance of the first tally of ballots.

Charge

A document filed by an employee, and employer, a union, or an individual alleging that an unfair labor practice has been committed. See "C Cases" under "Types of Cases."

Complaint

The document which initiates "formal" proceedings in an unfair labor practice case. It is issued by the regional director when he concludes on the basis of a completed investigation that any of the allegations contained in the charge have merit and an adjustment or settlement has not been achieved by the parties. The complaint sets forth all allegations and information necessary to bring a case to hearing before a trail examiner pursuant to due process of law. The complaint contains a notice of hearing, specifying the time and place of hearing.

Compliance

The carrying out of remedial action as agreed upon by the parties in writing (see "Formal Agreement," "Informal Agreement") ; as recommended by the trial examiner in his decision; as ordered by the Board in its decision and order; or as decreed by the court.

Dismissed Cases

Cases may be dismissed at any stage. They are dismissed informally when, following investigation, the regional director concludes that there has been no violation of the law, that there is insufficient evidence to support further action, or for a variety of other reasons. Before the charge is dismissed, however, the charging party is given the opportunity to withdraw the charge voluntarily. (See also "Withdrawn Cases.") Cases may also be dismissed by the trial examiner, by the Board, or by the courts through their refusal to enforce orders of the Board.

Dues

See "Fees, Dues, and Fines."

Election, Consent

An election conducted by the regional director pursuant to an agreement signed by all parties concerned. The agreement provides for the waiving of a hearing, the establishment of the appropriate unit by mutual consent, and the final determination of all postelection issues by the regional director.

Election Directed

Board-Directed

An election conducted by the regional director pursuant to a decision and direction of election by the Board. Postelection rulings are made by the regional director or by the Board.

Regional Director-Directed

An election conducted by the regional director pursuant to a decision and direction of election issued by the regional director after a hearing. Postelection rulings are made by the regional director or by the Board.

Election, Expedited

An election conducted by the regional director pursuant to a petition filed within 30 days of the commencement of picketing in a situation in which a meritorious 8(b)(7)(C) charge has been filed. The election is conducted under priority conditions and without a hearing unless the regional director believes the proceeding raises questions which cannot be decided without a hearing.

Postelection rulings on objections and/or challenges are made by the regional director and are final and binding unless the Board grants an appeal on application by one of the parties.

Election, Rerun

An election held after an initial election has been set aside either by the regional director or by the Board.

Election, Runoff

An election conducted by the regional director after an initial election, having three or more choices on the ballot, has turned out to be inconclusive (none of the choices receiving a majority of the valid votes cast). The regional director conducts the runoff election between the choices on the regional ballot which received the highest and the next highest number of votes.

Election, Stipulated

An election held by the regional director pursuant to an agreement signed by all the parties concerned. The agreement provides for the waiving of hearing and the establishment of the appropriate unit by mutual consent. Postelection rulings are made by the Board.

Eligible Voters

Employees within an appropriate bargaining unit who were employed as of a fixed date prior to an election, or are otherwise qualified to vote under the Board's eligibility rules.

Fees, Dues, and Fines

The collection by a union or an employer of dues, fines, and referral fees from employees may be found to be an unfair labor practice under section 8(b) (1)(A) or (2) or 8(a) (1) and (2) or (3), where for instance, such moneys were collected pursuant to an illegal hiring hall arrangement or an invalid or unlawfully applied union-security agreement; where dues were deducted from employees' pay without their authorization; or, in the case of fines, where such fines restrained or coerced employees in the exercise of their rights. The remedy for such unfair labor practices usually requires the reimbursements of such moneys to the employees.

Fines

See "Fees, Dues, and Fines."

Formal Action

Formal actions may be documents issued or proceedings conducted when the voluntary agreement of all parties regarding the disposition of all issues in a case cannot be obtained, and where dismissal of the charge or petition is not warranted. Formal actions are, further, those in which the decision-making authority of the Board (the regional director in representation cases), as provided in sections 9 and 10 of the Act, must be exercised in order to achieve the disposition of a case or the resolution of any issue raised in a case. Thus, formal action takes place when a Board decision and consent order is issued pursuant to a stipulation, even though the stipulation constitutes a voluntary agreement.

Formal Agreement (in unfair labor practice cases)

A written agreement between the Board and the other parties to a case in which hearing is waived and the specific terms of a Board order agreed upon. The agreement may also provide for the entry of a consent court decree enforcing the Board order.

Informal Agreement (in unfair labor practice cases)

A written agreement entered into between the party charged with committing an unfair labor practice, the regional director, and (in most cases) the charging party requiring the charged party to take certain specific remedial action as a basis for the closing of the case. Cases closed in this manner are included in "adjusted" cases.

Injunction Petitions

Petitions filed by the Board with respective U.S. district courts for injunctive relief under section 10(j) or section 10(l) of the Act pending hearing and adjudication of unfair labor practice charges before the Board. Also, petitions filed with the U.S. court of appeals under section 10(e) of the Act.

Jurisdictional Disputes

Controversies between unions or groupings of employees as to which employees will perform specific work. Cases involving jurisdictional disputes are received by the Board through the filing of charges alleging a violation of section 8(b)(4)(D). They are initially processed under section 10(k) of the Act which is concerned with the determination of the jurisdictional dispute itself rather than with a finding as to whether an unfair labor practice has been committed. Thereafter, the failure of a party to comply with the Board's determination of dispute is the basis for the issuance of an unfair labor practice complaint and the processing of the case through usual unfair labor practice procedures.

Objections

Any party to an election may file objections alleging that either the conduct of the election or the conduct of a party to the election failed to meet the Board's standards. An election will be set aside if eligible employee-voters have not been given an adequate opportunity to cast their ballots, in secrecy

and without hindrance from fear or other interference with the expression of their free choice.

Petition

See "Representation Case." Also see "Other Cases—AC, UC, and UD" under "Type of Cases."

Proceeding

One or more cases included in a single litigated action. A "proceeding" may be a combination of C and R cases consolidated for the purposes of hearing.

Representative Case

This term applies to cases bearing the alphabetical designations RC, RM, or RD. (See "R Cases" under "Types of Cases," this glossary, for specific definitions of these terms.) All three types of cases are included in the term "representation" which deals generally with the problem of which union, if any, shall represent employees in negotiations with their employer. The cases are initiated by the filing of a petition by a union, an employer, or a group of employees.

Representative Election

An election by secret ballot conducted by the Board among the employees in an appropriate collective-bargaining unit to determine whether the employees wish to be represented by a particular labor organization for purposes of collective bargaining. The tables herein reflect only final elections which result in the issuance of a certification of representatives if a union is chosen, or a certification of results if the majority has voted for "no union."

Situation

One or more unfair labor practice cases involving the same factual situation. These cases are processed as a single unit of work. A situation may include one or more CA cases, a combination of CA and CB cases, or a combination of other types of C cases. It does not include representation cases.

Types of Cases

General: Letter designations are given to all cases depending upon the subsection of the Act allegedly violated or otherwise describing the general nature of each case. Each of the letter designations appearing below is descriptive of the case it is associated with.

C Cases (unfair labor practice cases)

A case number which contains the first letter designation C, in combination with another letter, i.e., CA, CB, etc., indicates that it involves a charge that an unfair labor practice has been committed in violation of one or more subsections of section 8.

CA: A charge that an employer has committed unfair labor practices in violation of section 8(a) (1), (2), (3), (4), or (5), or any combination thereof.

CB: A charge that a labor organization has committed unfair labor practices in violation of section 8(b) (1), (2), (3), (5), or (6), or any combination thereof.

CC: A charge that a labor organization has committed unfair labor practices under section 8(b)(4) (i) and/or (ii), (A), (B), or (C), or any combination thereof.

CD: A charge that a labor organization has committed an unfair labor practice in violation of section 8(b)(4) (i) or (ii)(D). Preliminary actions under section 10(k) for the determination of jurisdictional disputes are processed as CD cases. (See "Jurisdictional Disputes" in this glossary.)

CE: A charge that either a labor organization or an employer, or both jointly, have committed an unfair labor practice in violation of section 8(e).

CP: A charge that a labor organization has committed unfair labor practices in violation of section 8(b)(7) (A), (B), or (C), or any combination thereof.

R Cases (representation cases)

A case number which contains the first letter designation R, in combination with another letter, i.e., RC, RD, RM, indicates that it is a petition for investigation and determination of a question concerning representation of employees, filed under section 9(c) and the Act.

RC: A petition filed by a labor organization or an employee alleging that a question concerning representation has arisen and seeking an election for the determination of a collective-bargaining representative.

RM: A petition filed by an employer alleging that a question concerning representation has arisen and seeking an election for the determination of a collective-bargaining representative.

RD: A petition filed by employees alleging that the union previously cerfied or currently recognized by the employer as their collective-bargaining representative no longer represents a majority of the employees in the appropriate unit and seeking an election to determine this.

Other Cases

AC: (Amendment of Certification cases) : A petition filed by a labor organization or an employer for amendment of an existing certification to reflect changed circumstances, such as changes in the name or affiliation of the labor organization involved or in the name or location of the employer involved.

AO: (Advisory Opinion cases) : As distinguished from the other types of cases described above, which are filed in and processed by regional offices of the Board, AO or "advisory opinion" cases are filed directly with the Board in Washington and seek a determination as to whether the Board would or would not assert jurisdiction in any given situation on the basis of its current standards, over the party or parties to a proceeding pending before a State or territorial agency or a court. (See subpart H of the Board's Rules and Regulations, Series 8, as amended.)

UC: (Unit Clarification cases): A petition filed by a labor organization or an employer seeking a determination as to whether certain classifications of employees should or should not be included within a presently existing bargaining unit.

UD: (Union Deauthorization cases): A petition filed by employees pursuant to section 9(e)(1) requesting that the Board conduct a referendum to determine whether a union's authority to enter into a union-shop contract should be rescinded.

UD Cases

See "Other Cases—UD" under "Types of Cases."

Unfair Labor Practice Cases

See "C Cases" under "Types of Cases."

Union Deauthorizing Cases

See "Other cases—UD" under "Types of Cases."

Union-Shop Agreement

An agreement between an employer and a labor organization which requires membership in the union as a condition of employment on or after the 30th day following (1) the beginning of such employment or (2) the effective date of the agreement, whichever is the later.

Unit, Appropriate Bargaining

A grouping of employees in a plant, firm, or industry recognized by the employer, agreed upon by the parties to a case, or designated by the Board or its regional director, as appropriate for the purposes of collective bargaining.

Valid Vote

A secret ballot on which the choice of the voter is clearly shown.

Withdrawn Cases

Cases are closed as "withdrawn" when the charging party or petitioner, for whatever reasons, requests withdrawal of the charge or the petition and such request is approved.

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Table 1.—Total Cases Received, Closed, and Pending, Fiscal Year 1971 [1]

	Total	Identification of Filing Party					
		AFL-CIO unions	Teamsters	Other national unions	Other local unions	Individuals	Employers
	All cases						
Pending July 1, 1970	11,220	4,597	1,261	555	581	2,863	1,363
Received fiscal 1971	37,212	12,887	5,283	1,676	1,122	11,201	5,043
On docket fiscal 1971	48,432	17,484	6,544	2,231	1,703	14,064	6,406
Closed fiscal 1971	37,200	12,811	5,197	1,704	1,274	11,224	4,990
Pending June 30, 1971	11,232	4,673	1,347	527	429	2,840	1,416
	Unfair labor practice cases [2]						
Pending July 1, 1970	8,276	3,188	667	338	238	2,683	1,162
Received fiscal 1971	23,770	6,650	1,873	792	547	10,061	3,847
On docket fiscal 1971	32,046	9,838	2,540	1,130	785	12,744	5,009
Closed fiscal 1971	23,840	6,714	1,844	797	515	10,128	3,842
Pending June 30, 1971	8,206	3,124	696	333	270	2,616	1,167
	Representation cases [3]						
Pending July 1, 1970	2,858	1,379	591	213	342	145	188
Received fiscal 1971	12,965	6,077	3,385	863	559	962	1,119
On docket fiscal 1971	15,823	7,456	3,976	1,076	901	1,107	1,307
Closed fiscal 1971	12,896	5,938	3,327	886	745	923	1,077
Pending June 30, 1971	2,927	1,518	649	190	156	184	230
	Union-shop deauthorization cases						
Pending July 1, 1970	33	----------	----------	----------	----------	33	----------
Received fiscal 1971	168	----------	----------	----------	----------	168	----------
On docket fiscal 1971	201	----------	----------	----------	----------	201	----------
Closed fiscal 1971	163	----------	----------	----------	----------	163	----------
Pending June 30, 1971	38	----------	----------	----------	----------	38	----------
	Amendment of certification cases						
Pending July 1, 1970	9	4	0	2	0	1	2
Received fiscal 1971	86	53	11	7	5	3	7
On docket fiscal 1971	95	57	11	9	5	4	9
Closed fiscal 1971	84	49	10	8	5	3	9
Pending June 30, 1971	11	8	1	1	0	1	0
	Unit clarification cases						
Pending July 1, 1970	44	26	3	2	1	1	11
Received fiscal 1971	223	107	14	14	11	7	70
On docket fiscal 1971	267	133	17	16	12	8	81
Closed fiscal 1971	217	110	16	13	9	7	62
Pending June 30, 1971	50	23	1	3	3	1	19

[1] See "Glossary" for definitions of terms. Advisory opinion (AO) cases not included. See table 22.
[2] See table 1A for totals by types of cases.
[3] See table 1B for totals by types of cases.

Table 1A.—Unfair Labor Practice Cases Received, Closed, and Pending, Fiscal Year 1971 [1]

	Total	Identification of Filing Party					
		AFL-CIO unions	Teamsters	Other national unions	Other local unions	Individuals	Employers
	CA cases						
Pending July 1, 1970	5,941	3,130	657	316	198	1,622	18
Received fiscal 1971	15,467	6,547	1,859	726	431	5,893	11
On docket fiscal 1971	21,408	9,677	2,516	1,042	629	7,515	29
Closed fiscal 1971	15,514	6,603	1,833	724	409	5,920	25
Pending June 30, 1971	5,894	3,074	683	318	220	1,595	4
	CB cases						
Pending July 1, 1970	1,477	44	9	9	18	1,038	359
Received fiscal 1971	5,351	66	10	19	57	4,067	1,132
On docket fiscal 1971	6,828	110	19	28	75	5,105	1,491
Closed fiscal 1971	5,363	76	10	22	52	4,104	1,099
Pending June 30, 1971	1,465	34	9	6	23	1,001	392
	CC cases						
Pending July 1, 1970	516	0	0	10	16	15	475
Received fiscal 1971	1,730	10	2	32	31	68	1,587
On docket fiscal 1971	2,246	10	2	42	47	83	2,062
Closed fiscal 1971	1,761	7	1	37	33	73	1,610
Pending June 30, 1971	485	3	1	5	14	10	452
	CD cases						
Pending July 1, 1970	209	12	0	1	2	1	193
Received fiscal 1971	697	24	0	7	13	18	635
On docket fiscal 1971	906	36	0	8	15	19	828
Closed fiscal 1971	698	25	0	7	12	17	637
Pending June 30, 1971	208	11	0	1	3	2	191
	CE cases						
Pending July 1, 1970	54	0	0	0	2	3	49
Received fiscal 1971	53	0	1	1	5	2	44
On docket fiscal 1971	107	0	1	1	7	5	93
Closed fiscal 1971	49	0	0	0	2	3	44
Pending June 30, 1971	58	0	1	1	5	2	49
	CP cases						
Pending July 1, 1970	79	2	1	2	2	4	68
Received fiscal 1971	472	3	1	7	10	13	438
On docket fiscal 1971	551	5	2	9	12	17	506
Closed fiscal 1971	455	3	0	7	7	11	427
Pending June 30, 1971	96	2	2	2	5	6	79

[1] See "Glossary" for definitions of terms.

