

TWENTY-FIRST
ANNUAL REPORT
OF THE
NATIONAL LABOR
RELATIONS BOARD

FOR THE FISCAL YEAR
ENDED JUNE 30

1956

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NATIONAL LABOR RELATIONS BOARD

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Office of the General Counsel

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Associate General Counsel

Division of Operations

DAVID P. FINDLING⁸

Associate General Counsel

Division of Law

¹ Appointed April 4, 1955, to succeed Albert C. Beeson; appointed Chairman November 2, 1955.

² Term expired August 26, 1956; succeeded by Joseph A. Jenkins.

³ Appointed Acting Chairman August 27, 1955.

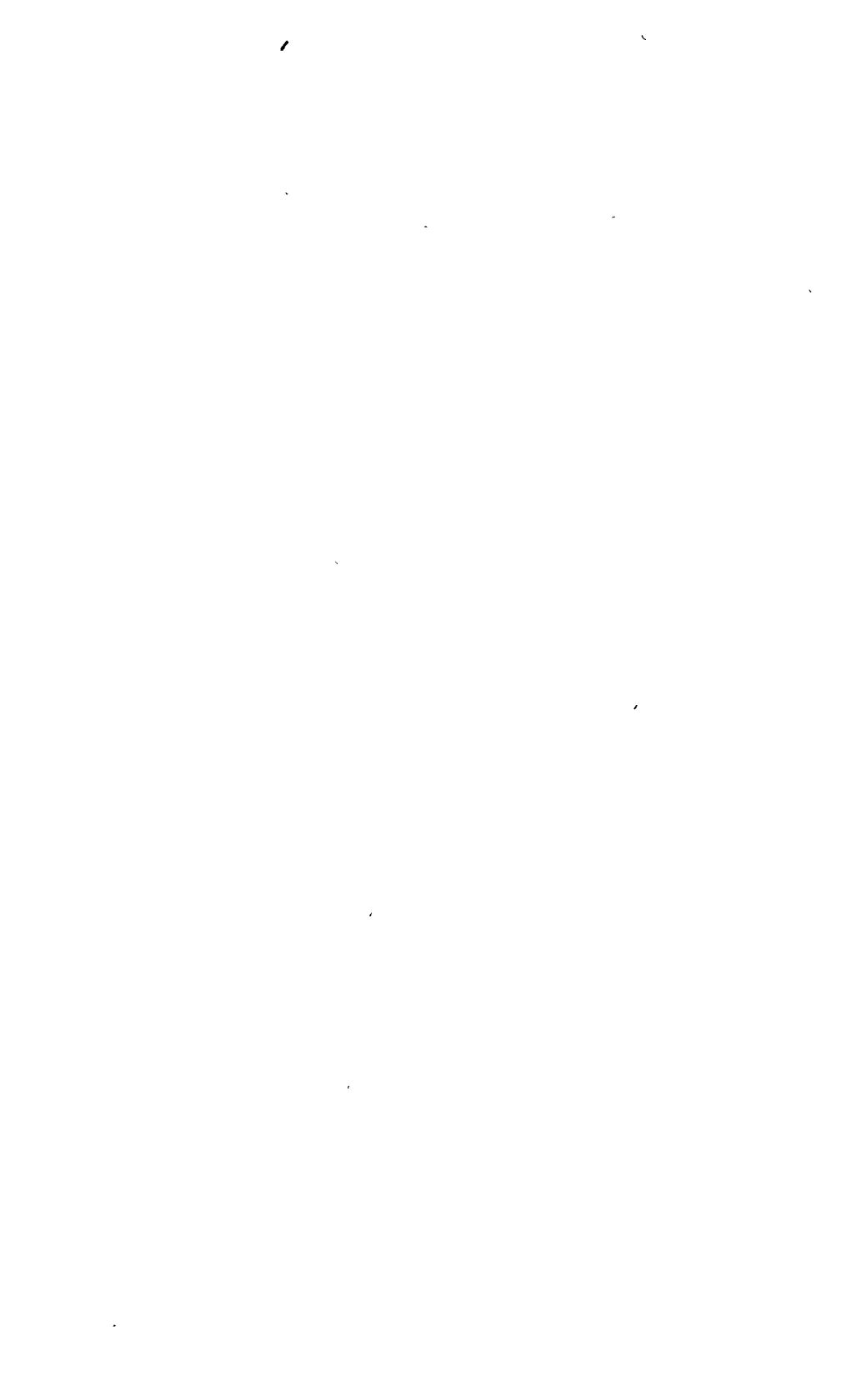
⁴ Appointed December 1, 1955, to succeed Guy Farmer.

⁵ Appointed December 19, 1955, to succeed William R. Consedine.

⁶ Appointed March 29, 1955, to succeed George J. Bott; resigned January 2, 1957, and succeeded by Jerome D. Fenton on February 23, 1957.

⁷ Appointed August 4, 1955, to succeed William O. Murdock; recess appointment as General Counsel effective January 2, 1957.

⁸ Deceased June 14, 1956; succeeded by Stephen Leonard on October 29, 1956.



LETTER OF TRANSMITTAL

NATIONAL LABOR RELATIONS BOARD,
Washington, D. C., January 3, 1957.

SIR: As provided in section 3 (c) of the Labor Management Relations Act, 1947, I submit herewith the Twenty-first Annual Report of the National Labor Relations Board for the fiscal year ended June 30, 1956, and, under separate cover, lists containing the cases heard and decided by the Board during this fiscal year, the names, salaries, and duties of all employees and officers in the employ or under the supervision of the Board.

Respectfully submitted.

BOYD S. LEEDOM, *Chairman.*

THE PRESIDENT OF THE UNITED STATES

THE PRESIDENT OF THE SENATE

THE SPEAKER OF THE HOUSE OF REPRESENTATIVES,

Washington, D. C.

20,954

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I

Operations in Fiscal Year 1956

The National Labor Relations Board received a total of 13,388 cases of all types during the fiscal year 1956 and closed a total of 13,734, thereby leaving a total of 3,768 cases pending disposition at various procedural levels.¹ This was a reduction of 8 percent from the 4,114 cases pending at the beginning of fiscal 1956, representing an alltime low.

Representation cases filed during fiscal 1956 totaled 8,076, an increase of 12.7 percent over the 7,165 filed in fiscal 1955. At the same time, unfair labor practice cases, which had reached an alltime high in fiscal 1955, showed a decrease of 14.7 percent. In fiscal 1956, these cases numbered 5,265, compared with 6,171 in fiscal 1955.

The increase in representation cases and the decrease in unfair practice cases reversed a trend which had been going on since 1953, i. e., a steady rise in the proportion of unfair practice cases in the Board's caseload. This decrease in unfair labor practice cases occurred in the filing of charges against both employers and unions. Charges against employers were filed during fiscal 1956 in 3,522 cases, a decrease of 19 percent from the 4,362 filed the preceding year. Charges against unions were made in 1,743 cases, a decrease of 3.6 percent from the 1,809 filed in fiscal 1955.

Filings of charges by individual employees against employers continued at about the same ratio as in the preceding year; individuals filed about 37 percent of the cases against employers. It is to be noted that, during recent years, the principal sources of unfair labor practice charges against employers has shifted, with a higher percentage of cases coming from individual employees. In fiscal 1956, this higher ratio continued, but with an apparent leveling off. In precise figures: individual filings in fiscal 1955 constituted 36.3 percent of the cases against employers, while in fiscal 1956 they constituted 36.9 percent. This compares with an average of 27 percent in the 1950-54 period.

¹ See tables in appendix A, for detailed statistical reports of NLRB activities during fiscal 1956.

Fiscal 1956, however, was marked by a shift in the sources of unfair labor practice charges against unions. Individual employees filed fewer such cases, the employers filed an unprecedented number; as a consequence, the number of cases filed against unions by employers and by individuals nearly equaled each other. In fiscal 1956, individual employees filed 807 cases against unions, while employers filed 826. In fiscal 1955, individual employees filed 1,095 such cases, or 60 percent of the cases against unions, while employers filed 627, or 35 percent.

Of the total unfair labor practices filed in fiscal 1956, the cases filed by individual employees constituted about 40 percent as compared with 43 percent in 1955, and 36 percent in 1954.

Of the 8,076 petitions for representation elections, 7,107, or 88 percent, were filed by unions seeking to represent the employees involved. Individual employees filed petitions for elections to decertify incumbent unions in 374 cases, which was 4.6 percent of the total representation cases filed. Employers petitioned for elections in 595 cases, or 7.4 percent of the total. The employees' requests for decertifications represented a 22-percent decrease from the 457 such cases filed in fiscal 1955, while the employers' requests for elections represented an increase of 9 percent over the 545 such cases filed in that year.

1. Decisional Activities of the Board

The Board Members issued decisions in a total of 2,151 cases of all types. Of these cases, 1,889 were brought to the Board on contest over either the facts or the application of the law; 293 were unfair labor practice cases and 1,596 were representation cases. Of the unfair labor practice cases, 191, or 65.2 percent, involved charges against employers; 102, or 34.8 percent, involved charges against unions. In the representation cases, the Board directed 1,357 elections. The remaining 239 contested petitions for elections were dismissed.

In the unfair labor practice cases, the Board found violations in 237, or 80.9 percent, of the 293 cases coming to it for decision during the year.

Violations were found in 159, or 83.2 percent, of the 191 cases against employers. In these cases, the Board ordered the employers to reinstate a total of 593 employees and to pay back pay to a total of 603 employees. Illegal assistance or domination of labor organizations was found in 31 cases and ordered stopped. In 54 cases, the employer was ordered to begin collective bargaining.

Violations of the act by unions were found by the Board in 78, or 76.5 percent, of the 102 decisions involving cases against unions. Of these cases, 20 involved the illegal discharge of employees, and back pay was ordered paid to 77 employees. In the cases of 31 of these

employees found entitled to back pay, the employer who made the illegal discharge and the union which caused it were held jointly liable. In 24 cases, the Board ordered a union to cease requiring an employer to extend illegal assistance to it. Nineteen cases involved activities by the union which the Board found to be in violation of the secondary boycott ban of the act and ordered halted.

2. Activities of the General Counsel

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

Also, under an arrangement between the five-Member Board and the General Counsel,² members of the agency's field staff function under the General Counsel's supervision in the preliminary investigation of representation and union-shop deauthorization cases. In the latter capacity, the field staffs in the regional offices have authority to effect settlements or adjustments in representation and union-shop deauthorization cases and to conduct hearings on the issues involved in contested cases. However, decisions in contested cases of all types are ultimately made by the five-Member Board.

Dismissals by regional directors of charges in unfair labor practice cases may be appealed to the General Counsel in Washington. Regional directors' dismissals in representation cases may be appealed to the Board Members.

a. Representation Cases

The field staff closed 6,335 representation cases during the 1956 fiscal year without necessity of formal decision by the Board Members. This was 78.5 percent of the 8,070 representation cases closed by the agency.

In the representation cases closed in the field, consent of the parties for holding an election was obtained in 3,748 cases. Petitions were dismissed by the regional directors in 702 cases. In 1,885 cases the petitions were withdrawn by the filing parties.

b. Unfair Labor Practice Cases

In the capacity of prosecutor of unfair labor practice cases, the General Counsel's staff during the 1956 fiscal year closed 5,030 unfair practice cases of all types without the necessity of formal action. This was 89.5 percent of the 5,619 unfair practice cases closed by the agency.

² See Board Memorandum Describing Authority and Assigned Responsibilities of the General Counsel (effective April 1, 1955), 20 Federal Register 2175 (April 6, 1955).

In addition, the regional directors, acting under the General Counsel's statutory authority, issued formal complaints alleging violation of the act in 713 cases. These complaints were about evenly divided as between employers and unions, with the exception of an added 74 complaints against a union based on charges by a single employer. Thus, there were 314 complaints against employers and 325 against unions (not including 74 complaints based on charges by the Southern Bell Telephone Co. against the Communications Workers of America, AFL-CIO, Cases Nos. 10-CB-291, 309, etc.).

Of the 5,030 unfair labor practice cases which the field staff closed without formal action, 562, or 11 percent, were adjusted by various types of settlements; 2,065, or 41 percent, were administratively dismissed after investigation. In the remaining 48 percent, the charges were withdrawn; in many cases such withdrawals actually reflected a settlement of the matter at issue between the parties. Of the charges against both employers and unions, 11 percent were adjusted in each instance (employers, 382 cases; unions, 180 cases). Of the remaining 89 percent of the charges against employers, 1,487, or 43 percent, were dismissed and 1,588, or 46 percent, were withdrawn. Of the remaining 89 percent of the charges against unions, 578, or 37 percent, were dismissed and 815, or 52 percent, were withdrawn.

3. Division of Trial Examiners

Trial examiners, who conduct hearings in unfair labor practice cases, conducted hearings in 386 cases during fiscal 1956 and issued intermediate reports and recommended orders in 319 cases. This was a decrease of 4 percent in the number of cases heard, compared with the 1955 fiscal year, and a decrease of 23 percent in the number of cases in which intermediate reports were issued.

In 57 unfair practice cases which went to formal hearing during the year, the trial examiners' findings and recommendations were not contested; this was 17.9 percent of the 319 unfair practice cases in which trial examiners issued reports. Of the 57 cases, 23 were closed by compliance with the trial examiners' recommendations without the necessity of action by the five-Member Board. In fiscal 1955, cases closed without contest of the trial examiner's report numbered 103, or 24.8 percent of the 416 cases in which reports were issued.

4. Types of Unfair Labor Practices Charged

The most common charge against employers continued to be that of illegally discriminating against employees because of their union

activities or because of their lack of union membership. Employers were charged with having engaged in such discrimination in 2,661 cases filed during the 1956 fiscal year. This was 75.6 percent of the 3,522 cases filed against employers.

The second most common charge against employers was refusal to bargain in good faith with representatives of their employees. This was alleged in 838 cases, which was 22.8 percent of the cases filed against employers.

A major charge against unions was illegal restraint or coercion of employees in the exercise of their right to engage in union activity or to refrain from it. This was alleged in 1,072 cases, or 61.5 percent of the 1,743 cases filed against unions.

Discrimination against employees because of their lack of union membership was also alleged in 857 cases, or 49 percent. Other major charges against unions were secondary boycott, made in 397 cases, or 22.8 percent, and refusal to bargain in good faith, made in 97 cases, or 5.6 percent.

5. Results of Representation Elections

The Board conducted a total of 5,075 representation elections during the 1956 fiscal year. This was an increase of 16.1 percent from 4,372 representation elections conducted in fiscal 1955.

In the 1956 representation elections, collective-bargaining agents were selected in 3,270 elections. This was 64.4 percent of the elections held, and compared with selection of bargaining agents in 66.4 percent of the 1955 elections.

In these elections, bargaining agents were chosen to represent units totaling 296,983 employees, or 62.7 percent of those eligible to vote. This compares with 73.1 percent in fiscal 1955, and 66.5 percent in fiscal 1954.

Of the 474,001 who were eligible to vote, 89.6 percent cast valid ballots.

Of the 424,857 employees actually casting valid ballots in Board representation elections during the year, 274,059, or approximately 64.5 percent, cast ballots in favor of representation.

Unions affiliated with the American Federation of Labor—Congress of Industrial Organizations won 2,941 of the 5,011 elections in which they took part. This was 58.7 percent of the elections in which they participated.

Unaffiliated unions won 329 out of 547 elections; this was 60.1 percent.

6. Fiscal Statement

The expenditures and obligations of the Board for fiscal year ended June 30, 1956, are as follows:

Salaries.....	\$7, 462, 944
Travel.....	439, 900
Transportation of things.....	17, 340
Communication services.....	238, 334
Rents and utility services.....	30, 733
Printing and reproduction.....	169, 332
Other contractual services.....	286, 157
Supplies and materials.....	89, 083
Equipment.....	46, 083
Refunds, awards, and indemnities.....	1, 910
Taxes and assessments.....	7, 789
	<hr/>
Grand total, obligations and expenditures for salaries and expenses.....	8, 789, 605

II

Jurisdiction of the Board

The Board's authority to remedy unfair labor practices and conduct representation elections extends to concerns whose labor management relations "affect" interstate commerce. However, the Board also has discretion to limit its assertion of jurisdiction to those cases which, in its opinion, have a substantial impact upon interstate commerce.¹

Measuring the relative impact of varied types of business upon interstate commerce is a complex and delicate endeavor. In 1950, for the first time, the Board adopted written standards which would enable the public and the parties to determine when jurisdiction would be asserted.² Before that, the Board had determined on a case-by-case basis whether or not to take jurisdiction. In 1954, the Board revised its standards for asserting jurisdiction, generally increasing the minimum volume of business required for its assertion of jurisdiction.³

The Board has no jurisdiction over railways and airlines,⁴ which come under the Railway Labor Act; and a rider to the Board's appropriation act denies it jurisdiction over agricultural laborers as defined in section 3 (f) of the Fair Labor Standards Act⁵ and over "mutual, nonprofit" water systems of which 95 percent of the water is used for farming.⁶

1. Outline of NLRB Standards for Asserting Jurisdiction

Whether jurisdiction will be asserted by the Board in a particular case is determined by the volume and character of business done by

¹ *Optical Workers Local 24859, et al v N L R B*, 227 F 2d 687 (C A. 5), *Office Employees International Union v. N. L. R. B.*, 235 F 2d 832 (C A, D C) See *N L R B v. Denver Bldg. & Construction Trades Council*, 341 U S. 675, 684 (1951). For discussion of difference between legal jurisdiction and the discretion to assert jurisdiction, see majority opinion in *East Newark Realty Corp*, 115 NLRB 483 (1956), Members Murdock and Peterson dissenting as to proper exercise of discretion.

² Fifteenth Annual Report (1950), pp 5-7, Sixteenth Annual Report (1951); pp 15-39, Seventeenth Annual Report (1952); pp 9-22.

³ Nineteenth Annual Report (1954), pp. 2-5

⁴ See *Pan American World Airways, Inc.*, *Guided Missiles Range Division*, 115 NLRB 493 (1956).

⁵ See *Central Carolina Farmers Exchange, Inc.*, 115 NLRB 1250 (1956), *Mississippi Chemical Corp*, 110 NLRB 826 (1954); *Antle Carrots, Inc.*, 110 NLRB 741 (1954), *Cochran Co., Inc.*, 112 NLRB 1400 (1955), Member Rodgers dissenting on facts of the particular case.

⁶ Act of August 1, 1955, Public Law 195 (84th Congress, First Session).

the employer or employers involved. All amounts are for a period of 1 year. Outflow is in terms of sales, and inflow is in terms of purchases.

Direct outflow refers to goods shipped or services furnished by the employer outside the State. Indirect outflow comprises sales within the State to users meeting the direct outflow standards, or to public utilities, transit companies, or companies which constitute instrumentalities and channels of interstate commerce or their essential links meeting the Board's jurisdictional standards.

Direct inflow refers to goods or services furnished directly to the employer from outside the State in which the employer is located. Indirect inflow refers to purchases of goods or services which originated outside the employer's State but which he purchased from a seller within the State.

The standards apply in the 48 States and the Territories.⁷ In the District of Columbia, the Board exercises plenary jurisdiction, without applying the standards.⁸

The standards apply to nonprofit organizations when engaged in commercial activities.⁹ Jurisdiction over a labor union acting in the capacity of employer has been declined where it was not engaged in commercial activities.¹⁰ Outside the District of Columbia, the Board declines jurisdiction over hotels,¹¹ taxicabs,¹² charter and sightseeing bus services,¹³ and racing.¹⁴

The standards as set forth in the decisions of the Board up to July 1, 1956, by which the Board determines to assert jurisdiction are as follows:

1. General standards for nonretail enterprises:¹⁵
 - a. Direct outflow of \$50,000, or
 - b. Indirect outflow of \$100,000,¹⁶ or

⁷ *Cantera Providencia*, 111 NLRB 848 (1955), Member Murdock dissenting; *Warner Brothers Company of P. R. Inc.*, 113 NLRB 177 (1955); *Alaska Chapter of the Associated General Contractors of America, Inc.*, 113 NLRB 41 (1955); *Hawaii Teamsters and Allied Workers Union, Local 996 (Waialua Darry)*, 111 NLRB 1220 (1955); *Union Cab Co.*, 110 NLRB 1921 (1954), Members Murdock and Peterson dissenting separately.

⁸ *M. S. Ginn & Co.*, 114 NLRB 112 (1955); *National Truck Rental Co., Inc.*, 114 NLRB 106 (1955)

⁹ *Disabled American Veterans, Inc (Idento Tag Operation)*, 112 NLRB 864 (1955). *Mississippi Chemical Corp.*, 110 NLRB 826 (nonprofit farmers' organization), *Massachusetts Institute of Technology*, 110 NLRB 1611 (1954), Chairman Farmer and Member Rodgers dissenting (educational institution engaged in research for the Federal Government).

¹⁰ *Oregon Teamsters' Security Plan Office*, 113 NLRB 987 (1955), Member Murdock concurring separately, Members Rodgers and Leedom dissenting.

¹¹ *The Virgin Isles Hotel, Inc.*, 110 NLRB 558 (1954), Member Murdock dissenting.

¹² *Checker Cab Co.*, 110 NLRB 683 (1954), Members Murdock and Peterson dissenting separately. But the Board has taken jurisdiction of a company selling cab parts, although affiliated with a taxi company. *Cab Service & Parts Corp.*, 114 NLRB 1294 (1955).

¹³ *Tanner Motor Tours, Ltd.*, 112 NLRB 275 (1955), Member Murdock dissenting.

¹⁴ *Pinkerton's National Detective Agency, Inc.*, 114 NLRB 1363 (1955), Members Murdock and Peterson dissenting separately.

¹⁵ Stated in *Jonesboro Grain Drying Cooperative*, 110 NLRB 481 (1954). Applies to wholesale concerns (*J. S. Latta & Son*, 114 NLRB 1248 (1955)) including wholesale utilities (*Central Electric Power Cooperative*, 113 NLRB 1059 (1955) Member Murdock concurring specially, Member Rodgers dissenting) but not to transportation concerns (*Edelen Transfer and Storage Co.*, 110 NLRB 1881, footnote 2 (1954), Members Murdock and Peterson dissenting).

¹⁶ *Whippany Motor Co., Inc.*, 115 NLRB 52 (1956).

- c. Direct inflow of \$500,000, or
 d. Indirect inflow of \$1,000,000.¹⁷
2. Multistate nonretail enterprises:
- a. The particular establishment involved in the case meets any of the foregoing standards, or
 - b. Direct outflow of the entire enterprise is \$250,000,¹⁸ or
 - c. Indirect outflow for entire enterprise of \$1,000,000, or
 - d. Entire enterprise has gross business of \$3,500,000.¹⁹
3. Links, channels, and instrumentalities of interstate commerce:
- a. Transportation and storage concerns: \$100,000 from services directly linked to interstate carriage of goods or passengers,²⁰ or for services performed for concerns which annually ship goods valued at \$50,000 or more out of State.²¹
 - b. Radio and television stations: \$200,000 gross business.²²
 - c. Telephone and telegraph: \$200,000 gross business.²³
4. Retail establishments:²⁴
- a. One or more establishments operating within a single State:
 - (1) Direct inflow of \$1,000,000;
 - (2) Indirect inflow of \$2,000,000.²⁵
 - (3) Direct outflow of \$100,000.
 - b. Multistate chain:
 - (1) Establishment involved meets any of intrastate retail tests, or
 - (2) Entire chain has gross sales of \$10,000,000.

¹⁷ Direct inflow may be added to indirect in determining whether the indirect inflow standard is met; *Central Cigar & Tobacco Co*, 112 NLRB 1094 (1955), Members Murdock and Peterson concurred in the result but dissented from the standard applied.

¹⁸ Applied in *The Ransom and Randolph Co.*, 110 NLRB 2204, *Franklin Limestone Co.*, 114 NLRB 747.

¹⁹ *Coca Cola Bottling Co. of New York, Inc.*, 114 NLRB 1423 (1955), Members Murdock and Peterson concurring specially.

²⁰ *Breeding Transfer Co.*, 110 NLRB 493 (1954), Member Murdock dissenting, Member Peterson separate opinion; and *Edlen Transfer and Storage Co., Inc.*, 110 NLRB 1881 (1954) (truck lines), Members Murdock and Peterson dissenting; *Royal Fleet Service*, 111 NLRB 1180 (1955) (local delivery for interstate carriers); *Rollo Transit Corp.*, 110 NLRB 1623 (1954) (bushline); *The Eureka Pipe Line Co.*, 115 NLRB 13 (1956) (pipeline); *United Warehouse and Terminal Corp.*, 112 NLRB 959 (1955) (warehouse). See *Mid-West Pool Car Ass'n*, 114 NLRB 721 (1955), Member Murdock dissenting, where a Board majority held that railroad freight charge collected and transmitted by the employer, an organization arranging carload shipments for member firms, should not be counted as receipts of the employer toward the jurisdictional amount.

²¹ *Pazan Motor Freight, Inc.*, 116 NLRB No. 224 (Nov. 14, 1956). See also *Potash Mines Transportation Co., Inc.*, 116 NLRB 1295 (jurisdiction asserted over local bus company receiving \$100,000 from interstate industrial concerns for charter services), and *Local 148, Truck Drivers and Warehousemen's Union*, 114 NLRB 1494 (1955).

²² *Hanford Broadcasting Co. (KNGS)*, 110 NLRB 1257 (1954); *The Scranton Times*, 111 NLRB 780 (1955).

²³ *The General Telephone Co of Ohio*, 112 NLRB 1225 (1955).

²⁴ Stated in *Hogue and Knott Supermarkets*, 110 NLRB 543. Applies to restaurants, *Bickford's Inc*, 110 NLRB 1904 (1954), Members Murdock and Peterson dissenting as to standard *C. R. Brown d/b/a C. R. Brown Cafeterias*, 115 NLRB 1772 (1956) (plant restaurants), Members Murdock and Peterson dissenting.

²⁵ Direct inflow may be added to indirect in determining whether the indirect inflow standard is met. *The Brass Rail Inc*, 110 NLRB 1656 (1954), Member Murdock concurring specially; *Autry Greer & Sons*, 112 NLRB 44 (1955).

5. Retail public utilities:²⁶
 - a. Gross sales of \$3,000,000.
6. Newspapers:
 - a. Holds membership in or subscribes to an interstate news service, publishes nationally syndicated features, or advertises nationally sold products, and
 - b. Gross business of \$500,000.²⁷
7. Office buildings:
 - a. Employer who leases or owns and who operates building is otherwise engaged in interstate commerce, and
 - b. Employer uses the building primarily for its own offices.²⁸
8. National defense:²⁹
 - a. Furnishes goods or services directly related to national defense to value of \$100,000,
 - b. Pursuant to Federal Government contract.

2. Computation of Jurisdictional Amount

The two principal problems that have arisen in connection with computing employers' volume of business for application of the jurisdictional standard have involved (1) the selection of the annual period to be used, and (2) the determination of an annual figure for employers which have been in business less than a year.

a. Annual Period Used

In applying the standards, the Board has consistently declined to consider expected changes in business volume and has based its determination upon the figures for either the most recent calendar or fiscal

²⁶ *The Greenwich Gas Co*, 110 NLRB 564 (1954), Members Murdock and Peterson dissenting. Includes retail power, gas, water, and transit utilities. Transit concerns which carry interstate passengers on continuous trips come under the transportation standards. *Rollo Transit Corp*, 110 NLRB 1623. Rural electric cooperatives are considered retail utilities, *Clay Electric Cooperative, Inc*, 111 NLRB 175. Wholesale utilities are subject to the *Jonesboro* nonretail standards. *Central Electric Power Cooperative*, 113 NLRB 1059 (1955), Member Murdock concurring specially, Member Rodgers dissenting. *Central Operating Co.*, 115 NLRB 1754 (1956). A State-regulated liquor dealer is not a public utility. *South Florida Liquor Distributors, Inc. of Tampa*, 113 NLRB 109 (1955).

²⁷ *The Daily Press, Inc*, 110 NLRB 573 (1954), Members Murdock and Peterson dissenting as to standards fixed.

²⁸ Stated in *McKinney Avenue Realty Co*, 110 NLRB 547 (1954), Members Murdock and Peterson dissenting. *Connecticut Bank & Trust Co.*, 114 NLRB 1293 (1955) (bank annually sending more than \$50,000 worth of checks out of State for collection used approximately 55 percent of space for its own offices). Compare *American Republics Corp. (Petroleum Building Dept.)*, 110 NLRB 870 (1954), jurisdiction declined where multistate corporation used only 26 percent for its own operations. This standard also applies to an industrial building, *East Newark Realty Corp*, 115 NLRB 483 (1956), Members Murdock and Peterson dissenting.

²⁹ *Maytag Aircraft Corp.*, 110 NLRB 594 (1954), Member Murdock dissenting. *Long Meadow Farms Cooperative, Inc*, 115 NLRB 419 (1956), Member Rodgers dissenting.

year or the year just before the Board hearing.³⁰ The Board has stated the rule as follows:

... the Board, in applying its jurisdictional standards, has heretofore uniformly relied on the experience of an employer during the most recent calendar or fiscal year, or the 12-month period immediately preceding the hearing before the Board, where such experience was available. To rely instead, as the Employer would have us do, on employers' predictions as to their future operations would invite speculation by them as to matters within their peculiar knowledge. We do not believe that such a policy would be administratively feasible or desirable where, as here, commerce data for a recent annual period is available.³¹

The Board has declined to base the assertion of jurisdiction upon years before the most recent calendar or fiscal year.³² However, the Board has considered the business done in earlier periods for the purpose of determining whether or not it had legal power to assert jurisdiction. Thus, in 1 case, the employer was shown to have had an inflow of only \$36,000 prior to the commission of the alleged unfair labor practice.³³ The Board held that this was sufficient interstate commerce to invest the Board with legal jurisdiction under the act; however, the Board, in applying the jurisdictional standards, based its assertion of jurisdiction upon the \$230,000 worth of goods which the employer shipped out of the State in the 9 months between the time of the alleged unfair practices and the date of the Board hearing in the case. Similarly, the employer in another case contended that charges arising from the discharge of one employee should be dismissed because the employer's lumber mill was not in operation at the time of the discharge and the company therefore was not engaged in interstate commerce at that time.³⁴ The Board found that some of the lumber intermingled with that later shipped out of State had been run through the mill before the discharge, thereby establishing legal power for asserting jurisdiction. The Board then applied the standards to the company's outflow after the discharge to assert jurisdiction.

In one case, it was necessary for the Board to make a choice among the periods that it ordinarily uses: the calendar year, fiscal year, or year before the hearing. In this case, because a substantial amount of the employer's out-of-State sales were concentrated in 2 months, the volume of business for either the calendar or fiscal year was

³⁰ *Aroostook Federation of Farmers, Inc*, 114 NLRB 538 (1955), *F. M. Reeves and Sons, Inc*, 112 NLRB 295 (1955) using calendar year, jurisdiction asserted; "*M*" *System, Inc.*, 115 NLRB 1316 (1956), using the year before the hearing, jurisdiction asserted, *Western Machine & Tool Co*, 115 NLRB 978 (1956), using calendar year and year before hearing, jurisdiction declined.

³¹ *Aroostook Federation of Farmers, Inc*, *supra*, followed in *Whippany Motor Co, Inc*, 115 NLRB 52 (1956). See also *Botany Mills, Inc*, 115 NLRB 1497 (1956)

³² *Western Machine & Tool Co.*, *supra*

³³ *Cadillac Marine & Boat Co*, 115 NLRB 107 (1956).

³⁴ *Sunset Lumber Products*, 113 NLRB 1172 (1955).

sufficient to meet the direct outflow standard.³⁵ But these months fell outside the year preceding the hearing so, for this period, the employer's business would not meet the standards. In that situation, the Board chose the calendar and fiscal years and asserted jurisdiction.

Nor will the Board decline jurisdiction merely because the employer does not expect recurrence of business which brought the concern within the standards.³⁶ In 1 case, the employer urged that jurisdiction should not be asserted on the basis of the sale of \$60,000 worth of seed rice to customers in Cuba because this was a "freak sale" resulting from an unusual shortage of Texas rice which these customers normally prefer.³⁷ Noting that the employer's manager was then in Cuba endeavoring to retain these customers and expand the firm's business there, the Board rejected this contention.

b. Projection of Less Than 1 Year's Business

When an employer's business is newly established and no annual figures are available, the Board customarily projects over a full year whatever figures on business volume are available. In various cases, the Board has asserted jurisdiction on the basis of projections of the business volume for a week,³⁸ 20 weeks,³⁹ and 8 months.⁴⁰

As to the use of predictions when no operating experience is available, the Board said in one case: "If the company had not had any operating experience its prediction of the volume of business it would do might have served to meet our jurisdictional standards."⁴¹ However, in this case, the Board rejected the predictions because they exceeded a projection of the company's actual sales experience during its first 3 months of operation.

3. Secondary Boycotts

In applying the jurisdictional standards to secondary boycott cases, the Board has followed the rule that

. . . it will take into consideration for jurisdictional purposes not only the oper-

³⁵ *Miami Tomato Corp.*, Case No. 10-RC-3464, decided August 8, 1955 (not reported in printed volumes of Board Decisions and Orders). In *F. M. Reeves and Sons, Inc.*, 112 NLRB 295, 296 (1955), the Board said "The Employer objects to the use of a calendar year in determining the dollar volume of its operations because in the prior proceeding the Board's frame of reference in determining business volume was a fiscal year. As the Board merely uses a yearly period proximate to the filing of a representation petition as a yardstick for determining the impact of an employer's operations upon commerce and, absent special circumstances not present here, is not concerned with the characteristics of the annual period selected, we find no merit in the Employer's objection."

³⁶ *Imperial Rice Mills*, 110 NLRB 612 (1954); *Bischof Die and Engraving*, 114 NLRB 1346 (1955); *Miami Tomato Corp.*, *supra*.

³⁷ *Imperial Rice Mills*, *supra*.

³⁸ *American Television, Inc., of Missouri*, 111 NLRB 164 (1955).

³⁹ *Carpenter Baking Co.*, 112 NLRB 288 (1955).

⁴⁰ *Safrit Lumber Co.*, 111 NLRB 657 (1955). Accord: *Miller Container Corp.*, 115 NLRB 509 (1956); *Wildwood Lumber Co.*, 114 NLRB 986 (1955), 6 months' figures projected.

⁴¹ *Local 140, Bedding, Curtain & Drapery Workers Union (Cent Noll Sleep Products, Inc.)*, 115 NLRB 318 (1956).

ations of the primary employer, but also the operations of any secondary employers to the extent that the latter are affected by the conduct involved.⁴²

Accordingly, the Board in this case considered the entire volume of business of the secondary employers at each of the terminals affected by the secondary boycott.

In another case, the Board was confronted with a question as to asserting jurisdiction in an unfair practice case brought by a union against an employer whose business did not meet the jurisdictional standards when, in a companion case, the union was charged with engaging in a secondary boycott in which the business of this employer added to the business of the other employers involved was sufficient to meet the standards.⁴³ Deciding to assert jurisdiction in the companion case against the employer, the Board said:

Essentially the same basic labor dispute is substantially involved in both cases, and its significance to the several issues is illuminated by the conduct of the parties as litigated in each case. In these circumstances, we believe that equity and the desirability of a full and complete record upon the issues as between the parties require that we should consider the merits of the issues in both of these consolidated cases.

In another case, where a union had complied with the trial examiner's recommended order in the secondary boycott case and the unfair practice case against the employer had thereafter been severed, the Board considered only the business volume of the employer charged.⁴⁴ In this case, jurisdiction was declined because the employer's business was not sufficient to meet the standards.

Another case presented the question of which was the primary employer.⁴⁵ In this case, it was found that the union had induced employees of a building contractor to refuse to hang doors made by a nonunion manufacturer with which the union had no direct dispute. The Board held that, in such a product boycott, the manufacturer is a primary employer for jurisdictional purposes despite the absence of an active dispute between the manufacturer and the union.⁴⁶

⁴² *International Brotherhood of Teamsters (McAllister Transfer, Inc.)*, 110 NLRB 1769 (1954), adopting the rule proposed by Member Peterson in *Local Union No. 830, Brewery and Beer Distributor Drivers, etc (Lincoln Beer Distributors)*, 106 NLRB 405 (1953). Member Murdock found it unnecessary to decide whether the rule urged by Member Peterson in the *Jamestown* case be adopted, because in his view the operations of the primary employer involved were sufficient to warrant the assertion of jurisdiction.

⁴³ *Reilly Cartage Co.*, 110 NLRB 1742 (1954). Member Murdock did not join in the part of the opinion as to jurisdiction.

⁴⁴ *Hildebrand Warehouse Co.*, 111 NLRB 1313 (1955).

⁴⁵ *Local 1976, United Brotherhood of Carpenters (Sand Door and Plywood Co.)*, 113 NLRB 1210 (1955); Member Peterson, in a dissent concurred in by Member Murdock, took the position that the manufacturer was too remote from the dispute for his business to be used as the basis for asserting jurisdiction. The doors were purchased by the contractor from a wholesaler which had obtained them from an exclusive distributor for the manufacturer. Member Peterson distinguished *Washington-Oregon Shingle Weavers' District Council (Sound Shingle Co.)*, 101 NLRB 1159 (1952) on the ground that there the manufacturer had sold the materials directly to the employer whose employees were induced to engage in the boycott.

⁴⁶ See also *Local 11, United Brotherhood of Carpenters (General Millwork Corp.)*, 113 NLRB 1084 (1955).

4. Joint or Allied Enterprises

The question of how to deal with related enterprises for the purpose of applying the jurisdictional standards has arisen in a number of forms. The Board in its decisions has treated the situations as falling into four principal categories: (1) separate business entities which are so closely related as to be considered a single employer, usually termed as integrated enterprise; (2) a group of employers which join together for collective bargaining; (3) a contractor which takes responsibility for construction but then subcontracts the actual performance to others; and (4) a single business entity engaged in diverse enterprises.

a. Integrated Enterprises

In applying the present jurisdictional standards, the Board early reaffirmed the long-established practice of treating separate concerns which are closely related as being a single employer for the purpose of determining whether to assert jurisdiction.⁴⁷ The question in such cases is whether the enterprises are sufficiently integrated to consider the business of both together in applying the jurisdictional standards.⁴⁸

The principal factors which the Board weighs in deciding whether sufficient integration exists include the extent of:

1. Interrelation of operations;⁴⁹

⁴⁷ *Venus Die Engineering Co.*, 110 NLRB 336 (1954). For an example of the practice under the 1950 standards see *Maloney-Chambers Lumber Co.*, 104 NLRB 503 (1953), followed in *Transport Company of Texas*, 111 NLRB 884 (1955). For an example of the practice before 1950, see *National Hardware Corp.*, 80 NLRB 368 (1948).

⁴⁸ See, for example, *Melco Plating Co.*, 110 NLRB 615 (1954). See also *A. M. Andrews Co. of Oregon*, 112 NLRB 626 (1955), enforced 236 F. 2d 44 (C. A. 9) where the issue was whether the companies were so integrated as to be held responsible for unfair labor practices. Section 2 (2) of the act defines the term "employer" as including, with certain specified exceptions, "any person acting as an agent of an employer, directly or indirectly."

Jurisdiction asserted over separate concerns as single employer: *Venus Die Engineering Co.*, *supra*, *Melco Plating Co.*, 110 NLRB 615 (1954), *East Detroit Stevedore Co.*, 110 NLRB 929 (1954), *Youngstown Tent and Awning Co.*, 110 NLRB 835 (1954); *Kleber Glass & Mirror Co.*, 111 NLRB 180 (1955); *The Transport Co. of Texas*, 111 NLRB 884 (1955), *The Scranton Times*, 111 NLRB 780 (1955), *Franconia Paper Mills, Inc.*, 111 NLRB 773 (1955), *Morris Kirschman & Co., Inc.*, 111 NLRB 776 (1955), *National Mattress Co.*, 111 NLRB 890 (1955), *The Union News Co.*, 112 NLRB 584 (1955); *A. M. Andrews Co.*, *supra*, *The Danspur Co.*, 114 NLRB 40 (1955), *Orkin Extermatting Co. (Of Kentucky)*, 115 NLRB 622 (1956), *Herman M. Brown Service Co.*, 115 NLRB 1371 (1956), *Crenshaw's, Inc.*, 115 NLRB 1374 (1956).

Jurisdiction declined: *Modern Linen & Laundry Service, Inc.*, 110 NLRB 1305 (1954) motion for reconsideration denied, 114 NLRB 166 (1955), Member Murdock dissenting, *Liquid Transport Co.*, 111 NLRB 376 (1955); *Safeway Transit Co.*, 111 NLRB 1359 (1955), Member Murdock dissenting, *Orkin "The Rat Man", Inc.*, 112 NLRB 762 (1955), Member Murdock dissenting, *Central Dairy Products Co.*, 114 NLRB 1189 (1955), Chairman Leedom dissenting, *Moving Picture Machine Operators (Rainier Theatre Corp.)*, 115 NLRB 952 (1956), Members Murdock and Peterson dissenting.

As to application of integration test to a single concern, see *Potato Growers Cooperative Co.*, 115 NLRB 1281 (1956), main opinion and concurrence of Chairman Leedom and Member Bean at footnote 12, *Texas Construction Material Co.*, 114 NLRB 378 (1955), where Chairman Leedom and Member Rodgers concurred in asserting jurisdiction on the basis of the integration of the company's 10 plants. See also *Cascade Natural Gas Corp.*, 110 NLRB 947 (1954).

⁴⁹ *Venus Die Engineering Co.*, 110 NLRB 336 (1954); *Melco Plating Co.*, 110 NLRB 615 (1954), *East Detroit Stevedore Co.*, 110 NLRB 929 (1954), *Morris Kirschman & Co., Inc.*, 111 NLRB 776 (1955); *The Transport Co. of Texas*, 111 NLRB 884 (1955); *Orkin Extermatting Co.*, 115 NLRB 622 (1956), *Herman M. Brown Service Co.*, 115 NLRB 1371 (1956); *Crenshaw's, Inc.*, 115 NLRB 1374 (1956).

2. Centralized control of labor relations;⁵⁰
3. Common management;⁵¹ and
4. Common ownership or financial control.⁵²

No one of these factors has been held to be controlling, but the Board opinions have stressed the first three factors, which go to show "operational integration,"⁵³ particularly centralized control of labor relations.⁵⁴ The Board has declined in several cases to find integration merely upon the basis of common ownership or financial control.⁵⁵

b. Associations of Employers

Shortly after adoption of the standards in 1954, the Board stated:

. . . we will adhere to our past practice of considering all association members who participate in multiemployer bargaining as a single employer for jurisdictional purposes. Accordingly, under the new standards, in determining whether to assert jurisdiction, the Board will continue to consider the totality of the operations of the association members.⁵⁶

In this case, the Board found that the association to which the employer belonged had for a number of years negotiated single contracts with the union. The Board held that the employers thus manifested a desire to be bound in their labor relations by joint rather than by individual action and thereby had constituted themselves and the association one employer within the meaning of the act.