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Table 1B.—Representation Cases Received, Closed, and Pending, Fiscal Year 1971 [1]

	Total	Identification of Filing Party					
		AFL–CIO unions	Teamsters	Other national unions	Other local unions	Individuals	Employers
	RC cases						
Pending July 1, 1970	2,530	1,378	590	213	342	7	----------
Received fiscal 1971	10,904	6,073	3,385	860	556	30	----------
On docket fiscal 1971	13,434	7,451	3,975	1,073	898	37	----------
Closed fiscal 1971	10,912	5 933	3,326	883	742	28	----------
Pending June 30, 1971	2,522	1,518	649	190	156	9	----------
	RM cases						
Pending July 1, 1970	188	----------	----------	----------	----------	----------	188
Received fiscal 1971	1,119	----------	----------	----------	----------	----------	1,119
On docket fiscal 1971	1,307	----------	----------	----------	----------	----------	1,307
Closed fiscal 1971	1,077	----------	----------	----------	----------	----------	1,077
Pending June 30, 1971	230	----------	----------	----------	----------	----------	230
	RD cases						
Pending July 1, 1970	140	1	1	0	0	138	----------
Received fiscal 1971	942	4	0	3	3	932	----------
On docket fiscal 1971	1,082	5	1	3	3	1,070	----------
Closed fiscal 1971	907	5	1	3	3	895	----------
Pending June 30, 1971	175	0	0	0	0	175	----------

[1] See "Glossary" for definitions of terms.

Table 2.—Types of Unfair Labor Practices Alleged, Fiscal Year 1971

	Number of cases showing specific allegations	Percent of total cases
A. Charges Filed against Employers Under Sec. 8(a)		
Subsections of Sec. 8(a): Total cases	15,467	100.0
8(a)(1)	1,363	8.8
8(a)(1)(2)	275	1.8
8(a)(1)(3)	8,285	53.6
8(a)(1)(4)	61	.4
8(a)(1)(5)	3,297	21.3
8(a)(1)(2)(3)	191	1.2
8(a)(1)(2)(4)	2	0
8(a)(1)(2)(5)	95	.6
8(a)(1)(3)(4)	260	1 7
8(a)(1)(3)(5)	1,502	9 7
8(a)(1)(4)(5)	4	0
8(a)(1)(2)(3)(4)	12	.1
8(a)(1)(2)(3)(5)	81	.5
8(a)(1)(2)(4)(5)	2	0
8(a)(1)(3)(4)(5)	25	.2
8(a)(1)(2)(3)(4)(5)	12	.1
Recapitulation [1]		
8(a)(1) [2]	15,467	100.0
8(a)(2)	670	4.3
8(a)(3)	10,368	67.0
8(a)(4)	378	2.4
8(a)(5)	5,018	32.4
B. Charges Filed Against Unions Under Sec. 8(b)		
Subsections of Sec. 8(b): Total cases	8,250	100.0
8(b)(1)	2,847	34.5
8(b)(2)	204	2 5
8(b)(3)	367	4.5
8(b)(4)	2,427	29.4
8(b)(5)	6	.1
8(b)(6)	8	.1
8(b)(7)	472	5.7
8(b)(1)(2)	1,627	19.7
8(b)(1)(3)	189	2 3
8(b)(1)(5)	6	.1
8(b)(1)(6)	2	0
8(b)(2)(3)	7	.1
8(b)(3)(5)	4	0
8(b)(1)(2)(3)	74	.9
8(b)(1)(2)(5)	7	.1
8(b)(1)(2)(6)	2	0
8(b)(1)(3)(5)	1	0

	Number of cases showing specific allegations	Percent of total cases
Recapitulation [1]		
8(b)(1)	4,755	57.6
8(b)(2)	1,921	23.3
8(b)(3)	642	7.8
8(b)(4)	2,427	29.4
8(b)(5)	24	.3
8(b)(6)	12	.1
8(b)(7)	472	5.7
B1. Analysis of 8(b)(4)		
Total cases 8(b)(4)	2,427	100.0
8(b)(4)(A)	63	2.6
8(b)(4)(B)	1,576	65.0
8(b)(4)(C)	17	.7
8(b)(4)(D)	697	28.7
8(b)(4)(A)(B)	66	2.7
8(b)(4)(B)(C)	8	.3
Recapitulation [1]		
8(b)(4)(A)	129	5.3
8(b)(4)(B)	1,650	68.0
8(b)(4)(C)	25	1.0
8(b)(4)(D)	697	28.7
B2. Analysis of 8(b)(7)		
Total cases 8(b)(7)	472	100.0
8(b)(7)(A)	136	28.8
8(b)(7)(B)	26	5.5
8(b)(7)(C)	304	64.5
8(b)(7)(A)(C)	3	.6
8(b)(7)(A)(B)(C)	3	.6
Recapitulation [1]		
8(b)(7)(A)	142	30.1
8(b)(7)(B)	29	6.1
7(b)(7)(C)	310	65.7
C. Charges Filed Under Sec. 8(e)		
Total cases 8(e)	53	100.0
Against unions alone	39	73.6
Against employers alone	0	0
Against unions and employers	14	26.4

[1] A single case may include allegations of violation of more than one subsection of the Act. Therefore, the total of the various allegations is greater than the total number of cases.

[2] Subsec. 8(a)(1) is a general provision forbidding any type of employer interference with the rights of the employees guaranteed by the Act, and therefore is included in all charges of employer unfair labor practices.

Table 3A.—Formal Actions Taken in Unfair Labor Practice Cases, Fiscal Year 1971 [1]

Types of formal actions taken	Cases in which formal actions taken	Formal actions taken by type of case										
		Total formal actions taken	CA	CB	CC	CD		CE	CP	CA combined with CB	C combined with representation cases	Other C combinations
						Jurisdictional dispute	Unfair labor practices					
10(k) notices of hearings issued	142	122				122						
Complaints issued	3,245	2,533	1,826	297	131		16	10	36	88	107	22
Backpay specifications issued	70	47	39	8	0		0	0	0	0	0	0
Hearings completed, total	1,589	1,123	739	134	50	65	5	3	13	46	55	13
Initial ULP hearings	1,526	1,090	710	131	50	65	5	3	13	45	55	13
Backpay hearings	51	22	18	3	0		0	0	0	1	0	0
Other hearings	12	11	11	0	0		0	0	0	0	0	0
Decisions by trial examiners, total	1,367	965	673	123	46		5	3	8	39	60	8
Initial ULP decisions	1,290	930	645	119	46		5	3	8	38	58	8
Backpay decisions	65	24	20	3	0		0	0	0	1	0	0
Supplemental decisions	12	11	8	1	0		0	0	0	0	2	0
Decisions and orders by the Board, total	1,681	1,239	786	166	76	69	7	3	18	40	61	13
Upon consent of the parties:												
Initial decisions	179	121	56	26	19		2	0	8	3	0	7
Supplemental decisions	3	1	1	0	0		0	0	0	0	0	0
Adopting trial examiners' decisions (no exceptions filed):												
Initial ULP decisions	311	261	192	35	8		3	0	5	8	10	0
Backpay decisions	23	6	3	1	0		0	0	0	2	0	0
Contested:												
Initial ULP decisions	1,067	788	501	85	45	69	1	2	5	24	50	6
Decisions based on stipulated record	30	24	6	13	3		1	0	0	1	0	0
Supplemental ULP decisions	53	26	18	4	1		0	1	0	1	1	0
Backpay decisions	15	12	9	2	0		0	0	0	1	0	0

[1] See "Glossary" for definitions of terms.

Table 3B.—Formal Actions Taken in Representation and Union Deauthorization Cases, Fiscal Year 1971 [1]

Types of formal actions taken	Cases in which formal actions taken	Formal actions taken by type of case				
		Total formal actions taken	RC	RM	RD	UD
Hearing completed, total	2,701	2,397	2,181	114	102	4
Initial hearings	2,455	2,161	1,968	98	95	2
Hearings on objections and/or challenges	246	236	213	16	7	2
Decisions issued, total	2,313	2,087	1,901	92	94	2
By regional directors	2,088	1,947	1,780	80	87	2
Elections directed	1,825	1,716	1,581	66	69	2
Dismissals on record	263	231	199	14	18	0
By Board	225	140	121	12	7	0
After transfer by regional directors for initial decision	193	109	94	10	5	0
Elections directed	118	80	72	3	5	0
Dismissals on record	75	29	22	7	0	0
After review of regional directors' decision	32	31	27	2	2	0
Elections directed	23	22	20	1	1	0
Dismissals on record	9	9	7	1	1	
Decisions on objections and/or challenges, total	890	875	810	47	18	9
By regional directors	326	317	298	13	6	6
By Board	564	558	512	34	12	3
In stipulated elections	535	529	484	34	11	0
No exceptions to regional directors' report	330	327	297	22	8	0
Exceptions to regional directors' reports	205	202	187	12	3	0
In directed elections (after transfer by regional directors)	22	22	21	0	1	1
In directed elections after review of regional directors' supplemental decisions	7	7	7	0	0	2

[1] See "Glossary" for definitions of terms.

Table 3C.—Formal Actions Taken in Amendment of Certification and Unit Clarification Cases, Fiscal Year 1971 [1]

Types of formal actions taken	Cases in which formal actions taken	Formal actions taken by type of case	
		AC	UC
Hearings completed	88	10	62
Decisions issued after hearing	99	8	69
By regional directors	72	5	54
By Board	27	3	15
After transfer by regional directors for initial decision	23	3	11
After review of regional directors' decisions	4	0	4

[1] See "Glossary" for definitions of terms.

Table 4.—Remedial Actions Taken in Unfair Labor Practice Cases Closed, Fiscal Year 1971 [1]

Action taken	Total all	Remedial action taken by—											
		Employer						Union					
		Total	Pursuant to					Total	Pursuant to—				
			Agreement of parties		Recommendation of trial examiner	Order of—			Agreement of parties		Recommendation of trial examiner	Order of—	
			Informal settlement	Formal settlement		Board	Court		Informal settlement	Formal settlement		Board	Court
A. By number of cases involved	[2] 6,750												
Notice posted	3,253	2,263	1,301	88	1	509	364	990	695	102	0	140	53
Recognition or other assistance withdrawn	67	67	35	3	0	15	14						
Employer-dominated union disestablished	17	17	6	0	0	7	4						
Employees offered reinstatement	1,248	1,248	817	48	0	200	183						
Employees placed on preferential hiring list	115	115	96	2	0	11	6						
Hiring hall rights restored	49							49	38	2	0	4	5
Objections to employment withdrawn	100							100	68	2	0	18	12
Picketing ended	755							755	680	32	0	31	12
Work stoppage ended	349							349	332	3	0	13	1
Collective bargaining begun	1,620	1,462	1,097	37	1	132	195	158	154	1	0	3	0
Backpay distributed	1,856	1,715	1,115	61	0	316	223	141	84	5	0	34	18
Reimbursement of fees, dues, and fines	148	70	43	0	0	19	8	78	55	1	0	17	5
Other conditions of employment improved	938	449	443	0	0	6	0	489	484	0	0	5	0
Other remedies	12	7	6	0	0	1	0	5	5	0	0	0	0

B. By number of employees affected:													
Employees offered reinstatement, total	4,068	4,068	2,624	158	0	410	876						
Accepted	2,763	2,763	1,883	91	0	253	536						
Declined	1,305	1,305	741	67	0	157	340						
Employees placed on preferential hiring list	406	406	360	7	0	17	22						
Hiring hall rights restored	46							46	37	1	0	4	4
Objections to employment withdrawn	108							108	73	1	0	24	10
Employees receiving backpay:													
From either employer or union	6,738	6,423	3,036	254	0	1,203	1,930	315	168	5	0	23	119
From both employer and union	32	16	7	1	0	8	0	16	7	1	0	8	0
Employees reimbursed for fees, dues, and fines:													
From either employer or union	6,093	1,665	661	0	0	495	509	4,428	199	2	0	308	3,919
From both employer and union	364	182	11	0	0	171	0	182	11	0	0	171	0
C. By amounts of monetary recovery, total	$4,825,575	$4,434,300	$1,668,120	$194,260	$0	$1,024,429	$1,547,491	$391,275	$130,640	$4,770	$0	$91,191	$164,674
Backpay (includes all monetary payments except fees, dues, and fines)	4,594,650	4,394,240	1,656,590	194,260	0	999,769	1,543,621	200,410	108,280	4,660	0	44,790	42,680
Reimbursement of fees, dues, and fines	230,925	40,060	11,530	0	0	24,660	3,870	190,865	22,360	110	0	46,401	121,994

[1] See "Glossary" for definitions of terms. Data in this table are based on unfair labor practice cases that were closed during fiscal year 1971 after the company and/or union had satisfied all remedial action requirements.

[2] A single case usually results in more than one remedial action; therefore, the total number of actions exceeds the number of cases involved.