Asserting jurisdiction in a work assignment dispute case on the basis of the inflow of all employers in an association which bargained for its members, the Board declared:

As this type of bargaining establishes a relationship whose impact on commerce reaches beyond the confines of any individual employer directly involved in the labor dispute, the findings as to commerce will be made upon the totality

⁵⁰ *Melco Plating Co*, *supra*; *National Mattress Co.*, 111 NLRB 890 (1955), *Crenshaw's, Inc*, *supra*. See *Orkin "The Rat Man", Inc.*, 112 NLRB 762 (1955), Member Murdock dissenting, and *Central Dairy Products Co*, 114 NLRB 1189 (1955), *Safeway Transit Co.*, 111 NLRB 1359 (1955), Member Murdock dissenting.

⁵¹ *Melco Plating Co*, *supra* *Crenshaw's, Inc.*, *supra*

⁵² *Venus Die Engineering Co*, *supra*; *Youngstown Tent and Awning Co.*, 110 NLRB 835 (1954); *Kleber Glass & Mirror Co*, 111 NLRB 180 (1955); *The Transport Co. of Texas*, *supra*, *Morris Kirschman & Co, Inc*, *supra*.

⁵³ See *Moving Picture Machine Operators Local No 159 (Ramier Theatre Corp.)*, 115 NLRB 952, Intermediate Report, quoting *Florida State Theatres, Inc*, 10-RC-2802 (not reported in printed volumes of Board Decisions and Orders), Member Murdock dissenting.

⁵⁴ *Central Dairy Products Co*, 114 NLRB 1189 (1955), jurisdiction declined, *Melco Plating Co.*, 110 NLRB 615 (1954), jurisdiction asserted. But see *Venus Die Engineering Co*, 110 NLRB 336 (1954).

⁵⁵ *Modern Linen & Laundry Services, Inc.*, 110 NLRB 1305 (1954), *Central Dairy Products, supra*, *Moving Picture Machine Operators (Ramier Theatre Corp)*, *supra*, Members Murdock and Peterson dissenting. The dissenting Members pointed out that there was operational integration and centralized control of labor relations as well as common ownership and financial control.

⁵⁶ *Insulation Contractors of Southern California, Inc*, 110 NLRB 638 (1954). Accord: *E. F. Shuck Construction Co.*, 114 NLRB 727 (1955); *Alaska Chapter of Associated General Contractors of America, Inc*, 113 NLRB 41 (1955); *International Union of Operating Engineers, Local 12 (Associated General Contractors, Southern California Chapter)*, 113 NLRB 655 (1955); *City Window Cleaning Co*, 114 NLRB 906 (1955) See Sixteenth Annual Report (1951), pp 20-23, Seventeenth Annual Report (1952), p. 12.

of operations of all of the members of the Association, whether or not they are parties to the proceeding ⁵⁷

However, for the Board to base assertion of jurisdiction upon the business of association members, the evidence must show that "the employers unequivocally intend to be bound in collective bargaining by group rather than individual action." ⁵⁸ The Board stated:

Such evidence appears when, for example, the employers participate personally with other employers in joint negotiations, or when they delegate to a joint bargaining representative authority to conduct negotiations on their behalf, and thereafter uniformly adopt the agreements resulting from such negotiations

c. General Contractors in Construction

As to general contractors in the construction industry, the Board has laid down the following rule for application of the jurisdictional standards:

In the future, the Board will assert jurisdiction over a general construction contractor on the basis of the total volume of his business or of the general construction which he undertakes to discharge. ⁵⁹

In this case, the Board, in asserting jurisdiction under the \$500,000 direct inflow standard, considered out-of-State purchases of both the general contractor and the subcontractor. The Board found that the general contractor "was solely responsible for the performance and completion of the job," which was the construction of a hospital.

d. Single Concerns Operating Diverse Enterprises

Questions were raised in some cases as to the proper application of the jurisdictional standards to a single corporation or business entity which operates a variety of enterprises. In one case, the Board asserted jurisdiction over a company operating two grain elevators, a lumberyard, and a gasoline station. ⁶⁰ The basis was direct inflow of more than \$500,000 a year to the grain elevators. Similarly, the Board asserted jurisdiction over a corporation operating a feed and grain mill, a trucking business, and a variety of other

⁵⁷ *Bay Counties District Council of Carpenters (Associated Home Builders of San Francisco)*, 115 NLRB 1757 (1956) See also Sixteenth Annual Report (1951), p 20.

⁵⁸ *Santa Clara County Pharmaceutical Association*, 114 NLRB 256 (1955), jurisdiction declined *Accord Los Angeles County District Council of Carpenters (Ellmwood Corporation)*, 115 NLRB 43 (1956), jurisdiction declined.

⁵⁹ *Carpenters Local Union No 1028 (Dennehy Construction Co.)*, 111 NLRB 1025 (1955)

⁶⁰ *Potato Growers Cooperative Co*, 115 NLRB 1281 (1956). The Board rejected the employer's contention that each of the operations should be considered separately for jurisdictional purposes, citing court decisions for the proposition that "the proper jurisdictional yardstick for an employer entity is the totality of its commercial activities" Chairman Leedom and Member Bean concurred in asserting jurisdiction because they believed that the legal precedents and the evidence of integration in the four operations warranted assertion of jurisdiction over the entire enterprise. Chairman Leedom took the view that the concern was predominantly engaged in operation of the grain elevators and the other operations were in the nature of incidental services to its members. Member Bean also relied upon (1) the Board's broad discretionary power in jurisdictional matters and (2) the fact that the assertion of jurisdiction over the entire enterprise was consistent with the Board's interpretation of the standards established in 1954.

enterprises.⁶¹ Jurisdiction was based upon the employer's direct outflow of \$2,200,000 a year. Likewise, the Board asserted jurisdiction in a case involving an ice-skating rink operated by a corporation which also operated various other retail establishments.⁶² The basis was the company's gross business of more than \$70,000,000 a year.

5. Direct Outflow

Several cases have raised questions as to what constitutes direct outflow under the jurisdictional standards. The nonretail "direct outflow" standard applies to "An enterprise which produces or handles goods and ships such goods out of State, or performs services outside the State in which the enterprise is located, valued at \$50,000 or more."⁶³ Jurisdiction is asserted over a multistate nonretail enterprise if it has a total direct outflow of \$250,000 although its individual units do not meet the \$50,000 test.⁶⁴ For a retail establishment, the standard is \$100,000 direct outflow.⁶⁵

The Board has emphasized that for the standard to apply, the employer must be the shipper. The Board has stated the requirement for direct outflow as follows:

Implicit in the current direct outflow standard is the requirement that, in order to qualify as the shipper of goods produced or handled, the enterprise involved, and not some other entity, must determine the destination of the goods shipped.⁶⁶

The question in this case was whether mail sent out of State by a mailing service for its customers should be counted as direct outflow. The materials mailed were valued at \$200,000 and the mailing service

⁶¹ *Central Carolina Farmers Exchange, Inc.*, 115 NLRB 1250 (1956).

⁶² *The Union News Co.*, 112 NLRB 584 (1955). Accord: *Eitwan Fertilizer Co.*, 113 NLRB 93 (1955) But see *Cascade Natural Gas Corp.*, 110 NLRB 947 (1954), where the Board declined to consider the total sales of a corporation's several gas manufacturing and distributing plants on the ground that each plant was "a self-contained and independent operational unit." However, total sales of the entire company was \$695,000, which did not meet the retail utility standard of \$3,000,000 a year (*Greenwich Gas Co.*, 110 NLRB 564).

⁶³ *Jonesboro Grain Drying Cooperative*, 110 NLRB 481 (1954), Members Murdock and Peterson dissenting.

⁶⁴ *Jonesboro Grain Drying Cooperative*, *supra*; *The Ransom and Randolph Co.*, 110 NLRB 2204 (1954); *Franklin Limestone Co.*, 114 NLRB 747, *Liggett Drug Co.*, 110 NLRB 949 (1954), shipments from warehouse to store of chain in another State. *American National Insurance Co.*, 111 NLRB 340 (1955) *Rockingham Poultry Cooperative*, 113 NLRB 376 (1955).

⁶⁵ *Hogue and Knott Supermarkets*, 110 NLRB 543 (1954). But where a retail store was operated as an integral part of a manufacturing business, the Board applied the nonretail standard and asserted jurisdiction on the basis of the manufacturer's direct outflow. *American Television, Inc. of Missouri*, 111 NLRB 164 (1955). See *Felway Shoe Corp.*, 110 NLRB 1914 (1954). *S. G. Tilden, Inc.*, 111 NLRB 640 (1955), "individual establishment" rule applied, jurisdiction declined.

⁶⁶ *Reliable Mailing Service Co.*, 113 NLRB 1263 (1955), Members Murdock and Peterson dissenting *Heating and Cooling Contractors Association*, 115 NLRB 386 (1956), applying the control test of *Reliable Mailing* to assert jurisdiction. Compare *American Rice Growers Cooperative Association*, 115 NLRB 275 (1956), where Chairman Leedom would apply the *Reliable Mailing* test to an association marketing rice for its members, stating that: "In his view the Employer actually finds the buyer and in that sense determines the destination of the shipment." See also *Safrit Lumber Co.*, 111 NLRB 657 (1955) where Member Murdock took the view an employer's out-of-State shipments at the direction of its customers should be held to constitute direct outflow.

received a fee of \$48,000 for its services. Declining jurisdiction of the mailing company, the Board majority said:

In the instant case, although specific addressees are determined by the Employer's address lists, it is the Employer's customers who determine the area to which the materials are to be shipped. Hence, the customers, rather than the Employer, are the shippers of the mail to out-of-State addressees and such out-of-State mail does not constitute direct outflow of the Employer.

In the *Mast Lumber* case, out-of-State companies received delivery of lumber and paid for it at the employer's sawmill and then hauled it away in their own trucks.⁶⁷ While it was not clear from the evidence whether the lumber actually was taken outside the State, the Board held that these transactions did not constitute direct outflow even if the lumber went out of the State, because it was not *shipped* by the employer involved in the case. A similar question had arisen in another case where the employer sold \$230,000 worth of used cars at his lot to out-of-State dealers, but it was not shown whether the buyers took the cars out of the State;⁶⁸ the Board majority declined to assert jurisdiction. Jurisdiction was asserted over automobile dealers which sold and shipped \$100,000 worth of cars out of the State.⁶⁹

Jurisdiction was asserted over an employer which shipped \$74,000 worth of sweet corn and carrots out of State, charging a 10 percent commission to the farmers, who retained title to the produce which was not commingled.⁷⁰ This was held to be direct outflow of the shipping employer.

However, merely ordering the shipment of goods does not make a shipper. Thus, the Board held that it was not direct outflow attributable to a pipe manufacturing and sales company when it ordered a steel company to ship pipe directly to the sales firm's warehouse in another State.⁷¹ In another case, the employer was engaged in sewing, on a dozen rate, garments which were shipped to it by other companies and then shipped back after finishing.⁷² The other companies then shipped the garments out of State. The employer received about \$75,000 a year for such services. It was urged that, under the legal theory that title to the garments had passed to the employer, the shipment of these garments into interstate commerce should be considered direct outflow. The Board rejected this contention.

Shipments out of State which are made f. o. b. from employer's

⁶⁷ *Mast Lumber Co*, 111 NLRB 18 (1955).

⁶⁸ *Homer Chevrolet Co*, 110 NLRB 825 (1954), Members Murdock and Peterson dissenting.

⁶⁹ *Grand River Chevrolet Co*, 110 NLRB 690 (1954); *Geo Byers Sons, Inc*, 111 NLRB 304 (1955)

⁷⁰ *C. A. Glass Co, Inc*, 111 NLRB 1366 (1955). See also *Antle Carrots, Inc*, 110 NLRB 741 (1954), more than \$50,000 worth of carrots shipped interstate, *Cochran Co*, 112 NLRB 1400, 1402 (1955), jurisdiction asserted over packingshed firm which "causes" more than \$100,000 worth of vegetables to be shipped out of State (Member Rodgers dissenting on another point)

⁷¹ *Central Valley Pipe Co.*, 111 NLRB 233 (1955).

⁷² *Vogue Craft*, 111 NLRB 220 (1955).

home State were held to constitute direct outflow despite the fact that the sales were to the out-of-State buyer's agent within the employer's State.⁷³

Services performed outside the employer's home State also come within this standard.⁷⁴ Also, the interstate shipment of a byproduct of the employer's principal operation constitutes direct outflow.⁷⁵

In applying the direct outflow standard to a company engaged in the sale and installation of store fixtures, the Board declined to limit its determination to the value of the installation directly involved in the case.⁷⁶

6. Indirect Outflow

The jurisdictional standard usually referred to as the "indirect outflow" standard applies to a nonretail enterprise

. . . which furnishes goods or services to other enterprises coming within [the \$50,000 outflow standard], or to public utilities or transit systems, or instrumentalities or channels of commerce and their essential links, which meet the jurisdictional standards established for such enterprises . . . valued at \$100,000 or more . . .⁷⁷

Multistate nonretail enterprises come within the Board's jurisdictional standards if the particular establishment involved meets this standard or if the enterprise has an annual indirect outflow of \$1,000,000.⁷⁸

Under the \$100,000 indirect outflow standard, the Board has asserted jurisdiction over a wide variety of enterprises.⁷⁹ These have

⁷³ *Crenshaw's, Inc.*, 115 NLRB 1374 (1956), *Texas Construction Material Co.*, 114 NLRB 378

⁷⁴ *M. B. Morgan Painting Contractor*, 111 NLRB 395 (1955) *Local 148, Truck Drivers and Warehousemen's Union (Harry Griffin Trucking)*, 114 NLRB 1494 (1955)

⁷⁵ *Dallas City Packing Co.*, 112 NLRB 63 (1955), \$200,000 worth of hides shipped out of State by meat packing company.

⁷⁶ *The Columbus Show Case Co.*, 111 NLRB 206 (1955)

Other cases in which jurisdiction was asserted under the direct outflow standards included: *Mississippi Chemical Corp.*, 110 NLRB 826 (1954), *Puerto Rico Food Products Corp.*, 111 NLRB 293 (1955), *Maxwell Bros Inc.*, 111 NLRB 1118 (1955), manufacturer of shipping crates, *Youngstown Tent and Awning Co.*, 110 NLRB 835 (1954); *Monroe Feed Store*, 110 NLRB 630 (1954), *Reimers-Kaufman Concrete Products, Inc.*, 110 NLRB 593; *The General Industries Co.*, 110 NLRB 712, *Wakefield's Deep Sea Trawlers, Inc.*, 112 NLRB 1357, *The Connecticut Bank and Trust Co.*, 114 NLRB 1293, checks sent out of State for collection, *American National Insurance Co.*, 111 NLRB 340 (1955), claims paid to policyholders outside the State, *Central Carolina Farmers Exchange, Inc.*, 115 NLRB 1250 (1956).

Cases in which jurisdiction was declined under this standard included *Essex Die Corp.*, 111 NLRB 959 (\$19,000), *Strongcraft Products, Inc.*, 110 NLRB 775 (1954, \$25,000).

⁷⁷ *Jonesboro Grain Drying Cooperative*, 110 NLRB 481, 484 (1954) as modified by *Whippany Motor Co.*, 115 NLRB 52 (1956). The Whippany decision abolished the distinction which required \$200,000 or more if the goods or services were not "directly utilized" by the recipient company. The majority opinion in Whippany said this distinction was abolished because experience since Jonesboro has shown "the general impracticability of testing, on a case by case basis, the precise type of utilization . . ." It was therefore decided that jurisdiction would be asserted under this standard "wherever the sales total \$100,000 annually, without regard to the manner in which purchasers make use of the goods or services"

⁷⁸ *Jonesboro, supra*, *Burns Detective Agency*, 110 NLRB 995 (1954)

⁷⁹ *Eagle Iron and Brass Co.*, 110 NLRB 747 (1954), forged tools, *Plastic Molding Co., Inc.*, 110 NLRB 2137 (1954) "tolling and set-up" services for plastic product makers; *Melco Plating Co.*, 110 NLRB 615 (1954), auto accessories; *Extral Corp.*, 111 NLRB 878 (1955), aluminum extrusions for windows; *New Orleans Laundries, Inc.*, 114 NLRB 1077 (1955), *City Window Cleaning Co.*, 114 NLRB 906 (1955) an association of window washing contractors; *Sharon Wire Co.*, 115 NLRB 372 (1956).

included a company engaged in installing fences for industrial concerns engaged in interstate commerce,⁸⁰ a concern servicing and repairing trucks of an interstate truckline,⁸¹ a printing company supplying printed materials to public utilities, transit systems and other concerns coming within the Board's jurisdictional standards,⁸² and a company furnishing guard service to plants of concerns engaged in interstate commerce.⁸³ Other employers over which jurisdiction was asserted on this test have included a concern supplying crushed rock for use as track ballast by an interstate railway⁸⁴ and a company engaged in constructing highways and bridges for a State.⁸⁵ In the latter case, the Board, rejecting the employer's contention that it did not come within Board jurisdiction, said:

Clearly the construction of State highways and bridges, which themselves constitute essential links in channels of interstate commerce, affects commerce within the meaning of the Act.

The Board has treated as indirect outflow sales of goods which have gone out of State through a dealer or a warehouse independent of the employer. Thus, jurisdiction was asserted over a poultry processor who sold \$284,000 worth of poultry to an out-of-State firm which took delivery within the processor's State and then shipped the poultry out of State.⁸⁶ Likewise, the Board asserted jurisdiction over a fishermen's association which sold more than \$100,000 worth of the fish caught by its members to dealers shipping \$50,000 a year out of State.⁸⁷

The Board held in one case that a manufacturer's shipments of goods out of State at the direction of a customer—a wholesaler—constituted indirect outflow.⁸⁸

While the statement of the standard in *Jonesboro* referred only to indirect outflow resulting from supplying a nonretail enterprise, the Board has indicated that indirect outflow also can be derived from

⁸⁰ *Hoosier Fence Co.*, 115 NLRB 51 (1956).

⁸¹ *Whippany Motor Co.*, 115 NLRB 52 (1956).

⁸² *Jahn-Tyler Printing and Publishing Co.*, 112 NLRB 167 (1955).

⁸³ *The Ransom and Randolph Co.*, 110 NLRB 2204 (1954) applying the \$250,000 standard for multistate nonretail enterprises. Members Murdock and Peterson dissenting from the standard applied. *A. D. T. Co.*, 112 NLRB 80 (1955), jurisdiction asserted over a fire and burglary alarm service providing a total of more than \$200,000 services to 69 customers engaged in interstate commerce.

⁸⁴ *G. C. McBride Co.*, 110 NLRB 1255 (1954). However, under the distinction between direct and indirect utilization then prevailing, a Board majority held that such rock was not directly utilized in the operation of the railway and hence had to meet the \$200,000 then in effect but later abolished. Cf. *F. M. Reeves and Sons, Inc.*, 111 NLRB 186 (1955), where jurisdiction was declined over an employer furnishing less than \$200,000 worth of ready-mixed concrete for State highways because it was not directly utilized "in the operational or functional use of roads." This distinction between direct and indirect utilization was eliminated by *Whippany Motor Co.*, 115 NLRB 52 (1956).

⁸⁵ *Madison County Construction Co.*, 115 NLRB 701 (1956).

⁸⁶ *Bush and Stokes Co.*, 111 NLRB 1142 (1955).

⁸⁷ *Fishermen's Marketing Association of Washington, Inc.*, 114 NLRB 189 (1955).

⁸⁸ *Safrit Lumber Co., Inc.*, 111 NLRB 657 (1955), Member Murdock, dissenting, would have held such shipments to be direct outflow. See also *The Danspur Co., Inc.*, 114 NLRB 40, where out-of-State excavation work under subcontract appears to be treated as indirect outflow, and *Local 148, Truck Drivers and Warehousemen's Union (Harry Griffin Trucking)*, 114 NLRB 1494 (1955), where subcontracted trucking services performed out of State are held direct outflow.

supplying a retail establishment which meets the retail standard of \$100,000 direct outflow.⁸⁹ However, the Board declined to assert jurisdiction based upon supplies to retail establishments merely because the establishments were part of a chain which met the Board's nonoutflow standards of jurisdiction.⁹⁰

The Board has stated the rule as follows:

As to within-the-State shipments made to . . . retail enterprises, such sales may or may not constitute indirect outflow depending upon whether the particular stores or units of such enterprises, which directly receive the Employer's products, themselves individually make annual shipments of \$100,000 out of the State. This is so because the Board would not assert jurisdiction over these stores or consumer outlets on the basis of their direct outflow if their out-of-State shipments were below \$100,000. The fact that the Board might also take jurisdiction over such individual stores as integral parts of sufficiently large multistate chains or on the basis of direct or indirect inflow is immaterial here. The indirect outflow concept in our jurisdictional standards is grounded on the assumption of some form of continued outflow directly into the stream of interstate commerce.⁹¹

Moreover, the sales or services must go to individual stores or units of the retail chain which have the necessary direct outflow.⁹² In one case, the Board said:

It is well established that sales to a local unit of retail chain enterprises do not constitute indirect outflow of the seller, under the jurisdictional standards unless the local unit of the retail enterprise which makes the purchases, itself, has sufficient outflow to warrant the Board's assertion of jurisdiction over it.⁹³

In another case where it was held that sales to retail mail order houses had not been shown to be indirect outflow, the Board stated:

It was not shown that any of these sales were to individual stores or units of such enterprises which themselves separately have sufficient direct outflow.⁹⁴

In computing indirect outflow, the Board has held that, where the employer is primarily engaged in performing services rather than in selling a finished product, the computation is based upon the value of the services, and not upon the value of the finished product.⁹⁵ However, service charges are added to charges for materials when both are furnished by the employer to the interstate company.⁹⁶

The Board also has considered the possibility of adding direct and indirect outflow to compute indirect outflow.⁹⁷

⁸⁹ *Star Garter Co.*, 114 NLRB 957 (1955). See also *New Jersey Poultry & Egg Cooperative Association, Inc.*, 114 NLRB 536 (1955).

⁹⁰ *New Jersey Poultry & Egg Cooperative Association, Inc.*, *supra*, *Star Garter Co.*, *supra*. But see *Frank Smith & Sons*, 111 NLRB 241 (1955), applying \$50,000 direct outflow standard to a warehouse of a retail chain.

⁹¹ *Star Garter Co.*, 114 NLRB 957 (1955).

⁹² *New Jersey Poultry & Egg Cooperative Association, Inc.*, *supra* (1955); *Star Garter Co.*, *supra*.

⁹³ *New Jersey Poultry & Egg Cooperative Association, Inc.*, *supra*.

⁹⁴ *Star Garter Co.*, *supra*.

⁹⁵ *Vogue Craft*, 111 NLRB 220 (1955).

⁹⁶ *The Plastic Molding Co., Inc.*, 110 NLRB 2137 (1954), \$2,459 in "tooling and setup charges" by a company supplying plastic molded parts.

⁹⁷ *Star Garter Co.*, 114 NLRB 957, where the Board said: "In sum, so far as it appears, the Employer's direct outflow equals \$22,665 and indirect outflow equals \$30,459. Neither separately nor together do these figures satisfy the minimum established standards." Cf. *The Brass Rail, Inc.*, 110 NLRB 1656 (1954), adding direct and indirect inflow to meet indirect inflow standard.

The indirect outflow standard does not apply to retail public utilities which serve industrial users,⁹⁸ nor to industrial building rental operations which include the furnishing of heat and similar services.⁹⁹ Nor does it apply to a plant cafeteria for employees.¹

a. Twice Removed From Interstate Commerce

Nor does indirect outflow embrace goods or services supplied by an employer to a concern over which the Board would assert jurisdiction only through the indirect outflow test. Such business is held to be "twice removed from interstate commerce."² Thus, a Board majority declined to assert jurisdiction over a firm supplying fertilizer to a commercial celery grower which did not ship its product directly out of State but sold it to a packingshed firm which packed it and marketed it in interstate commerce on a commission basis.³ The majority held that, in this instance, the fertilizer concern's business was twice removed from interstate commerce. Likewise under this doctrine, the Board declined jurisdiction over an employer which supplied materials to a roofing manufacturer within the State where the manufacturer sold its entire output to another company which in turn shipped it out of State.⁴ Another case involved a company cutting logs under contract for a company owned in part by a lumber manufacturing concern.⁵ The logging concern, at direction of the second company, shipped the logs directly to the lumber manufacturer which intermingled them with others to make lumber for shipment out of the State. The Board declined jurisdiction over the logging company on the ground that its operations were twice removed from interstate commerce.

7. Inflow

The Board's jurisdictional standard on inflow for nonretail enterprises is \$500,000 direct or \$1,000,000 indirect.⁶ For retail enterprises, the standards are \$1,000,000 direct inflow or \$2,000,000 indirect

⁹⁸ *Gary Hobart Water Corp*, 115 NLRB 1575 (1956), Member Murdock dissenting.

⁹⁹ *East Newark Realty Corp*, 115 NLRB 483 (1956), Members Murdock and Peterson dissenting.

¹ *C. R. Brown Cafeterias*, 115 NLRB 1772 (1956), Members Murdock and Peterson dissenting.

² This doctrine was first announced before adoption of the 1954 standards in *Brooks Wood Products*, 107 NLRB 237 (1953), Member Murdock dissenting. In that case, the employer sold crating materials to a company within the State which had the materials sent directly from the employer to other concerns within the State which used the materials for interstate shipments. The majority declined jurisdiction over the employer on the ground that his operations in making the crating materials were twice removed from interstate commerce. The rule was reaffirmed in *McDonald McLaughlin & Deane*, 110 NLRB 1340 (1954), where the Board declined jurisdiction over an employer performing logging services for a company logging timberlands of a plywood mill shipping in interstate commerce.

³ *O. B. Brown Fertilizer Co.*, 110 NLRB 1912 (1954), Member Murdock dissenting.

⁴ *Lucky Star Roofing Products Corp*, 114 NLRB 323 (1955). The Board asserted jurisdiction over the roofing manufacturer in this case.

⁵ *W. A. Swanson Logging Co.*, 111 NLRB 495 (1955).

⁶ *Jonesboro Grain Drying Cooperative*, 110 NLRB 481 (1954).

inflow.⁷ Direct inflow may be added to indirect inflow to determine whether or not an employer's business meets the *indirect* inflow standard.⁸

Questions as to what constitutes inflow and as to the distinction between direct and indirect inflow have arisen in relatively few cases. In an early case, the Board declined jurisdiction over a group of automobile dealers who purchased between \$1,000,000 and \$2,000,000 worth of new cars annually from assembly plants within the State. The bulk of the parts from which the cars were assembled—80 per cent in the case of 1 make—originated outside the State. A majority of the Board, holding that this did not constitute inflow, stated:

We consider a product as being part of an indirect stream of inflowing commerce only when it is delivered to the ultimate purchaser in the same form as when it entered the State. The flow is stopped when the form is materially altered, or, as in the case at bar, when the items become part of an entirely different product.⁹

The warehousing procedures in the tobacco industry also raised a question in two cases as to whether the products involved should be counted as direct or indirect inflow. In these cases, manufacturers of tobacco products maintained stocks of their products in public warehouses located in the same State as the employer involved in the case. In one case, the employer was a drugstore chain which sent its orders to the manufacturers' offices out of State but received the merchandise from the warehouses within the State.¹⁰ The Board held that this constituted direct inflow, stating:

... the purpose of the tobacco manufacturers in shipping their products across State lines into the public warehouses in Florida was necessarily in anticipation of the orders of Whelan [the employer] and other purchasers within the State and to facilitate prompt deliveries of such orders, . . . title to the merchandise passed from the out-of-State manufacturers to Whelan with no independent broker or wholesaler intervening; and, in substance, . . . the brief housing of the merchandise in public warehouses in Florida did not constitute a break in the practical continuity of movement of the goods until they reached Whelan's retail chain.

The Board reached the same result in an earlier case involving a tobacco wholesaler who received merchandise purchased within the State under a similar arrangement.¹¹

Nor does the fact that the employer orders through a local branch of an out-of-State supplier convert shipments from out of State into indirect inflow. Thus, the Board held that automobiles shipped to an Oklahoma dealer from assembly plants in other States constituted

⁷ *Hogue and Knott Supermarkets*, 110 NLRB 543 (1954), Members Murdock and Peterson dissenting.

⁸ *The Brass Rail, Inc.*, 110 NLRB 1656 (1954), *Autry Greer & Sons*, 112 NLRB 44 (1955), *Central Cigar & Tobacco Co.*, 112 NLRB 1094 (1955).

⁹ *Kenneth Chevrolet Co.*, 110 NLRB 1615 (1954), Member Murdock dissenting (applying retail standards).

¹⁰ *United Cigar-Whelan Stores Corp.*, 114 NLRB 1219 (1955); followed in *United Cigar-Whelan Store Corp.*, 115 NLRB 1214 (1956).

¹¹ *Central Cigar & Tobacco Co.*, 112 NLRB 1094 (1955).

direct inflow though the orders were placed through the manufacturer's Oklahoma City branch.¹² Similarly, the Board held that cement purchased by a Maryland manufacturer of concrete from a West Virginia cement maker was direct inflow despite the fact that the orders were placed through the manufacturer's Maryland office and, in some instances, the railway cars of cement were already on sidings in Maryland at the time of purchase.¹³

In calculating the value of purchases for inflow, it has been contended that taxes and freight charges should be deducted.¹⁴ The Board rejected such deductions, but it deducted a discount allowed on the invoice price.¹⁵

8. The Retail Standards

The major questions raised in connection with the retail standards have involved (1) what constitutes a retailer¹⁶ and (2) whether a group of stores, units, or corporations are sufficiently integrated to be treated as a single employer in applying the standards.¹⁷

Where the retailing is an integral part of a business covered under another set of standards, such as manufacturing or wholesaling, the Board has applied the nonretail standards.¹⁸ Warehouses of retail chains have been held subject to the retail outflow.¹⁹

a. Multistate Retail Chains

The standard for multistate chains was stated in 1954 as follows:

. . . in future cases involving a *multistate* chain of retail stores or service establishments we will assert jurisdiction over the entire chain or any integral part of it if the annual gross sales of all stores or establishments in the chain amount to at least \$10,000,000. Otherwise we will assert jurisdiction only over those individual stores or establishments comprising integral parts of the chain which independently satisfy the inflow or outflow standards [for retail enterprises.]²⁰

Interpreting this standard, a Board majority declared that, under it, "the Board will assert jurisdiction over an *entire* multistate chain if the

¹² *Jerry Cravens, Inc.*, 113 NLRB 875 (1955)

¹³ *V. Paturzo Bro & Son, Inc.*, 114 NLRB 1161 (1955).

¹⁴ *South Florida Liquor Distributors, Inc. of Tampa*, 113 NLRB 109 (1955), *V. Paturzo Bro & Son, Inc.*, *supra*.

¹⁵ *V. Paturzo Bro. & Son, Inc.*, *supra*

¹⁶ The standards apply to "retail stores or service establishments" *Hogue and Knott Supermarkets*, 110 NLRB 543, 544 See also *S. G. Tilden, Inc.*, 111 NLRB 640 (1955), brake relining shops held service establishments and retail standards applied.

¹⁷ For the treatment of questions of integration in retail firms, see, for example, *Raymond Pearson, Inc.*, 115 NLRB 190 (1956); *Orkin Exterminating Co (Of Kentucky)*, 115 NLRB 622. (Compare *Orkin "The Rat Man"*, *Inc.*, 112 NLRB 762 (1955)); *The Union News Co.*, 112 NLRB 584 (1955)

¹⁸ *American Television, Inc of Missouri*, 111 NLRB 164 (1955), manufacturer, *Aroostook Federation of Farmers, Inc.*, 114 NLRB 538 (1955), manufacturer; *W. B. Jones Lumber Co.*, 114 NLRB 415 (1955) wholesaler-retailer; *Potato Growers Cooperative Co.*, 115 NLRB 1281 (1956).

¹⁹ *S. G. Tilden, Inc.*, 111 NLRB 640 (1955).

²⁰ *Hogue and Knott Supermarkets*, 110 NLRB 543, Members Murdock and Peterson dissenting.

entire chain has gross sales of at least \$10,000,000 or if *each* of its integral parts independently satisfies the single store test."²¹ [Emphasis supplied.]

This case involved an employer which had 2 stores and a warehouse in 1 State and 2 stores in an adjoining State. An election was sought among the employees of all four stores. None of the stores, individually or considered by State units, had sufficient inflow or other commerce to bring them within the retail standards,²² and the chain's annual gross business was only \$2,000,000. The Board majority held that neither of the two requirements for asserting jurisdiction over a multistate chain had been met.

The majority distinguished this case from an earlier decision where jurisdiction was asserted in a case involving one store of multistate chain, on the basis of the direct inflow to all the stores of the chain located in the same State.²³ The majority opinion in *Deskins* said:

. . . the Board found that this store [in *Greenberg Mercantile*] together with the other stores in the chain located in the same State met the Board's direct inflow standards for asserting jurisdiction over an entire *intrastate* retail chain or any integral part thereof. Therefore the Board asserted jurisdiction over the employer's operations in that State. In the instant case the unit requested involves all the employer's operations in two States, rather than a segment of the Employer's operations in a single State. Accordingly, there is no warrant for applying the standards established for *intrastate* retail chain enterprises to the combined operations of the Employer's *multistate* chain in this case.

b. Distinction Between Wholesale and Retail

In view of the different standards for retail and nonretail enterprises, questions have arisen as to where the line should be drawn between the two. Most of these questions have involved companies selling merchandise or services.

It is well established that wholesale operations come under the nonretail standards,²⁴ and the Board has adopted a trial examiner's holding in one case that subcontracting is not retailing.²⁵ The Board also has applied the nonretail standards to enterprises which it found

²¹ *Deskins Super Market, Inc.*, 115 NLRB 1571 (1956), Members Murdock and Peterson dissenting.

²² \$1,000,000 direct inflow, \$2,000,000 indirect inflow, or \$100,000 direct outflow. Members Murdock and Peterson took the position that jurisdiction should be asserted on the basis of the \$1,395,000 total direct inflow to all the stores and the warehouse. They noted further that, had the petitioner limited its unit request to the employer's West Virginia operations, jurisdiction would have been asserted on the basis of the \$360,000 direct outflow from the employer's warehouse in accordance with the *Greenberg Mercantile* decision, *infra*. As jurisdiction over part of the employer's operations did exist, they believed jurisdiction had to be asserted over the whole of the employer's operations, which obviously exerted a greater, rather than a lesser, impact on commerce.

²³ *Greenberg Mercantile Corp.*, 112 NLRB 710 (1955).

²⁴ *Treasure State Equipment Co.*, 114 NLRB 529 (1955), *J. S. Latta & Son*, 114 NLRB 1248 (1955); *Dependable Parts, Inc.*, 112 NLRB 581 (1955), *Central Cigar & Tobacco Co.*, 112 NLRB 1094 (1955).

²⁵ *International Association of Heat and Frost Insulators and Asbestos Workers (Rhode Island Covering Co.)*, 114 NLRB 1526 (1955).

to be integrated wholesale and retail operations.²⁶ The nonretail standards also apply to wholesale utilities²⁷ and to manufacturing and distributing concerns.²⁸

In determining what constitutes wholesaling, the Board has relied upon the definitions considered by the Supreme Court in the *Roland* case involving the Fair Labor Standards Act.²⁹ Thus, the Board said:

In *Roland Electrical Company v. Walling*, the Supreme Court, in considering whether a firm which serviced and sold electrical equipment to industrial consumers was a "retail" or "service" establishment within the intendment of the Fair Labor Standards Act, examined and set forth the various criteria for distinguishing between "wholesale" and "retail" operations. In doing so, the Court noted that retail sales include sales to a purchaser who desires "to satisfy his own personal wants or those of his family or friends," while wholesale sales constitute "sales of goods or merchandise" to trading establishments of all kinds, to *institutions*, industrial, commercial, and professional users, and sales to governmental bodies.³⁰

Following this definition, the Board found that an employer who sold a substantial volume of equipment to public schools for institutional use was a wholesaler subject to the nonretail jurisdictional standards, and asserted jurisdiction.³¹ Applying the same tests, the Board held that an employer selling logging and road construction equipment was subject to the nonretail standards.³²

9. Bus and Transit Companies

The Board distinguishes between local transit companies, which come under the \$3,000,000 gross business standard for utilities, and bus or transit companies which constitute links in the chain of interstate commerce by hauling interstate passengers or by sharing facilities with interstate buslines.³³ In the *Rollo* case, the Board established a standard of \$100,000 annual revenue from operations connected with the interstate carriage of passengers for both intrastate and interstate buslines. The Board majority added:

We do not regard an intrastate transit company that merely connects with interstate carriers as a link in the interstate transportation of passengers. In

²⁶ *Meddin Enterprises, Inc.*, 114 NLRB 137, *W. B. Jones Lumber Co., Inc.*, 114 NLRB 415 (1955). But cf. *Felsway Shoe Corp.*, 110 NLRB 1914 (1954), where a parent company which operated a common warehouse and acted as purchasing agent for a chain of 23 stores was held, with the stores, to constitute a retail enterprise.

²⁷ *Central Electric Power Cooperative*, 113 NLRB 1059 (1955).

²⁸ *Coca Cola Bottling Co. of New York, Inc.*, 114 NLRB 1423 (1955).

²⁹ *Roland Electrical Company v. Walling*, 328 U. S. 657 (1946).

³⁰ *J. S. Latta & Son*, 114 NLRB 1248 (1955).

³¹ *J. S. Latta & Son*, *supra*.

³² *Treasure State Equipment Co.*, 114 NLRB 529 (1955).

³³ *Rollo Transit Corp.*, 110 NLRB 1623 (1954), Members Murdock and Peterson dissenting in part.

order that an intrastate transit company qualify as a link in the interstate transportation of passengers, we shall require factors such as the sale of tickets by it for a continuous passage using interstate lines or the sale of tickets by connecting interstate lines for a continuous passage using the intrastate company, the sharing of facilities by it with interstate companies, and the interchange of passes or tickets between it and interstate companies.³⁴

Subsequently, the Board distinguished a third type of company in the field of passenger transportation—the chartered bus and sight-seeing service. A majority of the Board held that this type of concern was nearer to taxi service than either a public transit company or a busline and therefore declined to assert jurisdiction in accord with the policy as to taxicabs.³⁵ But the *Jonesboro* indirect outflow standard of \$100,000 was held to apply to a local bus company when it was engaged in charter operations for interstate industrial concerns.³⁶

10. National Defense

Applying the national defense standard of \$100,000 a year of goods or services furnished pursuant to Government contract and directly related to national defense,³⁷ the Board has asserted jurisdiction over a variety of enterprises. These have included a university-operated laboratory engaged in research for the United States Department of Defense,³⁸ a company operating and maintaining a field to train Air Force cadets,³⁹ an association of contractors which included concerns engaged in construction on national defense projects,⁴⁰ a hospital treating veterans under Government contract,⁴¹ a concern furnishing guard services at an Atomic Energy Commission installation,⁴² a company supplying concrete to contractors doing construction on an

³⁴ *Rollo Transit Corp*, *supra*, footnote 6. For application of these requirements, see *Charleston Transit Co.*, 111 NLRB 1214 (1955), and *Suburban Transit, Inc.*, 111 NLRB 1251 (1955)

³⁵ *Tanner Motor Tours, Ltd.*, 112 NLRB 275 (1955), Member Murdock dissenting. The majority opinion said (p. 277): "Indeed, the nature of the operations of all the corporations herein involved appears, if anything, to be most like that of a taxicab operation. Moreover, the impact on interstate commerce of these corporations appears, we believe, to be even less than that of the usual taxicab operation."

³⁶ *Potash Mines Transportation Co., Inc.*, 116 NLRB 1295.

³⁷ *Maytag Aircraft Corp.*, 110 NLRB 594 (1954), Member Murdock dissented from the standard, Member Peterson disagreed with the amount of the standard and the contract requirement. In that case, the standard is stated as follows: ". . . we have determined that in future cases the Board will assert jurisdiction over enterprises of this type only if they are engaged in providing goods or services directly related to national defense pursuant to Government contracts, including subcontracts, in the amount of \$100,000 or more a year."

³⁸ *Massachusetts Institute of Technology (Lincoln Laboratory)*, 110 NLRB 1611 (1954), Chairman Farmer and Member Rodgers dissenting.

³⁹ *Garner Aviation Service Corp.*, 111 NLRB 191 (1955).

⁴⁰ *Alaska Chapter of Associated General Contractors of America, Inc.* 113 NLRB 41; *International Union of Operating Engineers, Local 12, AFL (Associated General Contractors, Southern California Chapter)*, 113 NLRB 655

⁴¹ *Hospital Hato Tejas*, 111 NLRB 155 (1955).

⁴² *Federal Services, Inc.*, 115 NLRB 1729 (1956).

Air Force base,⁴³ and a dairy cooperative furnishing milk to Army mess halls, and a commissary on a military post.⁴⁴

In two cases, companies operating Government-owned plants under cost-plus-fixed-fee contracts contested Board jurisdiction under the standards.⁴⁵ The Board asserted jurisdiction in both cases. In one case, the company contended that, because of the many Government controls under which it operated the plant, the Federal Government was actually the employer and the company was only the Government's agent.⁴⁶ Further, company witnesses testified that, while the Government contract for operation of the plant had a "multimillion dollar" value, the company netted only \$56,000 from the contract. The Board rejected the company's contention that it was merely an agent of the Government, observing that the company "retains a definite area of effective control over labor relations" in the plant. And, in determining whether the jurisdictional amount was met, the Board used the value of the services furnished rather than the employer's net fee.

The Board declined jurisdiction in a case involving a cab company which had contracts to provide service to and from a military base.⁴⁷ In this case, the company had a contract valued at about \$62,500 with the Army to furnish service between the Army installation and a nearby city. In addition, it had a contract for a post exchange concession to operate a taxicab service between the Army installation and a nearby Air Force base, valued at about the same amount. However, the Board, in declining jurisdiction, based its decision upon its general policy of not asserting jurisdiction over taxicabs.⁴⁸

In another case, the Board declined to apply the national defense standard to a company managing privately owned housing projects located on military bases.⁴⁹ A Board majority held that the operation of such a project does not have a substantial effect on national defense.