Table 5.—Industrial Distribution of Cases Received, Fiscal Year 1971 [1]

Industrial group [2]	All cases	Unfair labor practice cases							Representation cases				Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C cases	CA	CB	CC	CD	CE	CP	All R cases	RC	RM	RD	UD	AC	UC
Ordnance and accessories	114	103	63	37	3	0	0	0	11	8	1	2	0	0	0
Food and kindred products	1,950	1,152	779	291	58	8	1	15	776	652	69	55	11	4	7
Tobacco manufacturers	18	11	9	2	0	0	0	0	7	6	0	1	0	0	0
Textile mill products	439	320	247	52	6	4	0	11	115	98	11	6	1	2	1
Apparel and other finished products made from fabric and similar materials	504	372	280	77	5	1	0	9	130	110	15	5	1	0	1
Lumber and wood products (except furniture)	467	244	194	24	20	3	0	3	215	173	24	18	2	1	5
Furniture and fixtures	456	278	217	51	6	3	0	1	168	143	14	11	5	2	3
Paper and allied products	657	432	316	94	19	1	0	2	215	193	4	18	2	1	7
Printing, publishing, and allied industries	1,154	689	486	160	19	14	3	7	431	344	37	50	8	7	19
Chemicals and allied products	959	541	386	103	39	6	0	7	400	351	12	37	3	5	10
Products of petroleum and coal	258	157	112	30	10	4	0	1	99	83	11	5	0	1	1
Rubber and plastic products	682	407	308	86	11	0	0	2	269	231	16	22	2	1	3
Leather and leather products	236	156	136	15	3	1	0	1	76	66	5	5	3	0	1
Stone, clay, and glass products	879	536	352	112	45	12	1	14	331	276	40	15	4	4	4
Primary metal industries	1,278	872	571	268	15	18	0	0	386	325	17	44	2	5	13
Fabricated metal products (except machinery and transportation equipment)	1,551	933	732	159	24	13	0	5	587	501	25	61	12	8	11
Machinery (except electrical)	1,867	1,166	894	237	18	8	3	6	668	553	45	70	13	6	14
Electrical machinery, equipment, and supplies	1,145	768	558	194	12	2	1	1	346	305	18	23	11	7	13
Aircraft and parts	315	257	163	92	2	0	0	0	53	43	4	6	0	1	4
Ship and boat building and repairing	178	129	82	42	3	1	1	0	44	38	4	2	1	1	3
Automotive and other transportation equipment	1,118	763	516	215	17	10	0	5	343	299	19	25	3	3	6
Professional, scientific, and controlling instruments	214	141	115	21	1	4	0	0	71	63	3	5	1	1	0
Miscellaneous manufacturing	765	538	317	189	17	3	3	9	219	183	17	19	2	2	4
Manufacturing	17,204	10,965	7,833	2,551	353	116	13	99	5,960	5,044	411	505	87	62	130

Metal mining	92	55	39	12	2	2	0	0	30	21	2	7	0	6	1
Coal mining	224	174	96	43	16	2	0	17	49	38	10	1	0	0	1
Crude petroleum and natural gas production	27	14	9	0	1	3	0	1	13	13	0	0	0	0	0
Nonmetallic mining and quarrying	96	62	45	13	4	0	0	0	34	28	2	4	0	0	0
Mining	439	305	189	68	23	7	0	18	126	100	14	12	0	6	2
Construction	4,520	3,904	1,359	992	889	465	13	186	609	526	63	20	3	0	4
Wholesale trade	2,118	1,014	743	172	54	12	1	32	1,079	889	118	72	11	1	13
Retail trade	4,434	2,329	1,801	348	88	15	4	73	2,050	1,625	275	150	29	7	19
Finance, insurance, and real estate	409	224	162	35	22	3	0	2	176	153	9	14	3	0	6
Local passenger transportation	309	212	140	64	7	0	0	1	95	82	3	10	2	0	0
Motor freight, warehousing, and transportation services	2,432	1,663	1,070	443	102	13	10	25	760	658	64	38	3	1	5
Water transportation	322	277	112	138	14	10	2	1	44	40	3	1	0	1	0
Other transportation	107	62	41	12	6	2	1	0	44	43	1	0	1	0	0
Communications	649	391	262	106	16	5	2	0	244	196	20	28	5	1	8
Heat, light, power, water, and sanitary services	469	275	178	45	36	14	0	2	178	142	17	19	1	3	12
Transportation, communication, and other utilities	4,288	2,880	1,803	808	181	44	15	29	1,365	1,161	108	96	12	6	25
Hotels and other lodging places	449	270	198	45	15	0	2	10	175	145	26	4	3	0	1
Personal services	284	153	115	27	10	0	0	1	129	115	10	4	1	0	1
Automobile repairs, garages, and other miscellaneous repair services	330	137	101	25	8	0	0	3	190	157	17	16	2	0	1
Motion pictures and other amusement and recreation services	404	326	204	77	26	8	3	8	73	67	4	2	2	0	3
Medical and other health services	734	354	305	38	6	3	0	2	363	339	14	10	10	2	5
Educational services	210	105	82	14	4	3	1	1	103	94	9	0	0	0	2
Nonprofit membership organizations	143	114	77	34	1	1	1	0	27	20	5	2	0	0	2
Miscellaneous business services	995	569	416	95	36	15	0	7	415	362	32	21	4	2	5
Miscellaneous repair services	111	55	38	12	3	1	0	1	52	40	1	11	1	0	3
Legal services	4	2	2	0	0	0	0	0	2	2	0	0	0	0	0
Museum, art galleries, and botanical and zoological gardens	6	1	1	0	0	0	0	0	5	5	0	0	0	0	0
Miscellaneous services	130	63	38	10	11	4	0	0	66	60	3	3	0	0	1
Services	3,800	2,149	1,577	377	120	35	7	33	1,600	1,406	121	73	23	4	24
Total, all industrial groups	37,212	23,770	15,467	5,351	1,730	697	53	472	12,955	10,904	1,119	942	168	86	223

[1] See "Glossary" for definitions of terms.
[2] Source: Standard Industrial Classification, Division of Statistical Standards, U.S. Bureau of the Budget, Washington, 1957.

Table 6.—Geographic Distribution of Cases Received, Fiscal Year 1971 [1]

Division and State [2]	All cases	Unfair labor practice cases							Representation cases				Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C	CA	CB	CC	CD	CE	CP	All R	RC	RM	RD	UD	AC	UC
Maine	104	55	36	16	2	1	0	0	47	39	1	7	0	0	2
New Hampshire	95	43	35	3	4	1	0	0	50	42	5	3	0	0	2
Vermont	29	11	8	3	0	0	0	0	18	15	2	1	0	0	0
Massachusetts	921	591	358	122	80	20	1	10	316	282	18	16	4	3	7
Rhode Island	115	77	45	24	7	0	0	1	35	32	1	2	0	2	1
Connecticut	292	183	115	45	13	6	1	3	105	95	6	4	0	0	4
New England	1,556	960	597	213	106	28	2	14	571	505	33	33	4	5	16
New York	2,940	2,015	1,083	615	155	106	4	52	893	740	84	69	14	4	14
New Jersey	1,497	966	528	296	62	42	1	37	508	435	41	32	16	1	6
Pennsylvania	2,016	1,228	679	289	128	80	1	51	759	673	53	33	10	4	15
Middle Atlantic	6,453	4,209	2,290	1,200	345	228	6	140	2,160	1,848	178	134	40	9	35
Ohio	2,260	1,419	971	328	83	29	0	8	806	703	44	59	7	13	15
Indiana	1,377	1,012	640	288	47	22	0	15	349	299	31	19	4	1	11
Illinois	2,561	1,930	1,166	602	80	50	2	30	605	502	52	51	8	3	15
Michigan	2,102	1,287	892	256	87	21	0	31	785	657	56	72	11	7	12
Wisconsin	784	469	335	89	30	9	1	5	305	250	29	26	1	3	6
East North Central	9,084	6,117	4,004	1,563	327	131	3	89	2,850	2,411	212	227	31	27	59
Iowa	345	162	101	26	18	12	0	5	180	160	11	9	0	2	1
Minnesota	367	166	110	23	21	8	2	2	195	151	15	29	5	0	1
Missouri	1,514	1,109	772	224	62	25	2	24	390	331	30	29	5	1	9
North Dakota	55	23	21	1	1	0	0	0	32	26	5	1	0	0	0
South Dakota	44	27	20	2	2	2	0	1	17	13	2	2	0	0	0
Nebraska	142	82	70	6	4	2	0	0	59	51	4	4	1	0	0
Kansas	229	152	110	26	10	3	0	3	77	62	7	8	0	0	0
West North Central	2,696	1,721	1,204	308	118	52	4	35	950	794	74	82	11	3	11
Delaware	62	26	18	0	6	2	0	0	36	33	2	1	0	0	0
Maryland	452	228	138	59	18	7	2	4	221	195	10	16	2	1	0
District of Columbia	168	107	64	28	9	5	0	1	59	51	5	3	1	0	1
Virginia	425	272	181	31	49	8	0	3	150	128	12	10	0	0	3

West Virginia	392	261	170	64	17	6	0	4	127	108	13	6	2	0	2
North Carolina	442	278	243	28	6	0	0	1	163	138	10	15	0	0	1
South Carolina	181	113	102	9	2	0	0	0	68	62	3	3	0	0	0
Georgia	738	456	342	60	49	3	0	2	280	262	9	9	0	0	2
Florida	1,025	688	493	106	57	20	1	11	330	281	22	27	0	2	5
South Atlantic	3,885	2,429	1,751	385	213	51	3	26	1,434	1,258	86	90	5	3	14
Kentucky	557	358	260	50	33	12	1	2	195	170	15	10	1	1	2
Tennessee	653	414	316	70	22	2	2	2	233	203	13	17	0	3	3
Alabama	533	334	245	47	16	12	1	13	196	180	9	7	0	0	3
Mississippi	206	120	97	21	2	0	0	0	85	79	2	4	0	0	1
East South Central	1,949	1,226	918	188	73	26	4	17	709	632	39	38	1	4	9
Arkansas	231	146	105	23	13	2	0	3	81	69	3	9	0	1	3
Louisiana	604	400	282	87	22	7	0	2	201	176	12	13	1	1	1
Oklahoma	229	120	88	15	8	7	0	2	107	95	1	11	0	0	2
Texas	1,527	1,076	747	218	57	35	0	19	435	366	28	41	0	5	11
West South Central	2,591	1,742	1,222	343	100	51	0	26	824	706	44	74	1	7	17
Montana	154	85	67	11	3	1	0	3	67	45	9	13	0	1	1
Idaho	123	72	51	12	3	1	1	4	45	35	9	1	1	1	4
Wyoming	48	21	17	2	2	0	0	0	27	25	1	1	0	0	0
Colorado	578	364	237	54	52	17	0	4	211	169	26	16	0	0	3
New Mexico	240	185	123	27	18	3	2	12	53	38	9	6	0	1	1
Arizona	294	180	132	27	16	2	0	3	108	78	21	9	0	5	1
Utah	130	63	41	9	11	1	0	1	64	55	5	4	0	0	3
Nevada	199	129	93	29	5	2	0	0	66	59	6	1	1	0	3
Mountain	1,766	1,099	761	171	110	27	3	27	641	504	86	51	2	8	16
Washington	1,041	519	339	112	35	21	4	8	498	405	66	27	14	1	9
Oregon	475	267	164	35	45	9	1	13	191	115	59	17	10	2	5
California	4,938	3,137	1,972	761	239	69	21	75	1,728	1,337	233	158	37	10	26
Alaska	107	67	48	15	4	0	0	0	38	32	3	3	1	0	1
Hawaii	176	82	40	25	10	4	2	1	93	89	1	3	0	0	1
Pacific	6,737	4,072	2,563	948	333	103	28	97	2,548	1,978	362	208	62	13	42
Puerto Rico	483	190	152	32	5	0	0	1	271	261	5	5	11	7	4
Virgin Islands	12	5	5	0	0	0	0	0	7	7	0	0	0	0	0
Outlying Areas	495	195	157	32	5	0	0	1	278	268	5	5	11	7	4
Total, all States and areas	37,212	23,770	15,467	5,351	1,730	697	53	472	12,965	10,904	1,119	942	168	86	228

[1] See "Glossary" for definitions of terms.
[2] The States are grouped according to the method used by the Bureau of the Census, U.S. Department of Commerce.

Table 7.—Analysis of Methods of Disposition of Unfair Labor Practice Cases Closed, Fiscal Year 1971 [1]

Method and stage of disposition	All C cases			CA cases		CB cases		CC cases		CD cases		CE cases		CP cases	
	Number	Percent of total closed	Percent of total method	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed
Total number of cases closed	23,840	100 0	--------	15,514	100.0	5,363	100.0	1,761	100.0	698	100 0	49	100 0	455	100.0
Agreement of parties	5,279	22.2	100 0	3,395	21 9	903	16 8	801	45 5	10	1 4	15	30 7	155	34 0
Informal settlement	5,077	21.3	96 2	3,299	21.3	870	16.2	751	42 6	4	.6	15	30 7	138	30 3
Before issuance of complaint	3,957	16 6	75.0	2,430	15 7	726	13 5	664	37 7	(2)	--------	11	22.5	126	27.7
After issuance of complaint, before opening of hearing	1,014	4.3	19 2	789	5.1	126	2.4	79	4.5	4	6	4	8.2	12	2.6
After hearing opened before issuance of trial examiner's decision	106	.4	2.0	80	.5	18	.3	8	.4	0	--------	0	--------	0	--------
Formal settlement	202	.9	3 8	96	6	33	.6	50	2.9	6	.8	0	--------	17	3.7
After issuance of complaint, before opening of hearing	158	.7	3.0	67	.4	24	.4	45	2 6	6	8	0	--------	16	3 5
Stipulated decision	6	0	.1	3	0	2	0	1	.1	0	--------	0	--------	0	--------
Consent decree	152	7	2 9	64	.4	22	.4	44	2 5	6	.8	0	--------	16	3.5
After hearing opened	44	.2	.8	29	.2	9	.2	5	.3	0	--------	0	--------	1	.2
Stipulated decision	5	0	.1	4	0	0	--------	0	--------	0	--------	0	--------	1	2
Consent decree	39	.2	7	25	.2	9	.2	5	.3	0	--------	0	--------	0	--------
Compliance with	1,151	4 8	100.0	943	6 0	125	2 3	53	3 0	7	1.0	3	6.1	20	4.4
Trial examiner's decision	3	0	.3	2	0	1	0	0	--------	0	--------	0	--------	0	--------

Board decision	686	2.9	59.6	540	3.4	92	1.7	36	2.0	3	.4	2	4.1	13	2.9
Adopting trial examiner's decision (no exceptions filed)	138	.6	12.0	110	.7	22	.4	3	.2	0	-------	0	-------	3	.7
Contested	548	2.3	47.6	430	2.7	70	1.3	33	1.8	3	.4	2	4.1	10	2.2
Circuit court of appeals decree	413	1.7	35.9	354	2.3	32	.6	17	1.0	4	.6	1	2.0	5	1.1
Supreme Court action	49	.2	4.2	47	.3	0	0	0	-------	0	-------	0	-------	2	.4
Withdrawal	8,374	35.1	100.0	5,582	36.0	1,998	37.3	614	34.9	3	0.4	6	12.2	171	37.6
Before issuance of complaint	8,208	34.5	98.0	5,466	35.2	1,965	36.7	602	34.2	(2)	-------	5	10.2	170	37.4
After issuance of complaint, before opening of hearing	147	.6	1.8	100	.7	31	.6	11	.6	3	.4	1	2.0	1	.2
After hearing opened, before trial examiner's decision	10	0	.1	9	.1	1	0	0	-------	0	-------	0	-------	0	-------
After trial examiner's decision, before Board decision	6	0	.1	4	0	1	0	0	.1	0	-------	0	-------	0	-------
After Board or court decision	3	0	0	3	0	0	-------	0	-------	0	-------	0	-------	0	-------
Dismissal	8,343	35.0	100.0	5,582	36.0	2,334	43.5	293	16.6	0	-------	25	51.0	109	24.0
Before issuance of complaint	7,994	33.5	95.8	5,325	34.3	2,266	42.3	278	15.7	(2)	-------	18	36.7	107	23.6
After issuance of complaint, before opening of hearing	13	.1	.2	10	.1	3	.1	0	-------	0	-------	0	-------	0	-------
After hearing opened, before trial examiner's decision	4	0	0	4	0	0	-------	0	-------	0	-------	0	-------	0	-------
By trial examiner's decision	3	0	0	1	0	2	0	0	-------	0	-------	0	-------	0	-------
By Board decision	274	1.2	3.3	199	1.3	54	1.0	14	.8	0	-------	5	10.2	2	.4
Adopting trial examiner's decision (no exceptions filed)	61	.3	.7	51	.3	9	.2	1	.1	0	-------	0	-------	0	-------
Contested	213	.9	2.6	148	1.0	45	.8	13	.7	0	-------	5	10.2	2	.4
By circuit court of appeals decree	47	.2	.6	39	.3	8	.1	0	-------	0	-------	0	-------	0	-------
By Supreme Court action	8	0	.1	4	0	1	0	1	.1	0	-------	2	4.1	0	-------
10(k) actions (see table 7A for details of dispositions)	678	2.8	-------	-------	-------	-------	-------	-------	-------	678	97.2	-------	-------	-------	-------
Otherwise (compliance with order of trial examiner or Board not achieved—firms went out of business)	15	.1	-------	12	.1	3	.1	0	-------	0	-------	0	-------	0	-------

[1] See table 8 for summary of disposition by stage. See "Glossary" for definitions of terms.
[2] CD cases closed in this stage are processed as jurisdictional dispute under Sec. 10(k) of the Act. See table 7A.

Table 7A.—Analysis of Methods of Disposition of Jurisdictional Dispute Cases Closed Prior to Unfair Labor Practice Proceedings, Fiscal Year 1971 [1]

Method and stage of disposition	Number of cases	Percent of total closed
Total number of cases closed before issuance of complaint	678	100.0
Agreement of the parties—informal settlement	291	42.9
Before 10(k) notice	273	40.3
After 10(k) notice, before opening of 10(k) hearing	18	2.6
After opening of 10(k) hearing, before issuance of Board decision and determination of dispute	0	
Compliance with Board decision and determination of dispute	29	4.3
Withdrawal	262	38.6
Before 10(k) notice	222	32.7
After 10(k) notice, before opening of 10(k) hearing	23	3.4
After opening of 10(k) hearing, before issuance of Board decision and determination of dispute	3	.4
After Board decision and determination of dispute	14	2.1
Dismissal	96	14.2
Before 10(k) notice	83	12.3
After 10(k) notice, before opening of 10(k) hearing	3	.5
After opening of 10(k) hearing, before issuance of Board decision and determination of dispute	1	.1
By Board decision and determination of dispute	9	1.3

[1] See "Glossary" for definitions of terms.

Table 8.—Disposition by Stage of Unfair Labor Practice Cases Closed, Fiscal Year 1971 [1]

Stage of disposition	All C cases		CA cases		CB cases		CC cases		CD cases		CE cases		CP 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	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed
Total number of cases closed	23,840	100.0	15,514	100.0	5,363	100.0	1,761	100.0	698	100.0	49	100.0	455	100.0
Before issuance of complaint	20,837	87.4	13,221	85.2	4,957	92.4	1,544	87.7	678	97.1	34	69.4	403	88.6
After issuance of complaint, before opening of hearing	1,332	5.6	966	6.2	184	3.4	135	7.7	13	1.9	5	10.2	29	6.4
After hearing opened, before issuance of trial examiner's decision	164	.7	122	.8	28	.5	13	.7	0	--------	0	--------	1	.2
After trial examiner's decision, before issuance of Board decision	12	.1	7	.1	4	.1	1	0	0	--------	0	--------	0	--------
After Board order adopting trial examiner's decision in absence of exceptions	199	.8	161	1.1	31	.6	4	.2	0	--------	0	--------	3	.7
After Board decision, before circuit court decree	779	3.3	593	3.8	118	2.2	46	2.6	3	.4	7	14.3	12	2.6
After circuit court decree, before Supreme Court action	460	1.9	393	2.5	40	.8	17	1.0	4	.6	1	2.0	5	1.1
After Supreme Court action	57	.2	51	.3	1	0	1	.1	0	--------	2	4.1	2	.4

[1] See "Glossary" for definitions of terms.

Table 9.—Disposition by Stage of Representation and Union Deauthorization Cases Closed, Fiscal Year 1971 [1]

Stage of disposition	All R cases		RC cases		RM cases		RD cases		UD 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	12,896	100.0	10,912	100.0	1,077	100 0	907	100 0	163	100 0
Before issuance of notice of hearing	6,024	46.7	4,734	43.4	709	65.8	581	64.0	124	76.1
After issuance of notice before close of hearing	4,536	35.2	4,064	37 2	250	23.2	222	24.5	3	1.8
After hearing closed before issuance of decision	137	1.1	122	1.1	8	.8	7	.8	0	----------
After issuance of regional director's decision	2,006	15.5	1,822	16.7	94	8 7	90	9 9	36	22.1
After issuance of Board decision	193	1.5	170	1.6	16	1 5	7	8	0	----------

[1] See "Glossary" for definitions of terms.

Table 10.—Analysis of Methods of Disposition of Representation and Union Deauthorization Cases Closed, Fiscal Year 1971 [1]

Method and stage of disposition	All R cases		RC cases		RM cases		RD cases		UD cases	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Total, all	12,896	100.0	10,912	100.0	1,077	100 0	907	100 0	163	100.0
Certification issued, total	8,514	66.0	65	69.3	542	50 3	407	44.9	97	59 5
After:										
Consent election	1,953	15 1	1,710	15.7	117	10.9	126	13.9	29	17.8
Before notice of hearing	1,291	10 3	1,122	10.3	83	7.7	86	9 5	29	17 8
After notice of hearing, before hearing closed	651	5 0	577	5 3	34	3 2	40	4.4	0	----------
After hearing closed, before decision	11	.1	11	.1	0	----------	0	----------	0	----------
Stipulated election	4,908	38.1	4,367	40.0	331	30.7	210	23.1	32	19 6
Before notice of hearing	2,254	17.5	1,930	17.7	213	19 7	111	12 2	32	19 6
After notice of hearing, before hearing closed	2,620	20.3	2,404	22.0	117	10.9	99	10.9	0	----------
After hearing closed, before decision	34	.3	33	.3	1	.1	0	----------	0	----------
Expedited election	28	.2	4	0	23	2 1	1	.1	0	----------
Regional director-directed election	1,527	11.8	1,396	12.8	66	6 1	65	7.2	36	22.1
Board-directed election	98	.8	88	.8	5	.5	5	.6	0	----------
By withdrawal, total	3,233	25.1	2,605	23.9	346	32 2	282	31.1	48	29.5
Before notice of hearing	1,796	13.9	1,314	12.1	265	24.6	217	23.9	45	27.6
After notice of hearing, before hearing closed	1,165	9.1	1,038	9 5	72	6 7	55	6.1	3	1.9
After hearing closed, before decision	63	.5	57	.5	2	2	4	4	0	----------
After regional director's decision and direction of election	195	1.5	183	1.7	6	.6	6	.7	0	----------
After Board decision and direction of election	14	.1	13	.1	1	.1	0	----------	0	----------
By dismissal, total	1,149	8.9	742	6 8	189	17.5	218	24.0	18	11.0
Before notice of hearing	655	5.1	364	3.4	125	11.6	166	18.3	18	11.0
After notice of hearing, before hearing closed	100	.8	45	.4	27	2 5	28	3.1	0	----------
After hearing closed, before decision	29	.2	21	.2	5	.5	3	.3	0	----------
By regional director's decision	284	2.2	243	2 2	22	2.0	19	2.1	0	----------
By Board decision	81	.6	69	.6	10	.9	2	2	0	----------

[1] See "Glossary" for definitions of terms.

Table 10A.—Analysis of Methods of Disposition of Amendment of Certification and Unit Clarification Cases Closed, Fiscal Year 1971

	AC	UC
Total, all	84	217
Certification amended or unit clarified	52	46
Before hearing	44	10
By regional director's decision	44	9
By Board decision	0	1
After hearing	8	36
By regional director's decision	4	29
By Board decision	4	7
Dismissed	12	69
Before hearing	8	26
By regional director's decision	8	26
By Board decision	0	0
After hearing	4	43
By regional director's decision	3	32
By Board decision	1	11
Withdrawn	20	102
Before hearing	18	99
After hearing	2	3

Table 11.—Types of Elections Resulting in Certification in Cases Closed, Fiscal Year 1971 [1]

Type of case	Total	Type of election				
		Consent	Stipulated	Board-directed	Regional director-directed	Expedited elections under 8(b)(7)(C)
All types, total						
Elections	8,459	1,953	4,797	99	1,578	32
Eligible voters	592,673	79,465	345,461	36,436	130,339	972
Valid votes	519,619	70,588	306,912	29,936	111,355	828
RC cases:						
Elections	7,543	1,709	4,342	90	1,400	2
Eligible voters	546,632	71,254	322,355	32,308	120,584	131
Valid votes	480,119	63,308	286,733	26,699	103,261	118
RM cases:						
Elections	418	93	234	4	57	30
Eligible voters	18,797	2,388	9,733	3,854	1,981	841
Valid votes	16,103	2,103	8,533	3,018	1,739	710
RD cases:						
Elections	401	126	208	5	62	0
Eligible voters	20,726	4,797	12,393	274	3,262	0
Valid votes	18,062	4,281	10,839	219	2,723	0
UD cases:						
Elections	97	25	13	0	59	----------
Eligible voters	6,518	1,026	980	0	4,512	----------
Valid votes	5,335	896	807	0	3,632	----------

[1] See "Glossary" for definitions of terms.

Table 11A.—Analysis of Elections Conducted in Representation Cases Closed, Fiscal Year 1971

Type of election	All R elections				RC elections				RM elections				RD elections			
	Elections conducted				Elections conducted				Elections conducted				Elections conducted			
	Total elections	Withdrawn or dismissed before certification	Resulting in a rerun or runoff	Resulting in certification[1]	Total elections	Withdrawn or dismissed before certification	Resulting in a rerun or runoff	Resulting in certification	Total elections	Withdrawn or dismissed before certification	Resulting in a rerun or runoff	Resulting in certification	Ttoal elections	Withdrawn or dismissed before certification	Resulting in a rerun or runoff	Resulting in certification
All types	8,611	18	231	8,362	7,778	13	222	7,543	427	3	6	418	406	2	3	401
Rerun required			168				160				5				3	
Runoff required			63				62				1				0	
Consent elections	1,969	3	38	1,928	1,746	3	34	1,709	96	0	3	93	127	0	1	126
Rerun required			23				19				3				1	
Runoff required			15				15				0				0	
Stipulated elections	4,911	4	123	4,784	4,462	1	119	4,342	239	3	2	234	210	0	2	208
Rerun required			91				88				1				2	
Runoff required			32				31				1				0	
Regional director-directed	1,594	9	66	1,519	1,472	7	65	1,400	58	0	1	57	64	2	0	62
Rerun required			52				51				1				0	
Runoff required			14				14				0				0	
Board-directed	104	1	4	99	95	1	4	90	4	0	0	4	5	0	0	5
Rerun required			2				2				0				0	
Runoff required			2				2				0				0	
Expedited—Sec. 8(b)(7)(C)	33	1	0	32	3	1	0	2	30	0	0	30	0	0	0	0
Rerun required			0				0				0				0	
Runoff required			0				0				0				0	

[1] The total of representation elections resulting in certification excludes elections held in UD cases, which are included in the totals in table 11

Table 11B.—Representation Elections in Which Objections and/or Determinative Challenges Were Ruled on in Cases Closed, Fiscal Year 1971

	Total elections	Objections only		Challenges only		Objections and challenges		Total objections [1]		Total challenges [2]	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
All representation elections	8,611	739	8 6	235	2.7	160	1 9	899	10.4	395	4.6
By type of case:											
In RC cases	7,778	690	8 9	221	2.8	150	1.9	840	10.8	371	4.7
In RM cases	427	24	5.6	12	2.8	9	2 1	33	7.7	21	4.9
In RD cases	406	25	6 2	2	.5	1	.2	26	6 4	3	.7
By type of election											
Consent elections	1,969	91	4.6	31	1 6	20	1.0	111	5.6	51	2.6
Stipulated elections	4,911	418	8.5	130	2.6	90	1.8	508	10.3	220	4 5
Expedited elections	33	6	18.2	0	------	0	------	6	18 2	0	------
Regional director-directed elections	1,594	212	13.3	71	4.5	43	2.7	255	16.0	114	7.2
Board-directed elections	104	12	11.5	3	2.9	7	6.7	19	18 3	10	9.6

[1] Number of elections in which objections were ruled on, regardless of number of allegations in each election.

[2] Number of elections in which challenges were ruled on, regardless of number of individual ballots challenged in each election.

Table 11C.—Objections Filed in Representation Cases Closed, by Party Filing, Fiscal Year 1971 [1]

	Total		By employer		By union		By both parties [2]	
	Number	Percent by type	Number	Percent by type	Number	Percent by type	Number	Percent by type
All representation elections	1,155	100	376	32.6	750	64.9	29	2.5
By type of case:								
RC cases	1,076	100	358	33.3	693	64.4	25	2.3
RM cases	49	100	10	20.4	39	79.6	0	-------
RD cases	30	100	8	26.7	18	60.0	4	13.3
By type of election:								
Consent elections	146	100	48	32.9	95	65.1	3	2.0
Stipulated elections	672	100	216	32.2	443	65.9	13	1.9
Expedited elections	6	100	1	16.7	5	83.3	0	-------
Regional director-directed elections	307	100	104	33.9	194	63.2	9	2.9
Board-directed elections	24	100	7	29.2	13	54.2	4	16.6

[1] See "Glossary" for definitions of terms.

[2] Objections filed by more than one party in the same case are counted as one.

Table 11D.—Disposition of Objections in Representation Cases Closed, Fiscal Year 1971[1]

	Objections filed	Objections withdrawn	Objections ruled upon	Overruled		Sustained [2]	
				Number	Percent of total ruled upon	Number	Percent of total ruled upon
All representation elections	1,155	256	899	678	75.4	221	24.6
By type of case:							
RC cases	1,076	236	840	627	74.6	213	25.4
RM cases	49	16	33	28	84.8	5	15.2
RD cases	30	4	26	23	88.5	3	11.5
By type of election:							
Consent elections	146	35	111	86	77.5	25	22.5
Stipulated elections	672	164	508	388	76.4	120	23.6
Expedited elections	6	0	6	6	100.0	0	----------
Regional director-directed elections	307	52	255	181	71.0	74	29.0
Board-directed elections	24	5	19	17	89.5	2	10.5

[1] See "Glossary" for definitions of terms
[2] See table 11E for rerun elections held after objections were sustained. In 53 elections in which objections were sustained, 45 were subsequently withdrawn. In eight elections the outcome was decided by ruling on challenges, therefore, in these cases no rerun elections were conducted.

Table 11E.—Results of Rerun Elections Held in Representation Cases Closed, Fiscal Year 1971[1]

	Total reruns elections [2]		Union certified		No union chosen		Outcome of original election reversed	
	Number	Percent by type	Number	Percent by type	Number	Percent by type	Number	Percent by type
All representation elections	155	100	42	27.1	113	72.9	39	25.2
By type of case								
RC cases	149	100	38	25.5	111	74.5	37	24.8
RM cases	5	100	3	60.0	2	40.0	2	40.0
RD cases	1	100	1	100.0	0	----------	0	----------
By type of election:								
Consent elections	16	100	5	31.3	11	68.7	5	31.3
Stipulated elections	91	100	21	23.1	70	76.9	22	24.2
Expedited elections	0	----------	0	----------	0	----------	0	----------
Regional director-directed elections	46	100	15	32.6	31	67.4	11	23.9
Board-directed elections	2	100	1	50.0	1	50.0	1	50.0

[1] See "Glossary" for definitions of terms.
[2] Includes only final rerun elections; i.e , those resulting in certification. Excluded from the table are 13 rerun elections which were conducted and subsequently set aside pursuant to sustained objections. The 13 invalid rerun elections were followed by valid rerun elections which are included in the table.