⁴³ *Ready Mixed Concrete Co*, 110 NLRB 1251 (1954). Compare *F. M. Reeves and Sons, Inc.*, 111 NLRB 186 (1955) where the company's contract for gravel did not reach the jurisdictional amount. Member Murdock, concurring separately, pointed out that, while the *Maytag* standard for asserting jurisdiction on national defense grounds requires that the services be provided pursuant to Government contracts or subcontracts, "the record herein discloses no evidence of such a contract."

⁴⁴ *Long Meadow Farms Cooperative, Inc.*, 115 NLRB 419 (1956), Member Murdock concurring, Member Rodgers dissenting. Both separate opinions pointed out that the decision to assert jurisdiction constituted a liberal interpretation of the requirements that goods or services furnished must be "directly related" to the national defense.

⁴⁵ *E. I. DuPont de Nemours & Co (Indiana Ordnance Works)*, 112 NLRB 434 (1955), *Thiokol Chemical Corp. (Longhorn Division)*, 113 NLRB 547 (1955).

⁴⁶ *Thiokol Chemical Corp*, *supra*.

⁴⁷ *Union Cab Co*, 110 NLRB 1921 (1954), Members Murdock and Peterson dissenting separately.

⁴⁸ In this case, the Board majority announced that it would adhere to the policy of declining jurisdiction over taxicabs in the Territories as well as in the 48 States. The military reservations involved were located in Alaska.

⁴⁹ *Fort Knox Construction Co*, 112 NLRB 140 (1955), Member Murdock dissenting.

III

Representation and Union-Shop Cases

The act requires that an employer bargain with the representatives selected by a majority of his employees in a unit appropriate for collective bargaining. But the act does not require that the representative be selected by any particular procedure, as long as the representative is clearly the choice of a majority of the employees.

As one method for employees to select a majority representative, the act authorizes the Board to conduct representation elections. However, the Board may conduct such an election only after a petition has been filed by the employees or any individual or labor organization acting in their behalf, or by an employer who has been confronted with a claim of representation from an individual or a labor organization.

Once a petition has been properly filed, the Board has the statutory authority to determine the employees' choice of collective-bargaining representative in any business or industry affecting interstate commerce, with the major exceptions of agriculture, railroads, and airlines. It does not always exercise that power, however, where the enterprises involved have relatively little impact upon interstate commerce. It also has the power to determine the unit of employees appropriate for collective bargaining.

The Board may formally certify a collective-bargaining representative in a representation case only upon the basis of the results of a Board-conducted election. Once certified by the Board, the bargaining agent is the exclusive representative of all employees in the appropriate unit for collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment.

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

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

This chapter deals with decisions of the Board during the 1956 fiscal year which involve novel questions or set new precedents in representation or union-shop cases.

1. Showing of Employee Interest To Justify Election

Section 9 (c) (1) requires the Board to investigate any representation petition which has been filed "(A) by an employee or group of employees or any individual or labor organization acting in their behalf," and which alleges that a "substantial number" of the employees desire an election.¹ The Board, in turn, requires that a petitioner, other than an employer, make a showing that at least 30 percent of the employees favor the proposed election.

Under Board rules, a party seeking to participate in an election as an intervenor must show a contractual interest,² or some representative interest.³ The representative-interest rule was applied during fiscal 1956 in two decertification cases where a Board majority reaffirmed its view that the same rules should govern intervention in representation and decertification cases. Thus, in 1 case⁴ 2 outside unions with some interest were permitted to participate as joint intervenors, but in a companion case the outside union's request to intervene was denied because it made no showing.⁵

a. Sufficiency of Showing of Interest

The question whether a petitioner's showing of interest is sufficient is determined administratively and may not be litigated.⁶ This rule, the Board held during the past year, applies equally in processing a decertification petition or a petition for certification.⁷

The cases where the necessary showing was challenged during fiscal 1956 involved questions of timeliness as well as the adequacy of the showing.

¹ Section 9 (c) (1) (B) provides for investigation of employer petitions alleging a recognition claim by individuals or labor organizations.

² *East Texas Pulp & Paper Company*, 113 NLRB 539. See also *F. H. Soldwedel Company*, 113 NLRB 225, where intervention was granted on a transferee local's alleged contractual interest.

³ See Twentieth Annual Report, p 12, footnote 3.

⁴ *Standard Oil Co. of California (Richmond Refinery)*, 113 NLRB 475.

⁵ *Standard Oil Co. of California and California Exploration Co.*, 113 NLRB 477. Member Rodgers took the view that the nature and purpose of decertification proceedings preclude outside union intervention.

⁶ However, if evidence is offered which creates a reasonable cause for believing that an interest showing may have been tainted by fraud, the Board will make a further administrative investigation to ascertain the sufficiency of the showing. See, e. g., *Royal Jet, Inc.*, 113 NLRB 1064, and *General Shoe Corp.*, 114 NLRB 381, where no further investigation was found appropriate because the party alleging fraud failed to offer any supporting evidence, or because the evidence offered was inadequate. Cf. *Globe Iron Foundry*, 112 NLRB 1200, see also *A. Werman & Sons, Inc.*, 114 NLRB 629.

⁷ *LeRoi Div., Westinghouse Airbrake Co.*, 114 NLRB 893.

As to timeliness, the Board had occasion to make it clear that, generally, the showing of interest need not be completed before the issuance of the notice of hearing, and that a showing presented at the hearing may satisfy the Board's requirements.⁸ On the other hand, a recent modification of the Board's contract-bar rules requires that, in the case of a petition filed under the 10-day rule,⁹ the petitioner's showing⁷ must either accompany the petition or be furnished within the time limits specified in § 101.16 of the Board's Statements of Procedure.¹⁰ Absent such a showing, the petition will be considered barred by a prior contract executed during the 10-day period.

To justify participation in an election, the party's showing must be current.¹¹ The Board has, therefore, held that a petitioner who submits undated authorization cards—rather than dated ones as required by the Board's petition form—does not make a sufficient showing.¹¹

Several cases involved the question of the identity of the party whose interest was shown by the proof submitted. Authorization cards naming the petitioner's parent organization were held sufficient where there was no evidence of fraud or questionable authenticity.¹² However, the Board made it clear that it is better practice to submit cards naming the petitioning party. The Board also held in one case that cards designating the petitioner shortly before it came into existence were sufficient to establish interest because the cards, unless revoked, continued to indicate the employees' desires.¹³ And the interest of joint petitioners was held sufficiently established by authorization cards obtained when the petitioners were seeking to represent the employees individually rather than jointly.¹⁴ A Board majority in one case found it unnecessary to require a new showing of interest from a petitioner which had changed its affiliation between the time of the filing of the petition and the hearing.¹⁵ The majority here noted that the petitioner had maintained its identity as a labor organization, and there was no indication that the change in affiliation was contrary to the wishes of the employees in the proposed unit.

2. Existence of Question of Representation

Section 9 (c) (1) conditions the granting of a petition for a Board election on a finding that a question of representation exists. Whether

⁸ *Channel Master Corp.*, 114 NLRB 1486

⁹ *Infra*, p 44.

¹⁰ *Boston Quilting Corp.*, 115 NLRB 491.

¹¹ *A. Werman & Sons, Inc.*, *supra*.

¹² *Olin Mathieson Chemical Corp.*, 114 NLRB 948.

¹³ *Mason Can Co.*, 115 NLRB 105.

¹⁴ *The Stickleless Corp.*, 115 NLRB 979

¹⁵ *The Great Atlantic & Pacific Tea Co., National Produce Division*, 113 NLRB 865, Chairman Leedom and Member Rodgers dissenting.

this condition is satisfied depends in the first place on whether or not the petition filed with the Board has a proper basis.¹⁶

a. Petition of Candidate Bargaining Agent

Ordinarily an election will be directed if a request for recognition has been made by the petitioner and denied by the employer. However, the Board had occasion during the past year to make clear again that the petition of a party which seeks certification as bargaining agent raises a valid question of representation if the employer indicates his unwillingness to recognize the petitioner at the hearing. No demand for recognition is required¹⁷ other than the petition itself.¹⁸ In 1 case, the employer's objection to the consolidation of 2 separate petitions and to an amendment naming the petitioners as joint representatives, on the ground that no previous joint demand for recognition had been made, was rejected because at the hearing, the employer refused to recognize the joint petitioners.¹⁹

In another case, the petition of a previously certified union was found to raise a question of representation under the following circumstances: After its certification, the union made no efforts to negotiate a contract. Several years later the union asked for recognition, but the employer refused to bargain, asserting loss of majority. Rather than file refusal-to-bargain charges, the union filed a petition for a unit broader than the one for which it had been certified. The Board held that the union's demand and the employer's refusal to recognize the union as the continued majority representative presented a question of representation.²⁰

b. Employer Petitions

An employer's petition for a representation election must be based on a present demand for recognition. However, no formal request for recognition is required. Thus, letters asking for a meeting to "conclude a workable Agreement," and picketing for the apparent purpose of obtaining recognition, were held tantamount to demands for recognition.²¹ Similarly, a sufficient demand to support an employer petition was found where a union, following disaffiliation, advised the employer of the change in affiliation and the continuance in

¹⁶ The ultimate finding of the existence of a representation question under section 9 (c) (1) depends on other statutory and administrative provisions, viz: Qualification of the proposed bargaining agent (see pp. 34-38); bars to a present election, such as contracts or prior determinations (see pp. 38-52), and the appropriateness of the proposed bargaining unit (see pp. 52-64)

¹⁷ *Stratford Furniture Corp.*, 115 NLRB 739.

¹⁸ See Twentieth Annual Report, p. 14.

¹⁹ *Central Soya Company, Inc.*, 115 NLRB 246.

²⁰ *Kearney & Trecker Corporation*, 114 NLRB 891.

²¹ *Casey-Metcalf Machinery Co., et al.*, 114 NLRB 1520, *Shepherd Machinery Co.*, 115 NLRB 736, *Andrew Brown Company*, 115 NLRB 886.

office of the same officers, and requested that dues be withheld and reported periodically until Board action.²²

The Board also had occasion to point out again that an employer petition presents a representation question even though the underlying demand for recognition is that of a previously certified representative.²³ As to the sufficiency of a certified union's demand, a continuing request for a contract covering the employees named in the employer's petition has been held to satisfy the requirement.²⁴ In another case, it was held that the petition of an employer who contested a certified union's present majority status raised a question of representation in view of the union's assertion that the contract of its parent international was a bar.²⁵ The Board here noted that by asserting a contract bar the union in effect challenged the petitioning employer's right to contest the union's status as bargaining representative.

Contract demands have also been held to raise a question of representation even though the employer, before filing the petition, had agreed to negotiate a contract.²⁶

c. Disclaimer of Interest

In several cases, the existence of a question of representation again depended on whether the parties opposing the petitions had effectively disclaimed their interest in the employees involved.

As heretofore, the Board held that, in order to remove a question of representation, an asserted disclaimer must be clear and unequivocal on its face and in the light of the disclaimant's conduct.²⁷

A disclaimer of interest in an employer's employees is considered ineffectual where the disclaiming union later pickets the employer for the manifest purpose of obtaining recognition.²⁸ On the other hand, the Board in the same case pointed out that organizational activity does not of itself defeat an earlier disclaimer. In determining whether or not the union's subsequent activities are consistent with the disclaimer, the Board considers the whole course of conduct, and the mere use of language on the picket signs ostensibly directed to organization does not offset other conduct implying a demand for recognition.²⁹

²² *Globe Forge, Inc.*, 115 NLRB 862.

²³ *Triangle Publications, Inc.*, 115 NLRB 941

²⁴ *Triangle Publications, Inc.*, *supra*

²⁵ *Casey-Meicall Machinery Co., et al.*, *supra*.

²⁶ *Schye & Sullivan and Riedesel Construction Co.*, 115 NLRB 1427.

²⁷ *Curtis Brothers, Inc.*, 114 NLRB 116.

²⁸ *Riteway Motor Parts Corp.*, 115 NLRB 294. Member Peterson, dissenting, considered the picketing here organizational. For other cases where the Board rejected the disclaimant's contention that the purpose of its picketing was organizational rather than to obtain recognition from the picketed employer, see *Curtis Brothers, Inc.*, *supra*; *Andrew Brown Company*, 115 NLRB 886; *Shepherd Machinery Company*, 115 NLRB 736.

²⁹ *Riteway Motor Parts Corp.*, and *Curtis Brothers, Inc.*, both *supra*.

Nor will a union be permitted to defeat determination of a representation question by successive disclaimers interspersed with new demands for recognition. Thus, where a union disclaimed interest at the original hearing on a petition and then engaged in inconsistent conduct, its renewed disclaimer at the second hearing was held not entitled to credence.³⁰ And no effective disclaimer was found where a union disclaimed first when informed of the filing of a petition, then again demanded collective-bargaining negotiations, and later renewed its disclaimer at the hearing on the petition.³¹ Similarly, a representation question was held not to have been removed by three successive disclaimers as soon as petitions were filed by the employer.³² After its first disclaimer, the union in this case made an express demand for a contract, and after the second disclaimer it engaged in picketing for recognition up to the time of the hearing. The Board held that in view of these circumstances no effect could be accorded the union's third disclaimer entered 2 days after a new petition was filed.

In one case, the Board rejected an employer's contention that the petitioner's failure to appear at the hearing amounted to abandonment of the petition.³³ The Board held that the petitioner, having filed a statement opposing the employer's assertion, could not be found to have disclaimed its representative interest.

3. Qualification of Representatives

Under the terms of section 9 (c) (1), employees may be represented "by an employee or group of employees or any individual or labor organization." However, the Board's power to investigate and certify the representative status of a labor organization is subject to certain statutory limitations. Thus, a labor organization may be certified only if it is in compliance with the filing requirements of section 9 (f), (g), and (h). The act³⁴ also prohibits a labor organization from being certified as representative of a unit of plant guards if it "admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards."³⁵

Aside from these statutory limitations, the Board has adhered to its policy not to certify a representative which is found to lack the qualifications of a bona fide bargaining agent.

³⁰ *Riteway Motor Parts Corp.*, *supra*.

³¹ *Casey-Metcalf Machinery Co.*, *et al.*, 114 NLRB 1520

³² *Shepherd Machinery Company*, *supra*.

³³ *Aroostook Federation of Farmers, Inc.*, 114 NLRB 538.

³⁴ Section 9 (b) (3).

³⁵ See, e. g., *Federal Services, Inc.*, 115 NLRB 1729, *The Midvale Co.*, 114 NLRB 372.

a. Filing Requirements³⁶

A participant in a representation proceeding, in order to be subject to the filing requirements of section 9 (f), (g), and (h), must be a labor organization as defined in section 2 (5).³⁷

Regarding sufficiency, the Board held in one case that the petition of a parent organization, which at the time had no local admitting the employees involved, was adequately supported by the parent's compliance.³⁸ The Board rejected the contention that the petition should be dismissed because a noncomplying local may be established at the time of certification. As in an earlier case,³⁹ the Board again pointed out that should the parent win the election, a certification would not be issued if a local were in fact in the picture and unless such local were in compliance.

In another case the Board had occasion to make it clear that separate compliance by unions which seek to represent a bargaining unit jointly is sufficient, and that they need not comply jointly with the filing requirements.⁴⁰

(1) Change in Rule on Compliance With Section 9 (g)

During the past year the Board reviewed its policies in administering section 9 (g) which provides that a labor organization, in order to be eligible for Board certification, must file with the Secretary of Labor annual reports which bring up to date the information specified in section 9 (g), and must furnish certain financial reports annually to the Secretary of Labor and to the union's membership.

Unions seeking the use, or continued use, of the Board's processes have been granted a 90-day extension at the end of their fiscal year

³⁶ For rules governing compliance questions in both representation and unfair labor practice proceedings see Nineteenth Annual Report, pp 13-15.

As to the litigability of compliance questions, see the Supreme Court's decision in *N. L. R. B. v. Coca-Cola Bottling Co. of Louisville, Inc*, 350 U. S. 264, discussed in chapter on Supreme Court Litigation. The Board has interpreted the decision as in harmony with its practice of not permitting litigation of section 9 (b) matters which do not involve interpretation of the statutory language in representation or unfair labor practice proceedings, and of determining such questions administratively only in collateral proceedings. See *Desaulniers and Company*, 115 NLRB 1025, Member Rodgers dissenting, see also *United Cigar-Whelan Stores*, 115 NLRB 1214, "*M*" *System, Inc*, 115 NLRB 1316, *Crenshaw's, Inc*, 115 NLRB 1374. But note the views expressed by the First Circuit Court of Appeals in *N L R B. v Puerto Rico Food Corp.*, 232 F. 2d 515. This case and others in the courts of appeals involving compliance questions are discussed in the chapter on Enforcement Litigation.

³⁷ See *General Shoe Corp.*, 113 NLRB 905, *Perfect Circle Corp*, 114 NLRB 725, *Olin Mathieson Chemical Corp.*, 114 NLRB 948, *Geneva Forge Inc*, 114 NLRB 1290, *The Dunleavy Company*, 114 NLRB 1589, *The Hertner Electric Company*, 115 NLRB 820. Compare *Mason Can Co.*, 115 NLRB 105, where the Board rejected a contention that compliance was ineffective because the petitioner did not come into existence and did not elect officers until the day after the required documents and affidavits of officers were filed.

³⁸ *Trade Winds Company, Inc*, 115 NLRB 860.

³⁹ *The Borden Food Products Company*, 113 NLRB 459.

⁴⁰ *Cab Service & Parts Corp*, 114 NLRB 1294

to renew their compliance.⁴¹ The Board has found that 90 days is an adequate time for preparing, filing, and publishing the necessary data.⁴² However, in order to be entitled to the 90-day grace period, the Board has required filing of either a certificate of intent to effect renewal within the 90-day period, or, in lieu of the certificate, a letter stating that the required information will be furnished the Department of Labor and the union's membership, and that proof of distribution of its financial statement to members will be supplied within the 90-day period.

After reviewing its procedure, the Board in *Monsanto*⁴³ announced the following policies:

1. A union which has been granted a 90-day extension for renewing compliance under section 9 (g) may be granted additional time if it was prevented from complying within the 90-day period by circumstances beyond its control, as where the delay is due solely to the Department of Labor's failure to process materials filed by the union during the grace period.

2. Failure of a petitioner to come into compliance within the time allowed by the Board will result in the dismissal of the petition.

3. Failure of labor organizations involved in Board proceedings, other than a petitioner, so to comply will result in the immediate denial to them of the use of the Board's processes.

4. Failure of any union to comply by the end of the grace period will result in the immediate withdrawal or revocation of any action taken by the Board during the grace period.

In attaching immediate sanctions to failure to achieve compliance with section 9 (g) during the grace period, the Board abandoned the earlier *Fawcett-Dearing* rule⁴⁴ under which the only sanction invoked against a union which permitted its section 9 (g) compliance to lapse was the withholding of certification pending renewal of compliance. As noted by the Board, this rule was geared to the wording of section 9 (g) which, unlike section 9 (f) and (h), prohibits the Board only from certifying a union temporarily out of compliance, and does not prohibit the Board from investigating and processing a question concerning representation at the instance of such a union. However, the Board believes that its revised policy is necessary in order to give effect to the purpose of section 9 (g), *viz*, to insure the responsible administration of union funds by requiring unions to make periodic accounting to their members of their financial stewardship. To permit excessive

⁴¹ A union which has a case pending before the Board is given 30 days' advance notice of the impending expiration of its compliance status. Failure to give such notice, however, in no way relieves a union of its responsibility to renew compliance. See *Monsanto Chemical Company (John F. Queeny Plant)*, 115 NLRB 702, setting forth in detail the procedure for effecting compliance with section 9 (g).

⁴² See *Monsanto Chemical Company*, *supra*.

⁴³ See footnote 41, *supra*.

⁴⁴ *Fawcett-Dearing Printing Company*, 106 NLRB 1249.

delays in making such accounting, in the Board's view, would substantially impair the efficacy of section 9 (g).

In a later case, a majority of the Board held that a union's inadvertent neglect in failing to complete section 9 (g) compliance during the 90-day period was not a circumstance beyond the union's control which entitled it to a further extension of time under the *Monsanto* rule.⁴⁵

b. Other Questions of Qualification

The Board was confronted in one case with an employer's contention that the AFL-CIO merger effected a merger of the petitioner and the intervenor in the case and deprived them of their capacity to represent employees separately.⁴⁶ The Board rejected the contention, pointing out that the status of the petitioner and the intervenor as distinct labor organizations was not shown to have been affected by the merger. Each, according to the Board, though affiliated with the same parent organization, was qualified to seek the separate representation of the employer's employees.⁴⁷

The Board has adhered to the rule that the capacity of a union which is willing to represent employees is not affected by internal union matters, such as limitations on the eligibility of employees to the union's membership.⁴⁸ Nor was an intervenor's individual capacity to represent certain employees held affected by a conflict which may have existed because the petitioner in the case was the intervenor's parent.⁴⁹

In one case, the Board held that the filing of a petition by a parent organization presumptively established its desire and willingness to represent the employees sought, and that the union's alleged undertaking to divide the employees among various affiliates was not ground for dismissal.⁵⁰

(1) Craft Representatives

The Board during the past year reaffirmed its requirement that in order to qualify as representative of a craft unit, which is sought to be severed from a larger unit, the proposed bargaining agent either must have traditionally represented the particular craft,⁵¹ or must have been organized for the sole and exclusive purpose of representing the

⁴⁵ *Southern Waste Material Co., Inc.*, 115 NLRB 1273.

⁴⁶ *Individual Drinking Cup Co.*, 115 NLRB 947.

⁴⁷ As to the effect of the "no-raiding" provisions in the constitution of the merged AFL-CIO organization, see Effect of Waiver, *infra*, pp. 52.

⁴⁸ See "*M*" System, *Inc.*, 115 NLRB 1316

⁴⁹ *East Texas Pulp & Paper Company*, 113 NLRB 539.

⁵⁰ *Olin Mathieson Chemical Corporation*, 114 NLRB 948. Compare *Belmont Smelting & Refining Works, Inc.*, 115 NLRB 495, holding that an individual petitioner was not disqualified from being certified as bargaining representative because he intended to implement his expected certification by establishing an advisory committee of employees.

⁵¹ *American Potash & Chemical Corporation*, 107 NLRB 1418.

specific craft.⁵² Neither of these tests was held to have been met by a severance petitioner which had not represented the craft involved in the past, and which was presently organized to represent a multitude of craftsmen or even nonskilled 'tradesmen, rather than to represent specific craftsmen.⁵³

On the other hand, the Board had occasion to make it clear again that a craft union is not disqualified from seeking the severance of a craft which is traditionally represented because it also represents production and maintenance workers.⁵⁴

4. Contract as Bar to Election

In order for the Board's rule against determining representatives for employees presently subject to a collective-bargaining agreement to apply, the contract asserted as a bar must satisfy certain general requirements.⁵⁵ Thus, the contract must be a valid⁵⁶ written collective-bargaining agreement which has been properly executed⁵⁷ by the parties. It also must be of reasonable duration,⁵⁸ covering the employees involved in an appropriate unit,⁵⁹ and containing substantive terms and conditions of employment which are consistent with the policies of the act.⁶⁰

a. Execution and Ratification of Contract

Ordinarily a contract will not be given effect unless it is signed by all the parties.⁶¹ However, a contract was held to bar a petition filed after it had been signed by the employer, ratified by the employees, and put into effect by the submission of dues checkoff cards, but before the contracting union had procured all the signatures on its behalf.⁶² The Board noted that the contract was the direct result of an election held under State auspices, and that stability in labor relations would not be served here by an immediate redetermination of representatives.

⁵² *Friden Calculating Machine Co., Inc.*, 110 NLRB 1618.

⁵³ *Fort Die Casting Corporation*, 115 NLRB 1749.

⁵⁴ *John Bischof, d/b/a Bischof Die and Engraving*, 114 NLRB 1346.

⁵⁵ See Twentieth Annual Report, pp 18-25.

⁵⁶ While the validity of a contract as a bar may be challenged in the representation proceeding, a challenge which amounts to an allegation of unfair labor practices is subject to the rule that unfair labor practices can be determined only in a proceeding under section 10 and may not be litigated in a section 9 representation proceeding. Thus, the Board has declined to consider assertions which implied that the contract was invalid as a bar because the contracting union was employer assisted or dominated, as where it was alleged that the contract had been negotiated and signed by union officers who were supervisors (*The Mengel Co., Corrugated Box Division*, 114 NLRB 321), or that the contract was the result of collusion between the employer and the union (*Cyclone Sales, Inc.*, 115 NLRB 431).

⁵⁷ See a., *infra*.

⁵⁸ See b., *infra*, pp. 39.

⁵⁹ See c., *infra*, pp. 39-40.

⁶⁰ See d., *infra*, pp. 40-43.

⁶¹ See, e g., *Coca-Cola Bottling Co of New York, Inc.*, 114 NLRB 1423; *Jolly Grant Lumber Co.*, 114 NLRB 413; *Dover Industrial Chrome, Inc.*, 114 NLRB 1309.

⁶² *Mervin Wave Clip Co.*, 114 NLRB 157.

The Board during fiscal 1955 declined to modify its ratification rule which bars a representation petition while an otherwise complete agreement is in process of submission for membership ratification.⁶³ The Board reaffirmed the view, expressed during the preceding year in the *Westinghouse Electric* case,⁶⁴ that the relationship between the parties cannot be deemed stabilized until after ratification if the contract contemplates ratification.

b. Duration of Contract

The Board has continued to apply the rule that contracts of more than 2 years' duration may be given contract-bar effect after the first 2 years only if a substantial part of the industry has such contracts.⁶⁵ In order for industry custom to apply, a major part of the employer's operations must be currently devoted to the particular business. Thus, in 1 case the employer's business was held not part of the aircraft industry where 3-year contracts prevail because the dollar value of current nonaircraft production was 60 percent of total production, and 60 percent of the employees were engaged in such production.⁶⁶ The fact that during the preceding year the employer's production of aircraft parts had exceeded other production was held not controlling.

Contracts of uncertain duration, such as temporary or provisional agreements to remain in effect only pending negotiations for a new contract, continue to be regarded as no bar. Thus, elections were held not barred by a reopened contract which was to continue in effect only until the parties entered into a new agreement or discontinued negotiations,⁶⁷ or by an interim agreement in the nature of a temporary arrangement which converted an expired contract into one of indefinite duration.⁶⁸

c. The Contract Unit

A contract, though sufficient in other respects, does not bar a petition unless it covers the employees specified in the petition in an appropriate unit. Moreover, mere nominal coverage is not enough. Thus a contract granting recognition to the intervenor "as sole representative of all of the company's employees" was held not a bar to petitions for employee groups the intervenor had not actually bargained for.⁶⁹

⁶³ *American Broadcasting Co.*, 114 NLRB 7; see also *Cadillac Motor Car Division, General Motors Corp.*, 114 NLRB 181.

⁶⁴ *Westinghouse Electric Corporation, Small Motor Division*, 111 NLRB 497, Twentieth Annual Report, p. 19

⁶⁵ See, for instance, *Southeastern Greyhound Lines (Division of The Greyhound Corp.)*, 115 NLRB 1135, Chairman Leedom and Member Bean expressing no opinion as to the effect they would give to evidence of industry practice if offered

⁶⁶ *Royal Jet, Inc.*, 113 NLRB 1064, Member Rodgers basing his finding of no contract bar solely on the fact that the contract had been in effect for more than 2 years.

⁶⁷ *Robert F. Dwyer, et al., d/b/a Clackamas Logging Co.*, 113 NLRB 229

⁶⁸ *Cadillac Motor Car Division, General Motors Corp.*, 114 NLRB 181

⁶⁹ *Red Dot Foods, Inc.*, 114 NLRB 145, Member Peterson dissented because of his belief that there was not sufficient evidence indicating noncoverage.

The question of coverage has continued to arise in cases where after the execution of the contract the employer acquired a new operation or expanded existing operations. In one case of the first type, the Board held that a petition for employees in a completely new operation was not barred by the preacquisition contract of the incumbent union (intervenor) which was to cover "all other plants which the Company may operate hereafter."⁷⁰ The Board here found that before the employer entered on the new operation, the intervenor had forestalled automatic renewal of its contract; that the parties had orally extended the terms of the contract pending negotiation of a new agreement; and that the later execution of an extension agreement was accompanied by an understanding that the wages and other terms of employment specified in the extended contract would not be applied to the new operation. In the case of a mere expansion of the contract unit, the Board has continued to hold that a contract executed at a time when a substantial percentage of the current employee complement was employed will bar an election if the expanded operations do not require new employees with substantially different basic skills.⁷¹

A contract which on its face purported to provide for representation of all employees in the bargaining unit was held ineffective as a bar because of provisions which indicated an intent to represent members only.⁷²

d. Terms of Contract

In accord with the purpose of the contract-bar rule, the Board has again pointed out that a present determination of representatives is not barred by "every agreement parties may reach concerning conditions of employment," and that "a contract, to be effective as a bar to a representation question, must be of the type which in the Board's judgment will stabilize the labor-management relationship and thus encourage industrial peace."⁷³ The Board also made it clear that a contract which fails to grant exclusive recognition to a bargaining agent lacks an element which is crucial in the establishment of a satisfactory bargaining relationship.⁷⁴

Likewise, contract-bar effect has been denied collective-bargaining agreements containing terms in conflict with express statutory provisions.

⁷⁰ *Rockingham Poultry Cooperative Inc.*, 113 NLRB 376

⁷¹ *Cyclone Sales, Inc.*, 115 NLRB 431; *Muskm Manufacturing Co., Inc.* 114 NLRB 1307

⁷² *Solventol Chemical Products, Inc.*, 113 NLRB 617.

⁷³ *The Dover Ceramic Company*, 115 NLRB 1040 A Board majority (Members Murdock and Rodgers dissenting) here held that this requirement was not met by the agreement between the employer and the shop committee effecting minor changes in the company's employee's manual. The majority noted that the agreement itself set forth the parties' understanding that this was an "unusual arrangement and will not set a precedent."

⁷⁴ *Ibid.*

(1) Defective Union-Security Provisions

Agreements which contain unlawful union-security provisions, and therefore are in conflict with the policies of the act, are ineffective for contract-bar purposes. Cases in which union-security agreements were held invalid during fiscal 1956 involved both situations where the statutory prerequisites for entering into a union-security agreement had not been fully met and situations where the terms of the agreement exceeded the type of union security permitted by the act.

(a) Noncompliance with section 9 (f), (g), and (h)

In determining whether a contract containing a union-security clause is to be recognized for contract-bar purposes, the Board has continued to apply the restrictive provisions of section 8 (a) (3). The Board has interpreted those provisions as requiring that in order for a union-security agreement to bar a representation proceeding, the contracting union must have been in compliance with section 9 (f), (g), and (h) at the time the agreement was made, or must have received from the Board a notice of compliance within the preceding 12 months.⁷⁵ The Board in *Independent Manufacturing*⁷⁶ further held that where a union obtains a union-shop contract by assignment through a newly affiliated local the contract ceases to be a bar if the union which takes over the contract is not in compliance at the time of affiliation. The Board pointed out that "to hold otherwise would permit noncomplying unions to assume, through affiliation, union shop contracts of complying unions and thereby obtain therefrom benefits which the statute would not otherwise permit."

In one case, the Board held that a contract executed when the contracting union was not in compliance did not become a bar to a petition although the union took steps toward compliance before the petition was filed and achieved full compliance shortly after it was filed.⁷⁷ The Board pointed out that the union here had not clearly indicated before execution of the contract its intent to comply with the filing requirements,⁷⁸ nor had it merely fallen temporarily out of compliance and renewed compliance before the petition was filed.⁷⁹

In another case, the Board reiterated the rule that the legal consequences flowing from a contracting local's noncompliance attach to the contract.⁸⁰ Consequently, the Board rejected the contention

⁷⁵ See *Robert E. Smith, et al, d/b/a Independent Manufacturing Co*, 113 NLRB 937, and cases cited there; see also *Mason Can Co.*, 115 NLRB 105; *Borden Food Products Co.*, 113 NLRB 459.

⁷⁶ See footnote 75.

⁷⁷ *Aeronca Manufacturing Corporation*, 114 NLRB 1516

⁷⁸ As in *Dichello, Inc.*, 107 NLRB 1642.

⁷⁹ As in *New Idea, Division AVCO Manufacturing Corporation*, 106 NLRB 1104, *Industrial Luggage, Inc.*, 106 NLRB 1128

⁸⁰ *Moench Tanning Co.*, 114 NLRB 22.

that a contract executed by both a noncomplying local and its international was valid as to the international which was in compliance.

(b) *Illegal forms of union security*

A union-shop clause which in effect fails to guarantee employees the statutory 30-day grace period for acquiring union membership makes the contract inoperative as a bar. Thus, a decertification proceeding was held not barred by a contract which conditioned hiring of new employees on their immediate application for union membership.⁸¹ The Board here observed that by promptly approving an application the contracting union could, in effect, compel a new employee to become a member before the statutory grace period had run. However, as in earlier cases, the mere failure of a contract to provide expressly for 30 days' grace for old employees who were non-members on the contract's effective date was again held not to have automatically removed the contract as a bar.⁸² No such employee was shown to have been required to join the union prematurely or to have been discriminated against under the contract, and the record indicated that no dues had been checked off for any such employee before expiration of the 30-day period. Nor was the contract here held invalidated by the provision that new employees at the time of their hiring were to be given union membership cards. This clause, the Board found, was not improperly used and merely served as an arrangement by which the employer undertook the distribution of membership cards to newly hired employees.

One contract was found to be in conflict with the act, and therefore not a bar, because it had the effect of delegating to the union complete control over the seniority standing of former employees.⁸³ A majority of the Board⁸⁴ held that the rule of *Pacific Intermountain Express Company*⁸⁵ applied.

While proper clauses deferring the effectiveness of invalid union-security agreements may preserve the contract as a bar, the Board held in two cases that the provisions relied upon were inadequate. In one case, the supplemental suspension agreement had not been made and executed in conformity with the requirements of the union's original contract and its constitution.⁸⁶ In the other case, the Board concluded that where the clause expressly mentioned only one possible basis for deferral, the parties must be taken to have excluded reliance on other bases.⁸⁷ In this case, the clause expressly

⁸¹ *Bazley and Junedale Meat Markets Co.*, 114 NLRB 66.

⁸² *Towne Manufacturing Corp.*, 114 NLRB 1367. See also Twentieth Annual Report, pp. 24-25.

⁸³ *Theo. Hamm Brewing Co. & Pfeiffer Brewing Co.*, 115 NLRB 1157.

⁸⁴ Members Murdock and Peterson dissenting.

⁸⁵ 107 NLRB 837, and related cases cited there.

⁸⁶ *Aeronca Manufacturing Corp.*, 114 NLRB 1516

⁸⁷ *Triangle Tanning Co.*, 115 NLRB 271.

provided for deferral only if a union-shop referendum were required. The Board held that this did not operate to defer the union-shop clause when the union allowed its compliance to lapse for 4 years.

e. Effect of Schism or Change of Status of Bargaining Agent

The Board has continued to refuse to recognize a contract as a bar where a schism in the contracting union has created serious confusion as to the bargaining agent recognized by the employer.⁸⁸ However, the Board reiterated that in order for the "schism" doctrine to apply there must have been formalized disaffiliation action,⁸⁹ and the Board must be convinced that the bargaining relationship is so confused that no stabilizing purpose would be served by considering the contract involved a bar to a present determination of representatives.⁹⁰ Thus, for instance, the schism rule has been held inapplicable where the union's membership took formalized action which merely expressed dissatisfaction with the bargaining agent, and where the contracting union continued to function and to administer the existing contract and the employer continued to recognize the union as exclusive bargaining representative.⁹¹

The Board during the past year also reiterated that the "schism" doctrine may not be used to facilitate raiding by a rival union. Formalized disaffiliation action, which otherwise satisfies schism requirements, has therefore been held ineffective where the action was promoted by a rival union or where the latter controlled the meetings of the contracting union.⁹²

f. Effect of Rival Petitions—Timeliness

The rule that a rival petition is not barred by a contract executed or renewed⁹³ or becoming effective⁹⁴ at a later date continued to be strictly applied. Thus, a petition was held timely in relation to a contract because the contract was executed at a time when the employer had knowledge of the petitioner's representative interest and the petition was in fact filed 10 minutes before the execution of the contract.⁹⁵ In one case, the rule that the deferred effective date of a contract, rather than the date of its execution, controls was held to preclude a prepetition master agreement from becoming a bar because

⁸⁸ See, e. g., *John Deere Plow Works of Deere & Co.*, 115 NLRB 923, *A. C. Lawrence Leather Co.*, 113 NLRB 60; *Globe Forge, Inc.* 115 NLRB 862

⁸⁹ See, for instance, *Standard Conveyor Co.*, 114 NLRB 1447

⁹⁰ See *Muskim Manufacturing Co.*, 114 NLRB 1307

⁹¹ See *Muskim Manufacturing Co.*, *supra*; *Rumford Chemical Works, Division of Hulman and Co.*, 115 NLRB 1260, *Cyclone Sales, Inc.*, 115 NLRB 431; see also *Standard Conveyor Co.*, *supra*; compare *John Deere Plow Works of Deere & Co.*, *supra*

⁹² *Roberts Brass Mfg. Co.*, 114 NLRB 49

⁹³ See, for instance, *Ocoma Foods Co., Division of Omaha Cold Storage Co.*, 115 NLRB 1035

⁹⁴ See, e. g., *U. S. Rubber Co.*, 115 NLRB 240

⁹⁵ *East Texas Pulp & Paper Co.*, 113 NLRB 539

its effectiveness was dependent on the execution of a supplemental agreement which in turn was not completed until after filing of the petition.⁹⁶

The Board had occasion to announce, during the past year, that in determining the timeliness of a petition in relation to the automatic renewal date of a contract, it will strictly construe the contract's notice provision and will count each calendar day in computing the notice period and the last day on which a timely petition could be filed.⁹⁷

g. Effect of Rival Claims—The 10-Day Rule

The Board has continued to require as a general rule that an unsupported representation claim must be followed by the filing of a petition within 10 days, in order to prevent an intervening contract from becoming a bar. The rule has been applied in both certification⁹⁸ and decertification cases.⁹⁹

(1) Petitioner's Showing of Interest

The Board ruled during the past year that a petition filed within 10 days after an unsupported representation claim does not take precedence over an intervening contract unless it is accompanied by the requisite showing of a 30-percent interest, or unless the showing is furnished within the time limit prescribed in the Board's Statements of Procedure.¹ The Board requires such an interest showing because without it the petition itself would be nothing more than another "naked claim of representation," and because giving effect to a petition under such circumstances would defeat the salutary purpose of the 10-day rule which is designed to prevent indefinite frustration of collective bargaining by unsupported claims.

(2) Suspension of 10-Day Rule During *Mill B* Period

Special consideration was given during fiscal 1956 to the status of a new contract made during the "Mill B period" of a prior contract, i. e., in the interval between the old contract's automatic renewal and anniversary dates. Observing that this is the usual and natural period for the making of new contracts, the Board rules that in order to encourage timely negotiation for continuing stable bargaining relations, a contract executed during this period must be held to bar a subsequent petition, even though a rival claim is made prior to the execution of the contract and is followed by a petition within 10

⁹⁶ *U. S. Rubber Co*, *supra*.

⁹⁷ *Bethlehem Pacific Coast Steel Corp.*, *Shepbuilding Division*, 114 NLRB 1197.

⁹⁸ See, e. g., *Desaulniers and Company*, 115 NLRB 1025.

⁹⁹ See, e. g., *The Anaconda Co*, 114 NLRB 530

¹ *Boston Quilting Corp.*, 115 NLRB 491. The Statements of Procedure, section 101.16, require evidence of representation to be submitted within 48 hours after filing a petition, but *not* later than the last day on which the petition might be timely filed.

days.² To apply the *General Electric X-Ray*³ rule to the *Mill B* period of a prior contract, according to the Board,

would be to permit a rival union to cause contracting parties to suspend negotiations on a new contract for 10 days on the basis of a mere naked rival claim to await the filing of a petition, *which might not even be filed*, and thus the *Mill B* period designed for the negotiation of a new stabilizing contract would needlessly be reduced by 10 days to a period which might be insufficient to negotiate such a contract.

The Board here also pointed out that the 10-day rule is but an exception to the normal rule which seeks to stabilize bargaining relations by protecting prepetition contracts,⁴ and that the exception should have no application where the effect would be to impede stability in labor relationships.

h. Termination of Contracts

Resolution of the contract-bar issue in a number of cases turned again on whether or not the asserted contract had in fact been terminated as provided in the contract.

(1) Automatic Termination

In two cases, the contracts asserted as a bar were found to have terminated before the filing of the petition by their own terms which provided for automatic termination if negotiations for a new agreement, after notice to modify or to reopen, should be discontinued or should fail before a fixed date.⁵ In *Clackamas* the union gave notice to modify. Negotiations took place but were discontinued after an impasse was reached. The Board here rejected the contention that settlement meetings regarding the ensuing strike and the resulting agreement on the creation of a fact-finding board constituted bargaining negotiations which prevented termination of the contract. In *Consolidated Paper* the contract contained a wage-reopening clause and provided for negotiations to begin at least 30 days before a specified date. In case of failure to reach agreement by that date, the contract was to terminate automatically. After giving notice under the reopening clause, the union requested, and the employer agreed, that negotiations be postponed until after the contractual deadline. The Board held that in the absence of timely negotiations and agreement on new wage scales the contract's automatic termination clause became operative. In the Board's view, the union could not properly interpret the employer's consent to the postponement of

² *Spencer Kellogg & Sons, Inc.*, 115 NLRB 833

³ *General Electric X-Ray Corporation*, 67 NLRB 997

⁴ Compare *North American Aviation, Inc.*, 109 NLRB 269

⁵ *Robert F. Dwyer, et al, d/b/a Clackamas Logging Co.*, 113 NLRB 229, *Consolidated Paper & Box Manufacturing Company, Incorporated*, 115 NLRB 187.

negotiations as an agreement either to substitute a new deadline or to eliminate the automatic termination provision entirely from the contract.

(2) Notice of Termination—Sufficiency

Timely notice by a union of its desire to make changes in its contract was held sufficient in one case to foreclose automatic renewal since the contract provided only for notice of termination and not for notice to modify.⁶ One case involved the termination of a contract which provided (1) for notice of proposed modification, and (2) for notice to terminate if no agreement has been reached on the proposed changes within 30 days after the contract's expiration date.⁷ The employer's notice to terminate in accordance with these provisions was held to have removed the contract as a bar even though notice was not preceded by negotiations. The Board noted that there was neither an express provision for negotiations as a condition precedent to a termination notice nor any basis for implying such a condition. In another case, the sufficiency of a termination notice depended on whether a unit of a local, which was the immediate representative of the employer's employees, could unilaterally terminate.⁸ The Board found that the local was not merely a nominal party to the contract but had final and exclusive authority as a bargaining representative to effect termination. The unit's notice was therefore held to be ineffective for the purpose of forestalling automatic renewal

(3) Intent To Terminate

In several cases the finding of a contract bar turned on whether the prerenewal notice of one of the parties to amend was sufficiently broad that an intent to terminate the contract could properly be inferred under the *American Lawn Mower* principle.⁹

In the *Helmco* case, this principle was held inapplicable because the intervenor's notice required merely changes in wages and fringe benefits, and the parties' subsequent conduct evidenced no intent to terminate.¹⁰ But in a later case, the Board rejected the intervenor's contention that its notice to amend did not forestall automatic renewal of the contract. The Board here found that the scope of the intervenor's notice was immaterial because the contract, by its own terms, terminated upon notice to amend.¹¹ The Board also noted that the parties apparently intended to terminate their contract

⁶ *Variety Stamping Corporation*, 115 NLRB 1255

⁷ *General Foods Corporation, Northland Dairy Division*, 115 NLRB 263

⁸ *Rumford Chemical Works*, 115 NLRB 1260

⁹ *American Lawn Mower Co.*, 108 NLRB 1589, reaffirmed the rule that notice to modify under a contract with coterminous modification and termination clauses results in termination.

¹⁰ *Helmco, Inc.*, 114 NLRB 1585.

¹¹ *Seaporcel Metals, Inc.*, 115 NLRB 960

because the employer's reply to the union's notice referred to negotiations "for a new agreement."

There was no termination of a contract which provided that in case of notice to modify the contract would be automatically renewed for a full term, subject to the changes which may be agreed upon;¹² nor in a case where the contract, after notice to amend, was to renew itself for another year's term in the event of the failure of the parties to reach agreement on proposed changes before the renewal date of the agreement.¹³

However, in another case the Board had occasion to make clear that where a contract does not expressly provide that it is to renew itself automatically after notice to amend, it is a "reasonable and natural presumption that notice given shortly before the *Mill B* date of [the] contract is intended to terminate the contract."¹⁴ Here, the contract provided for termination on notice to that effect, but was silent as to the effect of notice to revise. The communications between the parties being ambiguous as to their intent regarding termination, and the union's notice having been accompanied by broad proposed modifications, the Board found the contract no bar to an election.

(a) Effect of postrenewal negotiations

In both *Mallinckrodt*¹⁵ and *Michigan Gear*,¹⁶ the Board held that continuation by the parties of negotiations after the date provided in the contract for automatic renewal did not require a finding that the parties' original notice to modify was in fact intended to effect termination. The Board pointed out that after the renewal of the contract the limitations of section 8 (d) on the duty to bargain became applicable, and the ensuing negotiations for changes were voluntary rather than mandatory. Under these circumstances, the Board observed, the prerenewal proposal for modification of the contract and the action taken thereon did not unstabilize the existing contractual relationship between the parties to such an extent as to preclude application of the usual contract-bar rules.

i. Premature Extension of Contract

In order to prevent the contract-bar rule from being used to prevent employees from changing bargaining representatives at reasonable and clearly predictable intervals, the Board has continued to hold that a prematurely extended contract does not bar a petition.¹⁷ In one case, the Board rejected the contention that the premature-extension

¹² *Mallinckrodt Chemical Works*, 114 NLRB 187.

¹³ *Michigan Gear & Engineering Company*, 114 NLRB 208.

¹⁴ *Griffith Rubber Mills*, 114 NLRB 712.

¹⁵ See footnote 12.

¹⁶ See footnote 13.

¹⁷ See, e. g., *Congoleum-Nairn, Inc.*, 115 NLRB 1202.

doctrine should not be applied because there had been no intention to forestall a redetermination of representatives; that the extension agreements were made to conform to the expiration dates of other contracts of the union in the area; and that the extensions granted substantial wage increases, and were to contribute to the stabilization of regional labor-management relations.¹⁸ It was pointed out again that the good faith of the parties, or the fact that they were motivated by economic reasons, does not affect the application of the premature-extension rule.¹⁹ And in another case the Board held that an extension agreement did not escape the premature-extension rule merely because it provided for the "termination" of the old contract rather than its modification or extension.²⁰ Looking at "substance rather than form," the Board noted that the "effect upon the terminal provision of the old agreement is the same whether the midterm agreement to change provisions is denominated an extension of the old agreement or an entirely new contract." The Board also rejected the further contention that the agreement here was not a "premature extension" because the intervenor had given 30 days' notice of its intention to terminate the old contract and the new agreement was not executed until after the termination notice had removed the old contract as a bar. The decision points out that the premature-extension rule, "like the contract-bar rule itself, is essentially a discretionary principle and its applicability depends upon the circumstances surrounding the negotiation and execution of the so-called new or extension agreement." Here, the Board continued, the rule applied (1) because the petitioner could not have anticipated the termination notice, the timing of which was entirely within the intervenor's discretion; and (2) because the new agreement was in fact executed before the intervenor's 30-day notice had expired.

However, the premature-extension doctrine was held not to apply to a memorandum agreement stipulating that the contract between the union and the employer's predecessor "shall remain in full force and effect, subject to all of its provisions, for the duration of the said agreement. . . ." ²¹ While the employer had assumed all rights and obligations of the predecessor's contract, the Board noted that the new employer was not a party to the union's prior agreements, and that the asserted contract was to be regarded as a new contract, even though the employer's obligations under it were identical with those of the employer's predecessor. In the Board's view, the successor's obligations were new obligations, separately undertaken, and constituted the initial contract between the parties.

¹⁸ *International Minerals & Chemical Corp.*, 113 NLRB 53.

¹⁹ See also *Potash Company of America*, 113 NLRB 340.

²⁰ *Congoleum-Nairn, Inc.*, *supra*.

²¹ *Stubnitz Greene Spring Corp.*, 113 NLRB 226.

5. Impact of Prior Determinations

The granting of a petition for an election is subject to certain limitations which are designed to implement the statutory objective to stabilize labor relations. Thus, where a representative has been previously certified for an employee unit, a rival petition ordinarily will not be entertained during the incumbent's certification year. And, where employees have voted in a valid election for or against collective-bargaining representation, another election may not be held in the same group until a 12-month period has elapsed.

a. Effect of Certification

Generally it is the Board's policy to treat a certification under section 9 (c) (1) "as identifying the statutory bargaining representative with certainty and finality for a period of one year." Whenever the 1-year rule applies, the board dismisses all petitions filed at any time before the end of the certification year in order to protect the bargaining relationship from disturbance during that period.²² If the record in a case shows that the petition is premature under the 1-year certification rule, the Board dismisses the petition even though the issue has not been raised by the parties.²³

However, the 1-year rule does not apply in the presence of unusual circumstances, as for instance where the certified union has become defunct as the representative of the employees in the bargaining unit.²⁴ Moreover, not every type of certification bars a petition for a year. Thus, the certification of the results of a self-determination election, where employees voted in favor of remaining a part of a larger unit, is not subject to the 1-year rule because it does not embrace a complete bargaining unit.²⁵

(1) *Ludlow* ²⁶ Modification of 1-Year Rule

In *Ludlow*, the Board ²⁷ took the view that where a certified union and the employer have agreed on a contract during the certification year, the certification bar to a new petition has served its purpose, and a later rival claim is no longer foreclosed even though the union's first contract expires before the end of the certification year. During fiscal 1956, the Board ²⁸ reaffirmed its belief that the *Ludlow* rule is best suited to accommodate the dual purpose of the act to promote industrial stability and at the same time to guarantee the employees' freedom to select bargaining representatives. Moreover, the Board

²² *Rockwell Valves, Inc*, 115 NLRB 236, citing *Centr-O-Cast & Engineering Co.*, 100 NLRB 1507.

²³ *Casey-Metcalf Machinery Co., et al*, 114 NLRB 1520.

²⁴ *WTOP, Inc*, 114 NLRB 1236

²⁵ *Westinghouse Electric Corporation*, 115 NLRB 185, citing *R. F. Goodrich Chemical Company*, 84 NLRB 429

²⁶ *Ludlow Typograph Company*, 108 NLRB 1463, Nineteenth Annual Report, p. 35

²⁷ Members Murdock and Peterson dissenting.

²⁸ Member Murdock again dissenting.

rejected the view that it was not within its discretion to limit the application of the 1-year certification rule because Congress in enacting the 12-month limitation on elections in section 9 (c) (3), and the Supreme Court in its *Ray Brooks* decision,²⁹ had sanctioned the policy of not recognizing rival claims during a certified union's entire certification year.³⁰ The majority pointed out that in the absence of any express congressional command that the 1-year rule be applied in its pre-*Ludlow* form, and in the absence of any adverse language in *Ray Brooks*, the Board was not precluded from adopting and adhering to the *Ludlow* rule.³¹

It was also made clear during fiscal 1956 that the *Ludlow* rule applies only where an agreement is entered into within the certification year.³² Thus a rival petition filed during the certification year of the incumbent, after the termination of the latter's precertification contract, was held untimely.

In some cases, the question whether an incumbent local's certification year had become merged with a postcertification contract depended again on the effect of the purported extension of a national or master agreement to the local upon its certification.³³ The Board found in two cases³⁴ that the agreement by which the certified incumbents became bound were complete collective-bargaining agreements, and that the incumbents were not entitled to further protection during the remainder of their certification year. Nor did the fact that the master agreement ran only 3 months after the certification exempt it from the *Ludlow* rule.³⁵ In this case, a master agreement which was extended to cover employees represented by a newly certified local union was terminated 3 months later by the parent international union and the employer to negotiate a new contract. Before the new contract was executed, another union petitioned for an election. The certified local contended that the new contract was its first within the certification year, but the Board unanimously rejected this contention, finding that the extension of the master agreement to the local, which also included a retroactive wage increase, was a contract which had "achieved a substantial measure of stability in labor relations sufficient to merge the certification year with the contract and thus make the contract controlling with respect to the timeliness of a rival petition."

²⁹ *Ray Brooks v. N. L. R. B.* 348 U. S. 96, Twentieth Annual Report, pp. 121-122.

³⁰ *The Union Forging Company*, 114 NLRB 1250.

³¹ The *Union Forging* decision also points out that *American Steel Foundries* (112 NLRB 531), an unfair labor practice case under section 8 (a) (5), did not overrule *Ludlow*.

³² *Westinghouse Electric Corporation (Sunnyvale Plant)*, 114 NLRB 1515.

³³ Compare *Westinghouse Electric Corporation, Sunnyvale Plant*, 110 NLRB 872, Twentieth Annual Report, p. 34.

³⁴ *U. S. Rubber Company*, 115 NLRB 240; *General Electric Company, Apparatus Service Shop*, 115 NLRB 1424.

³⁵ *U. S. Rubber Company, supra*.

b. Effect of Prior State Election

Section 9 (c) (3) prohibits the Board from directing that an election be held at a date less than 12 months after an earlier valid election among the same employees. Under this provision, the Board during fiscal 1956 dismissed two petitions because an election had recently been held under State auspices in the proposed bargaining unit.³⁶ In giving the State election the same effect as would have been accorded an election under section 9, the Board noted that in each case the prior election was conducted under proper circumstances, and that no irregularities had been alleged.

6. Other Election Bars

The cases decided during the past year also presented questions (1) as to whether a petition for an election was untimely because of an outstanding agreement settling refusal-to-bargain charges; and (2) as to whether the petitioner was barred from seeking an election by a waiver agreement or by intraunion rules.

a. Settlement Agreements

The Board has recognized that where an employer, in settlement of section 8 (a) (5) charges, has agreed to bargain with an incumbent employee representative, a reasonable time must be allowed the parties to carry out the settlement. During such a period, a rival petition for an election is barred.³⁷ However, the Board held during fiscal 1956 that a settlement agreement is not tantamount to a certification, and that the parties to the agreement are not entitled to a year's time within which to agree on a collective-bargaining contract.³⁸ The Board made it clear that, under the rule of the *Dick Brothers* and *Daily Press* cases,³⁹ an agreement disposing of refusal-to-bargain charges ceases to bar a petition after a reasonable bargaining period has elapsed, the reasonableness of the period depending on the particular circumstances. Thus, the Board in *Ruffalo's Trucking Service* directed an immediate election because the employer had fully complied with the settlement and, as found by the regional director, had bargained in good faith to an impasse which was no fault of the employer. The Board here also noted that the employees concerned had had no election at any time.

However, an agreement settling section 8 (a) (1) and (5) charges, under which the employer was not required to bargain, but only to

³⁶ *T-H Products Company*, 113 NLRB 1246, *Olin Mathieson Chemical Corp.*, 115 NLRB 1501.

³⁷ See *Dick Brothers, Inc.*, 110 NLRB 451; *The Daily Press, Inc.*, 112 NLRB 1434; Twentieth Annual Report, pp. 35-36

³⁸ *Ruffalo's Trucking Service, Inc.*, 114 NLRB 1549.

³⁹ *Supra*, footnote 37.

post certain notices, was held not to bar an election because there was no conflict between the petition and the settlement.

b. Effect of Waiver—Intraunion Rules

The Board had occasion to reaffirm the *Briggs Indiana*⁴⁰ policy not to direct an election at the instance of a petitioner who has contractually waived the right to represent the employees involved. As pointed out in the *Badenhausen*⁴¹ case, the application of the *Briggs Indiana* rule, being a limitation on the right of employees to select their own representatives, is strictly limited to certain situations. Thus, in order for the rule to apply, the contract of the parties must not only exclude the employees in question from its coverage, but it must also provide that the contracting representative will not seek to represent them. Consequently, no waiver bar to an election was found where the petitioner's contract contained no express or implied promise to refrain from seeking to represent the excluded employees.⁴²

The *Briggs Indiana* rule does not apply where the petitioner, though it is affiliated with and has received organizational assistance from the contracting union, is not subject to the latter's control and is an autonomous organization.⁴³ On the other hand, under the *Briggs Indiana* rule, an international union which is a party to the waiver agreement of one of its locals cannot avoid the effect of the agreement by chartering a new local which is to represent the employees covered by the waiver.⁴⁴

The Board has consistently declined to dismiss representation petitions on grounds related solely to intraunion matters. Thus, the assertion in a case that the filing of the petition violated the union's constitution, and was premature under the "International Dispute Plan" of the petitioner's parent, was held insufficient to justify dismissal.⁴⁵ It was pointed out that the pendency of proceedings before an intraunion tribunal for adjudication of representation questions does not affect the duty of the Board to resolve such questions. Similarly, in accordance with established policy, the Board has held that a "no-raiding" agreement between the petitioner and the intervenor in a case is not ground for dismissal.⁴⁶

7. Unit of Employees Appropriate for Bargaining

The Board has the duty under the act to determine, in each representation case and any other case where the question is material, the

⁴⁰ *Briggs Indiana Corporation*, 63 NLRB 1270.

⁴¹ *Badenhausen Corporation*, 113 NLRB 867, Members Rodgers and Leedom dissenting.

⁴² *F. C. Russell Company*, 114 NLRB 38.

⁴³ See *Badenhausen Corporation*, *supra*.

⁴⁴ *Huron Portland Cement Co.*, 115 NLRB 879.

⁴⁵ *S. G. Adams Company*, 115 NLRB 1012; *Mason Can Company*, 115 NLRB 105.

⁴⁶ *North American Aviation, Inc.*, 115 NLRB 1090.

appropriate bargaining unit "in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act." Section 9 (b) provides that the Board shall decide whether such unit shall be "the employer unit, craft unit, plant unit, or subdivision thereof." This section further sets forth certain specific limitations on the placement of professional employees, guards, and craft groups in bargaining units. Section 9 (c) (5) provides that the extent to which employees have organized shall not be controlling in the determination of an appropriate unit of employees. Section 2 (3) excludes supervisors, agricultural laborers, independent contractors, and certain others from the act's definition of "employees."

The Board, in exercising its power to determine appropriate bargaining units, strives to give meaning and practical effect to the actual day-to-day relationships among employees. This aim, the Board has stated, "is best served by giving controlling effect to the community of interest existing among employees."⁴⁷ Thus, the Board in one case rejected a "technical interpretation" which would have the effect of excluding from the unit certain employees who shared interests in common with those included.⁴⁸ However, absent any ambiguity, the terms used in describing an appropriate unit are to be given the meaning customarily assigned to them in Board decisions. In one case during the past year, the Board rejected a contention that a petitioner's custom, practice, or understanding should be permitted to vary the plain meaning of the terms of a unit description.⁴⁹

The Board customarily accepts units stipulated by the parties,⁵⁰ but it does not recognize such stipulations as establishing Board policy as to unit composition.⁵¹ Moreover, stipulations to exclude certain individuals as supervisors,⁵² casual employees,⁵³ and office clericals⁵⁴ were set aside where the record showed that the persons involved actually were regular employees of the kind properly included in the unit.

The sections below discuss the more important cases during fiscal 1956 which involved the determination of units.

a. Collective-Bargaining History

During the past year the Board continued to consider bargaining history as an important factor in determining the appropriateness of units. Thus, the Board held that a certification based on a consent

⁴⁷ *Montgomery Ward & Co*, 114 NLRB 1155.

⁴⁸ *Montgomery Ward & Co*, *supra*.

⁴⁹ *Massachusetts Mohair Plush Co*, 115 NLRB 1516.

⁵⁰ *Stanley Aviation Corp.*, 114 NLRB 178.

⁵¹ *The Eavey Co.*, 115 NLRB 1779, see also *Humble Oil and Refining Co*, 115 NLRB 1485.

⁵² *Herman M. Brown Service Co*, 115 NLRB 1371.

⁵³ *The Eureka Pipe Line Co.*, 115 NLRB 13.

⁵⁴ *Raybestos Manhattan, Inc.*, 115 NLRB 1036.

election did not control a unit determination in the face of subsequent history of bargaining on the basis of a different appropriate unit. In this case, the union had been certified separately as representative of each of several craft groups but had bargained for the employees as a single unit with one contract covering all the employees. The Board held that in view of this bargaining history, the separately certified groups had been merged into a single unit.⁵⁵ In another case, the Board was confronted with the need to choose between two bargaining histories. In that case, there had been 10 years' bargaining on the basis of an areawide unit.⁵⁶ However, 11 months before the filing of a petition seeking severance of certain employees from such unit, all the employer's operations were merged into 1 companywide unit. The Board held the area unit appropriate for craft severance purposes, stating that in view of the geographical separation of the plants and the long history of separate representation of employees the multiplant bargaining had not "proceeded for a sufficiently substantial period . . . to preclude severance of otherwise appropriate groups on a less than employerwide basis." However, for a shift from single-plant bargaining to a multiplant basis to be accepted, the intent to make the change must be clear and unequivocal.⁵⁷

The bargaining history of primary importance is that of the employees sought to be represented, but the bargaining history of similar employees in the area or industry also may be considered on occasion. Thus the Board has listed as one factor militating against a single-plant unit the fact that such unit did not conform in scope to the pattern of bargaining for the type of business in the particular area.⁵⁸ Again, the Board in placing certain employees in a unit over the petitioner's objection noted, among other factors, that the petitioner currently bargained with other employers in the area for units including the disputed employees.⁵⁹

b. Craft and Departmental Units

The Board's decisions during fiscal 1956 do not reflect any appreciable change with respect to those employees or groups of employees that may be separately represented in craft or departmental units. The Board continued to apply the standards set forth in *American Potash & Chemical Corp.*⁶⁰ As for departmental units, the Board,

⁵⁵ *International Mineral & Chemical Corporation (Potash Division)*, 113 NLRB 53

⁵⁶ *North American Aviation*, 113 NLRB 1040.

⁵⁷ *American Can Co.*, 114 NLRB 1547.

⁵⁸ *H P Hood & Sons, Inc.*, 114 NLRB 978

⁵⁹ *Peerless Products Co.*, 114 NLRB 1586 See, also, *Archer Mills, Inc.*, 115 NLRB 674, in which fixers were excluded from a production and maintenance unit of textile employees on the grounds, in part, that it was the "established pattern in the industry" to do so

⁶⁰ 107 NLRB 1418.

in nonseverance cases, continued to follow the policy that the petitioner must show that the proposed unit is composed of a functionally distinct group of employees which can be effectively represented apart from other employees.⁶¹ In cases where it is sought to sever a departmental unit from another established unit the proposed group must not only meet the foregoing standard but must, as required by the *American Potash* decision, possess "historically separate interests . . . which have by tradition and practice acquired craft-like characteristics."⁶²

The Board will not find a proposed craft unit appropriate if it includes only a segment of the employees possessing the same craft skills and performing comparable work.⁶³ However, the Board recognizes the existence of many separate traditional crafts which may have basically similar skills.⁶⁴

A departmental unit to be appropriate must include all the employees in the department.⁶⁵ But employees permanently assigned to other divisions in a plant need not be included in such a unit even though they may use, for a portion of their time, some of the same machinery as that used by the departmental employees,⁶⁶ or spend a substantial portion of their time in the departmental work area.⁶⁷ Moreover, a departmental unit need not include employees of similar skills who are outside the department.⁶⁸

(1) Craft and Departmental Severance

The severance of either a craft unit or a departmental unit is governed by the rules set forth by the Board in *American Potash & Chemical Corp.* A primary requirement for severance is that the unit sought must constitute a true craft or traditional departmental group. Thus, the Board during the past year dismissed petitions seeking severance of electricians,⁶⁹ sheet metal workers,⁷⁰ and patternmakers⁷¹ where the petitioner failed to show that these employees were true craftsmen within the *American Potash* standards. However, the Board has held that a union may sever noncraft employees from an

⁶¹ *Kennard Corp.*, 114 NLRB 150.

⁶² 107 NLRB 1418, 1424. See, also, *Fort Die Casting Corp.*, 115 NLRB 1749, *Inland Cold Storage Co., Inc.*, 115 NLRB 973, *Kennecott Copper Corp.*, 114 NLRB 13.

⁶³ *CBS-Hytron, A Division of Columbia Broadcasting System, Inc.*, 115 NLRB 1702, *Cessna Aircraft Co.*, 114 NLRB 1191.

⁶⁴ *Cadillac Motor Car Division, General Motors Corp.*, 114 NLRB 181, in which the Board found patternmakers and their apprentices to constitute an appropriate craft unit even though the unit excluded the die-makers, modelmakers, and woodworkers, none of whom worked in the pattern shop.

⁶⁵ See *General Motors Corp., Chevrolet Muncie Division (Forge Plant)*, 114 NLRB 231.

⁶⁶ *Kennard Corp.*, 114 NLRB 150.

⁶⁷ *North American Aviation*, 115 NLRB 1090.

⁶⁸ *American Bosch Arms Corp.*, 115 NLRB 226.

⁶⁹ *Precision Castings Corp.*, 114 NLRB 63.

⁷⁰ *Hughes Aircraft Co.*, 115 NLRB 504.

⁷¹ *John Deere Van Brunt Co.*, 114 NLRB 340.

established plantwide unit in order to convert an existing craft unit into a departmental unit.⁷²

A second requirement for severance specified in *American Potash* is that the union requesting severance must be the "historical and traditional representative of the employees it seeks." The Board has held that a union organized to represent a specific craft or departmental group meets this requirement.⁷³ However, a union established to represent crafts generally will not be accorded the status of traditional representative for a particular craft.⁷⁴ The fact that a union which traditionally represents a craft or departmental group also represents other employees does not detract from its right to a severance election for the employees it has traditionally represented.⁷⁵ Moreover, the Board held during fiscal 1956 that a union which is the traditional representative of certain employees on a craft basis is not precluded by *American Potash* from representing such employees in a departmental unit.⁷⁶

The burden of proof is upon a union to establish that it is the traditional representative of employees it seeks to sever. The Board will not accept "a mere affirmative allegation in the form of testimony" as sustaining this burden.⁷⁷ Nor will it find that representation of employees as part of a broad unit establishes a union as a traditional representative of such employees in a craft or departmental unit.⁷⁸ The Board will, however, resort to an administrative review of prior representation cases for information to aid in a proper determination of the traditional representative status of a union with respect to certain employees.⁷⁹

The Board in one case declined to direct a severance election when it found the union was not concerned primarily with representing the craft or departmental unit but was seeking by a severance election to acquire a broader unit on a piecemeal basis.⁸⁰ Neither did the Board permit a union which, as a joint representative, was actively engaged in bargaining for a production and maintenance unit to sever craft or departmental groups from such a unit. The Board considered bargaining for the larger unit as "wholly inconsistent with [the] attempt

⁷² *General Motors Corp., Chevrolet Forge Plant, Detroit, Michigan*, 114 NLRB 234 (Member Peterson concurring in the result; Member Murdock dissenting), *General Motors Corp., Oldsmobile Div., Forge Plant, Lansing, Michigan*, 114 NLRB 229

⁷³ *Friden Calculating Machine Co., Inc.*, 110 NLRB 1618; *Cessna Aircraft Co.*, 114 NLRB 1191.

⁷⁴ *Fort Die Casting Corp.*, 115 NLRB 1749

⁷⁵ *American Bosch Arma Corporation*, 115 NLRB 226.

⁷⁶ *General Motors Corporation, Chevrolet Muncie Division (Forge Plant)*, 114 NLRB 231.

⁷⁷ *Baugh & Sons Co.*, 114 NLRB 937.

⁷⁸ *Baugh & Sons Co.*, *supra*.

⁷⁹ *Baugh & Sons Co.*, *supra*.

⁸⁰ *Westinghouse Electric Corporation*, 115 NLRB 1381.

to establish that a question concerning representation exists with respect to the employees it seeks to sever.”⁸¹

During fiscal 1956 the Board clarified the election procedures to be followed in severance cases. It ruled that under *American Potash* no runoff elections were to be held in a severance proceeding and that if no union received a majority of votes cast, the employees would continue as part of the unit from which it was sought to sever them. The Board stated that the procedures adopted in *American Potash* “make it clear that no runoff was intended in craft severance elections as craft severance was to become effective only if a majority of the employees voted for the union seeking severance.”⁸² In furtherance of this principle, the Board abolished the “neither” or “no union” choice in conventional severance elections, noting, *inter alia*, that neither the act nor its legislative history requires that employees in a severance election be afforded an opportunity to return to a nonunion status.⁸³

c. Plant Guards

No major questions arose during fiscal 1956 with respect to the representation of plant guards. However, in one case it was contended that a union was disqualified from representing a unit of guards because it was indirectly affiliated—within the meaning of the statutory prohibition—with a nonguard union.⁸⁴ In this case, a nonguard union had aided laid-off guards, had given advice to the guard union, recommended an attorney for it, permitted it to use a room for one meeting, and had mimeographed membership cards for it. The Board rejected the contention, stating that “it would seem that assistance of this type may be anticipated between employee groups and is not, without more, indicative of ‘indirect affiliation’ within the meaning of Section 9 (b) of the Act.” In another case, the Board held that a regular substitute watchman engaged in plant protection duties was a guard.⁸⁵

d. Professional Employees

The act provides that professional employees cannot be included in a unit with other employees unless the professional employees vote separately for such inclusion.⁸⁶ The Board in one case applied this rule to exclude from a production and maintenance unit apprentices

⁸¹ *Hollingsworth & Whitney Division of Scott Paper Company*, 115 NLRB 15; *International Paper Company*, 115 NLRB 17

⁸² *Sutherland Paper Company*, 114 NLRB 211.

⁸³ *American Tobacco Company, Inc.*, 115 NLRB 218.

⁸⁴ *The Midvale Company*, 114 NLRB 372

⁸⁵ *Hook Drugs, Inc.*, 114 NLRB 1157

⁸⁶ Section 9 (b). Professional status is defined in section 2 (12)

in training for professional positions,⁸⁷ but nonprofessionals may be included in a professional unit if their presence does not destroy the predominantly professional character of the unit.⁸⁸

One of the principal questions arising during fiscal 1956 concerning professional employees was whether or not they should be exempted from the Board's rule⁸⁹ that the only appropriate unit for a decertification election is the established bargaining unit. Examining the statutory provision that professional employees may be included in a broader bargaining unit only if they vote in favor of it, the Board concluded that the purpose of the statutory policy was to provide professionals with separate representation for their specialized interest, if they wanted it.⁹⁰ Such a consideration, however, is not present in a decertification proceeding, which is not directed at obtaining separate representation but rather at eliminating representation. In view of the strong policy considerations against disrupting an established bargaining relationship, the Board declined to deviate from its rule against holding a decertification election in only a segment of an existing unit. The petitions, which sought decertification of professional employees who were part of larger units, were dismissed.

In another case, it was contended that certain professionals (manufacturing engineers) were, by their duties, so closely allied to management as to foreclose their inclusion in a unit of other professional employees.⁹¹ Considering this contention, the Board stated that "To justify the exclusion of individuals otherwise qualified for inclusion in a professional unit upon the ground that they are too closely allied to the employer to be regarded as employees under the Act, we believe that it must be established that the individuals in question have interests and duties not shared by the other professionally engaged employees." Thus, the Board concluded, the fact that the manufacturing engineers, like other professional employees, made recommendations on matters of extreme importance to management did not warrant their exclusion from the unit.

e. Multiemployer Units

The employees of a group of employers may compose a single bargaining unit if the employers bargain jointly for their employees or certain categories of their employees and hold themselves bound

⁸⁷ *Olin Mathieson Chemical Corp.*, 114 NLRB 948.

⁸⁸ *Westinghouse Electric Corp.*, 115 NLRB 1420.

⁸⁹ *Campbell Soup Co.*, 111 NLRB 234 (1955). See Twentieth Annual Report (1955), pp 51-52.

⁹⁰ *Westinghouse Electric Corp.*, 115 NLRB 530. *Great Falls Employers Council, Inc.*, 114 NLRB 370.

⁹¹ *Westinghouse Electric Corporation*, 113 NLRB 337, overruling to the extent that they are inconsistent *Westinghouse Electric Corporation*, 89 NLRB 8 and 91 NLRB No. 40 (not reported in printed volumes of Board Decisions and Orders).

by the results of the joint negotiations.⁹² In the face of a bargaining history on such a basis, a petition seeking a unit not coextensive with the multiemployer unit will be dismissed.⁹³ However, an employer may withdraw from multiemployer bargaining and thereby reestablish the employees in its own operations as a group, or groups, that will constitute separate appropriate units. But such withdrawal, to be effective, must be unequivocal and coupled with a clear intent on the part of the employer to pursue an individual course of action.⁹⁴ The employer need not, absent a contrary contractual provision, notify the employees' bargaining representative of its withdrawal.⁹⁵ Moreover, to be effective, withdrawal from multiemployer bargaining must be made at an appropriate time, such as during the period when an outstanding agreement between jointly bargaining employers and the employees' representative is no longer a bar to a petition seeking an election for employees covered by the agreement.⁹⁶ However, where an employer endorsed multiemployer negotiations, gave specific assurances that it would abide by the results thereof, and made no attempt to withdraw until after an agreement was negotiated and signed by one of its officers—though never delivered to the union—the Board regarded the attempted withdrawal “at this late stage as having been made at an inappropriate time and as ineffective.”⁹⁷ Therefore, it found that at that time the only appropriate unit was multiemployer in scope.

f. Residual Units

The Board has continued to find that groups of employees omitted from established bargaining units constitute appropriate residual units.⁹⁸ Such units must include all of the unrepresented employees of the type covered by the petition.⁹⁹ However, the Board indicated in one case that it will not find appropriate a residual unit of all unrepresented employees if it includes groups of employees which it is against Board policy to include in the same unit. Thus, where a petitioner sought to include in a residual unit both office and plant clerical employees, the Board found the requested unit inappropriate

⁹² For a comprehensive summary of the criteria on which the appropriateness of a multiemployer unit depends see the Nineteenth Annual Report (1954) p 44

⁹³ *Cody Distributing Co*, 113 NLRB 863, *Logan Printing Co.*, 115 NLRB 1111

⁹⁴ *Jones & Anderson Logging Co, Inc*, 114 NLRB 1203.

⁹⁵ *Clackamas Logging Co*, 113 NLRB 229.

⁹⁶ *Clackamas Logging Co*, *supra*.

⁹⁷ *McAnary & Weller, Inc*, 115 NLRB 1029, overruling insofar as inconsistent *Bailey Produce Company*, 108 NLRB 1267. Chairman Leedom and Member Bean dissented on the grounds that as the contract was never delivered to the union after being signed by the employer there was no outstanding binding agreement, and there being no valid collective-bargaining agreement by which an employer may be deemed to have voluntarily bound himself to a multiemployer unit for the period of the contract, it must be held that the Board cannot prevent an employer from withdrawing from a multiemployer unit

⁹⁸ *Carborundum Company*, 115 NLRB 216, *S D Warren Co*, 114 NLRB 410

⁹⁹ *American Radiator & Standard Sanitary Corporation*, 114 NLRB 1151, *Red Dot Foods, Inc*, 114 NLRB

on the ground that it "declines to establish single units comprising both office and clerical employees where the issue is raised by the parties." It consequently established a unit of office clerical employees and a residual unit of plant clerical employees.¹

g. Individuals Excluded From the Unit by Act

The act provides, by excluding from its definition of employees,² that individuals engaged in certain types of work shall not be included in any unit established by the Board. Of the several excluded categories, only those of agricultural laborer, independent contractor, and supervisor were subject to Board consideration during fiscal 1956.

(1) Agricultural Laborers

During the past year the Board was confronted with few cases involving the exemption of agricultural laborers and none presented novel situations. However, established Board doctrine was applied in two cases. Thus, the Board continued to apply its rule that in determining whether a particular type of work is agricultural "the ultimate test is whether the services of the employees involved are in connection with a mercantile enterprise or an agricultural operation."³ In the same case, the Board reaffirmed the rule that individuals who divide their time between agricultural and nonagricultural pursuits must be deemed agricultural laborers. Accordingly, dump-truck operators who hauled rocks from an employer's commercial quarry and who also worked part time on a sugar plantation hauling waste to dump were thus excluded from a unit. In another case, the Board reiterated that "the mere fact that a cooperative enterprise is owned by and operated in behalf of farmers does not impel the conclusion that it is a farmer."⁴ The cooperative's employees were held to be regular employees within the meaning of the act, with the exception of certain individuals engaged in raising poultry, an agricultural operation.

(2) Independent Contractors

The Board held, in conformance with past decision, that "the determination of whether an individual is an independent contractor or an employee depends on the facts of each particular case and that no one factor is determinative."⁵ It is the risks undertaken, the control exercised over their own operations, the opportunity for

¹ *Badenhausen Corporation*, 113 NLRB 867, Members Rodgers and Leedom dissenting on another issue. See also *J E Faltin Motor Transportation, Inc*, 114 NLRB 1369.

² Section 2 (3) of the act

³ *Yamada Transfer*, 115 NLRB 1330. See *Clinton Foods, Inc.*, 108 NLRB 85, 88; Twentieth Annual Report (1955), p 47

⁴ *Central Carolina Farmers Exchange, Inc*, 115 NLRB 1250.

⁵ *New Orleans Furniture Manufacturing Co*, 115 NLRB 1494.

profit from sound judgment that distinguish the independent contractor from the employee. In accord with these established standards, the Board found that certain drivers for a furniture company were employees where the company forbade the drivers placing liens on their trucks, required the trucks to be kept on company premises when not in use, specified that the drivers take the shortest routes to the points of delivery, set the time for arrivals and departures, usually selected from its own employees substitute drivers, and established common supervision for both its admittedly employee drivers and those alleged to be independent contractors.⁶ The Board also found that certain newspaper distributors were the type of individual found in previous decisions to be independent contractors⁷ and, accordingly, dismissed a petition seeking a unit of the distributors.⁸

(3) Supervisors

The principal issue coming before the Board with respect to supervisors was whether the Act intended to exclude as supervisors only "front line management" and not "minor supervisory employees." The Board held that it is "enough . . . that an individual has the authority to exercise the duties and responsibilities from which the Act draws the necessary inference of supervisory status."⁹ However, the Board continues to recognize that authority or direction which skilled workers exercise over relatively unskilled workers is not supervisory.¹⁰ This authority derives from the skill itself, the Board stated, and is not the authority contemplated by the act, responsibly to direct other employees, which flows from management and tends to identify or associate a worker with management. The Board again emphasized that supervisory status is determined by the actual authority possessed by an individual. Thus, a delegation of authority in form but not in fact does not bestow supervisory status;¹¹ neither does a supervisory title.¹² However, certain trainees for supervisory positions who were permanently retained by the employer only as supervisors after their training period were held by the Board to "have the interest of supervisors and stand as such under the Act."¹³ The Board also had occasion to reaffirm its rulings with respect to "part-time" supervisors, excluding from the bargaining unit workers whose assignment of supervisory authority

⁶ *New Orleans Furniture Manufacturing Co., supra.*

⁷ Citing *Carter Publications, Inc.*, 100 NLRB 599.

⁸ *P. G. Publishing Company*, 114 NLRB 60.

⁹ *The Eavey Company*, 115 NLRB 1779, Member Bean dissenting on this point. The term "supervisor" is defined in section 2 (11) of the act.

¹⁰ *Southern Bleachery and Print Works, Inc.*, 115 NLRB 787.

¹¹ *Southern Bleachery and Print Works, Inc., supra.*

¹² *Armour and Company d/b/a Memphis Cotton Oil Mill*, 115 NLRB 615

¹³ *WTOP, Inc.*, 115 NLRB 758, Member Peterson dissenting

was regular and substantial¹⁴ and including those whose assignment of such authority was sporadic and irregular.¹⁵

It is the Board's usual practice where a requested unit includes supervisors to exclude such persons and direct an election for the remainder of the group if they otherwise constitute an appropriate unit. However, where the requested unit is composed predominately of employees found to be supervisors the Board will dismiss the petition.¹⁶

h. Employees Excluded From the Unit by Board Policy

For reasons of policy the Board excludes from bargaining units managerial and confidential employees. Consequently, in two cases during 1956 it excluded a buyer¹⁷ and procurement driver,¹⁸ finding that because their duties involved committing their employers' credit, they exercised managerial prerogative and thus were managerial employees. In other cases, the Board held the fact that an employee's duties involved scheduling materials¹⁹ or that a professional employee²⁰ made recommendations on matters of great consequence to management does not make such persons managerial employees.

The exclusion of "confidential" employees from group bargaining was reexamined during fiscal 1956. Finding that in recent years there had been a broadening in the scope of this exclusion, the Board, in the *B. F. Goodrich* case,²¹ reviewed the matter and unanimously reaffirmed the standard adopted for such employees in the *Ford Motor* case.²² Henceforth, in accord with the decision in the latter case, the Board stated that it would limit the term "confidential employee" "so as to embrace only those employees who assist and act in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations." Thus, under this rule the Board found junior clerks and traffic department employees who had access, respectively, to personnel data and to information concerning company rates and business practices not to be confidential employees subject to exclusion²³

¹⁴ *Whitmoyer Laboratories, Inc*, 114 NLRB 749

¹⁵ *Pep Boys, Manny, Moe & Jack, Inc*, 114 NLRB 1195

¹⁶ *J. T. Flagg Knitting Company, Division of Flagg-Utica Corporation*, 115 NLRB 211. see also *WTOP, Inc*, *supra*

¹⁷ *Girdler Company, et al*, 115 NLRB 726

¹⁸ *Swift & Company*, 115 NLRB 752

¹⁹ *Hazel-Atlas Glass Co and Clarksburg Paper Co*, 115 NLRB 40

²⁰ *Westinghouse Electric Corporation*, 113 NLRB 337

²¹ *The B. F. Goodrich Co*, 115 NLRB 722

²² *Ford Motor Co*, 66 NLRB 1317 (1946)

²³ *Girdler Company, et al*, 115 NLRB 726. *Detroit Marine Terminals, Inc*, 115 NLRB 822. See, also, *ACF Industries, Inc*, 115 NLRB 1106.

i. Unit Treatment of Special Types of Employees

During fiscal 1956 the Board continued to apply its well-established rules with respect to the unit placement of clerical employees, technical employees, and other than regular, full-time employees.

(1) Clerical Employees

The Board distinguishes between office and plant clerical employees.²⁴ Separate units of office clericals are found by the Board to be appropriate.²⁵ Plant clericals are excluded from such units²⁶ and, absent a contrary agreement of the parties, are customarily included in units of production or maintenance employees with whom they associate in their work.²⁷

(2) Technical Employees

The Board excludes technical employees from plantwide units if one party objects to their inclusion.²⁸ However, the Board will find a separate unit of technical employees appropriate, and such unit may be represented by the same union representing the plantwide unit.²⁹

(3) Other Than Regular Full-Time Employees

The Board is frequently faced with the issue whether certain employees should be excluded from a unit because they are casual, probationary, or temporary employees. However, the classification of such employees is not determinative of their unit placement. If the job upon which employees are working is temporary and there is no substantial likelihood of continued employment or reemployment after the particular job has terminated, the Board will generally exclude the employees.³⁰ Thus, temporary, seasonal workers, few of whom return from year to year, are excluded by the Board.³¹ However, probationary employees who do the same work as other employees and most of whom continue as regular employees beyond the end of their probationary period will be included.³² Furthermore, the fact that at the time an employee is hired he is not taken on perma-

²⁴ For an example of the difference between these two types of clerical employees see *J. E. Faltin Motor Transportation, Inc.*, 114 NLRB 1369.

²⁵ See *Hazel-Atlas Glass Co. and Clarksburg Paper Company*, 115 NLRB 40.

²⁶ *ACF Industries, Inc.*, 115 NLRB 1106. *J. E. Faltin Motor Transportation, supra*, *Badenhausen Corporation*, 113 NLRB 867, Members Leedom and Rodgers dissenting on another point.

²⁷ *Hyde Park Mills, Inc.*, 115 NLRB 1303. *Brown Instruments Division, Minneapolis-Honeywell Regulator Co.*, 115 NLRB 344. *Clackamas Logging Co.*, 113 NLRB 229.

²⁸ *Pollock Paper Corporation (Waterproof-Ohio Division)*, 115 NLRB 231. *General Foods Corporation, Northland Dairy Division*, 115 NLRB 263.

²⁹ *United States Gypsum Company*, 114 NLRB 523.

³⁰ *Individual Drinking Cup Company, Inc.*, 115 NLRB 947.