Table 12.—Results of Union-Shop Deauthorization Polls in Cases Closed, Fiscal Year 1971

Affiliation of union holding union-shop contract	Number of polls					Employees involved (number eligible to vote) [1]					Valid votes cast			
	Total	Resulting in deauthorization		Resulting in continued authorization		Total eligible	In polls				Total	Percent of total eligible	Cast for deauthorization	
							Resulting in deauthorization		Resulting in continued authorization					
		Number	Percent of total	Number	Percent of total		Number	Percent of total	Number	Percent of total			Number	Percent of total eligible
Total	97	57	58.8	40	41.2	6,518	2,430	37.3	4,088	62.7	5,335	81.9	2,308	35.4
AFL-CIO unions	61	33	54.1	28	45.9	3,805	709	18.6	3,096	81.4	3,262	85.7	1,674	44.0
Teamsters	20	12	60.0	8	40.0	1,062	449	42.3	613	57.7	766	72.1	308	29.0
Other national unions	8	6	75.0	2	25.0	895	740	82.7	155	17.3	665	74.3	97	10.8
Other local unions	8	6	75.0	2	25.0	756	532	70.4	224	29.6	642	84.9	229	30.3

[1] Sec 8(a)(3) of the Act requires that to revoke a union-shop agreement, a majority of the employees eligible to vote must vote in favor of deauthorization.

Table 13.—Final Outcome of Representation Elections in Cases Closed, Fiscal Year 1971 [1]

Participating unions	Total elections [2]	Elections won by unions						Elections in which no representative chosen	Employees eligible to vote						In elections where no representative chosen
		Percent won	Total won	AFL-CIO unions	Teamsters	Other national unions	Other local unions		Total	In elections won	In units won by				
											AFL-CIO unions	Teamsters	Other national unions	Other local unions	
A. All representation elections															
AFL-CIO	4,292	50 3	2,160	2,160				2,132	297,766	100,180	100,180				197,586
Teamsters	2,435	49.2	1,197		1,197			1,238	75,491	26,972		26,972			48,519
Other national unions	627	55.8	350			350		277	47,161	18,784			18,784		28,377
Other local unions	252	53.2	134				134	118	18,667	7,370				7,370	11,297
1-union elections	7,606	50 5	3,841	2,160	1,197	350	134	3,765	439,085	153,306	100,180	26,972	18,784	7,370	285,779
AFL-CIO v. AFL-CIO	159	63.5	101	101				58	14,506	6,273	6,273				8,233
AFL-CIO v. Teamsters	210	83.3	175	68	107			35	21,074	16,769	7,706	9,063			4,305
AFL-CIO v. Natl	135	76.3	103	58		45		32	24,149	14,224	7,603		6,621		9,925
AFL-CIO v. Local	107	90 7	97	49			48	10	59,500	58,687	40,683			18,004	813
Teamsters v. Teamsters	5	80 0	4		4			1	147	136		136			11
Teamsters v. Natl	28	78.6	22		17	5		6	2,333	1,960		1,583	377		373
Teamsters v. Local	37	89.2	33		15		18	4	3,014	2,932		1,010		1,922	82
Natl. v. Natl	7	100 0	7			7		1	539	539			539		0
Natl v. Local	20	95.0	19			6	13	0	5,575	5,383			1,017	4,366	192
Local v. Local	7	100.0	7				7	0	739	739				739	0
2-union elections	715	79 4	568	276	143	63	86	147	131,576	107,642	62,265	11,792	8,554	25,031	23,934
AFL-CIO v. AFL-CIO v. AFL-CIO	4	50.0	2	2				2	532	40	40				492
AFL-CIO v. AFL-CIO v. Teamsters	4	50.0	2	0	2			2	1,100	723	0	723			377
AFL-CIO v. AFL-CIO v. Natl	4	100 0	4	3		1		0	66	66	57		9		0
AFL-CIO v. AFL-CIO v. Local	4	100 0	4	2			2	0	1,359	1,359	754			605	0
AFL-CIO v. Teamsters v. Teamsters	1	100.0	1	0	1			0	18	18	0	18			0
AFL-CIO v. Teamsters v. Natl	5	100 0	5	2	2	1		0	483	483	135	98	250		0
AFL-CIO v. Teamsters v. Local	5	100.0	5	2	1		2	0	403	403	117	181		105	0
AFL-CIO v. Natl. v. Natl	1	100 0	1	1		0		0	111	111	111		0		0
AFL-CIO v. Natl. v. Local	5	100.0	5	2		3	0	0	9,625	9,625	424		9,201	0	0
AFL-CIO v. Local v. Local	1	100.0	1	0			1	0	426	426	0			426	0

See footnotes at end of table.

Table 13.—Final Outcome of Representation Elections in Cases Closed, Fiscal Year 1971 [1]—Con.

Participating unions	Total elections [2]	Elections won by unions						Elections in which no representative chosen	Employees eligible to vote						In elections where no representative chosen
		Percent won	Total won	AFL-CIO unions	Teamsters	Other national unions	Other local unions		Total	In elections won	In units won by				
											AFL-CIO unions	Teamsters	Other national unions	Other local union	
A. All representation elections															
Teamsters v. Teamsters v. Teamsters	1	100 0	1	--------	1	--------	--------	0	71	71	--------	71	--------	--------	0
Teamsters v. Teamsters v. Natl	1	100.0	1	--------	1	0	--------	0	4	4	--------	4	0	--------	0
Teamsters v. Teamsters v. Local	1	100.0	1	--------	1	--------	0	0	8	8	--------	8	--------	0	0
Teamsters v. Local v. Local	1	0	0	--------	0	--------	0	1	873	0	--------	0	--------	0	873
AFL-CIO v. AFL-CIO v. AFL-CIO v. AFL-CIO	2	100.0	2	2	--------	--------	--------	0	382	382	382	--------	--------	--------	0
AFL-CIO v AFL-CIO v. AFL-CIO v. Teamsters	1	100.0	1	1	0	--------	--------	0	33	33	33	0	--------	--------	0
3(or more)-union elections	41	87.8	36	17	9	5	5	5	15,494	13,752	2,053	1,103	9.460	1,136	1,742
Total representation elections	8,362	53.2	4,445	2,453	1,349	418	225	3,917	586,155	274,700	164,498	39,867	36,798	33,537	311,455

B. Elections in RC cases

AFL-CIO	3,862	52.6	2,032	2,032				1,830	276,819	92,993	92,993				183,826
Teamsters	2,182	51.1	1,115		1,115			1,067	68,054	24,875		24,875			43,179
Other national unions	579	56.5	327			327		252	44,200	16,794			16,794		27,406
Other local unions	209	57.4	120				120	89	12,781	5,822				5,822	6,959
1-union elections	6,832	52 6	3,594	2,032	1,115	327	120	3,238	401,854	140,484	92,993	24,875	16,794	5,822	261,370
AFL-CIO v AFL-CIO	154	63 0	97	97				57	14,349	6,149	6,149				8,200
AFL-CIO v Teamsters	200	82.5	165	64	101			35	20,346	16,041	7,544	8,497			4,305
AFL-CIO v. Natl	126	76 2	96	56		40		30	23,685	13,810	7,482		6,328		9,875
AFL-CIO v Local	96	89 6	86	43			43	10	59,078	58,265	40,415			17,850	813
Teamsters v. Teamsters	5	80 0	4		4			1	147	136		136			11
Teamsters v. Natl	27	77 8	21		16	5		6	2,330	1,957		1,580	377		373
Teamsters v. Local	33	90 9	30		13		17	3	2,741	2,672		937		1,735	69
Natl v. Natl	6	100.0	6			6		0	509	509			509		0
Natl v. Local	19	94 7	18			5	13	1	5,504	5,312			946	4,366	192
Local v Local	5	100.0	5				5	0	609	609				609	0
2-union elections	671	78 7	528	260	134	56	78	143	129,298	105,460	61,590	11,150	8,160	24,560	23,838
AFL-CIO v. AFL-CIO v. AFL-CIO	4	50 0	2	2				2	532	40	40				492
AFL-CIO v AFL-CIO v. Teamsters	4	50 0	2	0	2			2	1,100	723	0	723			377
AFL-CIO v. AFL-CIO v. Natl	4	100 0	4	3		1		0	66	66	57		9		0
AFL-CIO v, AFL-CIO v. Local	4	100 0	4	2			2	0	1,359	1,359	754			605	0
AFL-CIO v Teamsters v. Teamsters	1	100 0	1	0	1			0	18	18	0	18			0
AFL-CIO v Teamsters v. Natl	5	100 0	5	2	2	1		0	483	483	135	98	250		0
AFL-CIO v. Teamsters v. Local	5	100 0	5	2	1		2	0	403	403	117	181		105	0
AFL-CIO v Natl v. Natl	1	100.0	1	1		0		0	111	111	111		0		0
AFL-CIO v Natl v. Local	5	100.0	5	2		3	0	0	9,625	9,625	424		9,201	0	0
AFL-CIO v Local v. Local	1	100.0	1	0			1	0	426	426	0			426	0
Teamsters v. Teamsters v Teamsters	1	100.0	1		1			0	71	71		71			0
Teamsters v. Teamsters v. Natl	1	100 0	1		1	0		0	4	4		4	0		0
Teamsters v. Teamsters v. Local	1	100 0	1		1		0	0	8	8		8		0	0
Teamsters v. Local v Local	1	0	0		0		0	1	873	0		0		0	873
AFL-CIO v. AFL-CIO v AFL-CIO v. AFL-CIO	1	100 0	1	1				0	368	368	368				0
AFL-CIO v. AFL-CIO v. AFL-CIO v. Teamsters	1	100 0	1	1	0			0	33	33	33	0			0
3 (or more) union elections	40	87.5	35	16	9	5	5	5	15,480	13,738	2,039	1,103	9,460	1,136	1,742
Total RC elections	7,543	55 1	4,157	2,308	1,258	388	203	3,386	546,632	259,682	156,622	37,128	34,414	31,518	286,950

See footnotes at end of table.

Table 13.—Final Outcome of Representation Elections in Cases Closed, Fiscal Year 1971 [1]—Con.

Participating unions	Total elections [2]	Elections won by unions						Elections in which no representative chosen	Employees eligible to vote						In elections where no representative chosen
		Percent won	Total won	AFL-CIO unions	Teamsters	Other national unions	Other local unions		Total	In elections won	In units won by				
											AFL-CIO unions	Teamsters	Other national unions	Other local unions	
C. Elections in RM cases															
AFL-CIO	216	31.5	68	68				148	8,702	2,263	2,263				6,439
Teamsters	152	40.1	61		61			91	4,383	1,304		1,304			3,079
Other national unions	11	63.6	7			7		4	456	284			284		172
Other local unions	18	61.1	11				11	7	4,441	430				430	4,011
1-union elections	397	37.0	147	68	61	7	11	250	17,982	4,281	2,263	1,304	284	430	13,701
AFL-CIO v AFL-CIO	3	100.0	3	3				0	79	79	79				0
AFL-CIO v. Teamsters	1	100.0	1	0	1			0	46	46	0	46			0
AFL-CIO v. Natl	3	66.7	2	0		2		1	84	66	0		66		18
AFL-CIO v. Local	6	100.0	6	4			2	0	183	183	164			19	0
Teamsters v. Natl	1	100.0	1		1	0		0	3	3		3	0		0
Teamsters v Local	3	66.7	2		1		1	1	205	192		5		187	13
Natl. v. Local	1	100.0	1			1	0	0	71	71			71	0	0
Local v. Local	2	100.0	2				2	0	130	130				130	0
2-union elections	20	90.0	18	7	3	3	5	2	801	770	243	54	137	336	31
AFL-CIO v. AFL-CIO v. AFL-CIO v. AFL-CIO	1	100.0	1	1				0	14	14	14				0
3 (or more)-union elections	1	100.0	1	1	0	0	0	0	14	14	14	0	0	0	0
Total RM elections	418	39.7	166	76	64	10	16	252	18,797	5,065	2,520	1,358	421	766	13,732

D. Elections in RD cases

AFL-CIO	214	28.0	60	60				154	12,245	4,924	4,924				7,321
Teamsters	101	20.8	21		21			80	3,054	793		793			2,261
Other national unions	37	43.2	16			16		21	2,505	1,706			1,706		799
Other local unions	25	12.0	3				3	22	1,445	1,118				1,118	327
1-union elections	377	26.5	100	60	21	16	3	277	19,249	8,541	4,924	793	1,706	1,118	10,708
AFL-CIO v. AFL-CIO	2	50.0	1	1				1	78	45	45				33
AFL-CIO v. Teamsters	9	100.0	9	4	5			0	682	682	162	520			0
AFL-CIO v. Natl.	6	83.3	5	2		3		1	380	348	121		227		32
AFL-CIO v. Local	5	100.0	5	2			3	0	239	239	104			135	0
Teamsters v. Local	1	100.0	1		1		0	0	68	68		68		0	0
Natl. v. Natl.	1	100.0	1			1		0	30	30			30		0
2-union elections	24	91.7	22	9	6	4	3	2	1,477	1,412	432	588	257	135	65
Total RD elections	401	30.4	122	69	27	20	6	279	20,726	9,953	5,356	1,381	1,963	1,253	10,773

[1] See "Glossary" for definitions of terms.
[2] Includes each unit in which a choice as to collective-bargaining agent was made; for example, there may have been more than one election in a single case, or several cases may have been involved in one election unit.

Table 14.—Valid Votes Cast in Representation Elections, by Final Results of Elections, in Cases Closed, Fiscal Year 1971 [1]

Participating unions	Total valid votes cast	Valid votes cast in elections won						Valid votes cast in elections lost					
		Votes for unions					Total votes for no union	Votes for unions					Total votes for no union
		Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions		Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions	
A. All representation elections													
AFL-CIO	265,848	59,560	59,560				28,393	61,266	61,266				116,629
Teamsters	67,640	16,884		16,884			7,197	14,164		14,164			29,395
Other national unions	41,930	10,889			10,889		5,708	9,152			9,152		16,181
Other local unions	15,305	4,445				4,445	1,560	2,552				2,552	6,748
1-union elections	390,723	91,778	59,560	16,884	10,889	4,445	42,858	87,134	61,266	14,164	9,152	2,552	168,953
AFL-CIO v. AFL-CIO	12,611	4,582	4,582				728	2,512	2,512				4,789
AFL-CIO v. Teamsters	18,623	13,957	6,335	7,622			743	1,441	560	881			2,482
AFL-CIO v. Natl.	21,459	11,762	6,372		5,390		675	3,216	1,672		1,544		5,806
AFL-CIO v. Local	46,184	44,681	25,558			19,123	766	232	54			178	505
Teamsters v. Teamsters	127	99		99			17	4		4			7
Teamsters v. Natl.	1,977	1,559		996	563		75	147		16	131		196
Teamsters v. Local	2,460	2,236		963		1,273	169	20		2		18	35
Natl. v. Natl.	487	459			459		28	0			0		0
Natl. v. Local	4,972	4,739			1,750	2,989	79	52			37	15	102
Local v. Local	624	598				598	26	0				0	0
2-union elections	109,524	84,672	42,847	9,680	8,162	23,983	3,306	7,624	4,798	903	1,712	211	13,922

AFL–CIO v. AFL–CIO v. AFL–CIO	498	33	33				0	154	154				311
AFL–CIO v. AFL–CIO v. Teamsters	987	602	248	354			25	124	124	0			236
AFL–CIO v. AFL–CIO v. Natl	53	52	45		7		1	0	0		0		0
AFL–CIO v. AFL–CIO v. Local	1,181	1,161	584			577	20	0	0			0	0
AFL–CIO v. Teamsters v. Teamsters	18	18	0	18			0	0	0	0			0
AFL–CIO v. Teamsters v. Natl	445	419	98	174	147		26	0	0	0	0		0
AFL–CIO v. Teamsters v. Local	340	338	77	165		96	2	0	0	0		0	0
AFL–CIO v. Natl. v. Natl	104	98	92		6		6	0	0		0		0
AFL–CIO v. Natl. v. Local	8,791	8,704	2,361		4,450	1,893	87	0	0		0	0	0
AFL–CIO v. Local v. Local	348	334	44			290	14	0	0			0	0
Teamsters v. Teamsters v. Teamsters	70	70		70			0	0		0			0
Teamsters v. Teamsters v. Natl	4	4		4	0		0	0		0	0		0
Teamsters v. Teamsters v. Local	8	8		8		0	0	0		0		0	0
Teamsters v. Local v. Local	790	0		0		0	0	237		139		98	553
AFL–CIO v. AFL–CIO v. AFL–CIO v. AFL–CIO	368	243	243				125	0	0				0
AFL–CIO v. AFL–CIO v. AFL–CIO v. Teamsters	32	32	32	0			0	0	0	0			0
3 (or more)-union elections	14,037	12,116	3,857	793	4,610	2,856	306	515	278	139	0	98	1,100
Total representation elections	514,284	188,566	106,264	27,357	23,661	31,284	46,470	95,273	66,342	15,206	10,864	2,861	183,975

See footnote at end of table

Table 14.—Valid Votes Cast in Representation Elections, by Final Results of Elections, in Cases Closed, Fiscal Year 1971 [1]—Continued

Participating unions	Total valid votes cast	Valid votes cast in elections won						Valid votes cast in elections lost					
		Votes for unions					Total votes for no union	Votes for unions					Total votes for no union
		Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions		Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions	
B. Elections in RC cases													
AFL-CIO	247,523	55,194	55,194				26,529	57,751	57,751				108,049
Teamsters	61,146	15,561		15,561			6,674	12,825		12,825			26,086
Other national unions	39,497	9,779			9,779		5,134	8,959			8,959		15,625
Other local unions	10,461	3,588				3,588	974	1,802				1,802	4,097
1-union elections	358,627	84,122	55,194	15,561	9,779	3,588	39,311	81,337	57,751	12,825	8,959	1,802	153,857
AFL-CIO v. AFL-CIO	12,463	4,481	4,481				711	2,505	2,505				4,766
AFL-CIO v. Teamsters	17,934	13,282	6,041	7,241			729	1,441	560	881			2,482
AFL-CIO v. Natl	21,051	11,458	6,291		5,167		617	3,195	1,662		1,533		5,781
AFL-CIO v. Local	45,817	44,328	25,341			18,987	752	232	54			178	505
Teamsters v. Teamsters	127	99		99			17	4		4			7
Teamsters v. Local	1,974	1,556		993	563		75	147		16	131		196
Teamsters v. Natl	2,226	2,014		852		1,162	165	18		0		18	29
Natl. v. Natl	460	433			433		27	0			0		0
Natl. v. Local	4,908	4,677			1,699	2,978	77	52			37	15	102
Local v. Local	507	489				489	18	0				0	0
2-union elections	107,467	82,817	42,154	9,185	7,862	23,616	3,188	7,594	4,781	901	1,701	211	13,868

AFL-CIO v AFL-CIO v AFL-CIO	498	633	33				0	154	154				311
AFL-CIO v. AFL-CIO v. Teamsters	987	602	248	354			25	124	124	0			236
AFL-CIO v. AFL-CIO v. Natl	53	52	45		7		1	0	0		0		0
AFL-CIO v. AFL-CIO v. Local	1,181	1,161	584			577	20	0	0			0	0
AFL-CIO v. Teamsters v Teamsters	18	18	0	18			0	0	0	0			0
AFL-CIO v. Teamsters v. Natl	445	419	98	174	147		26	0	0	0	0		0
AFL-CIO v. Teamsters v. Local	340	338	77	165		96	2	0	0	0		0	0
AFL-CIO v. Natl. v Natl	104	98	92		6		6	0	0		0		0
AFL-CIO v. Natl v Local	8,791	8,704	2,361		4,450	1,893	87	0	0		0	0	0
AFL-CIO v. Local v. Local	348	334	44			290	14	0	0			0	0
Teamsters v. Teamsters v. Teamsters	70	70		70			0	0		0			0
Teamsters v. Teamsters v. Natl	4	4		4	0		0	0		0	0		0
Teamsters v. Teamsters v Local	8	8		8		0	0	0		0		0	0
Teamsters v. Local v. Local	790	0		0		0	0	237		139		98	553
AFL-CIO v. AFL-CIO v. AFL-CIO v. AFL-CIO	356	231	231				125	0	0				0
AFL-CIO v. AFL-CIO v. AFL-CIO v. Teamsters	32	32	32	0			0	0	0	0			0
3(or more)-union elections	14,025	12,104	3,845	793	4,610	2,856	306	515	278	139	0	98	1,100
Total RC elections	480,119	179,043	101,193	25,539	22,251	30,060	42,805	89,446	62,810	13,865	10,660	2,111	168,825

Table 14.—Valid Votes Cast in Representation Elections, by Final Results of Elections, in Cases Closed, Fiscal Year 1971 [1]—Continued

Participating unions	Total valid votes cast	Valid votes cast in elections won						Valid votes cast in elections lost					
		Votes for unions					Total votes for no union	Votes for unions					Total votes for no union
		Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions		Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions	
C. Elections in RM cases													
AFL-CIO	7,633	1,376	1,376				535	1,587	1,587				4,135
Teamsters	3,805	830		830			309	735		735			1,931
Other national unions	399	168			168		68	57			57		106
Other local unions	3,546	272				272	135	679				679	2,460
1-union elections	15,383	2,646	1,376	830	168	272	1,047	3,058	1,587	735	57	679	8,632
AFL-CIO v. AFL-CIO	74	73	73				1	0	0				0
AFL-CIO v. Teamsters	43	42	13	29			1	0	0	0			0
AFL-CIO v. Natl	71	54	14		40		1	16	8		8		0
AFL-CIO v Local	158	153	111			42	5	0	0			0	0
Teamsters v. Natl	3	3		3	0		0	0		0	0		0
Teamsters v. Local	178	168		81		87	2	2		2		0	6
Natl. v. Local	64	62			51	11	2	0			0	0	0
Local v. Local	117	109				109	8	0				0	0
2-union elections	708	664	211	113	91	249	20	18	8	2	8	0	6
AFL-CIO v. AFL-CIO v. AFL-CIO v. AFL-CIO	12	12	12				0	0	0				0
3(or more)-union elections	12	12	12	0	0	0	0	0	0	0	0	0	0
Total RM elections	16,103	3,322	1,599	943	259	521	1,067	3,076	1,595	737	65	679	8,638

D. Elections in RD cases

AFL-CIO	10,692	2,990	2,990				1,329	1,928	1,928				4,445
Teamsters	2,689	493		493			214	604		604			1,378
Other national unions	2,034	942			942		506	136			136		450
Other local unions	1,298	585				585	451	71				71	191
1-union elections	16,713	5,010	2,990	493	942	585	2,500	2,739	1,928	604	136	71	6,464
AFL-CIO v. AFL-CIO	74	28	28				16	7	7				23
AFL-CIO v. Teamsters	646	633	281	352			13	0	0	0			0
AFL-CIO v. Natl	337	250	67		183		57	5	2		3		25
AFL-CIO v. Local	209	200	106			94	9	0	0			0	0
Teamsters v. Local	56	54		30		24	2	0		0		0	0
Natl. v. Natl	27	26			26		1	0			0		0
2-union elections	1,349	1,191	482	382	209	118	98	12	9	0	3	0	48
Total RD elections	18,062	6,201	3,472	875	1,151	703	2,598	2,751	1,937	604	139	71	6,512

[1] See "Glossary" for definitions of terms.

Table 15.—Geographic Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1971

Division and State [1]	Total elections	Number of elections in which representation rights were won by unions					Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions					Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions				Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions		
Maine	33	7	6	1	0	0	26	4,768	4,341	1,374	1,299	75	0	0	2,967	218
New Hampshire	27	16	9	7	0	0	11	1,291	1,228	682	437	242	3	0	546	676
Vermont	7	3	1	2	0	0	4	270	262	82	68	14	0	0	180	42
Massachusetts	228	113	51	50	8	4	115	41,415	33,033	25,958	16,939	1,110	639	7,270	7,075	30,582
Rhode Island	24	14	11	2	0	1	10	1,401	1,250	531	449	58	9	15	719	449
Connecticut	89	52	31	16	1	4	37	4,604	4,224	2,030	1,642	324	53	61	2,144	1,819
New England	408	205	109	78	9	9	203	53,749	44,338	30,707	20,834	1,823	704	7,346	13,631	33,786
New York	465	249	121	67	23	38	216	26,595	22,900	12,640	5,678	1,860	1,304	3,798	10,260	11,808
New Jersey	315	169	71	66	12	20	146	16,923	15,067	8,759	4,479	1,684	718	1,878	6,308	8,092
Pennsylvania	501	265	165	72	16	12	236	31,902	28,936	16,177	11,316	3,051	1,232	578	12,759	15,443
Middle Atlantic	1,281	683	357	205	51	70	598	75,420	66,903	37,576	21,473	6,595	3,254	6,254	29,327	35,343
Ohio	525	279	150	88	30	11	246	41,124	36,995	24,235	10,076	1,746	8,220	4,193	12,760	24,918
Indiana	263	127	57	49	14	7	136	15,535	14,095	7,509	4,140	1,928	932	509	6,586	6,125
Illinois	403	229	133	55	30	11	174	29,472	26,074	14,469	8,552	1,657	3,142	1,118	11,605	13,889
Michigan	541	305	151	57	87	10	236	27,928	24,403	12,983	5,792	1,120	4,609	1,462	11,420	13,650
Wisconsin	183	102	70	26	5	1	81	9,588	8,485	4,521	3,478	668	296	79	3,964	5,179
East North Central	1,915	1,042	561	275	166	40	873	123,647	110,052	63,717	32,038	7,119	17,199	7,361	46,335	63,761
Iowa	134	91	50	27	11	3	43	5,884	5,219	2,791	1,646	422	483	240	2,428	3,075
Minnesota	138	74	44	19	6	5	64	5,625	4,872	2,882	1,580	527	650	125	1,990	3,268
Missouri	279	157	76	67	13	1	122	13,906	12,306	6,850	3,325	2,185	1,071	269	5,456	6,377
North Dakota	19	11	7	4	0	0	8	835	763	381	230	151	0	0	382	421
South Dakota	11	6	4	2	0	0	5	382	332	182	127	55	0	0	150	272
Nebraska	46	21	11	9	1	0	25	2,180	1,838	768	453	175	140	0	1,070	648
Kansas	60	31	18	13	0	0	29	2,257	2,037	1,011	679	293	39	0	1,026	984
West North Central	687	391	210	141	31	9	296	31,069	27,367	14,865	8,040	3,808	2,383	634	12,502	15,045

Delaware	25	13	3	6	3	1	12	2,255	1,999	1,325	805	95	108	317	674	1,105
Maryland	156	76	41	28	3	4	80	13,211	11,216	6,373	3,619	958	244	1,552	4,843	6,635
District of Columbia	44	24	17	5	0	2	20	4,455	3,656	1,815	1,445	162	7	201	1,841	794
Virginia	108	66	37	16	8	5	42	10,814	9,603	5,820	4,390	532	611	287	3,783	6,693
West Virginia	86	50	26	14	10	0	36	4,804	4,446	2,267	1,477	443	334	13	2,179	1,825
North Carolina	118	59	38	18	2	1	59	24,518	22,485	10,244	9,184	633	392	35	12,241	4,027
South Carolina	45	23	12	8	3	0	22	5,391	4,827	2,038	1,693	156	170	19	2,789	1,641
Georgia	216	106	47	36	19	4	110	21,564	18,955	8,873	4,733	2,413	1,597	130	10,082	8,719
Florida	226	109	73	28	2	6	117	16,365	11,709	6,554	4,693	1,185	153	523	5,155	7,200
South Atlantic	1,024	526	294	159	50	23	498	100,377	88,896	45,309	32,039	6,577	3,616	3,077	43,587	38,649
Kentucky	121	61	27	25	8	1	60	9,697	8,792	4,099	2,578	1,090	326	105	4,693	3,067
Tennessee	176	84	41	32	7	4	92	16,192	14,912	6,752	4,382	1,379	642	349	8,160	4,408
Alabama	126	60	49	7	4	0	66	12,352	10,980	5,153	3,820	768	554	11	5,827	4,904
Mississippi	61	27	18	5	4	0	34	7,140	6,517	2,672	2,313	167	192	0	3,845	1,791
East South Central	484	232	135	69	23	5	252	45,381	41,201	18,676	13,093	3,404	1,714	465	22,525	14,170
Arkansas	67	35	27	6	2	0	32	5,226	4,731	2,353	1,904	108	341	0	2,378	2,351
Louisiana	146	75	54	15	5	1	71	19,602	17,995	7,755	5,820	1,358	465	112	10,240	4,811
Oklahoma	75	45	36	8	1	0	30	5,806	5,166	2,972	1,802	233	559	378	2,194	2,596
Texas	320	178	121	44	11	2	142	20,853	18,637	9,801	7,645	1,537	453	166	8,836	10,374
West South Central	608	333	238	73	19	3	275	51,487	46,529	22,881	17,171	3,236	1,818	656	23,648	20,132
Montana	46	17	9	7	0	1	29	1,662	1,440	996	912	77	0	7	444	1,092
Idaho	30	19	9	9	0	1	11	3,674	2,869	2,522	1,378	588	0	556	347	3,290
Wyoming	22	17	13	1	3	0	5	928	797	516	371	68	77	0	281	608
Colorado	143	85	51	26	8	0	58	5,124	4,694	2,280	1,371	656	253	0	2,414	2,271
New Mexico	34	13	9	3	0	1	21	1,336	1,192	455	346	104	0	5	737	246
Arizona	69	43	28	13	1	1	26	3,911	3,622	1,496	1,110	317	39	30	2,126	1,225
Utah	48	26	20	6	0	0	22	2,294	2,027	817	692	125	0	0	1,210	744
Nevada	35	14	6	7	1	0	21	841	731	283	152	100	31	0	448	223
Mountain	427	234	145	72	13	4	193	19,770	17,372	9,365	6,332	2,035	400	598	8,007	9,699

See footnote at end of table

Table 15.—Geographic Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1971—Continued

Division and State [1]	Total elections	Number of elections in which representation rights were won by unions					Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions					Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions				Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions		
Washington	153	93	64	20	4	5	60	10,861	8,904	7,251	3,520	836	52	2,843	1,653	9,205
Oregon	115	46	29	16	1	0	69	3,854	3,353	1,543	1,080	337	117	9	1,810	1,285
California	1,020	516	256	203	37	20	504	55,749	46,991	25,542	14,585	5,336	2,968	2,653	21,449	26,932
Alaska	26	18	12	6	0	0	8	1,035	857	678	366	312	0	0	179	900
Hawaii	66	37	15	9	13	0	29	3,003	2,469	1,132	634	250	224	24	1,337	965
Pacific	1,380	710	376	254	55	25	670	74,502	62,574	36,146	20,185	7,071	3,361	5,529	26,428	39,287
Virgin Islands	4	3	3	0	0	0	1	43	36	31	31	0	0	0	5	32
Puerto Rico	144	86	25	23	1	37	58	10,710	9,016	4,566	1,370	895	76	2,225	4,450	4,796
Outlying areas	148	89	28	23	1	37	59	10,753	9,052	4,597	1,401	895	76	2,225	4,455	4,828
Total, all States and areas	8,362	4,445	2,453	1,349	418	225	3,917	586,155	514,284	283,839	172,606	42,563	34,525	34,145	230,445	274,700

[1] The States are grouped according to the method used by the Bureau of the Census, U.S. Department of Commerce.