³¹ *Consolidated Paper & Box Manufacturing Company, Inc.*, 115 NLRB 187. *Wiltshire Manufacturing Company*, 115 NLRB 1499. *Swift & Company*, 115 NLRB 755. *American Rice Growers Cooperative Association, Beaumont Division*, 115 NLRB 275.

³² *Central Operating Company*, 115 NLRB 1754.

nently, receives no fringe benefits, and is paid less than other employees does not warrant the exclusion of such employee if he performs the same work as the other employees and works continuously.³³ Also, as in past years, the Board continued to include regular, part-time employees.³⁴

j. Units for Decertification Purposes

The Board continued to follow the rule³⁵ adopted in 1955 that, in decertification elections, the existing bargaining unit is alone appropriate. The Board applied this rule to professional employees where it was sought to decertify such employees only, though they were part of a broader unit. In finding the proposed unit inappropriate the Board held the act's requirement that professional employees be given a separate election to choose their bargaining representative does not likewise require that they be given a separate election for decertification purposes.³⁶ This rule on decertification also played a part in the Board's decision to abolish the "neither" or "no union" choice in severance elections. The reasoning was that a majority vote for such choice would, if counted, permit in effect decertification in a unit smaller than the established unit.³⁷ Similarly, the Board dismissed an employer petition seeking an election among a group of employees who were part of a larger unit.³⁸ To grant the employer's request, the Board stated, "would permit by indirection what could not be done directly, namely the decertification of a segment of an established unit."

8. Conduct of Representation Elections

Section 9 (c) (1) provides that if a question of representation is found to exist the Board must resolve it through an election by secret ballot. However, election details are left to the Board. This, in turn, continues to require frequent decisions on such matters as voting eligibility, timing of elections, and standards of election conduct.

a. Voting Eligibility

As heretofore, the Board has required that a voter in order to qualify must have employee status in the voting unit both on the

³³ *The Eureka Pipe Line Company*, 115 NLRB 13.

³⁴ *Minneapolis Star and Tribune Company*, 115 NLRB 1300.

³⁵ *Campbell Soup Co.*, 111 NLRB 234 (1955).

³⁶ *Westinghouse Electric Corporation*, 115 NLRB 530. see, also, *Great Falls Employers Council, Inc.*, 114 NLRB 370. As to technical employees, see *Standard Oil Co. of California*, 113 NLRB 475.

³⁷ *American Tobacco Co., Inc.*, 115 NLRB 218.

³⁸ *Triangle Publications, Inc.*, 115 NLRB 941.

applicable payroll and on the date of the election.³⁹ Moreover, the voter must have been employed and working on the established eligibility date.⁴⁰ However, as specified in the Board's usual direction of election or election agreement, the latter requirement does not apply to employees who are ill or on vacation or temporarily laid off,⁴¹ employees in the military service who appear in person at the polls, and strikers other than strikers who are not entitled to reinstatement.

In cases where the voting status of employees could not be presently determined, the Board has continued to permit the employees involved to vote subject to challenge. The practice was again followed in cases where the record did not clearly establish whether temporary employees had a substantial expectancy of permanent employment,⁴² and where the voting status of economic strikers and their replacements could not be presently ascertained.⁴³

Regarding the date as of which eligibility is determined, the Board customarily uses the payroll period immediately preceding the date of the direction of election. The Board has consistently declined to deviate from the established practice, except where it appeared that a different period would extend the voting privilege to a more representative electorate.⁴⁴ In one case,⁴⁵ where a strike of all the employees in the proposed unit was still in progress at the date of the hearing and where the record did not show the extent to which operations had been shut down, the Board directed that the customary eligibility date be used only if the employer's operations in fact continued during the strike or were resumed by the date of the direction of election. In the alternative, if operations were closed down, eligibility was to be determined on the basis of the payroll for the period immediately preceding commencement of the strike.

Requests for determination of eligibility on the basis of a payroll period preceding alleged unfair labor practices on the part of the

³⁹ See Twentieth Annual Report, p. 52

All employees properly in a bargaining unit are eligible to vote (*ibid*). Thus, the Board has rejected contentions that voting rights should be denied an employee because of his union membership (*Adler Metal Products Corporation*, 114 NLRB 170), or because in addition to his regular part-time job he held an office in a union, or had a full-time job elsewhere (*Personal Products Corporation*, 114 NLRB 959).

The tests applied in determining whether particular employees properly belong in a bargaining unit are discussed at pp. 52-64.

⁴⁰ An employee hired before the eligibility date who does not commence work until after that date is not eligible to vote *Barry Controls, Incorporated*, 113 NLRB 26

⁴¹ Employees found to have been permanently laid off have been held ineligible to vote even though they retained their seniority status. *N A Woodworth Company*, 115 NLRB 1263. *Owens-Illinois Glass Co*, 114 NLRB 387.

⁴² *Central Metal Products, Inc*, 115 NLRB 1155

⁴³ *Vaughn & Taylor Construction Co, Inc*, 115 NLRB 1404. *The Hertzner Electric Company*, 115 NLRB

820. Compare *Buffalo Arms, Inc*, 114 NLRB 950

⁴⁴ Compare *Buffalo Arms, Inc*, *supra*

⁴⁵ *Cab Service and Parts Corporation*, 114 NLRB 1294.

employer have been denied because of the Board's established policy not to consider unfair labor practices in representation proceedings⁴⁶

b. Timing of Elections

In a number of cases the Board was again requested not to hold an election during the customary period—i. e., within 30 days from the direction of election—either because of the pendency of unfair labor practice charges or because the employer's operations would not reach their seasonal peak until a later date.

Regarding the pendency of unfair labor practice charges, the Board reaffirmed the following rules: (1) Ordinarily an election will not be held while unfair labor practice charges are pending;⁴⁷ (2) where, however, the charging party has waived the charges as a basis for later objections to the results of the election, the Board will proceed with the election;⁴⁸ and (3) an immediate election will likewise be directed during the pendency of an appeal from the dismissal of unfair labor practice charges.⁴⁹

In one case, the Board rejected a contention that no election should be directed because insufficient time had elapsed since the settlement of certain unfair labor practice charges to permit a free election⁵⁰ The Board here noted that the employer had fully complied with the terms of the settlement agreement, and that the unfair labor practice case had been closed more than 3 months.

In two cases, where postponement of the election was requested on the asserted ground that the employer's operations were seasonal, the Board denied the request. In one case,⁵¹ it was found that mechanization of the employer's operations which was in progress had the effect of eliminating former payroll fluctuations, and that the current employee complement was therefore sufficiently representative to make an immediate election appropriate. In the second case,⁵² no election postponement was held required since the warehouse operations involved were carried on on an average of 22 weeks a year, with up to 24 percent of the employees returning from year to year.

c. Standards of Election Conduct

Board elections are conducted in accordance with strict standards designed to assure that the participating employees have an oppor-

⁴⁶ *General Foods Corporation, Northland Dairy Division*, 115 NLRB 263, *Henr Duty Electric Company*, 115 NLRB 798

⁴⁷ See *Coffey's Transfer Company*, 115 NLRB 888

⁴⁸ See *Milham Products Company, Inc.*, 114 NLRB 1544

⁴⁹ See *LeRoi Division, Westinghouse Airbrake Company*, 114 NLRB 893, *Cumee Press of Indiana*, 114 NLRB 764 In the last cited case, the Board also overruled objections to the election which were based on the pendency of charges alleging conduct which did not concern the employees involved

⁵⁰ *Albert Trostel Packings, Ltd.*, 115 NLRB 930

⁵¹ *Aroostook Federation of Farmers, Inc.*, 114 NLRB 538

⁵² *The Great Atlantic & Pacific Tea Company, National Produce Division*, 113 NLRB 865

tunity to register a free and untrammelled choice in selecting a bargaining representative. Any party to an election who believes that the prescribed standards were not met may, within 5 days, file objections to the election with the regional director under whose supervision it was held. The regional director then makes a report on the objections to which exceptions may be filed with the Board. The issues raised by such objections, and exceptions if any, are then finally determined by the Board.⁵³

(1) Mechanics of Election

Election mechanics, which must frequently be adapted to particular circumstances, in many respects are left to the discretion of the regional director or Board agent who conducts the election.⁵⁴ The Board has again pointed out that it will abide by their judgment unless they have acted arbitrarily or capriciously.⁵⁵

The more important election details which were the subject of objections during fiscal 1956 are discussed below.

(a) Posting of election notice

Employers are furnished official notices of election by the regional director which they must post in accordance with specific instructions. In one case during fiscal 1956, an employer's failure to post the notices was held ground for setting the election aside. The Board here found that the violation of instructions, without more, resulted in inadequate publication of the election and prevented employees from voting, so that the election did not represent the desires of all employees in the bargaining unit.⁵⁶ However, in another case, where the employer posted an unofficial notice because the official notices were not received, the election was held not invalidated thereby.⁵⁷ The Board noted that the unofficial notice adequately apprised the employees of the issue in the election, and that all employees in the unit voted. The Board nevertheless made it clear that its findings under the circumstance here were not to be taken "as approving the failure or refusal of any parties to adhere strictly to the regularly established procedures."

⁵³ The procedures for filing objections and exceptions and for their disposition are set out in section 102.61 of the Board's Rules and Regulations.

⁵⁴ See, e. g., *Interboro Chevrolet Co., Inc.*, 113 NLRB 118, as to the holding of pre-election conferences, *Milham Products Co., Inc.*, 114 NLRB 1544, as to the place of the election (away from the employer's premises), cf. *Bridgeport Moulded Products, Inc.*, 115 NLRB 1751, *East Texas Pulp & Paper Company*, 114 NLRB 885, as to position of a participant on the ballot, and *Holmes & Barnes, Ltd.*, 114 NLRB 630, as to adequate publication of the election.

⁵⁵ *East Texas Pulp & Paper Company, supra*

⁵⁶ *F. H. Vahlsmu, Inc.*, 114 NLRB 1451

⁵⁷ *Pegwill Packing Co.*, 115 NLRB 1151 distinguishing *McKesson & Robbins, Inc.*, 106 NLRB 1220

(b) Election observers

In Board-ordered elections the use of observers by the parties is discretionary with the Board. However, as pointed out in one case during the past year, where an agreement for a consent election specifically provides for observers, the use of an observer becomes a right and is not a mere privilege.⁵⁸ Such a contractual provision, according to the Board, assures the party to the agreement of the proper conduct of the election and is a material term of the consent-election agreement.

Regarding qualifications and conduct of election observers, the Board had occasion to reaffirm its view that a petitioning union is not precluded from selecting one of its paid organizers as observer,⁵⁹ and that the wearing of stickers, buttons, or similar insignia by observers does not impair the fair conduct of an election.⁶⁰ The Board also held that, while observers are prohibited from keeping a list of employees who have and have not voted, other than the official eligibility list secured by the Board agent for use in the election, there is no prohibition against an observer's retention of a list of prospective voters whose ballots he desires to challenge.⁶¹

(c) Removal and loss of ballots

In 2 cases the election was sought to be set aside because of the possibility of "chain voting,"⁶² allegedly indicated in 1 case⁶³ by a voter's removal of a ballot from the polling place, and in the other case⁶⁴ by the fact that 1 more ballot was cast than the number of voters checked off the eligibility list. In both instances, a majority of the Board found insufficient evidence of possible chain voting. In the *Holmes* case, the majority⁶⁵ held that the casting of the "extra" ballot was adequately explained and that the chance of chain voting was remote because of the smallness of the election.⁶⁶ In the *Farrell-Cheek* case,⁶⁷ the majority found that while the removal of a ballot from the polling place indicated an opportunity to initiate chain voting, the regional director's

⁵⁸ *Breman Steel Company*, 115 NLRB 247.

⁵⁹ *Shoreline Enterprises of America and Shoreline Packing Corporation*, 114 NLRB 716.

⁶⁰ *R. H. Osbrink, et al., d/b/a R. H. Osbrink Manufacturing Company*, 114 NLRB 940. See *Western Electric Company*, 87 NLRB 183.

⁶¹ *Burson Plant of The Kendall Company*, 115 NLRB 1401.

⁶² Chain voting occurs where a participant in an election "obtains a blank ballot without being seen to enter the voting booth with the same, marks it for his choice and passes it on to another voter to deposit in the ballot box, the latter voter, in turn, relinquishing the blank ballot which he receives in the line but does not cast, and which can then be premarked for the next voter."

⁶³ *Farrell-Cheek Steel Company*, 115 NLRB 926.

⁶⁴ *Holmes & Barnes, Ltd.*, 114 NLRB 630.

⁶⁵ Member (now Chairman) Leedom, dissenting, believed that the issue relating to the extra ballot had not been sufficiently explored and that the hearing requested by the employer should be held in the interest of establishing the requisite regularity of the election.

⁶⁶ Compare *Swift & Company*, 88 NLRB 1021, which the majority cites.

⁶⁷ 115 NLRB 926. Chairman Leedom and Member Rodgers dissented on the ground that the election here was attended by irregularities which prevented it from serving the statutory purpose.

investigation disclosed no evidence of the voter's or other person's participation in a dishonest voting scheme.

In one case, where challenged ballots which were to be opened and counted had been lost, the Board, rather than permit the particular employees to vote again, directed a new election in the entire unit.⁶⁸ The Board believed that the discharge of its responsibility for the proper conduct of elections required that the earlier election be set aside.

(2) Electioneering Rules

In order to assure that employees in a Board election shall have an opportunity to express their free and uncoerced choice in selecting a bargaining representative, the Board has continued to require the parties to the representation proceeding to abide by certain rules. These rules impose certain limitations on the place and time for electioneering and campaigning by the parties, and prohibit preelection conduct which tends to have a coercive effect on the voters.

(a) Preelection speeches—the 24-hour rule

A number of cases during fiscal 1956 involved, and required further interpretation of, the *Peerless Plywood* rule which prohibits "election speeches on company time to massed assemblies of employees within 24 hours before the scheduled time for conducting an election."⁶⁹

In one case, the Board made it clear that the rule reaches beyond the usual situation where a speech is made to a group or massed assembly of employees gathered together for the purpose of listening to a speaker who addresses them face to face.⁷⁰ Thus, the rule was held to apply to a speech broadcast from a sound truck which could be heard by employees at work inside the plant. It was pointed out that the critical factor is not the location of the speaker but whether the employees are exposed to his remarks. The Board further noted that here the employees who heard or could have heard the speeches, though not a massed assembly, were not isolated but worked in close proximity and that the union directed its campaign speeches at the employees in a planned and systematic fashion during the entire day before the election.

One group of cases turned on the question whether the speeches involved were made "on company time" in the sense that attendance was not voluntary. On the basis of this test, the *Peerless* rule was held to apply to a speech to employees who were on piece rate and were not paid for the time involved, but were addressed immediately after

⁶⁸ *Tube Distributors Company, Inc.*, 113 NLRB 381.

⁶⁹ *Peerless Plywood Company*, 107 NLRB 427.

⁷⁰ *U. S. Gypsum Co.*, 115 NLRB 734. Cf. *Repcal Brass Manufacturing Co.*, 110 NLRB 193 (Twentyeth Annual Report, p. 60), where the speeches emanating from the sound truck were heard only by employees who were leaving the plant on their own time after they had completed their shift.

work was stopped in the middle of the day and without any indication that attendance was voluntary;⁷¹ a speech to commission salesmen at a regular sales meeting which they were expected to attend;⁷² a speech made during time controlled and paid for by the employer at a non-routine employee meeting assembled by supervisory announcement;⁷³ a speech to store employees immediately after closing time, with no effort on the part of the employer to advise the employees that attendance was voluntary, and under circumstances which indicated that the meeting was in fact involuntary;⁷⁴ and speeches read to employees at the end of their work shifts during meetings the employees were required to attend.⁷⁵

In one case, the election was set aside because the employer had given permission, first to a nonparticipating union and then to the petitioner, to address employees in the manner proscribed by the *Peerless Plywood* rule.⁷⁶ The Board here held that the petitioner's own violation of the *Peerless* rule neither estopped the petitioner from objecting to the employer's initial misconduct, nor made the rule otherwise inapplicable. The Board noted that, while the petitioner's misconduct was not to be condoned, the petitioner was in no way responsible for the employer's misconduct on which the objection was based. The Board here also rejected the contention that the *Peerless* rule was inapplicable because the union which was first permitted to address the employees was not a participant in the election.

(b) Use of sample ballots

The Board had occasion to reaffirm its prohibition against the use by any participant in an election of any document purporting to be a copy of the Board's official ballot, unless the document is completely unaltered in form and content.⁷⁷ As pointed out in one case, the purpose of the rule is "to preserve for the parties to an election an atmosphere of impartiality, completely free from the slightest suggestion that [the Board] endorses any particular choice."⁷⁸ An election was therefore set aside because of the employer's distribution to the employees of sample ballots with a marking in the "NO" box.⁷⁹ The Board rejected the employer's contention that its action should not be held to invalidate the election since the ballot distributed was not an exact copy of the official ballot; that the ballot was accompanied by an

⁷¹ *Robbins Packing Corp.*, 115 NLRB 1429

⁷² *Fuller Ford, Inc.*, 113 NLRB 169

⁷³ *Rock Hill Printing & Finishing Co.*, 114 NLRB 836

⁷⁴ *The Great Atlantic and Pacific Tea Company*, 115 NLRB 1279

⁷⁵ *Homer Polotte, d/b/a H & P Mining Company*, 114 NLRB 1436

⁷⁶ *Sharks Motor Express Corp. and Boyce Motor Lines, Inc.*, 113 NLRB 753

⁷⁷ For statement of the rule, see *Allied Electric Products, Inc.*, 109 NLRB 1270. Twentieth Annual Report, p 62

⁷⁸ *Boro Wood Products Company, Inc.*, 113 NLRB 474

⁷⁹ *Ibid.*

explanatory letter definitely identifying it as a sample and listing both available choices; and that the employees therefore could not have inferred that the document was endorsed by the Board. It was further held that neither the free speech guarantee of the Constitution nor that in section 8 (c) of the act prevents the Board from prohibiting the use of its *own* official document for partisan advantage. In a later case, the Board again made it clear that the reproduction and distribution of altered sample ballots are *per se* sufficient grounds for setting an election aside, and that violation of the Board's rule cannot be remedied by a subsequent "retraction," such as statements that there was no intention to imply Board approval, and that the Board "is absolutely neutral and impartial."⁸⁰

However, in one case, where the sample ballot portion of posted election notices had been defaced with markings in the boxes, the Board held that the complaining petitioner could not invoke the *Allied Electric* rule absent a showing that the employer was responsible for the defacement, or unjustifiably permitted the defaced notices to remain posted.⁸¹

(c) Election propaganda and campaign tactics

Ordinarily, the Board does not censor or police election propaganda but leaves the evaluation of such propaganda to the participants in the election themselves.⁸² Moreover, in cases where a party asserted that a free election was prevented because of false or misleading statements, the Board has adhered to the *Gummed Products* test⁸³ and has declined to set the election aside unless the asserted misstatements were so misleading that they "exceeded the limits of legitimate propaganda and lowered the standards of campaigning to a level which impaired the free and untrammelled expression of choice by the employees"⁸⁴

In 2 cases, the Board rejected the employer's contention that the distribution of misleading union propaganda less than 24 hours before the election constituted "campaign trickery" because the *Peerless Plywood* rule⁸⁵ prevented the employer from making an effective reply.⁸⁶ The Board here reiterated that the *Peerless* rule does not apply to the distribution of campaign literature, and does not require that distribution of union campaign literature be timed so

⁸⁰ *The De Vilbiss Company*, 114 NLRB 945

⁸¹ *Robberson Steel Company*, 114 NLRB 344, compare *Rheem Manufacturing Company*, 114 NLRB 404, where the Board held that similar defacement of election notices, even if known to the employer before the election, was not cause for setting aside the election

⁸² See, e g , Twentieth Annual Report, pp 62-63. Nineteenth Annual Report, pp 62-63

⁸³ *The Gummed Products Company*, 112 NLRB 1092

⁸⁴ See *Otis Elevator Company*, 114 NLRB 1490, *Holder's, Inc* , 114 NLRB 751, *Mason Can Company*, 115 NLRB 1408

⁸⁵ See p 69

⁸⁶ *Gong Bell Manufacturing Co* , 114 NLRB 342, *N N Hills Brass Co* , 114 NLRB 164

as to afford the employer an opportunity to reply.⁸⁷ The Board further pointed out that the prohibition against "campaign trickery" is directed against conduct which renders *employees* incapable of evaluating propaganda, and is not concerned with conduct which may place an employer at a disadvantage insofar as replying is concerned.⁸⁸

Elections were again set aside where employers had attempted to influence the outcome by express or implied promises of economic benefits or threats of reprisals which were to materialize upon the selection or rejection of a proposed representative.⁸⁹ In one case, it was made clear that once an atmosphere of widespread fear of a plant shutdown had been systematically engendered by various means, the conditions necessary to an uncoerced election were not restored by a single statement by the employer assuring the employees of the continued operation of the plant.⁹⁰

On the other hand, objections to preelection statements were overruled where it was found that the statements had no coercive content and were in the nature of expressions of opinion which are privileged under section 8 (c).⁹¹

The Board during fiscal 1956 reaffirmed the rule that an election may be set aside where employees have been interviewed individually by the employer for the purpose of dissuading them from electing a union. Thus, it was again pointed out⁹² that

. . . the technique of calling the employees into the Employer's office individually to urge them to reject the Union is, in itself, conduct calculated to interfere with their free choice in the election. This is so, regardless of the noncoercive tenor of an employer's actual remarks.

The rule was applied where individual interviews were conducted in the employer's office⁹³ or store,⁹⁴ as well as where out-of-town drivers were interviewed in their homes and on their routes.⁹⁵

Regarding a union's offer to reduce the initiation fee if employees joined up before the election, the Board adhered to the view that such a practice, traditionally used during an organizational campaign, does not of itself interfere with the conduct of an election.⁹⁶ Absent

⁸⁷ See Twentieth Annual Report, p. 57.

⁸⁸ *Gony Bell Manufacturing Company, supra*

⁸⁹ See, e g , *Precision Sheet Metal, Inc* , 115 NLRB 949, *The Falmouth Company*, 114 NLRB 896.

⁹⁰ *The Falmouth Company, supra*

⁹¹ See, e g , *La Pointe Machine Tool Co* , 113 NLRB 171, Member Murdock dissenting; *Troy Engine & Machine Company*, 115 NLRB 883, see also *The Lux Clock Manufacturing Company, Inc.*, 113 NLRB 1194, Members Murdock and Peterson dissenting. *The Zeller Corporation*, 115 NLRB 762, Members Murdock and Peterson dissenting.

⁹² See *Oregon Frozen Foods Company*, 113 NLRB 881, *Mrs. Baird's Bakeries, Inc* , 114 NLRB 444, quoting *Economic Machinery Company*, 111 NLRB 947, Twentieth Annual Report, p. 64.

⁹³ *Mrs Baird's Bakeries, Inc.*, 114 NLRB 444, *Richards Container Corporation*, 114 NLRB 1435.

⁹⁴ *The Gallaher Drug Company*, 115 NLRB 1379.

⁹⁵ *Mrs Baird's Bakeries, Inc* , *supra*.

⁹⁶ *Otis Elevator Company*, 114 NLRB 1490.

a showing that the employees will be rewarded or penalized because they voted for or against the union, in the Board's opinion, a pre-election offer of lower initiation fees does not warrant setting aside the election.

d. Rules on Objections to Elections

The filing of objections to elections and of exceptions to a regional director's report on objections is subject to the pertinent provisions of the Board's Rules and Regulations.⁹⁷ It is the policy of the Board to hold the parties to a representation proceeding to strict compliance with these provisions in order to achieve procedural certainty. The Board believes that the infrequent hardships occasioned by a strict adherence to its rules are more than counterbalanced by the benefits that result from certainty in procedural matters.⁹⁸

The Board therefore declined to act on a petitioner's objections which were not received by the regional director within the prescribed 5-day period even though the petitioner contended that the untimely receipt of its objections was the result of a delay in mail delivery.⁹⁹ Similarly, the Board denied a motion to consider exceptions to a report on objections which were not received until the day after the filing period had expired.¹

In determining the timeliness of objections in one case, the Board construed the term "holiday" in section 102.83 of its Rules and Regulations as referring only to Federal holidays, rather than to holidays designated as such by the various laws of the several States.²

(1) Sufficiency of Objections

The Board's Rules and Regulations provide in section 102.61 that objections to an election "shall contain a short statement of the reasons therefor." The Board announced during the past year that this requirement is not met if the objections contain merely a general conclusive allegation of interference with the election, and that objections to merit investigation by the regional director must be "reasonably specific in alleging facts which *prima facie* would warrant setting aside the election."³ It was pointed out that the requirement of reasonable specificity in filing objections is a fundamental procedure essential to fairness, and not merely technical. In a later case, the Board upheld the regional director's refusal to consider the employer's timely objections which did not satisfy this test of spec-

⁹⁷ Section 102.61; section 102.83

⁹⁸ *Tung-Sol Electric, Inc and Triangle Radio Tubes, Inc*, 114 NLRB 104.

⁹⁹ *General Box Company*, 115 NLRB 301.

¹ *Tung-Sol Electric, Inc and Triangle Radio Tubes, Inc.*, *supra*.

² *Fisher Products Co*, 114 NLRB 161

³ *Don Allen Midtown Chevrolet, Inc*, 113 NLRB 879. Prior cases including *Gastonia Weaving Co.*, 103 NLRB 1200, and *Wilson & Co, Inc*, 88 NLRB 1, were overruled insofar as inconsistent. Member Murdock dissented from the application of the announced requirement to the present case.

ificity but were accompanied by a statement that particulars would be filed.⁴ The particulars referred to were filed after the 5-day period allowed for objections. Regarding the employer's allegation that its action conformed to the telephonic advice of an unidentified Board agent, the Board held that this was not sufficient ground for relaxing the published rules.

The Board also had occasion to reaffirm the rule⁵ that unless an objecting party furnishes supporting evidence, the regional director is not required to investigate the objections further, and that exceptions to a regional director's report on objections will be overruled by the Board unless the exceptions refer to specific substantial evidence controverting the director's conclusions.⁶

(2) Cutoff Date for Objections

The Board during the past year had to determine whether under the *A & P* and *Woolworth* rules⁷ a union could properly object to a second election because of a wage increase which was granted during the interval between the invalidation of a consent election and the direction of the second election.⁸ A majority of the Board⁹ held not. The majority reasoned that, while under the *A & P* rule the cutoff date for objections to the original consent election was the date of the stipulation for the election, that date was not controlling as to the second election, and that objections to the new election in order to be considered had to be based on conduct occurring after the Board's direction of the second election. The majority considered its view consonant with the policy of the *Woolworth* rule to select a cutoff date which tends to minimize the occasions for setting aside an election for conduct which is unreasonably remote from the date of the election. In order to effectuate this policy, the majority pointed out, the *A & P* cutoff date in contested cases was modified by substituting the date of the decision and direction of election for the more remote date of the issuance of notice of hearing, and by providing that in case of amendment the date of issuance of the amended decision and direction should control.

As to the wage increase here, the Board reaffirmed its view that for the purpose of the *Woolworth* rule the date a wage increase is granted is the critical date, and that an objection based on the continuation of the wage increase after the applicable cutoff date will not be entertained.

⁴ *Progressive Brass Foundry Co., Inc.*, 114 NLRB 963

⁵ *N B Liebman & Company, Inc.*, 112 NLRB 88, Twentieth Annual Report, p. 65

⁶ *Adler Metal Products Corp.*, 114 NLRB 170

⁷ *The Great Atlantic & Pacific Tea Company*, 101 NLRB 1118, *F W Woolworth Co.*, 109 NLRB 1446, Twentieth Annual Report, pp. 65-66

⁸ *Bremen Steel Co.*, 115 NLRB 1581

⁹ Member Peterson dissenting

IV

Unfair Labor Practices

The Board is empowered by the act "to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce" In general, section 8 forbids *an employer* or *a union* or their agents from engaging in certain specified types of activity which Congress has designated as unfair labor practices. The Board, however, may not act to prevent or remedy such activities until a charge of unfair labor practice has been filed with it. Such charges may be filed by an employer, an employee, a labor organization, or other private party. They are filed with the regional office of the Board in the area where the unfair practice allegedly was committed.

This chapter deals with decisions of the Board during the 1956 fiscal year which involve novel questions or set new precedents.

A. Unfair Labor Practices of Employers

1. Interference With Employees' Rights

Section 8 (a) (1) of the act forbids an employer "to interfere with, restrain, or coerce" employees in the exercise of their rights to engage in, or refrain from, collective-bargaining and self-organizational activities as guaranteed by section 7. Violations of this general prohibition may take the form of (1) any of the types of conduct specifically identified in subsections 2 through 5 of section 8 (a),¹ or (2) any other conduct which independently tends to restrain or coerce employees in exercising their statutory rights.

As in prior years, the great majority of the cases involving allegations of interference with employee rights by conduct not specifically forbidden in other subsections of section 8 (a) presented the usual questions arising from such matters as interrogation and surveillance of employees in connection with their union activities; threats, promises, and changes in terms of employment which tend to influence the employees' organizational leanings; discriminatory treatment of individual employees because of their concerted activities; or attempts to influence the outcome of Board elections.

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

Some of the more important issues involved in the cases under section 8 (a) (1) concerned the legality of prohibitions against wearing union insignia in the plant, premature recognition of a bargaining representative, and discrimination against supervisory employees.

a. Prohibition Against Wearing Union Insignia

Two cases in which employers were charged with unlawfully putting into effect a rule against the wearing of union badges² and campaign buttons³ turned on the application of the principle that

a rule prohibiting the wearing of union insignia in the plant interferes with employees' organizational rights unless special circumstances make the rule necessary in order to maintain discipline and uninterrupted production.⁴

A Board majority⁵ found in each case that there were no special circumstances which justified adoption of the rule.⁶

In *Kimble Glass*, the employer promulgated a general no-badge rule after officials and members of the incumbent representative of the plant's 1,500 employees had warned that the continued wearing by a comparatively few employees of insignia of a campaigning rival union might result in violence and work stoppages. Rejecting the employer's contention that the situation satisfied the "special circumstances" requirement, the majority of the Board pointed out that that requirement presupposes "more than an employer's submission to the demands of an incumbent union or its members to prevent adherents of a rival union from exercising their legitimate self-organizational rights." According to the majority, the employer here should have taken appropriate measures against the employees who threatened violence and work stoppages, instead of taking "the course of least resistance" by adopting the no-badge rule which interfered with the exercise by employees of statutory rights. As to the threatened work stoppages, it was pointed out that under judicial precedent strike threats do not justify limitations on the employees' organizational rights. Thus, in the majority's view, the threats of work stoppages here, unlike the threats of violence, could not be considered in determining the existence of "special circumstances." Regarding the threats of violence, the majority believed that complete order and efficiency could have been maintained had the employer made it sufficiently clear to the employees that violations of existing rules

² *Kimble Glass Company*, 113 NLRB 577.

³ *Caterpillar Tractor Co.*, 113 NLRB 553.

⁴ See *Kimble Glass Company*, cited above.

⁵ Member Rodgers dissenting.

⁶ The majority's conclusion in *Kimble Glass* was sustained by the Sixth Circuit Court of Appeals (230 F. 2d 484), certiorari denied 352 U. S. 836, Oct. 8, 1956. However, a similar ruling by the Board was reversed by the Seventh Circuit Court of Appeals in *Caterpillar Tractor* (230 F. 2d 357); see p. 77.

against disorder and interruption of production would be punished.

In *Caterpillar Tractor* the incumbent bargaining representative bolstered its drive to reduce nonmembership among the employees with campaign buttons variously inscribed "I'm Paying My Way Are You?" "Don't Be a Free Rider!" "I Joined Have You?" and "Don't Be a Scab!" The employer, believing that disorder might result from the display of the "Scab" buttons, prohibited their use. In passing on the right of the employees to display their insignia, the Board again stated the rule that

In establishing the protected nature of this type of concerted activity, the Board has not been unmindful of the employer's interest in achieving uninterrupted production and maintaining discipline in his plant. Consequently, the Board has recognized that, in order to effect an equitable and just balancing of competing rights and interests, the employees' statutory right to display union insignia might be qualified in certain limited instances where breaches of discipline or disruption of production attend its exercise. Thus, the Board has held that rules which interfere with the exercise of rights guaranteed by Section 7 of the Act "are presumptively invalid, in the absence of special circumstances which make them necessary in order to maintain production and discipline." [Footnotes omitted]

Upon weighing the conflicting employee and employer interests in the above sense, a majority of the Board concluded that the employer had not overcome the presumptive invalidity of its prohibition by a sufficient showing of "special circumstances." Thus, in the majority's view, the term "scab" used in one type of campaign button was not, as contended by the employer, so offensive that the eruption of violence could reasonably be anticipated.⁷ It was pointed out that the effect of the use of the term "scab" could not be determined on the basis of current definitions, but had to be evaluated with proper regard for the context and setting in which the term was used. The majority concluded that, so viewed, the term "scab" did not have the meaning attributed to it by the employer but conveyed a meaning no more opprobrious than that conveyed by the legends on the union's other insignia whose continued use was permitted. The majority went on to say

When this Board is called upon to strike down the statutory rights of employees embodied in Section 7 of the Act because of the content of organizational slogans which appear on campaign badges, the Board should do so only upon a clear showing that special circumstances exist which justify such action and that the interests to be thus served manifestly outweigh those of the employees whose rights are thereby being withheld

⁷ The Court of Appeals for the Seventh Circuit (see preceding footnote), like Board Member Rodgers, took the view that the employer justifiably anticipated that the use of "Scab" buttons might disrupt harmony and discipline in the plant, and that the prohibition against wearing such buttons was therefore not unlawful.

b. Untimely Recognition of Representative

A recurring problem in cases under section 8 (a) (1) is the application in novel situations of the general *Midwest Piping*⁸ prohibition against employer recognition of one union in the face of the rival claim of another union. In 1 case during 1956, a Board majority⁹ held that recognition of 1 of 2 competing unions violated the rule, even though the rival union's petition for certification previously had been dismissed by the Board because the unit sought was in process of immediate and substantial expansion.¹⁰ The majority held that under the circumstances the dismissal of the petition without prejudice did not operate to extinguish the petitioner's representation claim, and that a real question concerning representation within the *Midwest Piping* rule continued to exist.¹¹ Rejecting the dissenting Member's view that the petitioner's claim was merged in and fell with its petitions, the majority said:

Although the existence of a valid claim is normally evidenced by the filing and processing of a representation petition, it is the continuing existence of the *claim*, and not, as our dissenting colleague asserts, *only* the acceptance and processing of a petition by the Board, which determines whether the situation calls for the application of the *Midwest Piping* doctrine [Footnote omitted]

Here, the majority pointed out, the rival union's claim survived the dismissal of its petition because the rival union had sought recognition in a basically appropriate unit and the dismissal of its petition was unrelated to the validity of its claim. According to the majority, the impact of the dismissal of a petition in an expanding unit situation, such as the one here, is not the same as that of a dismissal for the inappropriateness of the unit sought or for a contract bar. Thus, the majority noted that dismissal because of an expanding unit decides "no more than that an unsubstantial and unrepresentative complement of employees may not select a representative to represent the contemplated full employee complement."

Another case involved the question whether an employer violated section 8 (a) (1) by extending the coverage of its union-security contract for an existing bargaining unit to a new department in which no employees had yet been hired, and by later applying the agreement to newly hired employees.¹² The Board found that the employees in the new department could not properly constitute a

⁸ *Midwest Piping and Supply Co., Inc.*, 63 NLRB 1060, 1071

⁹ Member Murdock dissenting

¹⁰ *Pittsburgh Valve Company*, 114 NLRB 193

¹¹ The majority rejected the Trial Examiner's conclusion that the unit requested by the petitioner, which did not include all of the employer's plants, was inappropriate and did not raise a real question of representation, and that the situation here therefore came within the *William Penn* (93 NLRB 1104) exception to the *Midwest Piping* rule

¹² *Borg-Warner Corporation*, 113 NLRB 152 See also *The Item Co.*, 113 NLRB 67, discussed at p. 80

separate bargaining unit but had to be viewed as an accretion to the existing unit. Pointing out that such an accretion, under established policy, was not entitled to a self-determination election, the Board held that the extension of the union-security contract did not violate the act.

c. Discrimination Against Supervisor

Supervisors are excluded from the definition of the term "employee"¹³ and thus are not entitled to the protection of section 7. However, discrimination against a supervisor may violate section 8 (a) (1) if it has the effect of interfering with the exercise by rank-and-file employees of their self-organizational rights. Such a violation was found during the past year where an employer discharged a supervisor because he had given testimony adverse to the employer's interests in an earlier Board proceeding.¹⁴ The Board concluded that the discharge necessarily caused nonsupervisory employees to fear that they would expose themselves to similar discrimination if they testified against the employer before the Board. The Board said:

Clearly inherent in the employees' statutory rights is the right to seek their vindication in Board proceedings. Moreover, by the same token, rank-and-file employees are entitled to vindicate these rights through the testimony of supervisors who have knowledge of the facts without the supervisors risking discharge or other penalty for giving testimony under the Act adverse to their employer.

In order to remedy the violation, and to restore to the employer's nonsupervisory employees their full organizational freedom, the Board directed that the discharged supervisor be reinstated to his job with back pay.

2. Employer Domination or Support of Employee Organizations

Section 8 (a) (2) makes it unlawful for an employer "to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it."

For remedial purposes, the Board has continued to distinguish domination of labor organizations from lesser forms of interference. The usual remedy in the case of domination is a direction that the dominated organization be completely disestablished. Disestablishment was ordered in only one case during the past year.¹⁵ In the case of employer assistance and support which does not amount to domination, the conventional remedy is to order the employer to refrain from recognizing or giving effect to any contract with the

¹³ Section 2 (3).

¹⁴ *Better Monkey Grip Company*, 115 NLRB 1170.

¹⁵ *Coppus Engineering Corporation*, 115 NLRB 1387

assisted organization unless or until it is certified by the Board. Where a labor organization has been assisted by an unlawful arrangement for the checkoff of dues on its behalf, the Board directs that employees be reimbursed for the amounts withheld from their wages.¹⁶

a. Assistance and Support

The cases under section 8 (a) (2) where employers were charged with acts of assistance and support of labor organizations, short of domination, involved types of conduct which traditionally have been held violative of section 8 (a) (2). Thus, taking into consideration the circumstances under which the conduct occurred, unlawful interference was again found in the case of permission to use company premises and facilities for union purposes, payment of employees for time spent on union business, and dues checkoff.¹⁷

In the numerous cases where employers had entered into illegal union-security agreements with labor organizations, their action was also found to have violated section 8 (a) (2).¹⁸ The Board has consistently held that agreements which make union membership compulsory, in a manner not sanctioned by the specific provisions of section 8 (a) (3), have the effect of giving unlawful support to the contracting union. The cases where the rule was applied during fiscal 1956 involved union-security agreements with labor organizations which had not proved their majority status in the unit covered;¹⁹ and union-security agreements which exceeded statutory limitations, such as agreements making union membership compulsory immediately or within a shorter time than the 30-day period provided by the act.²⁰ The extension of a union-security agreement to a group of employees who were entitled to an election but were afforded no opportunity freely to designate or reject the contracting union as their bargaining agent, was likewise held to have violated section 8 (a) (2).²¹ However, in another case, the extension of an incumbent bargaining agent's union-security agreement to employees in a new department was held not to have violated section 8 (a) (2), because the employees in the new department constituted merely an accretion to the existing

¹⁶ See, e g, *Hibbard Dowell Co.*, 113 NLRB 28, *The Englander Company, Inc.*, 114 NLRB 1034.

¹⁷ For cases where the circumstances were held not to justify a finding that similar conduct violated section 8 (a) (2), see *H. H. Erikson, et al., d/b/a Detroit Plastic Products Company*, 114 NLRB 1014, *National Electronic Manufacturing Corp.*, 113 NLRB 620 (Board majority). See also the Board's affirmation of the trial examiner's conclusion to the same effect in *Hearst Publishing Company, Inc. (Los Angeles Examiner Division)*, 113 NLRB 384, and *New Orleans Laundries, Inc.*, 114 NLRB 1077.

¹⁸ For other aspects of illegal union security, see the discussion of discrimination under section 8 (a) (3), pp 85-87, and section 8 (b) (2), pp. 100-106.

¹⁹ See *Hibbard Dowell Co*, *supra*, *National Electronic Manufacturing Corp*, *supra*.

²⁰ *Hearst Publishing Company, Inc*, *supra*; *Associated Machines, Inc*, 114 NLRB 390, *Louis Goren, et al., d/b/a City Window Cleaning Company*, 114 NLRB 906; *Seaboard Terminal and Refrigeration Company*, 114 NLRB 1391.

²¹ *The Item Company*, 113 NLRB 67.

bargaining unit and as such would not have been entitled to a self-determination election.²²

Under the *Midwest Piping* doctrine,²³ employer recognition of a labor organization as the bargaining representative of his employees at a time when conflicting claims of one or more competing unions raise a valid question of representation also constitutes unlawful assistance within section 8 (a) (2), in addition to being independently violative of section 8 (a) (1).²⁴ In one case, which is discussed in the preceding section,²⁵ a Board majority held that the employer's recognition of the complaining union's rival violated section 8 (a) (2) within the *Midwest Piping* rule, even though the complainant's petition for certification had been dismissed, before the rival's recognition, because of the imminent expansion of the unit sought. The majority was of the view that, since the dismissal of the petition was unrelated to the validity of the complaining union's claim, the claim survived and continued to raise a valid question of representation.

In one case, the Board rejected the view that a union's filing of charges alleging employer assistance to an incumbent union established the charging union as the incumbent's rival so that an extension of the incumbent's contract to a new department violated section 8 (a) (2).²⁶

3. Discrimination Against Employees

Section 8 (a) (3) forbids an employer to discriminate against employees "in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization." However, the "union security" proviso to section 8 (a) (3) permits an employer to make an agreement with a labor organization requiring that the employees join the union within 30 days and maintain union membership as a condition of continued employment.

In each case where an employer is charged with a violation of section 8 (a) (3), the Board must determine whether the complaining employees were in fact discriminated against because of activities which are protected by section 7 of the act.²⁷ If the discrimination

²² *Borg-Warner Corporation*, 113 NLRB 152.

²³ *Midwest Piping and Supply Co., Inc.*, 63 NLRB 1060

²⁴ See section 1, pp 78-79.

²⁵ *Pittsburgh Valve Company*, 114 NLRB 193, Member Murdock dissenting, p. 78, *supra*.