Table 16.—Industrial Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1971

Industrial group [1]	Total elections	Number of elections in which representation rights were won by unions					Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions					Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions				Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions		
Ordance and accessories	6	3	3	0	0	0	3	960	874	313	313	0	0	0	561	356
Food and kindred products	578	334	169	133	17	15	244	40,428	35,441	21,401	12,820	5,774	1,223	1,584	14,040	22,533
Tobacco manufacturers	5	4	1	2	0	1	1	1,073	744	613	425	99	0	89	131	1,063
Textile mill products	71	36	24	6	2	4	35	10,584	9,357	4,545	3,502	475	354	214	4,812	5,083
Apparel an other finished products made from fabric and similar materials	95	40	29	5	4	2	55	11,922	10,681	4,707	4,122	296	239	50	5,974	3,474
Lumber and wood products (except furniture)	140	69	48	15	5	1	71	21,480	19,442	9,034	8,175	541	162	156	10,408	4,937
Furniture and fixtures	107	49	27	14	6	2	58	9,832	8,824	4,755	3,113	1,091	478	73	4,069	4,740
Paper and allied products	167	88	50	25	9	4	79	19,448	17,653	10,646	5,828	2,080	787	1,951	7,007	8,694
Printing, publishing, and allied industries	290	150	110	25	6	9	140	11,253	10,285	5,323	3,877	824	247	375	4,962	5,121
Chemicals and allied products	297	151	56	63	26	6	146	24,882	22,834	12,545	6,562	2,041	2,205	1,737	10,289	11,038
Products of petroleum and coal	85	55	32	18	1	4	30	5,291	4,817	3,623	1,836	689	138	960	1,194	3,980
Rubber and miscellaneous plastics products	213	104	59	23	19	3	109	21,754	19,531	9,270	6,071	1,037	1,542	620	10,261	7,602
Leather and leather products	47	18	14	1	2	1	29	11,473	10,394	4,740	3,723	26	304	687	5,654	3,146
Stone, clay, and glass products	208	114	67	33	10	4	94	9,328	8,513	4,460	3,297	758	216	189	4,053	3,891
Primary metal industries	267	153	96	34	19	4	114	22,361	20,351	10,625	6,816	915	2,400	494	9,726	9,244

See footnote at end of table

Table 16.—Industrial Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1971—Continued

Industrial group [1]	Total elections	Number of elections in which representation rights were won by unions					Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions					Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions				Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions		
Fabricated metal products (except machinery and transportation equipment	443	253	157	50	36	10	190	27,924	25,240	14,181	8,649	2,044	2,774	714	11,059	14,138
Machinery (except electrical)	517	258	152	46	54	6	259	49,837	45,505	26,935	12,686	1,870	9,443	2,936	18,570	24,307
Electrical machinery, equipment, and supplies	254	102	63	10	19	10	152	34,609	31,340	14,656	10,353	1,336	2,251	716	16,684	9,073
Aircraft and parts	45	18	8	1	6	3	27	7,403	6,768	2,983	1,778	99	848	258	3,785	2,040
Ship and boat building and repairing	25	11	8	3	0	0	14	10,658	9,752	3,574	2,632	914	28	0	6,178	2,039
Miscellaneous transportation equipment	248	131	48	28	50	5	117	24,182	21,922	12,562	3,873	1,546	4,598	2,545	9,360	13,858
Professional, scientific, and controlling instruments	46	14	10	3	1	0	32	4,607	4,339	2,063	1,419	351	291	2	2,276	1,320
Miscellaneous manufacturing	170	81	37	28	9	7	89	10,971	9,823	4,372	2,334	1,144	733	161	5,451	2,935
Manufacturing	4,324	2,236	1,268	566	301	101	2,088	392,260	354,430	187,926	114,204	25,950	31,261	16,511	166,504	164,612
Metal mining	8	5	4	0	0	1	3	1,639	1,412	1,279	700	20	3	556	133	1,562
Coal mining	27	15	0	0	9	6	12	1,236	1,089	578	58	0	366	154	511	476
Crude petroleum and natural gas production	15	7	5	2	0	0	8	501	422	174	157	17	0	0	248	100
Nonmetallic mining and quarrying	18	9	5	2	2	0	9	632	573	367	186	37	144	0	206	443
Mining	68	36	14	4	11	7	32	4,008	3,496	2,398	1,101	74	513	710	1,098	2,581
Construction	188	123	87	18	10	8	65	6,810	5,541	3,775	2,905	358	184	328	1,766	4,391

Wholesale trade	730	396	75	281	28	12	334	17,896	16,297	8,474	2,950	4,652	451	421	7,823	8,740
Retail trade	1,239	645	439	153	17	36	594	50,945	41,913	21,912	16,066	3,933	553	1,360	20,001	23,785
Finance, insurance, and real estate	90	45	36	3	3	3	45	9,537	7,945	4,304	1,966	260	56	2,022	3,641	4,451
Local passenger transportation	45	30	11	15	0	4	15	2,571	1,990	1,400	553	378	9	460	590	1,990
Motor freight, warehousing, and transportation services	471	237	35	190	6	6	234	12,979	11,373	5,508	1,245	3,875	77	311	5,865	4,665
Water transportation	28	17	12	3	2	0	11	1,872	1,426	519	398	29	64	28	907	410
Other transportation	25	10	4	5	1	0	15	1,623	1,466	674	242	421	11	0	792	804
Communications	155	94	82	4	1	7	61	33,846	26,037	24,560	16,134	296	14	8,116	1,477	31,922
Heat, light, power, water, and sanitary services	124	79	59	14	4	2	45	5,337	4,931	2,925	2,047	208	264	406	2,006	2,899
Transportation, communication, and other utilities	848	467	203	231	14	19	381	58,228	47,223	35,586	20,619	5,207	439	9,321	11,637	42,690
Hotels and other lodging places	94	43	32	1	1	9	51	5,593	4,329	1,916	1,419	152	116	229	2,413	2,212
Personal services	69	31	11	15	2	3	38	2,922	2,565	1,190	687	371	56	76	1,375	944
Automobile repairs, garages, and other miscellaneous repair services	133	77	28	43	6	0	56	2,577	2,272	1,207	416	706	71	14	1,065	1,241
Motion pictures and other amusement and recreation services	28	17	10	4	1	2	11	2,486	1,670	1,122	266	94	17	745	548	1,698
Medical and other health services	225	151	133	1	1	16	74	13,365	10,708	6,501	5,613	104	105	679	4,207	8,669
Educational services	34	19	11	6	1	1	15	7,147	5,595	2,104	764	218	76	1,046	3,491	1,823
Nonprofit membership organizations	9	6	5	0	0	1	3	519	460	223	130	2	0	91	237	296
Miscellaneous services	283	153	101	23	22	7	130	11,862	9,840	5,201	3,500	482	627	592	4,639	6,567
Services	875	497	331	93	34	39	378	46,471	37,439	19,464	12,795	2,129	1,068	3,472	17,975	23,450
Total, all industrial groups	8,362	4,445	2,453	1,349	418	225	3,917	586,155	514,284	283,839	172,606	42,563	34,525	34,145	230,445	274,700

[1] Source: Standard Industrial Classification, Division of Statistical Standards, U.S. Bureau of the Budget, Washington, 1957.

Table 17.—Size of Units in Representation Election Cases Closed, Fiscal Year 1971 [1]

Size of unit (number of employees)	Number eligible to vote	Total elections	Percent of total	Cumulative percent of total	Elections in which representation rights were won by: AFL-CIO unions		Teamsters		Other national unions		Other local unions		Elections in which no representative was chosen	
					Number	Percent by size class	Number	Percent by size class	Number	Percent by size class	Number	Percent by size class	Number	Percent by size class
A. Certification elections (RC & RM)														
Total RC and RM elections	565,429	7,961	100.0		2,384	100.0	1,322	100.0	398	100.0	219	100.0	3,638	100.0
Under 10	11,247	1,989	25.0	25.0	583	24.4	552	41 8	82	20.6	41	18.7	731	20 1
10 to 19	23,670	1,691	21.2	46 2	547	22.9	336	25.4	77	19.4	43	19.6	688	18.9
20 to 29	23,632	979	12.3	58.5	276	11.6	158	12.0	50	12 6	31	14.1	464	12.8
30 to 39	21,895	641	8.1	66.6	236	9.9	67	5 1	31	7.8	11	5.0	296	8.1
40 to 49	17,417	394	4.9	71.5	123	5.2	47	3.6	23	5.8	11	5 0	190	5.2
50 to 59	18,210	353	4.4	75 9	107	4.5	31	2.3	25	6.3	8	3.7	182	5 0
60 to 69	19,884	295	3.7	79.6	89	3.7	22	1.7	17	4.3	7	3.2	160	4.4
70 to 79	14,006	189	2.4	82.0	60	2.5	17	1.3	7	1.8	5	2.3	100	2.7
80 to 89	12,378	147	1.8	83.8	32	1.3	18	1.4	11	2.8	6	2.7	80	2.2
90 to 99	14,697	156	2.0	85.8	48	2 0	13	1.0	6	1.5	6	2.7	83	2.3
100 to 109	10,516	101	1.3	87.1	25	1.1	4	.3	9	2.3	3	1.4	60	1 6
110 to 119	10,141	89	1.1	88 2	33	1.4	5	.4	6	1.5	1	.5	44	1.2
120 to 129	9,575	77	1.0	89.2	27	1.1	7	.5	5	1 3	1	.5	37	1.0
130 to 139	10,853	81	1.0	90.2	25	1.1	7	.5	2	.5	4	1.8	43	1.2
140 to 149	8,828	61	.8	91.0	16	.7	3	.2	5	1.3	2	.9	35	1.0
150 to 159	9,071	59	.7	91.7	12	.5	5	.4	3	.7	4	1 8	35	1.0
160 to 169	4,923	30	.4	92.1	8	.3	1	.1	2	.5	0	----------	19	.5
170 to 179	6,971	40	.5	92.6	12	.5	2	.1	1	.2	2	.9	23	.6
180 to 189	6,630	36	.5	93.1	3	.1	2	1	1	.2	1	.5	29	.8
190 to 199	4,456	23	.3	93.4	2	.1	0	----------	2	.5	0	----------	19	.5
200 to 299	51,173	211	2.6	96.0	45	1.9	9	.7	18	4 5	9	4.1	130	3.6
300 to 399	34,363	101	1.3	97.3	23	1.0	6	.5	1	.2	8	3 7	63	1.7
400 to 499	32,251	73	.9	98.2	20	.8	2	.1	8	2.0	1	.5	42	1.2
500 to 599	21,322	39	.5	98.7	6	.3	3	.2	3	.7	3	1.4	24	.7
600 to 799	28,828	41	.5	99.2	12	.5	3	.2	0	----------	3	1 4	23	.6
800 to 999	17,672	20	.3	99.5	5	.2	2	.1	2	.5	0	----------	11	.3
1,000 to 1,999	40,764	31	.4	99.9	6	.3	0	----------	0	----------	4	1.8	21	.6
2,000 to 2,999	10,538	4	0	99.9	0	----------	0	----------	0	----------	2	.9	2	.1
3,000 to 9,999	43,134	8	.1	100.0	1	0	0	----------	1	.2	2	.9	4	.1
10,000 and over	26,384	2	0	100.0	2	.1	0	----------	0	----------	0	----------	0	----------

See footnote at end of table

B. Decertification elections (RD)

Total RD elections	20,726	401	100.0	----------	69	100 0	27	100 0	20	100.0	6	100.0	279	100.0
Under 10	552	97	24.2	24.2	2	2 9	2	7.4	1	5 0	0	----------	92	33 0
10 to 19	1,310	95	23.7	47.9	13	18.8	12	44.5	2	10 0	0	----------	68	24 4
20 to 29	1,105	44	11.0	58.9	8	11.6	3	11.1	1	5.0	0	----------	32	11.4
30 to 39	1,255	36	9.0	67 9	6	8 7	2	7.4	1	5 0	1	16.7	26	9 3
40 to 49	1,045	24	6 0	73 9	6	8.7	1	3 7	1	5 0	2	33.3	14	5.0
50 to 59	541	10	2.5	76 4	2	2 9	0	----------	0	----------	2	33.3	6	2 1
60 to 69	512	8	2.0	78.4	1	1 5	1	3.7	1	5 0	0	----------	5	1.8
70 to 79	359	5	1.2	79.6	2	2 9	1	3.7	0	----------	0	----------	2	.7
80 to 89	1,264	15	3.7	83.3	6	8.7	1	3.7	5	25 0	0	----------	3	1.1
90 to 99	470	5	1.2	84 5	3	4.3	0	----------	1	5 0	0	----------	1	.4
100 to 109	1,151	11	2.7	87 2	5	7.2	0	----------	2	10.0	0	----------	4	1.4
110 to 119	672	6	1.5	88.7	0	----------	0	----------	2	10.0	0	----------	4	1.4
120 to 129	380	3	.7	89.4	2	2.9	0	----------	0	----------	0	----------	1	.4
130 to 139	540	4	1.0	90.4	1	1.5	0	----------	0	----------	0	----------	3	1.1
140 to 149	1,006	7	1.7	92.1	4	5 8	1	3.7	0	----------	0	----------	2	.7
150 to 159	308	2	.5	92.6	1	1 5	0	----------	0	----------	0	----------	1	.4
160 to 169	322	2	.5	93.1	0	----------	0	----------	0	----------	0	----------	2	.7
170 to 199	1,622	9	2.3	95.4	2	2 9	2	7.4	1	5 0	0	----------	4	1.4
200 to 299	2,132	9	2 3	97.7	3	4 3	0	----------	1	5.0	0	----------	5	1.8
300 to 399	1,697	5	1.2	98.9	2	2.9	1	3.7	0	----------	0	----------	2	.7
400 to 499	834	2	.5	99.4	0	----------	0	----------	1	5.0	0	----------	1	.4
500 to 799	627	1	.3	99.7	0	----------	0	----------	0	----------	0	----------	1	.4
800 and over	1,022	1	.3	100 0	0	----------	0	----------	0	----------	1	16.7	0	----------

[1] See "Glossary" for definitions of terms.

Table 18.—Distribution of Unfair Labor Practice Situations Received, by Number of Employees in Establishment, Fiscal Year 1971 [1]

Size of establishment (number of employees)	Total number of situations	Total		Type of situations															
				CA		CB		CC		CD		CE		CP		CA-CB combinations		Other C combinations	
		Percent of all situations	Cumulative percent of all sitations	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class
Total	[2] 20,607	100.0	----------	13,069	100.0	3,620	100.0	1,377	100.0	524	100.0	39	100.0	384	100.0	1,326	100.0	268	100.0
Under 10	5,191	25.2	25.2	3,185	24.4	911	25 2	446	32.4	122	23 3	19	48.7	127	33.1	296	22.3	85	31.7
10 to 19	2,111	10.2	35.4	1,501	11.5	226	6.2	133	9.6	66	12.6	2	5.1	77	20.0	78	5.9	28	10.5
20 to 29	1,611	7.8	43.2	1,067	8.2	197	5.4	143	10 4	53	10 1	1	2.6	46	12.0	80	6 0	24	8 9
30 to 39	1,084	5 3	48.5	729	5.6	135	3 7	89	6.5	33	6.3	2	5.1	22	5.7	52	3.9	22	8.2
40 to 49	839	4.1	52 6	583	4.5	122	3.4	49	3 5	22	4.2	0	-------	22	5.7	35	2.6	6	2 2
50 to 59	910	4.4	57.0	536	4.1	149	4.1	84	6.1	46	8.7	2	5.1	21	5.5	57	4.3	15	5.6
60 to 69	582	2.8	59.8	391	3.0	87	2.4	40	2.9	13	2 5	0	-------	15	3.9	28	2.1	8	3.0
70 to 79	483	2.3	62.1	322	2 5	79	2 2	26	1.9	13	2.5	0	-------	6	1.5	37	2.8	0	-------
80 to 89	375	1 8	63.9	251	1.9	56	1.5	31	2.2	10	1 9	1	2.6	2	.5	22	1.7	2	.7
90 to 99	197	1 0	64.9	129	1.0	23	.6	20	1 4	6	1.1	0	-------	8	2.1	10	.8	1	.4
100 to 109	804	3.9	68 8	470	3.6	177	4.9	42	3.0	22	4.2	5	12.8	5	1.3	55	4.1	28	10.5
110 to 119	136	.7	69.5	93	.7	24	.7	8	.6	1	.2	0	-------	2	.5	7	.5	1	.4
120 to 129	305	1.5	71.0	224	1.7	38	1.1	8	.6	7	1.3	0	-------	2	.5	24	1.8	2	.7
130 to 139	141	.7	71.7	108	.8	17	.5	10	.7	0	-------	0	-------	2	.5	3	.2	1	.4
140 to 149	95	.5	72 2	64	.5	13	.4	7	.5	3	.6	0	-------	0	-------	7	.5	1	.4
150 to 159	385	1.9	74.1	225	1.7	90	2.5	23	1.7	9	1.7	1	2.6	2	.5	31	2.3	4	1.5
160 to 169	106	.5	74.6	71	.5	18	.5	4	.3	10	1.9	0	-------	1	.3	2	.2	0	-------
170 to 179	123	.6	75.2	88	.7	17	.5	7	.5	3	.6	0	-------	0	-------	8	.6	0	-------
180 to 189	69	.3	75.5	42	.3	19	.5	3	.2	2	.4	0	-------	1	.3	2	.2	0	-------

190 to 199	35	.2	75.7	27	.2	4	.1	2	.2	0	-------	0	-------	0	-------	1	.1	1	.4
200 to 299	1,122	5.4	81.1	713	5.4	246	6.8	45	3.3	27	5.1	0	-------	5	1.3	76	5.7	10	3.7
300 to 399	668	3.2	84.3	439	3.4	139	3.8	25	1.8	8	1.5	1	2.6	5	1.3	41	3.1	10	3.7
400 to 499	368	1.8	86.1	224	1.7	83	2.3	12	.9	4	.8	0	-------	2	.5	42	3.2	1	.4
500 to 599	366	1.8	87.9	209	1.6	89	2.5	11	.8	7	1.3	0	-------	1	.3	47	3.5	2	.7
600 to 699	229	1.1	89.0	143	1.1	47	1.3	12	.9	2	.4	0	-------	1	.3	21	1.6	3	1.1
700 to 799	137	.7	89.7	84	.6	34	.9	8	.6	2	.4	0	-------	0	-------	8	.6	1	.4
800 to 899	142	.7	90.4	93	.7	30	.8	4	.3	0	-------	1	2.6	0	-------	14	1.1	0	-------
900 to 999	72	.3	90.7	41	.3	19	.5	3	.2	4	.8	0	-------	0	-------	5	.4	0	-------
1,000 to 1,999	696	3.4	94.1	397	3.0	151	4.2	45	3.3	16	3.0	3	7.6	2	.5	75	5.7	7	2.6
2,000 to 2,999	315	1.5	95.6	171	1.3	92	2.5	12	.9	4	.8	0	-------	1	.3	34	2.6	1	.4
3,000 to 3,999	239	1.2	96.8	109	.8	86	2.4	5	.4	3	.6	0	-------	0	-------	36	2.7	0	-------
4,000 to 4,999	97	.5	97.3	47	.4	32	.9	1	.1	0	-------	0	-------	1	.3	16	1 2	0	-------
5,000 to 9,999	255	1.2	98.5	141	1.1	64	1.8	9	.6	4	.8	0	-------	0	-------	36	2.7	1	.4
Above 9,999	319	1.5	100.0	152	1.2	106	2.9	10	.7	2	.4	1	2.6	5	1.3	40	3.0	3	1.1

[1] See "Glossary" for definitions of terms.

[2] Based on revised situation count which absorbs companion cases, cross-filing and multiple filings as compared to situations shown in charts 1 and 2 of Chapter I, which are based on single and multiple filings of same type of case.

Table 19.—Litigation for Enforcement and/or Review of Board Orders, Fiscal Year 1971; and Cumulative Totals, Fiscal Years 1936–71

	Fiscal year 1971									July 5, 1935–June 30, 1971	
	Number of proceedings [1]					Percentages					
	Total	Vs. employers only	Vs. unions only	Vs. both employers and unions	Board dismissal [2]	Vs. employers only	Vs. unions only	Vs. both employers and unions	Board dismissal	Number	Percent
Proceedings decided by U.S. courts of appeals	392	330	52	1	9						
On petitions for review and/or enforcement	371	314	47	1	9	100.0	100.0	100 0	100.0	4,708	100 0
Board orders affirmed in full	275	227	40	0	8	72.3	85.1		88.9	2,823	60.0
Board orders affirmed with modification	46	44	2	0	0	14 0	4.3			881	18.7
Remanded to Board	15	10	4	1	0	3 2	8 5	100.0		200	4.2
Board orders partially affirmed and partially remanded	1	1	0	0	0	3				70	1.5
Board orders set aside	34	32	1	0	1	10 2	2.1		11.1	734	15.6
On petitions for contempt	21	16	5	0	0	100 0	100.0				
Compliance after filing of petition, before court order	7	5	2	0	0	31 3	40.0				
Court orders holding respondent in contempt	13	10	3	0	0	62.5	60.0				
Court orders denying petition	1	1	0	0	0	6 2					
Proceedings decided by U.S. Supreme Court [3]	4	2	2	0	0	100.0	100 0				
Board orders affirmed in full	2	1	1	0	0	50 0	50 0				
Board orders affirmed with modification	0	0	0	0	0						
Board orders set aside	1	1	0	0	0	50 0					
Remanded to Board	0	0	0	0	0						
Remanded to court of appeals	1	0	1	0	0		50 0				
Board's request for remand or modification of enforcement order denied	0	0	0	0	0						
Contempt cases remanded to court of appeals	0	0	0	0	0						
Contempt cases enforced	0	0	0	0	0						

[1] "Proceedings" are comparable to "cases" reported in annual reports prior to fiscal year 1964. This term more accurately describes the data inasmuch as a single "proceeding" often includes more than one "case." See "Glossary" for definitions of terms.

[2] A proceeding in which the Board had entered an order dismissing the complaint and the charging party appealed such dismissal in the courts of appeals.

[3] Board appeared as *amicus curiae* in two cases. *Industrial, Technical & Professional Employees, Div. of Natl. Maritime Union, AFL-CIO* v. *Sea Pak. Div. of W. R. Grace & Co.*, 400 U.S. 985—Board's position sustained, and *Lockridge* v. *Amalgamated Assn. of Street, Electric Railway & Motor Coach Employees of Amer.*, 403 U.S. 274—Board's position sustained.

Table 19A.—Proceedings Decided by Circuit Courts of Appeals on Petitions for Enforcement and/or Review of Board Orders, Fiscal Year 1971 Compared With 5-Year Cumulative Totals, Fiscal Years 1966 Through 1970 [1]

Circuit courts of appeals (headquarters)	Total fiscal year 1971	Total fiscal years 1966–70	Affirmed in full				Modified				Remanded in full				Affirmed in part and remanded in part				Set aside			
			Fiscal year 1971		Cumulative fiscal years 1966–70		Fiscal year 1971		Cumulative fiscal years 1966–70		Fiscal year 1971		Cumulative fiscal years 1966–70		Fiscal year 1971		Cumulative fiscal years 1966–70		Fiscal year 1971		Cumulative fiscal years 1966–70	
			Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Total all circuits	371	1,463	275	74.1	892	61.0	46	12.4	271	18.5	15	4.0	70	4.7	1	0.3	39	2.7	34	9.2	191	13.1
1. Boston, Mass.	10	74	6	60.0	51	68.9	2	20.0	8	10.8	1	10.0	4	5.4	0	0	2	2.7	1	10 0	9	12.2
2. New York, N.Y.	38	108	32	84.2	71	65.7	4	10 5	19	17.6	0	0	4	3.7	0	0	4	3.7	2	5.3	10	9.3
3. Philadelphia, Pa.	10	68	7	70 0	50	73 5	1	10.0	3	4.4	0	0	8	11.8	0	0	1	1.5	2	20 0	6	8.8
4. Richmond, Va.	29	124	21	72 4	78	62.9	4	13.8	33	26.6	0	0	2	1.6	0	0	0	0	4	13.8	11	8 9
5. New Orleans, La.	61	284	44	72.1	167	58 8	8	13.1	68	23.9	4	6.6	11	3.9	0	0	7	2.5	5	8.2	31	10.9
6. Cincinnati, Ohio	67	237	54	80.6	127	53.7	6	9.0	52	21.9	2	3.0	7	3.0	1	1.5	6	1.5	4	5.9	45	19 0
7. Chicago, Ill.	31	136	22	71.0	83	61.0	4	12 9	21	15.4	1	3.2	0	0	0	0	2	1.5	4	12.9	30	22.1
8. St. Louis, Mo.	29	93	15	51.7	31	33.3	11	37 9	31	33 3	0	0	7	7.5	0	0	2	2.2	3	10 4	22	23.7
9. San Francisco, Calif.	54	150	41	75.9	113	75.3	2	3.7	11	7.3	6	11.1	10	6.7	0	0	3	2.0	5	9.3	13	8.7
10. Denver, Colo.	21	65	17	81.0	38	58 5	1	4.7	15	23.1	0	0	5	7.7	0	0	1	1.5	3	14 3	6	9.2
11. Washington, D.C.	21	124	16	76.2	83	66.8	3	14.2	10	8.1	1	4.8	12	9 7	0	0	11	8.9	1	4 8	8	6.5

[1] Percentages are computed horizontally by current fiscal year and total fiscal years.

Table 20.—Injunction Litigation Under Section 10(e), 10(j), and 10(l), Fiscal Year 1971

	Total proceedings	Injunction proceedings		Total dispositions	Disposition of injunctions						Pending in district court June 30, 1971
		Pending in district court July 1, 1970	Filed in district court fiscal year 1971		Granted	Denied	Settled	Withdrawn	Dismissed	Inactive	
Under sec. 10(e), total	[1] 6	0	6	5	0	4	0	[2] 1	0	0	1
Under sec. 10(j), total	16	3	13	14	8	2	3	0	1	0	2
8(a)(1)	2	0	2	1	0	0	1	0	0	0	1
8(a)(1)(2); 8(b)(1)(A)	1	0	1	1	1	0	0	0	0	0	0
8(a)(1)(2)(3)(5); 8(b)(1)(A)(2)	1	0	1	1	1	0	0	0	0	0	0
8(a)(1)(3)	2	1	1	2	2	0	0	0	0	0	0
8(a)(1)(3)(5)	1	0	1	1	0	0	1	0	0	0	0
8(a)(1)(5)	5	0	5	4	2	2	0	0	0	0	1
8(b)(1)(A)	2	0	2	2	1	0	1	0	0	0	0
8(b)(1)(B)(3)	2	2	0	2	1	0	0	0	1	0	0
Under sec. 10(l), total	253	14	239	249	110	7	93	14	18	7	4
8(b)(4)(A)	2	0	2	2	0	0	2	0	0	0	0
8(b)(4)(A)(B)	3	0	3	3	0	0	3	0	0	0	0
8(b)(4)(A); 8(e)	1	0	1	1	0	0	1	0	0	0	0
8(b)(4)(A)(B); 8(e)	1	0	1	1	0	0	1	0	0	0	0
8(b)(4)(B)	99	5	94	95	46	1	28	7	8	5	4
8(b)(4)(B)(C)	3	0	3	3	1	0	0	1	1	0	0
8(b)(4)(B)(D)	17	0	17	17	8	0	9	0	0	0	0
8(b)(4)(B); 8(e)	2	0	2	2	1	0	1	0	0	0	0
8(b)(4)(B); 7(A)	2	0	2	2	1	0	0	1	0	0	0
8(b)(4)(B); 7(C)	2	0	2	2	2	0	0	0	0	0	0
8(b)(4)(D)	74	8	66	74	24	4	32	5	7	2	0
8(b)(7)(A)	11	0	11	11	6	0	4	0	1	0	0
8(b)(7)(B)	4	0	4	4	2	0	2	0	0	0	0
8(b)(7)(C)	26	1	25	26	15	1	9	0	1	0	0
8(e)	6	0	6	6	4	1	1	0	0	0	0

[1] In courts of appeals.
[2] One case withdrew injunction issued mooted by enforcement on merit after default.

Table 21.—Miscellaneous Litigation Involving NLRB; Outcome of Proceedings in Which Court Decisions Issued in Fiscal Year 1971

Type of litigation	Number of proceedings								
	Total—all courts			In courts of appeals			In district courts		
	Number decided	Court determination		Number decided	Court determination		Number decided	Court determination	
		Upholding Board position	Contrary to Board position		Upholding Board position	Contrary to Board position		Upholding Board position	Contrary to Board position
Totals—all types	43	35	8	17	11	6	26	24	2
NLRB-initiated actions	5	4	1	5	4	1	0	1	0
To enforce subpena	2	2	0	2	2	0	0	0	0
To restrain dissipation of assets by respondent	0	0	0	0	0	0	0	0	0
To defend Board's jurisdiction	3	2	1	2	1	1	1	1	0
Action by other parties	30	27	3	9	7	2	21	20	1
To restrain NLRB from	12	11	1	1	1	0	11	10	1
Proceeding in R case	8	7	1	1	1	0	7	6	1
Proceeding in unfair labor practice case	1	1	0	0	0	0	1	1	0
Proceeding in backpay case	1	1	0	0	0	0	1	1	0
Other	2	2	0	0	0	0	2	2	0
To compel NLRB to	18	16	2	8	6	2	10	10	0
Issue complaint	7	7	0	3	3	0	4	4	0
Seek injunction	1	0	1	1	0	1	0	0	0
Take action in R case	5	4	1	2	1	1	3	3	0
Other	5	5	0	2	2	0	3	3	0
Other	8	4	4	4	1	3	4	3	1

Table 22.—Advisory Opinion Cases Received, Closed, and Pending, Fiscal Year 1971 [1]

	Total	Number of cases				
		Identification of petitioner				
		Individual	Employer	Union	Courts	State bds.
Pending July 1, 1970	2	0	1	1	0	0
Received fiscal 1971	14	1	8	5	0	0
On docket fiscal 1971	16	1	9	6	0	0
Closed fiscal 1971	15	1	9	5	0	0
Pending June 30, 1971	1	0	0	1	0	0

[1] See "Glossary" for definitions of terms.

Table 22A.—Disposition of Advisory Opinion Cases, Fiscal Year 1971 [1]

Action taken	Total cases closed
	15
Board would assert jurisdiction	6
Board would not assert jurisdiction	8
Unresolved because of insufficient evidence submitted	0
Dismissed	1
Withdrawn	0

[1] See "Glossary" for definitions of terms.

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