²⁶ *Borg-Warner Corporation*, 113 NLRB 152. As noted above (p. 78), the Board here found that the department was only an accretion to the incumbent's contract unit, and that the extension of its union security to the new employees was therefore not unlawful.

²⁷ Whether the employer was illegally motivated, i. e., prompted by the employees' protected activity, in many cases must be inferred from the circumstances under which the discrimination occurred. For types of circumstances which have been held to indicate unlawful motivation, see, for instance, *National Video Corporation and Navidco, Inc.*, 114 NLRB 599, *Fox Manufacturing Company*, 114 NLRB 1313, *Vandum Corporation of America, Inc.*, 114 NLRB 428, see also *Eastern Massachusetts Street Railway Company*, 113 NLRB 298

is found to have been motivated by such activities, the employer may be held to have violated section 8 (a) (3).²⁸ Moreover, discrimination which is based on a belief, true or false, that the employees engaged in union activities is sufficient to sustain a finding that the act was violated.²⁹

a. Protected and Unprotected Activities

Section 7 of the act protects the right of employees "to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection,"³⁰ as well as the right of employees "to refrain from any or all of such activities."

The right to refrain, as noted before, is limited by the union-security proviso of section 8 (a) (3), and the right to engage in organizational and other concerted activities also is subject to certain limitations. Thus, employees are entitled to the protection of section 8 (a) (3) only if their section 7 activities have a lawful purpose and are carried on in a lawful manner. Moreover, an employer may limit employee activities on his property by nondiscriminatory rules which are reasonably necessary for the maintenance of production and plant discipline.³¹

(1) Legality of Purpose

One case involved the discharge of employees for attempting to oust their supervisor.³² A two-Member majority of the Board held that the participating employees were engaged in a protected activity, *viz*, activity intended to bring common grievances against their supervisor to the attention of management. In the view of the majority, the situation was different from that which caused the Fourth Circuit Court of Appeals in *Joanna Cotton Mills*³³ to set aside the

²⁸ Such discrimination also violates section 8 (a) (1) independently, and may be found to violate that section alone. Whether viewed as a violation of section 8 (a) (3) or section 8 (a) (1), the employee's right to reinstatement and back pay is the same. *Matheson Chemical Corporation*, 114 NLRB 486.

²⁹ See *Etiwan Fertilizer Company*, 113 NLRB 93. Here the employer was held to have violated section 8 (a) (3) by discharging employees who, he learned, had participated in a Board election while employed elsewhere. The Board found that the employer's action was motivated by a belief that the employees' presence threatened the maintenance of the unorganized status of the plant and was therefore illegal.

³⁰ A Board majority again made it clear in one case (*Kearney & Trecker Corporation*, 113 NLRB 1145) that concerted activity in order to be protected need not contemplate collective bargaining, and that the protection of section 7 is not limited to majority groups but extends to minority groups as well.

³¹ However, discriminatory action for violation of rules curtailing union or other concerted section 7 activities, which the employer could not lawfully make, violates section 8 (a) (3). See, e.g., *Kimble Glass Company*, 113 NLRB 577, and *Caterpillar Tractor Co*, 113 NLRB 553, discussed at pp. 76-77. See also *Avondale Mills*, 115 NLRB 840, *Williamson-Dickie Manufacturing Company*, 115 NLRB 356.

³² *Hearst Publishing Company, Inc (Los Angeles Examiner Division)*, 113 NLRB 384, Chairman Farmer dissenting.

³³ *Joanna Cotton Mills v N L R B*, 176 F. 2d 749 (C A 4), setting aside 81 NLRB 1398.

Board's finding that an employee had been unlawfully discharged for circulating a petition asking for the discharge of a supervisor. The court's action in the *Joanna* case, the majority noted, was based on the conclusion that the circulation of the petition was motivated by the employee's desire to vent his personal resentment against a supervisor whose rebuke had angered him. There was no such motivation here, the majority observed.

In another case, the question of whether employees had been unlawfully disciplined also turned on whether the employees' presentation of a common grievance as a group was a protected activity within the meaning of section 7.³⁴ The employees involved insisted that the company explain to their satisfaction the complicated mechanics of an incentive system by which their pay was calculated. A majority of the Board rejected the employer's contention that the employee group, not constituting a majority of employees in an appropriate unit, was not protected by section 7. It is now well settled by both Board and court precedent, the majority said, that section 7 not only protects the right of a majority group to bargain collectively, but also protects "concerted activities" for "mutual aid or protection" by a minority group.³⁵

(2) Strike for Recognition of Noncomplying Union

The Board held during the past year that employees may lawfully strike for the purpose of obtaining recognition of a labor organization which has not complied with the non-Communist affidavit requirements of section 9 (h) of the act.³⁶ It was pointed out that while the act does deny the processes of the act to a noncomplying union it does not prohibit bargaining with a noncomplying union, and that an employer may voluntarily recognize and deal with such a union.³⁷ Under these circumstances, in the Board's view, had Congress intended to withhold the act's protection from employees who engage in otherwise lawful acts of self-help as adherents of such a union, it would have done so expressly. The Board declined to infer such an intent.³⁸

³⁴ *Kearney & Trecker Corporation*, 113 NLRB 1145, Chairman Farmer and Member Rodges dissenting. While the employer was charged with having violated the prohibitions of both subsections (1) and (3) of section 8 (a), the trial examiner and the Board decided only the 8 (a) (1) aspect of the case, the remedy for the discrimination under either subsection being the same.

³⁵ The following cases were cited in which the Board's view had received judicial approval: *Phoenix Mutual Life Insurance Company*, 73 NLRB 1463, enforced 167 F. 2d 983 (C. A. 7), certiorari denied 335 U. S. 845, *Kennametal, Inc.*, 80 NLRB 1481, enforced 182 F. 2d 817 (C. A. 3), *Buzza-Cardozo*, 97 NLRB 1342, enforced 205 F. 2d 889 (C. A. 9), certiorari denied 346 U. S. 923.

³⁶ *David G. Leach and Doyle H. Wallace d/b/a Brookville Glove Company*, 114 NLRB 213.

³⁷ The Board cited *N. L. R. B. v. Pratt, Read and Company, Inc.*, 191 F. 2d 1006 (C. A. 2).

³⁸ The Board's decision in this case parallels the views later expressed by the Supreme Court in *United Mine Workers v. Arkansas Oak Flooring Company*, 351 U. S. 62, discussed in the chapter on Supreme Court Rulings.

(3) Misconduct in Concerted Activities

Employees may forfeit the protection of section 8 (a) (3) if their concerted activities are carried on in an unlawful manner or are accompanied by serious misconduct.

In one case during fiscal 1956, a majority of the Board held that an employer was not required to reinstate strikers who had circulated a handbill which, in the view of the majority, "was intended to, and did, publicly impugn the quality and usability of the [employer's] product."³⁹ This action, the majority observed, was distinguishable from the boycott of an employer's business and product which inheres in the usual strike situation, and which has for its purpose to publicize an existing labor dispute. According to the majority, the handbill activity with which the employees here implemented their otherwise lawful strike demonstrated their "detrimental disloyalty" to the employer and justified their discharge. The situation was held to come within the principles on which the Supreme Court in the *Jefferson Standard Broadcasting Co.* case⁴⁰ decided that the use of a disparaging handbill was not an activity protected by section 7 of the act.

In another case, the Board held that strikers who threatened non-strikers with serious bodily harm exceeded the permissible bounds of strike activity and forfeited their statutory rights.⁴¹ While noting that no violence occurred, the Board pointed out that the threats were such that, had they been made by union agents, they would have constituted unlawful coercion within the meaning of section 8 (b) (1) (A).

(4) Strikes in Violation of Contract

Strikes which contravene a basic policy of the act—such as strikes in violation of binding provisions of a collective-bargaining agreement—are not protected. Thus, in one case the discharge of employees who participated in a strike over a grievance was held not to have violated section 8 (a) (3) because the strike was a breach of the grievance and arbitration provisions of the union's contract with the employer.⁴² The Board pointed out that, while the contract contained no specific no-strike clause, its grievance and arbitration procedure was intended as the exclusive means by which disputes

³⁹ *Patterson-Sargent Company*, 115 NLRB 1627, Members Murdock and Peterson dissenting. The handbill stated that the employees of the company—a paint manufacturer—were on strike and that paint made by "any other than the regular, well trained, experienced workers . . . could peel, crack, blister, scale or any one of many undesirable things that would cause you inconvenience, lost time and money."

⁴⁰ *Jefferson Standard Broadcasting Co.*, 94 NLRB 1507, 1512, enforced *sub nom N. L. R. B. v. Local Union No. 1229, International Brotherhood of Electrical Workers*, 346 U. S. 464 (1953). See Nineteenth Annual Report, pp 119-120.

⁴¹ *David G. Leach and Doyle H. Wallace d/b/a Brookville Glove Company*, 114 NLRB 213.

⁴² *W. L. Mead, Inc.*, 113 NLRB 1040.

subject to the contractual procedure were to be adjusted. The Board went on to say:

Every encouragement should be given to the making and enforcement of such clauses. But, if employees may effectively call upon the Board to protect them when they arbitrarily breach clear and binding arbitration clauses of this kind, and turn to the use of economic force for the settlement of grievances rather than to the contractual, quasi-judicial procedure, the effect will be to discourage the making of, and the adherence to, contractual arbitration procedures. To hold that a strike in furtherance of such a material breach of a clear and binding contractual arbitration clause is to be protected by this Board would be contrary to the labor policy embodied in the National Labor Relations Act as interpreted by the courts of appeals and the Supreme Court [Footnotes omitted.]

On the other hand, a majority of the Board held in another case that an employer cannot invoke the no-strike provisions of a contract which he has repudiated.⁴³ The majority noted that the no-strike clause had been agreed to in exchange for, among other things, the establishment of a five-step grievance procedure which was to culminate in arbitration, but the grievance clause was breached by the employer before the work stoppage for which the complaining employees were disciplined. The majority of the Board held that to enforce the no-strike clause of the contract against employees under these circumstances would be contrary both to fair play and to fundamental principles of contract law.

b. Encouragement of Union Membership

Section 8 (a) (3) prohibits not only discrimination which discourages union activities but also discrimination which tends to encourage union membership, except under a valid union-security agreement. As in prior years, unlawful encouragement of union membership in some instances took the form of arrangements between employers and unions which placed the union in a position to obtain hiring preference for its members,⁴⁴ or whereby a union was given exclusive control over some aspect of existing employment relationships.⁴⁵ In one case, it was again made clear that an employer who delegates to a union final authority to determine seniority questions violates

⁴³ *Kearney & Trecker Corporation*, 113 NLRB 1145 Chairman Farmer and Member Rodgers, dissenting separately, were of the view that under the circumstances of the case the employees here were not entitled to the act's protection.

⁴⁴ See, for instance, *H. E. Stoudt & Son, Inc.*, 114 NLRB 838, *Alaska Chapter of the Associated General Contractors of America, Inc.*, 113 NLRB 41.

⁴⁵ For the section 8 (b) (2) aspects of cases involving such arrangements see p. 102. See also *International Union of Operating Engineers, Local No. 12, AFL*, 113 NLRB 655, involving what a majority of the Board believed to be a discriminatory operation of a dispatch system. While the employer parties to the arrangement were not charged with having violated section 8 (a) (3), the majority noted that the delegation by the employers to the union of the operation of the dispatch system did not relieve them of their responsibility to insist that the union administer the system in a nondiscriminatory manner. The case is more fully discussed at p. 101.

section 8 (a) (3), because the delegation of such power and its exercise by the union "is inherently coercive and discriminatory in its broad impact on the employees in the bargaining unit."⁴⁶ In another case, section 8 (a) (3) likewise was held violated by a contractual provision under which an employer agreed to honor the contracting union's request to take disciplinary action against nonunion employees for "disrupting harmonious working relations."⁴⁷ While the agreement had been discriminatorily applied, it was also held to be unlawful in itself because it illegally encouraged union membership by limiting this ground for discipline or discharge to "nonunion employees."

In addition to the cases where employers entered into and enforced discriminatory agreements, section 8 (a) (3) violations were found in the case of an employer's refusal to grant a promotion to a qualified employee because "the matter was one for the Union to decide";⁴⁸ and where an employer—again because it was "a matter for the Union to determine"—refused to reemploy a work gang of which a majority had indicated support for a losing candidate in an intraunion election.⁴⁹ In one case, an employer was held to have violated section 8 (a) (3) by acceding to a union's request for the discharge of an employee who refused to pay a strike assessment,⁵⁰ and in another case the employer was found to have unlawfully required applicants, as a condition of employment, to join, and sign checkoff authorizations in favor of, one labor organization in order to discourage membership in another union.⁵¹

(1) Discrimination Under Union-Security Agreements

An employer may lawfully discharge employees at the request of a union under the terms of a valid union-security agreement.⁵² However, if the agreement is invalid in that it fails to meet the requirements of the proviso to section 8 (a) (3), the discharge violates the act.⁵³ Thus, an employer cannot defend discrimination charges under section 8 (a) (3) with a union-security agreement made with a union which did not represent a majority of the employees in the bargaining unit.⁵⁴ Nor does an initially valid agreement which was extended to

⁴⁶ *Kenosha Auto Transport Corporation*, 113 NLRB 643, Member Murdock dissenting

⁴⁷ *Olaa Sugar Company, Limited*, 114 NLRB 670 Acting Chairman Rodgers believed that the complaining employee here was an agricultural laborer and that the proceeding should therefore be dismissed

⁴⁸ *Joseph Brodsky and Herman Brodsky, d/b/a J. Brodsky & Son*, 114 NLRB 819.

⁴⁹ *Imparato Stevedoring Corporation*, 113 NLRB 883

⁵⁰ *Central Pipe Fabricating and Supply Co.*, 114 NLRB 350

⁵¹ *The Dunspar Company, Inc.*, 114 NLRB 40

⁵² The cases dealing with the enforcement of union-security agreements are discussed also in the chapter on section 8 (b) (2) violations See pp 100-106.

⁵³ The maintenance of such an agreement itself has consistently been held to violate the antidiscrimination provisions of section 8 (a) (3) and 8 (b) (2) See *Associated Machines, Inc.*, 114 NLRB 390, compare *Heart Publishing Company, Inc (Los Angeles Examiner Division)*, 113 NLRB 384.

⁵⁴ *Harold Hibbard and Ben R. Steyn, d/b/a Hibbard Dowel Co.*, 113 NLRB 28, *Bobbie Shoe Corp.*, 113 NLRB 314.

cover employees outside the bargaining unit provide a defense.⁵⁵ Discrimination is likewise unlawful if the terms of the agreement on which the employer relies exceed permissible union security, as, for instance, by requiring union membership before the expiration of the statutory 30-day grace period.⁵⁶

Section 8 (a) (3) specifically provides that an employer may not discriminate against employees under a union-security agreement if he has reason to believe that discharge is requested for reasons other than the nonpayment of initiation fees or regular dues which accrued under the union's agreement with the employer. Thus, in one case an employer was held to have violated section 8 (a) (3) by complying with a union's request to discharge an employee for dues delinquency including "back dues" which the employer knew had accrued during the employee's previous employment with another employer.⁵⁷ Conversely, where a union requested the discharge of employees who admitted being delinquent on their dues but to whom the union had discriminatorily denied the 30-day grace period for payment provided by the union's constitution, the employer's compliance with the request was held not to have violated section 8 (a) (3) because the employer, being unaware of the union's ulterior motives, merely undertook to carry out its obligations under the union-security clause of its contract with the union.⁵⁸

4. Refusal To Bargain in Good Faith

Section 8 (a) (5) makes it an unfair labor practice for an employer to refuse to bargain in good faith about wages, hours, and other conditions of employment with the representative which a majority of an appropriate unit of employees has selected as its bargaining agent.

a. Proof of Representative's Majority Status

An employer is not required to bargain unless the union or other employee representative demonstrates its majority status among the employees. Regarding proof of majority, it was again pointed out during the past year that "ordinarily an employer faced with the demand for recognition by a labor organization which claims to represent a majority of his employees may refuse to rely upon evidence of the union's representation and insist that the union establish its

⁵⁵ *The Item Company*, 113 NLRB 67.

⁵⁶ See, e. g., *Seaboard Terminal and Refrigeration Company*, 114 NLRB 1391

⁵⁷ *Murphy's Motor Freight, Inc.*, 113 NLRB 524 Compare *Bakery & Confectionary Workers*, 115 NLRB 1542, where the act's union-security provisions were held violated by a union which demanded the discharge of members for nonpayment of monthly charges which in effect, include a fine for belated payment

⁵⁸ *Krambo Food Stores, Inc.*, 114 NLRB 241.

majority by means of a Board-conducted secret election.”⁵⁹ However, this rule does not apply where the employer rejects majority proof offered by the union and insists on an election because of “a desire to gain time and to take action to dissipate the union’s majority.”⁶⁰

In two section 8 (a) (5) cases decided during fiscal 1956—*Sunset Lumber Products* and *KTRH Broadcasting*⁶¹—which turned on the employer’s motive in insisting on a Board election, a majority of the Board⁶² held that “the total picture of the employer’s conduct” did not indicate bad faith, and there was therefore no unlawful refusal to bargain. The fact that in *Sunset Lumber* the employer had discharged an employee because of his connection with the complaining union, which participated in a widespread strike in the industry, was held insufficient to support the conclusion that the employer’s later refusal to grant immediate recognition to the union was improperly motivated. It was pointed out that the discharged employee and another union representative were later permitted to carry on organizational activities in the employer’s plant; that the employer continued to employ members of the complaining union and actually facilitated the organization of its employees; and that no further unfair labor practices occurred either before or after the union’s request for recognition.⁶³ In *KTBH Broadcasting*, the majority of the Board likewise declined to hold “that the commission of unfair labor practices by an employer automatically precludes the existence of a good-faith doubt as to a union’s majority status.” Here, the majority held, a finding of bad-faith bargaining could not be made solely on the basis of the conduct of a minor supervisor who threatened his subordinates with loss of benefits and interrogated them about the union. It was pointed out that the supervisor acted without authorization and contrary to instructions, and that this circumstance, while not relieving the employer of responsibility, served “to destroy any inference that [the supervisor] was acting as part of a campaign to destroy the Union’s representation by unlawful means.” Other unfair practices found, whether taken separately or together with the supervisor’s conduct, in the majority’s view, were too insubstantial to evidence a campaign or a conspiracy to destroy the union’s status.

⁵⁹ *Glenn Koenecke d/b/a Sunset Lumber Products*, 113 NLRB 1172 *KTBH Broadcasting Company*, 113 NLRB 125

⁶⁰ *Ibid*, the Board here quoted *Joy Silk Mills v. N. L. R. B.*, 185 F. 2d 732, 741 (C. A., D. C.), enforcing 85 NLRB 1263, certiorari denied 341 U. S. 914.

⁶¹ See footnote 59, above.

⁶² Members Murdock and Peterson dissented in the *Sunset Lumber* case; Member Murdock dissented in *KTRH Broadcasting*

⁶³ Charges against the employer alleging unfair labor practices, other than the one instance of unlawful discrimination, were dismissed

b. Appropriateness of the Unit

The bargaining mandate of section 8 (a) (5) requires an employer to bargain only concerning employees in an appropriate unit. If an employer charged with an unlawful refusal to bargain challenges the bargaining agent's unit request, the Board determines the appropriateness of the unit in the unfair labor practice proceeding unless the request rests on a prior Board determination. If there has been a prior determination, the employer cannot relitigate the unit issue unless he offers evidence of a change in circumstances sufficient to warrant a redetermination.⁶⁴ The Board also had occasion to make it clear in the *Pacific Telephone* case that an employer's good-faith doubt as to the continued validity of an earlier unit determination does not justify a refusal to bargain with the representative of the unit. A majority here pointed out that a unit determination, unlike a determination of a union's majority status,⁶⁵ does not lose force through lapse of time. The majority noted that in the related injunction proceeding⁶⁶ the Ninth Circuit Court of Appeals had reached the same conclusion. It was also pointed out that the employer here, instead of refusing to bargain, could have submitted the unit issue to the Board in a proceeding under section 9 (c) (1) (B), or could have applied to the Board for an amendment of its original unit findings.

In another case, the Board held that the respondent company could not lawfully refuse to bargain with the certified representative of its production and maintenance employees because of an asserted change in operations which was the result of a merger with three other companies.⁶⁷ The Board noted that after the merger certain operations, which previously had been contracted out, were performed in newly created divisions as part of a continuous, integrated operation. This accretion to the original unit, the Board found, resulted in an increase in the number of production and maintenance employees but did not destroy the appropriateness of the basic, certified unit.

In one case, the employer sought to defend its refusal to bargain for a unit of craft employees on the ground that the Board's craft

⁶⁴ *The Pacific Telephone & Telegraph Company, et al.*, 113 NLRB 478 See also Twentieth Annual Report, p. 96

⁶⁵ Under the Board's 1-year rule, the certified majority status of a union cannot be challenged, except under unusual circumstances, until 1 year after the date of the certification. See *Ray Brooks v N. L. R. B.*, 348 U. S. 96. As to the 1-year rule, see also Twentieth Annual Report, pp 121-122. Following the certification year, however, an employer's good-faith doubt as to the certified union's continued majority status may be a defense to refusal-to-bargain charges See Twentieth Annual Report, p. 94, Nineteenth Annual Report, p. 96.

⁶⁶ Following issuance of the complaint here, the Board sought to enjoin the employer's refusal to bargain in a proceeding under section 10 (j). The United States District Court for Northern California denied relief (see Nineteenth Annual Report, pp 143-144), but its decision was reversed by the Ninth Circuit Court of Appeals. *Brown v. The Pacific Telephone and Telegraph Co.*, 218 F. 2d 542, Twentieth Annual Report, p 152.

⁶⁷ *J. W. Rex Company*, 115 NLRB 775.

severance doctrine, as announced in the *American Potash* case,⁶⁸ was an invalid exercise of the Board's authority to determine bargaining units under the act.⁶⁹ A majority of the Board⁷⁰ rejected the employer's contention because (1) severance of the craft unit had been granted in accordance with principles which had been consistently applied both before and after *American Potash*, and (2) the Board's craft severance policy, as explicated in *American Potash*, was consistent with the clear intent of Congress in enacting the craft unit provisions of section 9 (b) (2) in 1947.

c. Violation of Duty To Bargain

The employer's statutory duty to bargain, as defined in section 8 (d), includes the duty to bargain "in good faith" with respect to "wages, hours, and other terms and conditions of employment."⁷¹ This duty is violated if an employer deals with the representative of his employees without a good-faith intent to reach agreement on bargainable matters,⁷² as well as in the case of an outright refusal to negotiate as to a matter on which bargaining is required. As noted below, section 8 (a) (5) has also been held violated where an employer conditioned bargaining on acceptance of proposals which, though not illegal, were not related to wages, hours, or other conditions of employment.

(1) Conditions on Bargaining

In the *Borg-Warner* case,⁷³ a majority of the Board found that the employer violated section 8 (a) (5) by insisting, as a condition precedent to the execution of any agreement, on the adoption of (1) a clause recognizing as bargaining representative a local union rather than its international which had been certified by the Board; and (2) a clause which required a secret-ballot election among union and nonunion employees on acceptance of the employer's "last offer" and on the question of contract modification or termination, and which prohibited the union from calling a strike without such employee approval.

The majority of the Board held that, since these demands did not concern matters subject to obligatory bargaining, the employer could

⁶⁸ *American Potash & Chemical Corporation*, 107 NLRB 1418 Nineteenth Annual Report, pp. 38-41

⁶⁹ *Libbey-Owens-Ford Glass Company and L-O-F Glass Fibers Company*, 115 NLRB 1452

⁷⁰ Member Peterson dissented because of his general disagreement with the Board's craft severance policies

⁷¹ See section 8 (b) (3) for the corresponding bargaining duty of labor organizations

⁷² The question of "good faith" is determined in each case on the basis of the employer's entire dealings with the employees' bargaining representative. In *J H Rutter-Rex Manufacturing Company*, 115 NLRB 338, the Board had occasion to make it clear that it will not "police the language, sometimes overheated, that may be used at collective-bargaining conferences." The Board here rejected the trial examiner's finding that an employer's remark reflecting upon the integrity of the union's officers was evidence of bad faith.

⁷³ *Wooster Division of Borg-Warner Corporation*, 113 NLRB 1288, Chairman Farmer and Member Leedom dissenting.

not insist on their acceptance, even though he may have had a right to make the proposals and the union might have voluntarily agreed to them. The majority rejected the view of the dissenting Members that once it was conceded that it was not unlawful for the employer to make the recognition and strike poll proposals, the question whether the employer violated section 8 (a) (5) turned solely on whether he bargained about the proposals with the union in good faith.⁷⁴ In the view of the majority, such a holding would be "an amendment to the Act's statement of the required subject of collective bargaining" and would mean that negotiating parties "are required under the Act to bargain about matters wholly unrelated to wages, hours, and other conditions of employment."

Regarding the employer's insistence upon executing a contract with the local union to the exclusion of the certified international, the majority pointed out that it was the employer's absolute duty to accord exclusive and unequivocal recognition to the statutory representative, to bargain with it, and to execute a contract with it incorporating any agreements reached. The discharge of this duty was, therefore, not a subject as to which the employer could bargain to an impasse. A demand that a union's certified status be bargained away, the majority declared, "cannot be countenanced if the purposes of the statute are to be realized. What has been won through the Board's election processes need not be rewon at the bargaining table."

Nor, according to the majority, could the employer insist on acceptance of its employee-ballot proposal.⁷⁵ It was pointed out that, while the employer may have believed in good faith that the union might not truly represent the wishes of a majority of the employees, the protection of employees against the speculative arbitrariness of their statutory representative was not an obligatory subject of collective bargaining. The majority said:

It appears self-evident that a representative system necessarily involves trusting the agent with discretion not subject to review by those it represents as to each exercise thereof, particularly at the instance of an outside party. It is the pattern traditionally followed in the labor movement in this country and the concept embodied in the Act. As the Supreme Court stated, the Act "has been considered to absorb and give statutory approval to the philosophy of bargaining as worked out in the labor movement in the United States." Under the practice of collective bargaining as thus developed, it is customary to leave the decision as to demands to be made upon the employer, the sanction to be resorted to in

⁷⁴ The employer's good faith not being an issue and not having been litigated, the dissenting Members believed that the case should be dismissed.

⁷⁵ Compare *Cranston Print Works Company*, 115 NLRB 537, where a majority of the Board (Member Murdock dissenting) held that the employer's strike referendum proposal, viewed in the light of the course of negotiations, was not violative of section 8 (a) (5). The majority in *Borg-Warner* noted that the employer in *Cranston* ultimately abandoned the proposal and did not, as in *Borg-Warner*, insist on the provision to the point of impasse.

support of the demands, and the content of the contract ultimately entered into, up to the majority representative leaving to internal procedures of the union the extent to which these may be ratified by the membership of the union or employees generally. The legislative history of the Act as it was originally enacted makes it abundantly clear that Congress was fully aware of all the implications arising out of writing the majority rule principle into the Act, including the fact that those in the minority were not to have an effective voice in collective-bargaining negotiations. Indeed, this view of the intent of the Act is clearly supported by the Supreme Court's opinion in the *Brooks* case where it is stated that "in placing a nonconsenting minority under the bargaining responsibility of an agency selected by a majority of the workers, Congress had discarded the common law doctrine of agency." [Footnotes omitted]

In holding that a strike-ballot clause—unlike a no-strike clause—is not subject to bargaining,⁷⁶ the majority pointed out that in a no-strike clause the bargaining agent to which the employees have entrusted the exercise of their right to strike waives that right as a *quid pro quo*, whereas a strike-ballot clause "is primarily concerned with the mechanics of testing the statutory representative's power to call a strike or to terminate or amend the contract during its term—a purely internal matter unrelated to any condition of employment." In the majority's opinion, "the requirement that employees be given an opportunity to vote on the Respondent's last offer or to terminate or amend the contract, is simply an attempt to resolve economic differences at the bargaining table between an employer and the statutory agent by dealing with the employees as individuals." Citing Supreme Court authority,⁷⁷ the majority pointed out that, where employees have selected a bargaining representative, an employer may not bypass or undercut the representative by attempting to deal directly or indirectly with the employees.

In a later case, a majority of the Board again held that an employer similarly violated section 8 (a) (5) by insisting on a contract clause providing (a) that the contract shall become effective only after a secret ballot of employees in the bargaining unit and ratification by a majority of the employees voting; and (b) that the contract shall become void in the event the number of checkoff authorizations declines to less than 50 percent of the number of employees in the bargaining unit.⁷⁸

⁷⁶ The majority here expressed disagreement with the contrary holding of the Seventh Circuit Court of Appeals in *Allis-Chalmers Manufacturing Co. v. N. L. R. B.*, 213 F. 2d 374; Nineteenth Annual Report, p. 133.

⁷⁷ *Medo Photo Supply Corp v. N. L. R. B.*, 321 U. S. 678, 683-684, *May Department Stores v. N. L. R. B.*, 326 U. S. 376, 383-384.

⁷⁸ *Darlington Veneer Company, Inc.*, 113 NLRB 1101. Chairman Farmer concurred in the finding of a section 8 (a) (5) violation solely on the basis of the employer's failure to bargain in good faith. Member Leedom's concurrence was based on the employer's failure to bargain in good faith regarding the matter of checkoff alone.

Compare *Mathieson Chemical Corporation*, 114 NLRB 486, where the employer's refusal to bargain in good faith was held clearly indicated by his insistence on a superseniority clause which favored employees who abandoned a strike and which was, in fact, a retaliatory measure to penalize employees for exercising their rights under the act.

(2) Refusal To Bargain When Plant Moved

Reaffirming the rule that the projected removal of a plant to a new location is a matter regarding which an employer must bargain upon request, the Board held in one case that section 8 (a) (5) was violated when the employer refused to discuss the transfer of employees to a new location with the employees' bargaining representative.⁷⁹ The Board, one Member dissenting, held also that, after the plant was moved, the employer violated the act further by (1) refusing to recognize the union at the new location, (2) refusing to apply its existing contract, and (3) unilaterally establishing wages and working conditions there which differed substantially from those fixed by the contract. The majority took the view that, under the circumstances, the employer's duty to bargain with the union continued even though the union did not establish its majority status among the employees at the new location. It was pointed out that, while relocation of the plant had been decided upon for economic reasons, the employer utilized the move to get rid of the union and to dissipate its majority status. When refusing to bargain about the transfer of employees, the employer falsely made it appear that it had ceased production and had nothing to do with employment at the new location.⁸⁰ The majority held that under these circumstances it was for the employer to show that a number of employees sufficient to preserve the union's representative status would not have transferred, even if the employer had bargained in good faith concerning employee transfers and had not deliberately misled the union as to its future plans. The majority applied the well-established principle that in such a situation it is the burden of the respondent charged with unfair labor practices to disentangle the consequences of its lawful conduct from those of its unlawful conduct.⁸¹ The employer not having sustained this burden, the majority held that it was reasonable to believe that without the unlawful conduct a sufficient number of employees would have transferred, and that the union's loss of status was therefore the direct result of the employer's unfair labor practices.⁸²

The majority also held that the union's contract remained in effect after the plant removal and therefore could not be lawfully terminated except in accordance with the requirements of section 8 (d). Thus, the employer was held to have violated both section 8 (d) and section 8 (a) (5) when it unilaterally changed wages and working con-

⁷⁹ *Jack Lewis and Joe Leutan d/b/a California Footwear Company*, 114 NLRB 765, Acting Chairman Rodgers dissenting.

⁸⁰ The Board was unanimous in its finding that the company which operated the old plant continued to be the employer at the new plant, and that the ostensible employer there was but its *alter ego*.

⁸¹ *N. L. R. B. v. A. B. Swinerton, et al.*, 202 F. 2d 511, 515-516 (C A 9), cert. denied 346 U. S. 814; and *N. L. R. B. v. The Barrett Company*, 135 F. 2d 959, 961-962 (C A 7) were cited.

⁸² The majority held that, in view of the employer's manifest plan to eliminate the union, the present case was unlike the *Brown Truck and Trailer* case, 106 NLRB 999

ditions at the new location. It was pointed out that the continued effectiveness of the contract turned on the fact that (1) following removal the operations and physical equipment remained substantially the same, and (2) the failure of the employees covered by the contract to transfer to the new location was attributable to the employer's unfair labor practices

(3) Refusal To Furnish Information

During fiscal 1956, the Board was again faced with varying aspects of the employer's duty under section 8 (a) (5) to comply with the request of the employees' statutory representative for wage and other information to facilitate bargaining negotiations.

In the *Oregon Coast Operators* case,⁸³ the employer refused to furnish the complaining union any of the information it had asked in a questionnaire. The data sought included employees' classifications and job functions, and their earnings in various modes of compensation, and certain production and operational statistics, including types and specifications of equipment used. Holding that the employer's arbitrary refusal to furnish any of the requested information violated section 8 (a) (5),⁸⁴ a majority of the Board directed that the employer "bargain collectively with the Unions by furnishing them information which is relevant and necessary for purposes of collective bargaining and in order that they may properly discharge their functions as statutory representatives of the employees"⁸⁵ However, as pointed out in the later *Glen Raven* case,⁸⁶ the requirement of the *Oregon* order that the employer furnish "relevant and necessary" information was not intended to overrule or qualify the *Whitin Machine Works* doctrine.⁸⁷ It was noted in *Glen Raven* that wage data cases come under the *Whitin* rule under which a union may request all such data "related to the issues involved in collective bargaining," without showing a "specific need as to a particular issue" It was made clear that the

⁸³ *Oregon Coast Operators Association*, 113 NLRB 1338 See also *Long Bell Lumber Company, et al.*, 113 NLRB 1231, a companion case in which the parties stipulated that the Board's findings, conclusions, and order in the *Oregon* case were to apply

⁸⁴ The Board's decision lists in detail the great variety of data employers had been held obligated to furnish in earlier cases under both Board and court decisions As to the cases on the proposition that an employer must offer data to substantiate its economic position (see footnote 28 of the Board's *Oregon* decision), it should be noted that the refusal of the Fourth Circuit Court of Appeals to enforce the bargaining order in the *Truitt* case was subsequently reversed by the Supreme Court whose decision is discussed in the chapter on Supreme Court Rulings

⁸⁵ Chairman Farmer, concurring, took the view that the matter of relevance was a matter for collective bargaining and that the Board's order should be limited to require the employers to bargain in good faith on the subject of the unions' questionnaires Member Rodgers was of the view that only the wage data requested by the unions were relevant and necessary for bargaining purposes, and that the refusal to furnish other information was not unlawful

⁸⁶ *Glen Raven Knitting Mills, Inc.*, 115 NLRB 422, Member Rodgers dissenting.

⁸⁷ 108 NLRB 1537, enforced 217 F. 2d 593 (C. A. 4), certiorari denied 349 U. S. 905, see Twentieth Annual Report, pp. 132-133.

qualification "and necessary" was added in the *Oregon* case because much of the requested information concerned issues "other than wage," the relevance and necessity of which in connection with the issues involved was not readily apparent. In the *Glen Raven* case, where the complaining union was denied direct wage data and also information on style construction which was directly related to piece-rate pay, the Board issued a *Whitin*-type order directing the employer to supply the requested "wage and related data relevant to wages."⁸⁸

In another case, a majority of the Board found that under the *Whitin* wage-information doctrine the employer was required to furnish substantiating data which formed part of the employer's job-evaluation system and which the employer had agreed to furnish on any particular job if the union should process a grievance on that job.⁸⁹ The majority here took the view that "if the data is relevant and necessary in the case of individual grievances, it is equally relevant and necessary where the object of the negotiation is to establish broad pay formulas which will eliminate the necessity of filing individual grievances." It was also pointed out that the information was readily available and that to furnish it imposed no undue burden on the employer.

One case presented the question of whether an employer could lawfully refuse to permit union representatives to make an on-the-job study of the duties of an employee whose pay classification was the subject of a pending grievance.⁹⁰ A three-Member majority of the Board⁹¹—for separately stated reasons—held that the employer's refusal to grant the union's request was not violative of section 8 (a) (5). One Member⁹² took the view that the issue was not the union's right to information relating to the grievance but rather the union's right to access to the employer's production areas; that this right was a bargainable issue, and under the circumstances should have been resolved at the bargaining table. One Member,⁹³ likewise viewing the case as involving the union's right of access to the plant, concurred in the dismissal of the complaint on the ground that the employer's refusal of the union's request was not shown to have unreasonably impeded the union's exercise of its bargaining rights in connection with the grievance. The third Member⁹⁴ of the majority concluded that the issue involved was governed by the "wage data" line of cases,

⁸⁸ Member Rodgers, dissenting, was of the view that the *Oregon*-type order should either be applied here or should be abandoned.

⁸⁹ *Taylor Forge and Pipe Works*, 113 NLRB 693, Chairman Farmer and Member Rodgers dissenting.

⁹⁰ *Westinghouse Electric Corporation*, 113 NLRB 954.

⁹¹ Members Murdock and Peterson dissenting.

⁹² Chairman Farmer.

⁹³ Member Leedom

⁹⁴ Member Rodgers

and that the case should be dismissed because the on-the-job investigation proposed by the union would not have yielded any information relevant and necessary to the processing of the grievance.⁹⁵

It was pointed out again during the past year that a union's right to request information for use in bargaining may be waived by agreement, and that if a bargaining representative has "clearly and unmistakably" bargained away its right to specific information the employer's later refusal to honor a request for the information does not violate section 8 (a) (5).⁹⁶

(4) Inclusion of Side Agreements in Formal Contract

In 1 case during the past year, the Board held that a group of employers violated section 8 (a) (5) by refusing to bargain regarding the request of the representative of their employees to include all side agreements between the parties in 1 formal contract.⁹⁷ The union initially made the request in connection with its proposal that its current contracts with the employers be reopened and it repeated the request during the ensuing contract negotiations. The side agreements were supplementary to the union's main contracts with the several employers and they came into existence during the terms of these contracts. The side agreements were the result both of intermittent collective bargaining and of the settlement of grievances. Some were in writing, while others were oral. They covered various terms and conditions of employment, a common subject being provisions for wage scales which generally were omitted from the main contracts. The Board pointed out that, the subject matter of the side agreements having been properly opened up, the employer's duty to bargain in regard to them included the duty to discuss their incorporation in a single instrument. The Board made it clear that, while section 8 (d) did not compel the employer to agree to the union's "single agreement" proposal but required only the signing of a written contract after agreement was reached, the employers' summary

⁹⁵ The dissenting members believed that the right to access claimed by the union was a statutory right which should be enforced subject to the condition that reasonable limitations on its exercise be left to collective bargaining by the parties.

⁹⁶ See *International News Service Division of The Hearst Corporation*, 113 NLRB 1067, where Chairman Farmer and Member Rodgers found that the complaining union's request for certain wage information was foreclosed by the union's waiver which was the result of protracted bargaining negotiations. Member Leedom concurred in the dismissal of the refusal-to-bargain charges against the employer on the ground that the union's demand for the information was untimely with respect to the wage-reopening provision of the union's contract, and that there was no apparent necessity for the information at the time of the request. Members Murdock and Peterson, dissenting, were of the view that the union could be held neither to have waived its right to the information nor to have made an untimely request.

See also *Boston Record-American-Advertiser Division—The Hearst Corporation*, 115 NLRB 1095, where the Board unanimously agreed with the trial examiner's conclusion that the complaining union had not, as contended by the employer, waived its right to the requested wage information, and that the employer's refusal to furnish it was unlawful. The situation in the *International News* case (*supra*) was held distinguishable.

⁹⁷ *Oregon Coast Operators Association, supra*.

refusal of the union's proposal violated section 8 (a) (5). According to the Board, it was the employers' statutory duty to bargain in order to arrive at an agreement as to whether, for instance, all or certain terms of the side agreements were to appear either in the main contract, or in a contract supplement, or in a separate side agreement.

B. Unfair Labor Practices of Unions

Section 8 (b) of the act specifically proscribes as unfair labor practices six separate types of conduct by unions or their agents. The more important cases decided during fiscal 1956 under subsections (1), (2), and (4) of section 8 (b) are discussed below. No cases came to the Board involving 8 (b) (3) requiring unions to bargain in good faith, or 8 (b) (5) which forbids excessive and discriminatory union fees, or 8 (b) (6) which prohibits so-called "feather-bedding" practices.

1. Restraint or Coercion of Employees

Section 8 (b) (1) (A) ⁹⁸ makes it an unfair labor practice for a labor organization or its agents "to restrain or coerce employees in the exercise of the rights guaranteed in Section 7." Section 7 guarantees employees the right to engage in concerted activities directed toward self-organization or collective bargaining, and also the right to refrain from such activities.

As in prior years, some of the cases under section 8 (b) (1) (A) again involved violence or threats of violence by union agents against employees who failed to support union action, such as strikes.⁹⁹ In one case, the Board agreed with the trial examiner's conclusion that an attack upon a company official directed by the union's business manager, though not committed in the presence of nonstriking rank-and-file employees, violated section 8 (b) (1) (A) because the assault occurred under circumstances which insured that it would necessarily come to the attention of nonstrikers.¹ As noted by the trial examiner, the company official suffered injuries which required hospital and medical treatment, and the resulting publicity and criminal prosecution inevitably came to the attention of the nonstriking employees. Applying the Board's reasoning in an earlier similar case,² the trial examiner held that "under such circumstances nonstriking employees

⁹⁸ Subsection (B) of section 8 (b) (1) prohibits labor organizations from restraining or coercing employers in the selection of their bargaining representatives. This subsection was not involved in any of the cases decided during fiscal 1956.

⁹⁹ See, e. g., *United Steelworkers of America (Metal Fabricators & Finishers, Inc., et al)*, 114 NLRB 532, *Local 140, United Furniture Workers of America (Brooklyn Spring Corporation and Lorraine Fibre Mills, Inc)*, 113 NLRB 815; *Warehouse & Distribution Workers Union, Local 688, International Brotherhood of Teamsters (Coca-Cola Bottling Company of St. Louis)*, 115 NLRB 1506

¹ *Local 140, United Furniture Workers, supra*

² *Smith Cabinet Manufacturing Company, Inc*, 81 NLRB 886.

might have reasonably regarded such incidents as a reliable indication of what would befall them if they sought to work during the strike.”³ The Board adopted the trial examiner’s reasons in finding a violation.

Other cases under section 8 (b) (1) (A) were concerned with coercion and restraint of employees which resulted from the imposition of union membership requirements which could not be justified under the union-security proviso of section 8 (a) (3). Thus, section 8 (b) (1) (A) was held to have been violated by a union which threatened employees with discharge for failure to pay dues under an illegal union-security agreement.⁴ In the same case, the retention in the union’s contract of a provision conditioning the payment of welfare benefits by the employer on the employees’ membership in good standing on the date of accrual of the benefits was also found to violate section 8 (b) (1) (A) in that the provision acted as a restraint upon the employees’ right under section 7 to refrain from union activities.

In another case, it was again pointed out that “the exaction through economic coercion of financial contributions to a union from union members . . . which are not sanctioned by a valid union-security contract, constitutes a violation of section 8 (b) (1) (A).”⁵ Here a majority of the Board found that the respondent union unlawfully required a member of a “foreign” sister local to pay a fee as a condition to registration on the union’s “Out-of-Work” list. The employee desired to register in order to qualify for unemployment compensation.⁶ It was pointed out that the union’s conduct coerced the employee not only in the exercise of his right to refrain from contributing support to the union, but also in the exercise of his right not to join the union. For, the majority noted, the imposition on the employee as a member of a sister local of a fee as a condition to qualification for unemployment compensation was in effect an exaction of a penalty for membership in a sister local rather than in the respondent union. The majority rejected the union’s contention that its action was protected by the union rules proviso of section 8 (b) (1) (A) which preserves “the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein.”

³ Compare *Charles Hart and Local 450, International Union of Operating Engineers, AFL (American Construction Company)*, 113 NLRB 213, where the Board adopted the trial examiner’s finding that a union agent’s threatening statements to one employee during a heated argument were not violative of section 8 (b) (1) (A) because they were quickly repudiated and because any coercive effect the statements may have had was dissipated by the union agent’s subsequent actions.

⁴ *Seaboard Terminal and Refrigeration Company*, 114 NLRB 1391.

⁵ *Local 1400, United Brotherhood of Carpenters (Pardee Construction Company)*, 115 NLRB 126, Member Peterson dissenting. For the combined section 8 (b) (2) and section 8 (b) (1) (A) aspects of the case see p. 101.

⁶ The State unemployment compensation agency required that union members, in order to qualify for unemployment compensation, had to register for work with their union and had to obtain evidence of registration from the union’s business agent.

It was pointed out that the fee involved here was not exacted as a condition of acquiring or retaining union membership but solely as a condition of registering for unemployment compensation.⁷

In a number of cases it was again held that unions which caused or attempted to cause an employer to discriminate illegally against employees violated not only section 8 (b) (2) but also section 8 (b) (1) (A), because such conduct necessarily has the effect of coercing and restraining employees in the exercise of their statutory rights. The cases involving this type of unlawful restraint and coercion are discussed in the next section.

2. Causing or Attempting To Cause Illegal Discrimination

Section 8 (b) (2) is directed against union conduct which causes or attempts to cause an employer to discriminate against employees within the meaning of section 8 (a) (3). The antidiscrimination provisions of section 8 (b) (2) were involved in a substantial portion of the complaints against labor organizations which reached the Board during fiscal 1956. Substantively, the cases under this section presented the usual factual question of whether the respondent unions engaged in the conduct with which they were charged. In addition, the cases called for decision on varying issues which were determinative of the further question of whether the union's conduct did, in fact, cause, or was calculated to cause, employer discrimination within the meaning of the section.

a. Discrimination Within Section 8 (a) (3) Must Be Involved

In order for union conduct to violate section 8 (b) (2) it must have caused or constituted an attempt to cause an employer to violate section 8 (a) (3), i. e., to discriminate against employees for the purpose of encouraging or discouraging union membership. As pointed out again in one case, discrimination which does not have this effect does not come within the prohibition of the section.⁸ In this case, the Board held that unintentional discrimination did not have illegal effect. Here the union inadvertently failed to advise job applicants as to the reporting and registration procedures necessary to obtain a referral. Rejecting the trial examiner's contrary conclusion, the Board noted that there was no showing that the union intended to mislead the employees, and that any discrimination the employees

⁷ The dissenting Member took the view that the exaction of the fee from the complainant was not violative of section 8 (b) (1) (A) because the fee was unrelated to a condition of employment as to him, and he was therefore not coerced or restrained in the exercise of any right guaranteed him by section 7.

⁸ *Local No. 1400, United Brotherhood of Carpenters (Pardee Construction Company)*, 115 NLRB 126, 127. The Board here quoted the Supreme Court's decision in *Radio Officers' Union of the Commercial Telegraphers Union, AFL v N L R B*, 347 U S 17, 42-43. Other aspects of this case are discussed below.

may have suffered could not have encouraged or discouraged union membership.

In another case, the Board sustained the respondent union's exception to the trial examiner's conclusion that it violated section 8 (b) (2) by refusing to clear certain key personnel.⁹ The employees declined to work without clearance in order not to impair their standing with the union. As a result, the employer canceled the contract. The Board pointed out that the employer did not act in the performance of an illegal hiring agreement, but, on the contrary, it sought to persuade the personnel involved to work without clearance. Thus, the Board concluded, had the employer been charged with a section 8 (a) (3) violation, he could not have been found to have discriminated against the employees; therefore, the union could not be held to have caused illegal discrimination by him.

b. Discriminatory Practices and Agreements

The section 8 (b) (2) violations, as in prior years, involved (1) individual instances of union-induced discriminatory treatment of employees and (2) the adoption and enforcement of discriminatory agreements.

The violations of the first type included union requests—in which the employer acquiesced—to deny promotion to a qualified employee in favor of one who was acceptable to the union;¹⁰ and to withhold further employment from a work gang of which a majority had indicated their support for a losing candidate in an intraunion election.¹¹ In one case, it was found that an employee on a construction project was discharged when the union steward on the job refused to work with the employee because he did not have a referral slip from the union as required by the union's rules.¹² A majority of the Board rejected the view that the union steward here had acted in his individual capacity rather than as the respondent union's agent, and that the union could, therefore, not be held to have caused the discharge. The majority pointed out that it was the steward's responsibility to enforce union rules on the job; that he communicated his declared intention not to work with the employee to fellow union members, thus in effect instructing them to stop work if the employee continued to work on the job; and that the job superintendent, when informed

⁹ *Local 148, Truck Drivers and Warehousemen's Union (Harry Griffin Trucking)*, 114 NLRB 1494.

¹⁰ *J. Brodsky & Son*, 114 NLRB 819.

¹¹ *Imparato Stevedoring Corporation*, 113 NLRB 883.

¹² *Millwright Local Union No. 2484 (The Lummus Company)*, 114 NLRB 656, Member Murdock dissenting (footnote 1, p. 659).

of the steward's action, concluded that the employee's discharge was necessary in order to avert a strike.

(1) Discrimination Under Contractual Arrangements

A union which has contracted for the exclusive right to refer job applicants to the contracting employer on a nondiscriminatory basis violates section 8 (b) (2) if it administers its hiring function in a manner which results in preferred treatment of its members.¹³ One union was found to have violated the act by requiring members of a "foreign" local, whom the employer had referred to the union's hiring hall, to obtain a temporary working card for a fee as a condition to their registration on the union's "Out-of-work" list and to being cleared for a job.¹⁴ Members of the union and members of other affiliates of the local district council were not required to pay a similar fee for utilizing the union's registration and referral facilities. The Board held that since the job applicants here could escape discriminatory treatment only by transferring their membership to the respondent union, they were subjected to discriminatory conditions of employment which necessarily encouraged membership in the union. In another case, a majority of the Board also found that a contractual dispatch system was administered so as to constitute a violation of section 8 (b) (2) on the part of the contracting union.¹⁵ The agreement of the parties provided that job applicants with previous service in the contracting multiemployer group were entitled to preferential referral regardless of union membership.¹⁶ However, the majority found that the union administered the referral system with the use of two separate referral lists, one entitled "Members" and the other "Applicants and Others," and had a practice of giving preference on the basis of union membership alone. It was further found that one employee, whose name had been removed from the preferred "Members" list after his expulsion from the union, was denied further referrals. Also nonunion employees were compelled to apply for union membership immediately upon their first dispatch rather than within 30 days as provided in the union's contract.¹⁷ Moreover, the majority found that there was evidence of a practice of requiring

¹³ For cases involving hiring agreements which were discriminatory on their face, see, e g, *Seaboard Terminal and Refrigeration Company*, 114 NLRB 1391; *United Association of Journeymen & Apprentices of the Plumbing & Pipefitting Industry of the United States and Canada, Local 231, AFL-CIO (J. S. Brown—E. F. Olds Plumbing & Heating Corporation)*, 115 NLRB 594

¹⁴ *Local 1400, United Brotherhood of Carpenters and Joiners of America (Pardee Construction Company)*, 115 NLRB 126.

¹⁵ *International Union of Operating Engineers, Local No. 12 AFL (Associated General Contractors, Southern California Chapter)*, 113 NLRB 655, Member Murdock dissenting.

¹⁶ The validity of the agreement was not challenged and was not passed upon by the majority.

¹⁷ The majority noted that the union was prohibited by its constitution from issuing temporary work permits to anyone who was not a member or an applicant for membership.

nonunion applicants for referral, unlike union members, to pay work permit fees.¹⁸

The Board during the past year reaffirmed the rule that the delegation to a union of authority unilaterally to determine the seniority status of particular employees, and the exercise by a union of such authority, "is inherently coercive and discriminatory in its broad impact on the employees in the bargaining unit"¹⁹ In this case the union was held to have violated section 8 (b) (2) by maintaining an agreement providing such a delegation and also by exercising its delegated authority. In another case, a majority of the Board held that a contract between a union and an employer which gave the union the right to request, and the employer to take, disciplinary action against *nonunion* employees for "disrupting harmonious working relations" was similarly discriminatory *per se* and violative of the act.²⁰ It was pointed out that the necessary effect of subjecting non-union employees, but not union members, to possible discipline and discharge for specified conduct was to encourage union membership in a manner not permitted by section 8 (a) (3) The majority also held that the union here further violated section 8 (b) (2) by the discriminatory enforcement of the agreement and by requesting the discharge of a nonmember for certain conduct, while not requesting disciplinary action against union members who had engaged in like conduct.

(2) Discrimination Under Union-Security Agreements

The act permits a labor organization to enter into an agreement with an employer requiring the employees in the bargaining unit to join the union, within limitations specified by the union-security proviso of section 8 (a) (3).

The execution and maintenance of union-security agreements which do not conform to statutory requirements, however, have consistently been held to constitute a violation of section 8 (a) (3) on the part of the contracting employer and of section 8 (b) (2) on the part of the union. Thus, section 8 (b) (2) is violated by a labor organization

¹⁸ The Ninth Circuit Court of Appeals, denying enforcement of the Board's order in part (*N L R B v International Union of Operating Engineers, Local 12*, 237 F 2d 670) held that while the referral system devised by the union could conceivably admit of discrimination against nonunion employees, there was not sufficient evidence of a practice of discrimination The court likewise held that the practice of unlawfully requiring immediate membership applications from nonunion applicants for referral and of unlawfully exacting work permit fees was not sufficiently established.

¹⁹ *Kenosha Auto Transport Corporation*, 113 NLRB 643, Member Murdock dissenting The majority follows *Pacific Intermountain Express Company*, 107 NLRB 837 The modification of the Board's order in the *Pacific Intermountain* case (*sub nom International Brotherhood of Teamsters*, 225 F 2d 343 (C A 8)) does not affect the validity of the rule

²⁰ *Olaa Sugar Company, Limited*, 114 NLRB 670 Member Rodgers was of the view that the complaint should be dismissed because in his opinion the complaining employee was an agricultural employee and was excluded from the act's coverage

when it becomes a party to a union-security agreement without having majority status among the employees covered;²¹ or when it extends an otherwise valid union-security agreement to cover employees outside the bargaining unit who had had no opportunity to express their wishes regarding representation by the contracting union;²² or when it makes an agreement providing for union security in excess of the statutory limitations.²³

(a) **Illegal enforcement of union-security agreements**

The act permits labor organizations to utilize union-security agreements only to compel the payment of regular dues and initiation fees. The purpose of permissible union security is "to prevent 'free riders,' i. e., employees who accept the benefits of union representation but who refuse to pay their allotted share therefor."²⁴ But for an employee to be subject to discharge or other discrimination in employment under a union-security agreement, his dues delinquency must have accrued while he was subject to the union's agreement with his present employer. Thus, a union was held to have violated section 8 (b) (2) by bringing about the discharge of an employee because of his failure to pay "back dues" for a period before his present employment.²⁵

In one case, section 8 (b) (2) was held violated by a union which invoked its current maintenance-of-membership agreement in an attempt to cause the discharge of employees who had resigned from the union and had ceased to pay dues at a time when the union's similar prior agreement was in effect.²⁶ The union's current agreement required maintenance of membership only by employees who were members when the agreement became effective, or who became members at a later date. The union insisted that it could lawfully request the employees' discharge because both the contract in effect at the time and the union's constitution prevented their resignation; that there was no break in the continuity of the two successive maintenance-of-membership agreements; and that the employees' membership status and obligations therefore continued throughout. A majority of the Board was of the view that the union's contentions were without merit regardless of whether the term of the old contract continued up to the time when the new contract became effective, or

²¹ See *Hubbard Dowel Co.*, 113 NLRB 28, *Robbie Shoe Corp.*, 113 NLRB 314

²² *The Item Company*, 113 NLRB 67

²³ See, e g., *Seaboard Terminal and Refrigeration Company*, 114 NLRB 1391 (failure to provide for the statutory 30-day grace period) On the validity of union-security agreements, see also pp 86-87

²⁴ *Technicolor Motion Picture Corporation*, 115 NLRB 1607

²⁵ *Murphy's Motor Freight, Inc.*, 113 NLRB 524

²⁶ *Martin Rockwell Corporation, et al.*, 114 NLRB 553

whether, as found by the trial examiner,²⁷ there was a break in the effectiveness of the two contracts. Holding that if the term of the old contract was "interrupted," that contract clearly was not a "bar" to resignation, the majority pointed out that a like conclusion was reached under similar circumstances in the earlier *New Jersey Bell Telephone* case.²⁸ The majority further held that even if there was no hiatus between the two contracts, the employees did not become subject to the new contract and were not required to pay dues under its terms, because before that contract became effective the employees had exercised their paramount statutory right to terminate their union membership. According to the majority, the employees' right to withdraw from a union is equivalent to the right not to *join* a union, and is therefore protected by section 7 of the act as construed in *Union Starch*²⁹ and later related cases. A labor organization's statutory privileges under a union-security contract, no matter how worded, the majority concluded, do not include the right to deny effectiveness to the employees' independent decision to reject membership status.

The majority likewise rejected the contention that, irrespective of any union-security provisions, the internal union-member contract did not permit the employees to resign, and that the union-rules proviso of section 8 (b) (1) (A) entitled the union to enforce the contract. It was pointed out that, while the employees' resignation may have constituted a clear breach of their union-membership contract, the proviso of section 8 (b) (1) (A) does not permit enforcement of union rules by the application of discriminatory sanctions. It was again made clear that the sole purpose of the proviso to section 8 (b) (1) (A) is to guarantee to unions the privilege to determine who shall be a union member and the conditions which must be complied with in order to acquire or retain union membership, and that the proviso is not "a license to discriminate against employees over and beyond that specifically allowed by the proviso to section 8 (a) (3)." Here, the Board concluded, the complaining employees had exercised their section 7 right to become nonmembers, "and their nonmember status afforded them protection against compulsive pressures affecting their job security, exerted here as a means of compelling their continuing dues contributions to the Union at a time when they were not required by the then current bargaining agreement to again join the Union."

²⁷ Member Rodgers agreed with the trial examiner's conclusion that the term of the union's old contract was not effectively extended so as to remain operative up to the time the new contract became effective, and that the employees' membership obligations ceased on that account.

²⁸ 106 NLRB 1322, enforced *sub nom.* *Communications Workers of America, CIO v. N. L. R. B.*, 215 F. 2d 835 (C. A. 2); Twentieth Annual Report, pp. 136-137.

²⁹ *Union Starch & Refining Company* 87 NLRB 779, enforced 186 F. 2d 1008 (C. A. 7), certiorari denied, 342 U. S. 815.

One case involved a question as to whether a late-payment charge was dues or was a fine which could not be made the basis of discharge under a union-security agreement.³⁰ At issue was a monthly \$1 early payment "discount" which the employee involved had forfeited. A majority of the Board held that the amount labeled "discount" was in fact a fine. In an earlier case, the union was found to have unlawfully requested delinquent employees to pay a \$1 assessment as a condition to continued employment.³¹ The union then adopted the "discount" practice. In the view of the majority, the circumstances indicated that the changeover was but a device by which the union in effect continued to impose a \$1 fine for late payment of dues.

One union was held to have violated section 8 (b) (2) by causing the discharge of an employee because of his refusal to attend a union initiation meeting.³² Under the union-shop provision of the contract, new employees were required to pay their initiation fee, and to become members at the first union meeting after expiration of their probationary period. Dues were payable after initiation. The complaining employee had paid his initiation fee but for "personal" reasons refused to attend the initiation meeting. A majority of the Board found that, while the complaining employee had not tendered membership dues, the union's resort to the union-security provision of its contract was unlawful because it was motivated solely by the employee's nonattendance. A tender of the dues by the employee, the majority found, would have been futile.³³ It was pointed out that, though a union may have membership requirements in addition to the payment of dues and initiation fees, union-security provisions are not available to enforce the additional requirements.

The Board also had occasion to make it clear during the past year that a union-security clause does not entitle the contracting union to cause the discharge of members for nonpayment of dues unless the union's rules for payment are uniformly applied.³⁴ Thus, a request for the discharge of dues-delinquent employees who had not been accorded the 30-day grace period for payment provided by the union's constitution was held unlawful.

(3) Reimbursement of Illegal Union Charges

In order to remedy section 8 (b) (2) violations the Board usually directs that the parties cease and desist from continuing their practices

³⁰ *Bakery and Confectionery Workers Union of America, Local 12, AFL-CIO (National Biscuit Company)*, 115 NLRB 1542, Member Rodgers concurring, Members Murdock and Peterson dissenting.

³¹ *The Great Atlantic & Pacific Tea Company (Pittsburgh Bakery)*, 110 NLRB 918.

³² *United Brotherhood of Carpenters and Joiners of America, Millmen's Local 824, AFL-CIO (Brunswick-Balke-Callender Company)*, 115 NLRB 518, Member Murdock dissenting.

³³ See also *Murphy's Motor Freight, Inc.*, 113 NLRB 524, where the Board also held that the complaining employee was not required to tender less than the total amount of "back dues" covered by the union's demand, at least some of which was illegal, because such a tender would have been futile.

³⁴ *Krambo Food Stores*, 114 NLRB 241.

which caused, or constituted an attempt to cause, unlawful discrimination against employees, and that employees who suffered loss of employment or pay and other benefits be made whole and restored to their former position.

In addition, it is the Board's policy to require the reimbursement of dues and other charges collected by illegal conduct from employees as the price for retaining their jobs. It is the Board's belief that offending unions should not be allowed to enjoy the benefits of their unlawful conduct, and that reimbursement of illegally collected charges is necessary in order to effectuate the policies of the act.³⁵

3. Secondary Strikes and Boycotts

The act's prohibitions against secondary boycotts are contained in section 8 (b) (4) (A) and (B). Subsection (A) is directed against secondary action which is intended to disrupt the business relations of separate employers, whereas subsection (B) prohibits strike action against one employer for the purpose of forcing another employer to recognize or bargain with a labor organization which has not been certified by the Board.

The administration of the secondary boycott provisions during fiscal 1956 again called for decision on a variety of issues, such as the proper basis for the assertion of jurisdiction in secondary boycott cases, interpretation of statutory terms, and the general scope of the protection afforded neutral employers by the act.

a. Inducement of "Concerted" Action

In order for the inducement of a cessation of work to violate section 8 (b) (4), the inducement must contemplate "concerted" action, i. e., action by more than one employee.³⁶ It was made clear during the past year that this requirement may be satisfied where a union supports its primary dispute by inducing a single employee of each of several neutral employers to stop work. Thus, a union which induced the meat buyer of each of several markets not to buy the product of a packer involved in a dispute with the union was held to have intended that the several buyers take parallel action, and that the action induced was therefore "concerted" within the meaning of

³⁵ See *Marlan-Pockwell Corporation*, 114 NLRB 553, *Local 983, United Brotherhood of Carpenters and Joiners of America, AFL-CIO (O W Furke Company)*, 115 NLRB 1123. See also *United Association of Journeymen & Apprentices of the Plumbing & Pipefitting Industry of the United States and Canada (J S Frown-E F Olds Plumbing & Heating Corporation)*, 115 NLRB 594, where a Board majority held that it was clearly within the Board's power to direct the reimbursement of all dues and assessments collected under its unlawful closed-shop contract. Member Peterson dissented on the ground that, in his view, there was no evidence of coercive collection of dues and assessments, and that the reimbursement issue was not properly litigated.

³⁶ *Glazers' Union Local No 27 (Johel Contractors Association)*, 99 NLRB 1391, enforced 202 F. 2d 606 (C. A. 7) (1953), *Denver Building and Construction Trades Council*, 108 NLRB 318, 322, footnote 8.

section 8 (b) (4)³⁷ In another case, where the respondent union's business agent induced the union steward employed on each of two separate construction projects not to handle nonunion materials, it was similarly held that a concerted refusal to handle the materials was involved.³⁸ It was pointed out that, while the two employees were approached singly, they could be reasonably expected as union stewards to transmit union instructions to the other union members on the respective jobs. And in 1 case, the Board rejected the contention of 1 of several respondent unions that it could not be held to have induced a "concerted" cessation of work in violation of section 8 (b) (4), because the only direct action taken against secondary employees was the inducement by its business agent of a single employee to honor a picket line.³⁹ The Board here made it clear that the incident could not be viewed in isolation, since it was but one of a series of related events in a total pattern of conduct which made up the several respondents' joint course of action and which in its entirety violated section 8 (b) (4) (A).

b. "Secondary Employer" Status—"Ally" Doctrine

In two cases where violations of section 8 (b) (4) (A) were charged, the respondent unions insisted that no secondary action was involved because the affected employer, though nominally a stranger to the union's primary dispute, was in fact not a neutral but an "ally"⁴⁰ of the primary employer. The union's defense was held without merit in both cases.⁴¹

In the *National Cement* case, where an independent contractor relationship existed between the primary employer (a contract hauler) and the secondary employer (a building material company), the respondent union's claim they were allies was based on the fact that the hauler was (1) related by marriage to the partners who made up the material company, and (2) also an employee of the company. A majority of the Board rejected the union's defense, being of the view that the coexisting family and employee relations did not alter the business relationship between the parties. It was pointed out that

³⁷ *Amalgamated Meat Cutters, Local No 88 (Swift and Company)*, 113 NLRB 275. Member Murdock, who dissented from the finding of a section 8 (b) (4) (A) violation in this case, expressed no opinion as to whether the inducement of individual employees of different employers here was an inducement to engage in "concerted" conduct. See also *Warehouse & Distribution Workers Union, Local 688 (Coca-Cola Bottling Company of St. Louis)*, 115 NLRB 1506.

³⁸ *Local 11, United Brotherhood of Carpenters & Joiners of America (General Millwork Corporation)*, 113 NLRB 1084. Member Murdock dissented from the finding of section 8 (b) (4) (A) violation on other grounds.

³⁹ *Seattle District Council of Carpenters (Cisco Construction Company)*, 114 NLRB 27.

⁴⁰ See *National Union of Marine Cooks and Stewards (Irwin-Lyons Lumber Company)*, 87 NLRB 54, *Douglas v. Metropolitan Federation of Architects (Project Engineering Co)*, 75 F Supp 672 (S D., N. Y., 1948).

⁴¹ *National Brotherhood of Teamsters (National Cement Products Co of Toledo, Ohio)*, 115 NLRB 1290. Member Murdock dissenting. *Chauffeurs, Teamsters, Warehousemen and Helpers Local Union No 135 (Marsh Foodliners, Inc)*, 114 NLRB 639.

in those cases where a secondary employer had been found to be an "ally" of the primary employer,⁴² unlike here, there was evidence that the two employers were subject to common ownership and managerial control, or that there was a transfer of struck work. The majority also held that the existing employment relationship did not destroy the material company's otherwise neutral status merely because it may have accentuated its normal interest in the labor dispute of its subcontractor.⁴³

In *Marsh Foodliners*, 1 of 2 consolidated cases turned on the picketing of a warehouse which handled goods consigned to the operator of a chain of retail food stores. The respondent union, which had struck the food chain for recognition, asserted that the warehouse picketing was legal under the rule of the *Metropolitan Federation* case⁴⁴ because the warehouse ceased to be a neutral and became an ally of the food chain when its storage business increased as the result of the recognition strike. Rejecting the union's affirmative defense, the Board pointed out that the union had failed to sustain its burden to establish the existence of the asserted "ally" relationship and that therefore it was not necessary to decide whether such a relationship, if it existed, would have legalized the warehouse picketing. Thus, the Board noted, there was no direct evidence that the increase in the warehouse's storage business during the first days of the strike in connection with shipments by common carriers to the food chain was due to the strike; or that the storage space involved was contracted for by the food chain rather than by the common carriers; or that any food stored at the warehouse during the strike was ever delivered to the food chain. The Board also rejected the union's contention that the transfer of a shipment by a common carrier to a food chain truck on property adjacent to the warehouse evidenced the existence of an ally relationship. In the Board's view, even if it had been shown that the reloading operation was authorized by the warehouse, this incident alone would not have been sufficient to establish the union's defense.

c. Product Boycotts

In two cases where unions were charged with unlawfully boycotting nonunion products, the contention was made that primary, rather than secondary, action was involved since there was no active dispute with the nonunion manufacturer, and the only dispute arose from the

⁴² See footnote 40, above

⁴³ The majority also held that the inducement of the material company's employees not to load the hauler's trucks could not be viewed as primary action, even though the union had previously had a primary dispute with the company. It was pointed out that, the earlier dispute having been settled by the execution of a contract, the subsequent refusal of the hauler to sign a contract gave rise to a new primary dispute with the hauler.

⁴⁴ *Douds v. Metropolitan Federation of Architects*, *supra*, footnote 40

use of the product by the employer against whom strike action was taken.⁴⁵ Rejecting the contention, the majority of the Board pointed out that the question was foreclosed by the decision in the *Sound Shingle Co.* case⁴⁶ where a product boycott was held to violate section 8 (b) (4) (A) even though the union had no active dispute over specific demands with the nonunion manufacturer of the boycotted product.

In the *Sand Door* case, the majority of the Board also held not only that the respondent union violated section 8 (b) (4) (A) when it induced the work stoppage by the employees of the immediate user of a nonunion product, but that it violated the prohibitions of the section again when it proposed to call off the work stoppage on condition that the wholesaler who furnished the boycotted product cease to place further orders with the nonunion manufacturer. The majority made clear that under section 8 (b) (4) (A) "it is not necessary that the employer or person whom the labor organization seeks to force to cease doing business with another person be the employer of the employees who have been induced . . . to engage in a work stoppage for that purpose."

d. Refusal To Perform Services

The prohibitions of section 8 (b) (4) are directed, in part, against the inducement of employees to refuse "in the course of their employment . . . to perform any services" for the purposes specified. The Board had to determine, during the past year, whether a union brought itself within this prohibition when it induced its members among the meat buyers of a number of markets not to buy the products of a meat packer whose salesmen it sought to organize.⁴⁷ A majority of the Board held that the union's action clearly violated section 8 (b) (4) (A) since its object was to force the meat markets to cease doing business with the packer's nonunion salesmen.⁴⁸ The majority rejected the view that inasmuch as the term "buy" was not used in section 8 (b) (4), buying activity must be taken to be exempt from the operation of the section. According to the majority, buying is a service for the performance of which the particular type of employees are hired, and here the service consisted in determining on the

⁴⁵ *Local 1976, United Brotherhood of Carpenters (Sand Door and Plywood Co.)*, 113 NLRB 1210, Member Rodgers concurring, Members Murdock and Peterson dissenting separately, *Local 11, United Brotherhood of Carpenters (General Millwork Corporation)*, 113 NLRB 1084, Members Murdock and Peterson dissenting.

⁴⁶ *Washington-Oregon Shingle Weavers' District Council (Sound Shingle Co.)* 101 NLRB 1159, Member Murdock dissenting, enforced 211 F. 2d 946 (C. A. 9).

⁴⁷ *Amalgamated Meat Cutters, Local 88 (Swift and Company)*, 113 NLRB 275, Member Murdock dissenting.

⁴⁸ The Board majority rejected the union's contention that the inducement of meat buyers not to buy from Swift salesmen must be viewed as but an incident of its primary effort to organize the salesmen, i. e., as an indirect appeal to the salesmen themselves. It was pointed out that, in the absence of conduct aimed directly at the nonunion employees, the question of incidental action against secondary employees did not arise.

basis of objective criteria whether the purchase of a packer's products was in the interest of the employer.⁴⁹

e. Employer Consent to Secondary Boycott

During fiscal 1956, the Board was again called upon to make clear its position as to whether a union's inducement of a work stoppage or a refusal to handle goods, that would otherwise violate the prohibition against secondary boycotts, can be immunized from this violation by the secondary employer consenting in advance to a boycott through a "hot cargo" agreement⁵⁰ or otherwise.

In the *Sand Door* case⁵¹ the trial examiner, deeming himself bound by the doctrine of the *Conway's Express* and *Pittsburgh Plate Glass* cases,⁵² recommended dismissal of a section 8 (b) (4) (A) complaint on the ground that the union, which induced employees on a construction project not to install doors made by nonunion employees, had an agreement with the contractor that employees "shall not be required to handle nonunion material." A majority of the Board,⁵³ overruling *Conway's Express* and *Pittsburgh Plate Glass*⁵⁴ on this point, held that the union here violated the act because, "regardless of the existence of a 'hot cargo' clause, any direct appeal to employees by a union to engage in a strike or concerted refusal to handle a product is proscribed by the Act when one of the objectives set forth in Section 8 (b) (4) (A) is present."⁵⁵ Moreover, as later pointed out in the *American Iron* case, this is so even though the employer

⁴⁹ Member Murdock, dissenting, took the view that the buyers were performing a managerial function, which Congress intentionally omitted from the operation of section 8 (b) (4). According to the dissenting opinion, purchasing itself is "the act of doing business," and "inducement of a buyer with unlimited authority to buy, not to buy the products of a nonunion supplier, is not . . . inducement of employees to refuse to 'handle' products or 'perform any services' for their own employer. . . ."

⁵⁰ "Hot cargo" clauses in collective-bargaining agreements usually provide in effect that the employees covered by the agreement shall not be required to handle goods declared "unfair."

⁵¹ *Local 1976, United Brotherhood of Carpenters (Sand Door and Plywood Co)*, 113 NLRB 1210

⁵² *International Brotherhood of Teamsters, Local 294 (Henry V Raboun, d/b/a Conway's Express)*, 87 NLRB 972, affirmed 195 F. 2d 906 (C. A. 2), *Chauffeurs, Teams,ers, Warehousemen and Helpers Local Union No. 155 (Pittsburgh Plate Glass Company)*, 105 NLRB 740.

⁵³ Members Murdock and Peterson dissenting.

⁵⁴ *Supra*, footnote 51. The view expressed in *Pittsburgh Plate Glass* that a refusal to work in accordance with a "hot cargo" agreement is not a "refusal . . . in the course of employment" within section 8 (b) (4) (A) was rejected.

⁵⁵ Chairman Farmer and Member Leedom took the view that while a union may induce an employer to execute a "hot cargo" agreement and thus to agree in advance to boycott the goods of another employer, the contracting union violates section 8 (b) (4) (A) if it approaches employees covered by the contract for the purpose of inducing or encouraging them to refuse to handle the goods of another employer. They declared that such "conduct is contrary to the express language of the statute, and therefore cannot be validated by the existence of a contract containing a 'hot cargo' clause."

Member Rodgers, concurring in the finding of a violation, reemphasized his belief that a "hot cargo" agreement, being a subterfuge for avoiding the proscription against secondary boycotts, is against public policy and for that reason is unenforceable and cannot serve as a defense to section 8 (b) (4) (A) charges.

Members Murdock and Peterson adhered to their view that a "hot cargo" agreement is a valid defense to secondary boycott charges such as the ones here involved.

acquiesces in the union's demand that the employees refuse to handle the "hot" goods.⁵⁶

In *General Millwork*,⁵⁷ a Board majority similarly held that a direct appeal to employees of the subcontractors on a construction job not to hang prehung "nonunion" doors violated section 8 (b) (4) (A) even though the subcontractors, as members of the union, had consented to and were obliged to abide by the union's policy against handling nonunion doors. Nor, according to the majority, was the union's action permissible because it was the industry custom and practice in the area to install only conventional doors.

f. Common Situs Picketing

In cases involving extension of picket lines from the premises of the primary employer to the premises of neutrals where the primary employees spend part of their working time, the Board generally adhered to the rule that if the primary employer has a permanent place of business at which the picketing union can effectively publicize its dispute, extension of the picket line violates section 8 (b) (4) (A).⁵⁸

In *Southwestern Motor Transport*,⁵⁹ a Board majority held that under this rule the ban on secondary boycotts was violated under the following circumstances: The union, which had a dispute with a trucking company, struck and picketed the company's terminal with signs publicizing the strike. In addition, pickets carrying identical signs followed the company's trucks to various industrial establishments and picketed the trucks on the latter's premises while they were loading freight. Picketing at the premises of secondary employers occurred only while the primary employer's trucks were present. The drivers of the picketed trucks had to cross the union's primary picket line twice a day.

The majority here took occasion to reiterate the following general principles: Picketing at the situs of the primary employer's operations is not prohibited by section 8 (b) (4), but picketing away from that situs and at the situs of another employer's operations where none of the primary employer's employees are working is prohibited by that section. This rule, it was pointed out again, accommodates a dual congressional objective, i. e., (1) to permit union pressure on a primary

⁵⁶ *General Drivers, etc. Local No 886 (American Iron and Machine Works Company)*, 115 NLRB 800, Members Murdock and Peterson dissenting. Chairman Leedom and Member Bean predicated their finding of a section 8 (b) (4) (A) violation on the respondent union's direct appeal to the employees. Member Rodgers again concurred solely because he considers "hot cargo" agreements against public policy.

⁵⁷ *Local 11, United Brotherhood of Carpenters & Joiners of America (General Millwork Corporation)*, 113 NLRB 1084, Members Murdock and Peterson dissenting.

⁵⁸ See *Brewery and Beverage Drivers and Workers, Local No 67 (Washington Coca Cola Bottling Works, Inc.)*, 107 NLRB 299, enforced 220 F 2d 380 (C A, D C). But see the court of appeals decisions in the *Otis Massey and Campbell Coal* cases, pp 144-145, 146.

⁵⁹ *Local 657, International Brotherhood of Teamsters (Southwestern Motor Transport, Inc.)*, 115 NLRB 981, Member Peterson dissenting.

employer through appeals to his own employees even where the primary appeal may have some incidental effect on employees of some other employer; and (2) at the same time to shield other employers from other than incidental pressures in controversies not their own. However, as also reiterated, where there is no other way in which a union can picket the primary employer's employees for the purpose of putting pressure on the primary employer, secondary picketing is permissible provided the picketing meets the conditions specified in the *Moore Dry Dock* case,⁶⁰ i. e., the picketing must be conducted in a manner which makes clear that it is directed only against the employees of the primary employer. On the other hand, the exception does not apply "when the reason for its application—the inability of the union to put pressure on the primary employer through his own employees at his place of business—does not exist."⁶¹

Citing *Southwestern Transport* in the later *Arthur Company* case,⁶² a Board majority similarly held that a union, which had a dispute with a roofing company and picketed the latter's place of business, violated section 8 (b) (4) (A) when it extended the picketing to the premises of a customer where its employees were engaged in rebuilding roofs. While the trial examiner here found that the secondary picketing was unlawful because it failed to satisfy *Moore Dry Dock* criteria,⁶³ the majority of the Board was of the view that the proper basis for finding a violation was the *Washington Coca Cola* rule. It was again pointed out that the *Moore Dry Dock* "ambulatory situs" rule does not apply when, as here, the primary employer has a permanent place of business which can be picketed effectively.⁶⁴ As to the availability of the roofing company's premises, the majority noted that the company's employees worked interchangeably at those premises and on job sites, and that when engaged on a job they reported twice each day at the company's plant. The majority opinion also noted that it was the union's manifest purpose to extend its appeal to employees other than the roofing company's since

⁶⁰ *Moore Dry Dock Company*, 92 NLRB 547.

⁶¹ Finding that the ambulatory picketing here violated section 8 (b) (4) (A) and (B), the majority held that the situation was comparable to the one in the *National Trucking* case (111 NLRB 483), enforced by the Fifth Circuit Court of Appeals (228 F. 2d 791), and was clearly distinguishable from that in *Otis Massey* (109 NLRB 275), reversed by the same court (225 F. 2d 205, certiorari denied 350 U. S. 914). For discussion of the court's decisions see pp. 144-146, below.

⁶² *Sheet Metal Workers International Association, Local No. 51 (W. H. Arthur Company)*, 115 NLRB 1137, Member Peterson dissenting.

⁶³ *Supra*.

⁶⁴ *Case General Drivers, etc., Local No. 886 (American Iron and Machine Works Company)*, 115 NLRB 800, Members Murdock and Peterson dissenting, where a Board majority held that one of the unions violated section 8 (b) (4) (A) by picketing trucks of the company involved in the primary dispute while the trucks attempted to deliver freight to neutral common carriers. The union's action there was held unlawful both because of the availability of the primary employer's premises for picketing, and because the pickets failed to disclose that their dispute was only with the primary employer. The majority cited *Moore Dry Dock Company*, 92 NLRB 547. As noted above (p. 110), the dissenting Members of the Board found no violation because of the existence of a "hot cargo" agreement.

picketing at the job site was not confined to areas used by the roofing employees; employees of another neutral employer were induced to quit work; and truckdrivers entering the job site on business for their own employers were stopped.

In *Cisco Construction*,⁶⁵ likewise cited by the majority in the *Arthur* case, a union was found to have violated section 8 (b) (4) (A) by picketing concrete suppliers serving two construction jobs of a nonunion contractor. The trial examiner held that the picketing was unlawful only to the extent that it was conducted at times when no employees of the primary employer—the general contractor—were present. The Board, however, again made it clear that since the construction sites—the primary sites of the union's dispute—could be and were in fact picketed, *all* picketing at the premises of the concrete suppliers was prohibited secondary action under the *Washington Coca Cola* rule.

4. Strikes for Recognition Against Certification

Section 8 (b) (4) (C) forbids a union from engaging in strike activity in order to force an employer to recognize or bargain with one labor organization as the representative of the employer's employees when another union has been certified by the Board as such representative.

The Board decided two cases under section 8 (b) (4) (C) during fiscal 1956, finding in each case that the section was violated.⁶⁶

a. Validity of Incumbent's Certification

In *Lewis Food*, the Board held that the trial examiner properly rejected the union's contention that its strike for recognition was lawful because the incumbent union had not been validly certified. The union alleged that, at the time of certification, the incumbent was company dominated and, moreover, was not in compliance with the filing requirements of section 9 (h). In agreement with the trial examiner, the Board concluded that, even assuming the existence of a legal defect in the Board's certification, such a legal defect

gave no right to the Union to decide for itself that the Board's determination was defective, and the Board's certification a nullity, and proceed to picket the Company, as if the certification and the certified representative did not exist. Fundamental legal procedure required that a decree or certificate of a judicial, or quasi-judicial tribunal, issued in a proceeding of which the tribunal had jurisdiction, which appeared valid and proper on its face, be respected as valid, until either the tribunal which had issued the decree or certificate, or higher authority, vacated, set aside, or rescinded the decree in an appropriate legal proceeding.⁶⁷

⁶⁵ *Seattle District Council of Carpenters (Cisco Construction Company)*, 114 NLRB 27.

⁶⁶ *Meat & Provision Drivers Union, Local No 626 (Lewis Food Company)*, 115 NLRB 890, *Arnold Bakers, Inc (Local 50, Bakery and Confectionery Workers International Union, AFL-CIO)*, 115 NLRB 1333, Member Rodgers concurring, Member Peterson dissenting from the finding of a violation on the ground that there was no unlawful inducement of strike action. See subsection c, *infra*

⁶⁷ Language of intermediate report, 115 NLRB 890, 901

b. Object of Strike Action

In both *Lewis Food* and *Arnold Bakers*, one of the issues to be determined was whether the object of the respondent union's strike action was, in fact, to obtain recognition as bargaining agent for the employees presently represented by the certified incumbent. In *Lewis Food*, the respondent was held to have made an unlawful demand for recognition when it asked the employer to "authorize" the union as bargaining representative, negotiate a contract, and join in filing a petition for decertification of the incumbent union. A majority of the Board also found that the respondent's further strike objective was to force the employer to bargain concerning the reinstatement of several of the union's adherents who had been discharged. In the view of the majority, the union's strike for this purpose necessarily was a strike to force or require the employer to recognize the union as bargaining agent to this extent.⁶⁸ The majority rejected the trial examiner's conclusion that the union's action was legal in this respect because the matter of reinstatement was a grievance which could be processed through a rival of the certified union under the proviso to section 9 (a) as construed by the Second Circuit Court of Appeals.⁶⁹ The majority reaffirmed the *Federal Telephone and Radio* decision,⁷⁰ where the Board expressed disagreement with the Second Circuit's construction of section 9 (a).

In *Arnold Bakers*, the question of whether the object of the union's picketing was immediate recognition arose under these circumstances: After defeat in a State board election and unsuccessful efforts, including a merger proposal, to acquire bargaining rights, the respondent union began to picket the employer's plant. The picketing continued after Board certification of the incumbent union on the basis of an election in which the respondent refused to participate. In the view of a majority of the Board, the record in the *Arnold* case did not show that the union's admitted precertification objective, i. e., immediate recognition, was changed after the incumbent's certification. The change in the wording of the union's picket signs was held insufficient in this respect.⁷¹ The majority agreed with the trial

⁶⁸ Member Murdock, concurring in the finding of a violation, found it unnecessary to decide whether the union's second strike objective also violated section 8 (b) (4) (C). Member Peterson, also concurring in the finding of a violation, disagreed with the conclusion that the strike to obtain reinstatement of discharged employees was unlawful.

⁶⁹ *Douds v. Local 1250, Retail Wholesale Department Store Union (Oppenheim Collins & Co)*, 173 F. 2d 764.
⁷⁰ 107 NLRB 649, 653, footnote 9.

⁷¹ The majority noted that the regional director's application under section 10 (l) for a temporary injunction against the picketing had been denied by the United States District Court for Southern New York, and that the denial was sustained by the Court of Appeals for the Second Circuit. *Douds v. Bakery Workers Union (Arnold Bakers)*, 127 F. Supp. 534, 224 F. 2d 49, Twentieth Annual Report, pp. 150, 153. While mindful of these decisions, the majority pointed out that under the statutory scheme they were not final as to the merits of the case, and that the more complete record before the Board and the detailed analysis of the trial examiner, not available to the court, justified a conclusion at variance with that of the court in the ancillary injunction proceeding.

examiner's conclusion that, in the absence of evidence of such a change, the union's purpose to achieve immediate recognition must be presumed to have continued. Nor, according to the majority, was the finding of a violation precluded because the union's postcertification picketing may have had the further objective of enlisting the employees as members to achieve recognition ultimately by lawful means. It was pointed out that the union's unlawful objective continued to exist concurrently and was not replaced by the lawful one.

c. Picketing as Unlawful Inducement of Work Stoppage

Picketing, in order to violate section 8 (b) (4) (C), not only must have an illegal objective, but must constitute unlawful inducement of employees to stop work. The majority's finding in *Arnold Bakers* that the picket line had the effect of inducing the bakery's employees to stop work⁷² was based on the view that "the mere existence of a picket line is in most instances 'a strike signal'⁷³ and induces employees to assist the picketing union by refusing to work regardless of the motive of the picketing union." The majority recognized that in extraordinary circumstances⁷⁴ a picket line may not have this effect, and that picketing an employer's place of business therefore does not in *all* circumstances constitute inducement and encouragement of employees not to perform employment services. But the majority found no such special circumstances here. While the union's picket signs contained no direct appeal to any employees to refuse to work for their employers, the majority believed that the wording of the picket signs was not such as to dispel the normal reaction of employees to the existence of the picket line.

5. Jurisdictional Disputes

Section 8 (b) (4) (D) forbids a labor organization from engaging in or inducing strike action for the purpose of forcing any employer to assign particular work tasks "to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, 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 charges alleging any other type of unfair

⁷² In the preliminary injunction proceeding under section 10 (l) relief was denied because of the court's contrary conclusion. See preceding footnote.

⁷³ Citing the Supreme Court's decision in *International Brotherhood of Electrical Workers, Local 501 v. N. L. R. B.*, 341 U. S. 694 700.

⁷⁴ E. g., consumer picketing of customer entrances.

labor practice. Section 10 (k) requires that the parties to a jurisdictional dispute be given 10 days, after notice of the filing of 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 the dispute," the Board is empowered to hear and determine the dispute. Section 10 (k) also provides that "upon compliance by the parties to the dispute with the decision of the Board or upon such voluntary adjustment of the dispute," the charge shall be dismissed. A complaint issues only if there is a failure to comply with the Board's determination.⁷⁵ Also, a complaint may be issued in case of the failure of the method agreed upon to adjust the dispute.⁷⁶

a. Determination of Dispute

In order to proceed with a determination under section 10 (k), the Board must find (1) that there is reasonable cause to believe that the union charged with having violated section 8 (b) (4) (D) has induced or encouraged employees to strike or refuse to perform services⁷⁷ in order to obtain a work assignment within the meaning of section 8 (b) (4); and (2) that a dispute within the meaning of 10 (k) currently exists. If there is no reasonable cause for believing that employees were unlawfully encouraged to strike,⁷⁸ or if no dispute is found to exist, the Board dismisses the proceeding by ordering that the notice of hearing issued in the case be quashed.

(1) Existence of Dispute

In several proceedings under section 10 (k), the Board had to pass on assertions that no work assignment dispute cognizable under section 10 (k) was involved, or that a determination was not proper either because the dispute which gave rise to the section 8 (b) (4) (D) charges had become moot, or because the parties had "adjusted, or agreed upon methods for the voluntary adjustment of the dispute" as provided in section 10 (k).

In one case, a majority of the Board rejected the union's contention that the proceeding should be dismissed because (1) the union's strike against a contractor on a construction project did not have the unlaw-

⁷⁵ No complaints under section 8 (b) (4) (D) were adjudicated during fiscal 1956.

⁷⁶ However, the validity of such a complaint has not been decided by the Board.

⁷⁷ The tests for determining whether a union has unlawfully induced action in violation of section 8 (b) (4) (D) are the same as in the case of other violations of section 8 (b) (4). As pointed out in one case (*United Association of Journeymen & Apprentices of the Plumbing and Pipe Fitting Industry of the U. S. & Canada, Local No. 533, AFL-CIO (Kansas City Power & Light Company)*, 115 NLRB 1411), the "difference between these [several] subsections of 8 (b) (4) goes only to the objective and not to the acts of inducement or encouragement."

⁷⁸ See *Local Union No. 1, Sheet Metal Workers International Association (Refrigeration and Air Conditioning Contractors Association of the Peoria Area)*, 114 NLRB 924, where cessation of operations on a construction project was found to have been the result of the inducement of employers to stop operations pending adjustment of a work assignment dispute.

ful purpose of securing the assignment of disputed work in violation of section 8 (b) (4) (D), but rather was for the lawful purpose of forcing the contractor to sign a collective-bargaining agreement; and (2) in any event, there was no dispute over any work actually being performed on the project at the time of the strike.⁷⁹ As to the first contention, it was pointed out that the union's contract demands included specific provisions for the assignment of work which was the subject of the union's current jurisdictional dispute with another union. The majority observed that the strike to force the contractor to sign the contract was a direct effort to resolve the existing jurisdictional dispute and was therefore clearly prohibited by section 8 (b) (4) (D). "To hold," the majority said, "that the strike was merely for lawful contract purposes, would permit a labor organization to gain immunity from this section of the Act by merely demanding that provisions covering any work in dispute be included in its contract."

As to the second contention, it was pointed out that while there may have been no dispute over work actually in progress on the struck job, the union's contract demands expressly called for the assignment of certain work to one group of the contractor's employees to the exclusion of another group. Thus, according to the majority, the situation was unlike that in the *Anheuser-Busch* case⁸⁰ on which the union relied. In *Anheuser-Busch*, the 10 (k) proceeding was dismissed because there was no *present* demand for a work assignment to employees of the struck employer, but only a demand for a contract provision continuing in effect an existing limitation on the employer's selection of subcontractors for the performance of certain work. The fact that in the present case the union struck a job where the actual work was not in dispute was held immaterial, because the strike was related to a basic, jurisdictional dispute which was active and concerned a type of work which the employer, by the very nature of its business, was regularly performing, both immediately before and after the union's demand for the work assignment provision.

One case involved union action which, as found by a majority of the Board, was intended to force an employer to hire union members on a full-time basis for a minor air compressor operation which had been performed by one of the employer's laborers on a part-time basis.⁸¹ The union asked that the proceeding be dismissed on the ground that

⁷⁹ *Local Union No. 9, Wood, Wire & Metal Lathers (Anning-Johnson Company)*, 113 NLRB 1237, Member Murdock dissenting.

⁸⁰ *Anheuser-Busch, Inc.*, 101 NLRB 348

⁸¹ *Local 450, International Union of Operating Engineers (Industrial Painters and Sand Blasters)*, 115 NLRB 984. Member Murdock dissenting

The majority here rejected the union's contention that no section 8 (b) (4) (D) violation was involved because the employer assented to the assignment of the operation to the union. The majority noted that the union initially requested the hiring of several operators; that the employer acquiesced to the extent of hiring one employee for the operation, that the union then renewed its demand that an operator be hired for each compressor, and that this demand was followed by the establishment of a picket line.

there was no work which could be the subject of a work assignment dispute within section 8 (b) (4) (D), and that none of the employer's own employees had complained about the union's insistence on the hire of compressor operators. Rejecting the contention, a majority of the Board pointed out that the term "work" as used in section 8 (b) (4) (D) does not, as apparently contended by the union, refer to a job that is assigned to a specific person. Section 8 (b) (4) (D), according to the majority, refers to work tasks rather than to specific persons.⁸²

(a) Mootness of dispute

In the *Industrial Painters* case,⁸³ the majority held that the dispute had not become moot because the cessation of work on the picketed project had resulted in cancellation of the contract for the job. It was pointed out that the union at no time withdrew any of its demands or indicated its intention of doing so. And in the *Kansas City Power* case,⁸⁴ the majority of the Board reiterated that a work assignment dispute does not become moot merely because the particular job involved had been abandoned by the struck employer and completed by another and picketing had been discontinued.⁸⁵ Nor, according to the majority, was the dispute in the *Kansas City Power* case rendered moot by the union's written statement, just before the hearing, that the union will not violate section 8 (b) (4) (D) by inducing employees to strike in order to compel assignment of the work in question. Any other view, the Board pointed out, "would leave the Board with the possibility of again facing a last minute effort to forestall Board action at some time in the future."

(b) Adjustment of dispute

Section 10 (k) expressly provides that a work assignment dispute which has given rise to section 8 (b) (4) (D) charges is not to be determined by the Board if the dispute has been satisfactorily adjusted or if the parties have "agreed upon methods for the voluntary adjustment of the dispute."

The question of adjustment again had to be determined where dismissal of section 10 (k) proceedings was requested because of an award of the National Joint Board for the Settlement of Jurisdictional Disputes in the Building and Construction Industry, or an agreement

⁸² Insofar as the union argued that, if its insistence on the hiring of a full-time operator for each air compressor should be regarded as "featherbedding," its conduct was cognizable under the specific prohibition of section 8 (b) (6) rather than 8 (b) (4) (D), the majority made it clear that the two sections do not contemplate mutually exclusive treatments.

⁸³ Footnote 81, *supra*

⁸⁴ *United Association of Journeymen & Apprentices of the Plumbing and Pipe Fitting Industry of the U S & Canada, Local No. 555, AFL-CIO (Kansas City Power & Light Company)*, 115 NLRB 1411, Member Murdock dissenting.

⁸⁵ See also *Bay Counties District Council of Carpenters (Associated Home Builders of San Francisco, Inc.)*, 115 NLRB 1757, Member Murdock dissenting.

of the parties to submit any disputes to the Joint Board. The Board has considered itself without authority to determine disputes where all the parties—i. e., the disputing union and the employers responsible for the assignment of the disputed work—are bound by the agreement establishing the Joint Board.⁸⁶ In this case, the disputing local union, though not a signatory to the Joint Board agreement, was bound by the agreement of its international and had accepted awards in the past; and the employer, also not a signatory, had submitted itself to the Joint Board's processes, and had previously acquiesced in Joint Board action. Under these circumstances, no Board determination was made. The Board also made it clear that a party which has agreed on Joint Board methods for the adjustment of disputes cannot obtain a redetermination of a dispute by the Board by refusing to abide by an unfavorable Joint Board determination. Similarly, a union subject to Joint Board procedures was held not entitled to a section 10 (k) determination of a dispute because it announced in advance that it would not abide by any determination the Joint Board might make.⁸⁷ But the Board proceeded to determine existing disputes in two cases where the disputing construction trades unions were subject to Joint Board action and where the contractors, or subcontractors, or some of them, were not subject to Joint Board procedures.⁸⁸

In one case, a majority of the Board declined to dismiss the proceeding on the ground that the disputing employer and union did not seek to arbitrate the dispute under the arbitration clause of their collective-bargaining contract.⁸⁹ The majority noted that the group of employees to whom the disputed work had been assigned under a contract with another union would not be a party to the arbitration, so that no useful purpose would be served by withholding a determination under section 10 (k). And in another case, a majority of the Board held that a letter submitted by the respondent union just before the hearing, admitting that it was not lawfully entitled to the disputed work and stating that it would not induce employees to strike to force assignment of the work to its members, constituted neither evidence of an agreed-upon method for voluntary adjustment of the dispute nor an informal settlement.⁹⁰

⁸⁶ *Local Union No. 9, Wood, Wire, and Metal Lathers (A. W. Lee, Inc.)*, 113 NLRB 947

⁸⁷ *Local Union No. 1, Sheet Metal Workers International Association (Refrigeration and Air Conditioning Contractors Association of the Peoria Area)*, 114 NLRB 924.

⁸⁸ *International Brotherhood of Electrical Workers, Local No. 5, AFL-CIO (Pittsburgh's Great Southern Shoppers Mart, Inc.)*, 115 NLRB 1196. *Bay Counties District Council of Carpenters (Associated Home Builders of San Francisco, Inc.)*, 115 NLRB 1757.

⁸⁹ *Truck Drivers Local Union No. 375 (Service Transport Co.)*, 113 NLRB 452. Member Murdock, dissenting, was of the view that the situation here did not involve a dispute cognizable under section 10 (k).

⁹⁰ *United Association of Journeymen & Apprentices of the Plumbing & Pipe Fitting Industry of the U. S. & Canada, Local No. 533, AFL-CIO (Kansas City Power & Light Company)*, 115 NLRB 1411.

(2) Work Claims Based on Contract

In cases where the union charged with a section 8 (b) (4) (D) violation asserts that it is entitled to the disputed work under a contract with the employer, and that the employer has assigned the work in derogation of the contract, the Board, in determining the dispute, considers the validity of the union's contract claim.

In one case during fiscal 1956, it was made clear that once an employer validly agrees to assign certain work to the members of the contracting union a later agreement which gives jurisdiction over the same work to another union and infringes on the earlier contract will not be given effect.⁹¹ A majority of the Board here found that the respondent union was entitled under the terms of its contract to have the work involved assigned to its members and that respondent could lawfully strike for the disputed work.⁹²

In another case, however, the Board held that the disputing union's written contract, as allegedly supplemented by a later oral agreement, could not be interpreted so as to support the union's work assignment claim.⁹³ It was pointed out that the union's interpretation of the written contract was neither consistent with past practice nor justified by the pertinent clauses of the contract, and that the alleged oral understanding was but a temporary expedient which vested no contract rights in either party.

⁹¹ *Radio & Television Broadcast Engineers Union, Local 1212, International Brotherhood of Electrical Workers, AFL-CIO (Columbia Broadcasting System, Inc)*, 114 NLRB 1354.

⁹² Chairman Leedom dissented because of his view that the work in dispute was not covered by the contract on which the striking union relied

⁹³ *Truck Drivers Local Union No. 375 (Service Transport Co.)*, 113 NLRB 452

V

Supreme Court Rulings

During fiscal 1956, the Supreme Court handed down decisions in five cases under the National Labor Relations Act. Four cases involved the validity of Board orders and turned, respectively, on (1) the scope of certain statutory and contractual limitations on the right to strike; (2) an employer's duty under section 8 (a) (5) to supply relevant financial data in support of his bargaining position; (3) the right of nonemployee organizers to contact employees on company premises; and (4) the proper administration of the filing provisions of section 9 (f), (g), and (h). One case dealt with the discretion of a court of appeals in adjudicating a defaulting party in contempt of the court's decree enforcing a Board order.

In one case, the Board was invited as *amicus curiae* to express its views as to whether a State court injunction against picketing conflicted with the Federal jurisdiction under the National Labor Relations Act.

1. Limitations on the Right To Strike

The Supreme Court in *Mastro Plastics Corp.*¹ held that neither the no-strike clause of the collective-bargaining agreement invoked by the employer, nor the waiting provisions of section 8 (d) (4) deprived employees who struck against unfair labor practices of the act's protection. The Court² agreed with the Second Circuit Court of Appeals that the Board properly construed the no-strike pledge and the limitation of section 8 (d) (4) as intended only to outlaw strikes for economic benefits, and as preserving the employees' statutory right to strike against unfair labor practices.³

a. No-Strike Pledge

Regarding the scope of the undertaking of the employees' bargaining agent "to refrain from engaging in any strike or work-stoppage during

¹ *Mastro Plastics Corp. and French-American Reeds Mfg. Co., Inc. v. N. L. R. B.*, 350 U. S. 270.

² Justices Frankfurter, Minton, and Harlan dissenting.

³ As noted by the Supreme Court, the Seventh Circuit had reached the same conclusion in *N. L. R. B. v. Wagner Iron Works*, 220 F. 2d 126. See Twentieth Annual Report, pp. 154-155.

the term of [this] agreement,"⁴ the Court made it clear that the agreement "must be read as a whole in the light of the law relating to it when made."

According to the Court, the contract here was a typical collective-bargaining contract which dealt solely with the economic relationship between the contracting employers and their employees, and the waiver clause was concerned only with strikes involving the subject matter of the contract. The Court pointed out that, given the broader meaning contended for by the employer, the waiver would amount to a surrender of the employees' statutory right to strike "even if [the employer], by coercion, ousted the employees' lawful bargaining representative, and by threats of discharge, caused the employees to sign membership cards in a new union." In the Court's view, to find such a broad waiver without a "compelling expression of it," and to infer it from general language of the kind here employed by the contracting parties would contravene the policies of the act.⁵

b. Limitation of Section 8 (d) (4)

As to the strike limitation of section 8 (d) (4), the Court agreed with the views of the Board and the Second and Seventh Circuits that in enacting the section Congress was concerned solely with the termination and modification of collective-bargaining agreements, and did not envisage unfair labor practice strikes when providing that "any employee who engages in a strike within the sixty-day period specified in this subsection shall lose his status as an employee . . . for the purposes of sections 8, 9, and 10 of this Act." The Court here again pointed out that the language relied on by the employer may not be read "in complete isolation" but must be construed in the light of "the provisions of the whole law, and . . . its object and policy." The Board, in the Court's view, correctly related the required waiting period to the duty of a party to a collective-bargaining agreement, who intends to "terminate or modify," to keep the agreement in effect without strike or lockout. Section 8 (d), the Court said, seeks to relieve contracting parties from the economic pressure of a strike or lockout during this natural negotiation period and is not applicable when, as here, the purpose of the strike was to protest against unfair labor practices rather than to terminate or modify the existing contract. To interpret section 8 (d) as outlawing unfair labor practice strikes during the statutory

⁴ The waiver clause quoted by the Court in its entirety reads "The Union agrees that during the term of this agreement, there shall be no interference of any kind with the operations of the Employers, or any interruptions or slackening of production of work by any of its members. The Union further agrees to refrain from engaging in any strike or work stoppage during the term of this agreement."

⁵ The Court rejected the contention that the provision of section 13, that the act is not to be construed so as to affect "the limitations or qualifications" on the right to strike, prevented the generally worded contractual strike waiver from being given a limited meaning.

waiting period, according to the Court, would produce the anomalous result of penalizing employees for exercising their right to strike and depriving them—

of their most effective weapon at a time when their need for it is obvious. Although the employees' request to modify the contract would demonstrate their need for the services of their freely chosen representative, petitioners' interpretation would have the incongruous effect of cutting off the employees' freedom to strike against unfair labor practices aimed at that representative. This would relegate the employees to filing charges under a procedure too slow to be effective. The result would unduly favor the employers and handicap the employees during negotiation periods contrary to the purpose of the Act. There also is inherent inequity in any interpretation that penalizes one party to a contract for conduct induced solely by the unlawful conduct of the other, thus giving advantage to the wrongdoer.

2. The Bargaining Process—Substantiation of the Employer's Position

In *Truitt Mfg. Co.*,⁶ the Supreme Court held that an employer's refusal to adduce relevant financial data in support of his claim of inability to pay higher wages may support a finding of a failure to bargain in good faith. In the view of a majority of the Court,⁷ the employer's refusal under the circumstances of the case justified such a finding, and warranted the Board's direction that Truitt furnish "reasonable proof" of its asserted inability to grant any wage increase.⁸ While pointing out that a union is not automatically entitled to substantiating evidence "in every case in which economic inability is raised as an argument against increased wages," the Court noted that here the parties had treated the company's financial ability as highly relevant in their effort to reach agreement. In this connection the Court said:

Good faith bargaining necessarily requires that claims made by either bargainer should be honest claims. This is true about an asserted inability to pay an increase in wages. If such an argument is important enough to present in the give and take of bargaining, it is important enough to require some sort of proof of its accuracy.

3. Access of Nonemployee Organizers to Employer's Premises

The *Babcock and Wilcox* case, and two companion cases,⁹ presented the conflicting views of the Fifth and Tenth Circuit Courts of Appeals,¹⁰

⁶ *N. L. R. B. v. Truitt Mfg. Co.*, 351 U. S. 149.

⁷ Justices Frankfurter, Clark, and Harlan, concurring and dissenting in part, believed that the Board did not apply a proper standard in determining the employer's bad faith in bargaining, and that the case should be remanded to the Board for appropriate action.

⁸ The Court therefore reversed the Fourth Circuit's refusal to enforce the Board's order in *N. L. R. B. v. Truitt Mfg. Co.*, 224 F. 2d 869, *infra*, p. 138.

⁹ *N. L. R. B. v. The Babcock & Wilcox Company*, 351 U. S. 105, *N. L. R. B. v. Seamprufe, Inc.*, 351 U. S. 105, and *N. L. R. B. v. Ranco, Inc.*, 351 U. S. 105.

¹⁰ *N. L. R. B. v. The Babcock & Wilcox Company*, *supra*; *N. L. R. B. v. Seamprufe, Inc.*, *supra*.

on the one hand, and the Sixth Circuit, on the other hand, as to an employer's right to prohibit nonemployee organizers from distributing union literature on company parking lots during the employees' free time. In each case, the Board had found that the circumstances required rescission of the employer's rule excluding union organizers from its parking lot. The Board's order was enforced by the Sixth Circuit in *Ranco*,¹¹ but was set aside by the Fifth and Tenth Circuits in *Babcock* and *Seamprufe*, respectively.¹²

The Board's finding that the employer's action in each case unlawfully interfered with the organizational freedom guaranteed by sections 7 and 8 (a) (1) was predicated on the principles announced by the Supreme Court in the *LeTourneau Co.* case.¹³ *LeTourneau* held that an employer's prohibition against the distribution of union literature on the company's parking lot by employees constituted an unreasonable impediment to the employees' exercise of their section 7 rights.

The Supreme Court in *Babcock* pointed out, however, that *LeTourneau* was concerned only with the accommodation of the legitimate interest of employees in distributing union literature on the company's premises and did not spell out the circumstances under which nonemployee organizers must be permitted to distribute literature. According to the Court, the rule that no restriction may be placed on the employees' right to discuss self-organization among themselves, unless the restriction is necessary to maintain production or discipline, does not also govern the access of nonemployee organizers to company property. Such access, the Court observed, is related to the fact that self-organization "depends in some measure on the ability of employees to learn the advantages of self-organization from others." The applicable rule, according to the Court, is therefore that nonemployee organizers may be excluded from company property—

if reasonable efforts by the union through other available channels of communication will enable it to reach the employees with its message and if the employer's notice or order does not discriminate against the union by allowing other distribution.

Conversely, the Court held, access for the purpose of distributing literature must be granted—

if the location of a plant and the living quarters of the employees place the employees beyond the reach of reasonable union efforts to communicate with them.

In the latter circumstances, the Court continued, the employer's right to exclude nonemployees from its property is "required to

¹¹ Twentieth Annual Report p. 156.

¹² *Ibid.*, p. 157.

¹³ *LeTourneau Company of Georgia*, 54 NLRB 1253.

yield to the extent needed to permit communication of information on the right to organize.” The Court concluded that, since none of the three cases before it involved such a situation, the employers could not be required to allow union organizers to approach the employees on company property even under reasonable regulations.

4. Determination of Compliance with Non-Communist Affidavit Requirement

The *Coca-Cola* case¹⁴ involved two issues pertaining to the administration of the affidavit provisions of section 9 (h): (1) the litigability in an unfair labor practice proceeding of the question whether each of the complaining union’s “officers” has filed a section 9 (h) affidavit; (2) the propriety of the Board’s “constitutional test”¹⁵ in determining whether the requirement of section 9 (h) that *each officer* file an affidavit has been complied with, i. e., to consider, in the absence of attempted evasion, only those persons as officers who occupy a position designated by the union’s constitution as an office.

In the matter of litigating compliance, the Supreme Court held that its ruling in the *Highland Park* case¹⁶ was controlling because here, as in that case, a question regarding the scope of section 9 (h) was involved rather than merely “an inquiry into disputed facts.” While recognizing the merits of the view that an employer should not be permitted to disrupt or delay complaint or representation cases by raising questions respecting section 9 (h), the Court pointed out that this argument was foreclosed by *Highland Park*.¹⁷

Regarding the construction of the term “officers” in section 9 (h), the Supreme Court approved the Board’s “constitutional” rule which had been rejected by the court of appeals in favor of a “functional” test. The word “officers,” not being defined in the act or its legislative history, must, according to the Court, be given its usual meaning, i. e., “those who hold defined offices . . . not the boys in the back room or other agencies of invisible government.” Moreover, the Court continued, even if the term should have a technical meaning, its definition by the Board as an expert body must be accepted here since it was “a reasonable if not compelling construction of the statute.”

¹⁴ *N. L. R. B. v. Coca-Cola Bottling Co. of Louisville*, 350 U. S. 264.

¹⁵ See sec. 102.13 of the Board’s Rules and Regulations, Nineteenth Annual Report, p. 11.

¹⁶ *N. L. R. B. v. Highland Park Manufacturing Co.*, 341 U. S. 322

¹⁷ The Board has interpreted the *Coca-Cola* decision as in harmony with its practice of not permitting litigation of sec. 9 (h) matters which do not involve interpretation of the statutory language in representation or unfair labor practice proceedings, and of determining such questions administratively only in collateral proceedings. See *Desaulniers and Company*, 115 NLRB 1025, Member Rodgers dissenting; see also *United Cigar-Whelan Stores Corporation*, 115 NLRB 1214; “*M*” *System, Inc.*, 115 NLRB 1316; *Crenshaw’s, Inc.*, 115 NLRB 1374. See discussion of compliance cases in the courts of appeals, *Enforcement Litigation*, sec 2, pp. 131-133.

5. Contempt of Bargaining Decree

In the *Warren* case,¹⁸ the Supreme Court reversed the dismissal by the Fifth Circuit of the Board's petition for the adjudication in civil contempt of an employer who had failed to comply with a bargaining decree. The pertinent provision of the decree gave effect to the well-established rule that an employer who has unlawfully refused to bargain with a union, and has been ordered by the Board to remedy the refusal, cannot avoid enforcement of the Board's bargaining order on the ground that the complaining union has since lost its majority status. However, in the view of the Fifth Circuit, this rule was not binding on contempt and did not necessarily require a finding that the employer's postdecree refusal to bargain based on the union's asserted loss of majority was contumacious. Rejecting the conclusion of the court of appeals, the Supreme Court held that the employer's failure following the decree to bargain for a reasonable time was unlawful and that it was "the statutory duty" of the court of appeals here to adjudge the employer in contempt of its enforcement decree. A decree, the Supreme Court said, "like the order it enforces, is aimed at the prevention of unfair labor practices, an objective of the Act, and so long as compliance is not forthcoming that objective is frustrated." Pointing out that the judicial remedy of contempt is the ultimate sanction to secure compliance with Board orders, the Supreme Court made it clear that the granting or withholding of the remedy is not wholly discretionary with the court of appeals which has issued an enforcement decree. This, according to the Supreme Court, is so not only under the National Labor Relations Act but also under general equity principles.

6. Scope of Federal Jurisdiction Over Labor Relations

In *United Mine Workers v. Arkansas Oak Flooring Company*,¹⁹ where the Board participated as *amicus curiae*, the Supreme Court held that the field reserved to Federal jurisdiction by the National Labor Relations Act was invaded when a State court enjoined peaceful picketing intended to compel an employer to grant bargaining rights to a union which had been selected by a majority of his employees, but which was not entitled to Board certification because of its failure to comply with the filing requirements of section 9 (f), (g), and (h) of the act. The Supreme Court agreed that Congress intended the filing requirements only as a limitation on the right of labor organizations to the benefits of the National Labor Relations Act, but not on the right of a labor organization to represent employees for collective-bargaining

¹⁸ *N L R B v Warren Company, Inc*, 350 U. S. 107.

¹⁹ *United Mine Workers of America v. Arkansas Oak Flooring Company*, 351 U. S. 62.

purposes. The filing requirements, the Court noted, are not mandatory and the only effect of noncompliance is the loss of specified statutory advantages.²⁰ The Court observed that there are no provisions either disqualifying a noncomplying union from representing employees in an appropriate bargaining unit if designated by a majority of them, or precluding an employer from voluntarily recognizing such a union. Thus, according to the Court, noncompliance "does not . . . eliminate the applicability of the National Labor Relations Act." Here, the Court continued, the employees had exercised their right under section 7 to choose their bargaining representatives, and the union, having majority status within the meaning of section 9 (a), was entitled to recognition by the employer. The Court concluded that the union, though deprived of access to the Board's processes, could meet the employer's refusal to bargain with it by other lawful action, i. e., it could lawfully strike under section 13, and could peacefully picket the employer under section 7, in order to achieve its purpose. Citing its *Anheuser-Busch* and *Garner* decisions,²¹ the Court held that the State court injunction here was invalid because a "State may not prohibit the exercise of rights which the Federal Acts protect."

²⁰ The Court noted that the effect of noncompliance is the same whether one or more of the filings are omitted

²¹ *Weber v. Anheuser Busch, Inc.*, 348 U. S. 468, Twentieth Annual Report, pp 149-150, *Garner v. Teamsters Union*, 346 U. S. 485; Nineteenth Annual Report, pp 116-117.

VI

Enforcement Litigation

Board orders issued in unfair labor practice proceedings were reviewed by the courts of appeals in 94 enforcement cases during fiscal 1956.¹ The more important issues decided by the respective courts are discussed in this chapter.

1. Jurisdiction

Questions regarding both the Board's statutory jurisdiction and its discretion to exercise, or refrain from exercising, that jurisdiction were again litigated during the past year.

Regarding the general scope of the Board's jurisdiction over commerce operations, the Fifth Circuit Court of Appeals had occasion to point out again that "Congress did not make jurisdiction dependent upon any volume of commerce affected as long as it is in an amount sufficient to avoid the operation of the *de minimis* rule."² The court here held that the Board had jurisdiction over a meat packer whose interstate sales of hides amounted to about \$200,000 annually and constituted about 4 percent of its total sales. Noting that the use and disposition of byproducts, such as hides, is an integral part of the meat packing and processing business, the court concluded that the jurisdiction over the packer could properly be asserted on the basis of its hide sales.

a. Jurisdiction Over Labor Organization as Employer

In the first case to involve the act's provisions that the term "employer" in section 2 (2) shall not include "any labor organization (other than when acting as an employer)," the Court of Appeals for the District of Columbia sustained the Board's finding that a labor organization is an "employer" with respect to its own employees,³

¹ In addition, one order was summarily enforced because of respondent's failure to take exception to the intermediate report. For statistical breakdown of court actions on these cases, see table 19, Appendix A.

² *N. L. R. B. v. Dallas City Packing Company*, 230 F. 2d 703, 710. The court remanded the case to the Board for the purpose of taking additional evidence on the unfair labor aspects of the case.

³ One Board Member took the view that the legislative history permitted a labor organization to be treated as an employer only in the extreme case where it is engaged in a commercial business, but not where, as here, only employees needed in carrying out normal bargaining functions are involved.

and that the Board has jurisdiction to take cognizance of charges alleging that a labor organization in its employer capacity violated the prohibitions of section 8 (a).⁴ A majority of the court⁵ also sustained the dismissal of the complaint on the ground that, as in the case of other employers, it was within the Board's discretion to decline to exercise its jurisdiction on the ground that to do so would not effectuate the policies of the act.

b. Jurisdictional Standards

Regarding the method of establishing limitations of the exercise of jurisdiction, the Fifth Circuit held that under the authority of the Supreme Court's decision in the *Chenery* case⁶ the Board has power to adopt restrictive policies "either in the form of an individual decision or as rule making for the future, in any manner reasonably calculated to carry out its statutory duties."⁷

The Board's discretion to change its jurisdictional policy in the Territories and apply the jurisdictional standards there was approved by the Ninth Circuit.⁸ The Board formerly asserted plenary jurisdiction in the Territories. The court agreed with the Board's view that the broad grant of plenary jurisdiction in section 2 (6) over "trade . . . within any Territory" included the power to decline jurisdiction.

Application of established jurisdictional standards and declination of jurisdiction was also approved in a case involving labor organizations charged with having committed unfair labor practices in their capacity as employers.⁹ A three-Member majority of the Board dismissed the complaint. The two Members writing the principal opinion were of the view that the unions here, while employers within section 2 (2), were engaged in the normal function of organizing and representing employees and thus were nonprofit organizations of the kind over which the Board, as a matter of policy, does not exercise jurisdiction.¹⁰ The third majority Member predicated dismissal on the conclusion that Congress intended to treat labor organizations as employers only when engaged in a commercial enterprise, but not when carrying on their normal collective-bargaining functions. The dissenting Members took the view not only that the respondent

⁴ *Office Employees International Union, Local No 11 v. N. L. R. B.*, 235 F. 2d 832, 833; certiorari granted 352 U. S. 906.

⁵ Judge Bazelon dissenting.

⁶ *Securities and Exchange Commission v. Chenery Corp.*, 332 U. S. 194, 196, 202, 203.

⁷ *Optical Workers Union Local 24859, et al. v. N. L. R. B.*, 227 F. 2d 687, 691, 229 F. 2d 170; certiorari denied 351 U. S. 963.

⁸ *Teamsters, Chauffeurs, Warehousemen and Helpers Local Union No 183 v. N. L. R. B. (Alaska Beverage Co.)*, 238 F. 2d 195

⁹ *Office Employees International Union, Local No 11 v. N. L. R. B.*, cited in footnote 4.

¹⁰ As noted by the court, jurisdiction over nonprofit organizations is asserted by the Board "only in exceptional circumstances and in connection with purely commercial activities"

labor organizations were employers within section 2 (2), but also that it would effectuate the policies of the act to assert jurisdiction over them. Upholding the dismissal, the court adopted the reasoning of the principal opinion and specifically rejected the view that the pertinent provisions of section 2 (2) compel the Board to exercise jurisdiction over labor organizations as employers and leave no room for application of jurisdictional standards.

However, pointing out that the Board's discretion in asserting jurisdiction is not unlimited, the Second Circuit ¹¹ held in one case that the Board could not, on the basis of new standards, decline to exercise jurisdiction in an unfair labor practice case involving charges that a witness, whom the Board had subpoenaed in an earlier proceeding, was discharged by his employer in violation of section 8 (a) (4).¹² The court agreed with the view of the dissenting Board Member that in this situation the nature and extent of the employer's business activities became irrelevant. According to the court, the protection of section 8 (a) (4) is coextensive with the power to subpoena and is not subject to curtailment through application of restrictive jurisdictional standards later adopted by the Board.¹³

(1) Retroactive Application

Enforcement of Board orders was resisted in two cases because of the intervening adoption by the Board of new standards under which jurisdiction would no longer be asserted over the respective respondents.¹⁴ Holding that the Board's petition was not barred, the court in each case expressly approved the announcement in the *Wemyss* case ¹⁵ that

The Board will apply the recently announced jurisdictional standards to all future and to all pending complaint cases which have not yet resulted in the issuance of a decision and order either finding unfair labor practices or dismissing the complaint. As to all other complaint cases in which a decision and order already issued, the Board will proceed with compliance, enforcement, and contempt proceedings, depending upon the status of the case, without regard to whether the particular case meets the revised jurisdictional standards.

¹¹ The court noted the Board's own conclusion to this effect in *Breeding Transfer*, 110 NLRB 493.

¹² *Eugen Pedersen v N L R. B.*, 234 F. 2d 417.

¹³ The court remanded the case to the Board for hearing on the merits. After the close of the fiscal year the Board found that the discharge by the employer of a supervisor, who had given adverse testimony in an earlier proceeding, violated sec. 8 (a) (1). A majority of the Board found it unnecessary to pass upon the question whether the supervisor's discharge also violated sec. 8 (a) (4). *Modern Linen & Laundry Service, Inc.*, 116 NLRB 1974.

¹⁴ *N L R. B. v Kartarik, Inc.*, 227 F. 2d 190, 191-192 (C A 8); *N L R. B. v Stanislaus Implement and Hardware Company, Ltd.*, 226 F. 2d 377, 379 (C. A. 9). The policy change relied on in *Kartarik* occurred after the entry of a consent decree and before the issuance of the supplemental back-pay order which the Board sought to have incorporated in the decree, and in *Stanislaus* announcement of the change fell within the period between issuance of the order and the Board's petition for enforcement.

¹⁵ *Edwin D. Wemyss*, 110 NLRB 840, 843.

The Eighth Circuit in *Kartarik* made it clear that its denial of enforcement in the *National Gas* case¹⁶ under similar circumstances antedated the *Wemyss* announcement and was the result of misunderstanding as to the Board's policy regarding application of the new jurisdictional standards to "pending cases."

In another case, the Fifth Circuit held that the Board could properly dismiss an unfair labor practice complaint on the basis of jurisdictional standards adopted after issuance of the intermediate report in which the trial examiner found that the respondent employer's operations met the Board's then applicable standards.¹⁷ The union, which complained of the Board's dismissal, asserted that the trial examiner's jurisdictional conclusions in the unfair labor practice case and the Board's earlier assertion of jurisdiction over the employer in the representation proceeding with which the section 10 proceeding was consolidated, were "the law of the case," so that the Board could not later dismiss the unfair labor practice case on the basis of revised, more restrictive jurisdictional standards. Rejecting the contention, the court pointed out that in shaping its jurisdictional policies "wherein flexibility is so essential . . . juristic concepts like the law of the case have no conclusive relevance."¹⁸

2. Compliance With Filing Requirements of Section 9

The cases involving the requirements of section 9 of the act that unions and their officers must file certain documents as a condition to their access to the Board were concerned both with the litigation of compliance questions and the effect of noncompliance in certain situations.

a. Litigation of Compliance Questions

Resolution of the compliance issues in two cases involved interpretation of the Supreme Court's pronouncement in the *Coca Cola* case,¹⁹

¹⁶ *N. L. R. B. v. National Gas Co.*, 215 F. 2d 160, Twentieth Annual Report, p. 126, footnote 8.

¹⁷ *Optical Workers Local 24859, et al. v. N. L. R. B.*, 227 F. 2d 687, 691, 229 F. 2d 170, certiorari denied 351 U. S. 963.

¹⁸ As to the Board's power to change its policies in other than jurisdictional matters, see *N. L. R. B. v. Shirlington Supermarket, Inc.*, 224 F. 2d 649 (C. A. 4), certiorari denied, 350 U. S. 914, and *N. L. R. B. v. International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, et al.*, 225 F. 2d 343 (C. A. 8). In *Shirlington Supermarket* one of the contentions rejected by the court was that the Board's invalidation of the election which the complaining union lost could not be sustained because the election rule applied was subsequently supplanted by a different rule. This case is discussed further at p. 148-149, below.

In *Teamsters Local 41 (Pacific Intermountain Express)*, the court held that an earlier Board ruling that certain seniority provisions in a collective-bargaining agreement were not *per se* invalid under the act did not preclude the Board from later taking a contrary view and from overruling the earlier decision (see footnote 57). However, the court was of the view that while the Board could announce its revised interpretation of the act in the form of a rule for the future, it was without power to issue a cease and desist order prohibiting the respondent in the case from engaging in the conduct now held unlawful. But see *S. E. C. v. Chenery Corp.*, 332 U. S. 194, where the Supreme Court held that the S. E. C. could announce and apply a new standard of conduct by which the parties before it were retroactively bound.

¹⁹ *N. L. R. B. v. Coca Cola Bottling Co. of Louisville, Inc.*, 350 U. S. 264. See p. 125, above.

(1) that compliance questions are litigable in complaint or representation cases insofar as they involve the scope of section 9 (h) and do not merely involve "an inquiry into disputed facts"; (2) that the Board may properly look to a union's constitution in determining whether a person is an "officer" for the purpose of section 9 (h).

The Seventh Circuit in the *Goodman* case²⁰ held that the *Coca Cola* decision did not preclude it from determining whether certain "Trustees" and "District Secretaries" of the union were "officers" for the purpose of section 9 (h). The court was of the view that the provisions of the union's constitution, on the basis of which the Board had found that the "trustees" and "secretaries" were not officers, were ambiguous and that it was therefore proper for the court to look to other constitutional provisions in order to determine the officer issue which had been raised. The court concluded that, in the light of all relevant provisions of the union's constitution, both the trustees and secretaries were in fact officers and that, neither of them having filed the required affidavits, the union's complaint before the Board had to be dismissed.

Regarding litigability, the First Circuit in *Puerto Rico Food*²¹ interpreted the Supreme Court's *Coca Cola* ruling as permitting litigation in enforcement proceedings of both "the fact of compliance and the necessity of compliance" with section 9 (h).²² The court therefore held that the Board may be requested to prove compliance with the filing requirements of the act by disclosing what documents are on file and who filed them. The court pointed out, however, that its ruling was not intended to permit inquiry as to the truth of the affidavits and the factual accuracy of the reports filed with the Board. The court remanded the case to the Board for the purpose of determining the merits of the respondent employer's noncompliance claim.²³

²⁰ *Goodman Manufacturing Company v. N. L. R. B.*, 234 F. 2d 775, 778-779; certiorari denied October 13, 1956 (352 U. S. 872).

²¹ *N. L. R. B. v. Puerto Rico Food Products Corporation*, 232 F. 2d 515, 519 (C. A. 1).

²² As noted above (p. 125), in the view of a majority of the Board, *Coca Cola* is intended to limit litigation to questions of law arising from section 9 (h), and to exclude factual questions regarding compliance.

²³ In *N. L. R. B. v. Lannom Manufacturing Company*, 226 F. 2d 194 (C. A. 6), the Board petitioned for enforcement of an order based on the complaint of a union whose president was convicted of having filed a false non-Communist affidavit. The order issued before the conviction, and the Board pointed out to the court that a permanent injunction precluded the Board from altering the complaining union's status. However, the Board also pointed out that the court in the enforcement proceeding was not likewise precluded from giving effect to the conviction and from denying enforcement if it found that the conviction invalidated the complaint. The Sixth Circuit denied enforcement, but its decision was reversed by the Supreme Court after the close of the fiscal year. *Amalgamated Meat Cutters v. N. L. R. B. and Lannom Manufacturing Company*, December 10, 1956, 352 U. S. 153. See also the companion case of *Leedom v. International Union of Mine, Mill and Smelter Workers*, 352 U. S. 145. The Supreme Court held that the only remedy for the filing of false affidavits under sec. 9 (h) is the criminal penalty expressly provided by Congress in that section.

b. Effect of Noncompliance

The Board's view that a union which has not complied with the filing requirements of section 9 nevertheless may lawfully strike for recognition, and that the discharge of employees because of their participation in such a strike violates the act, was approved by the Third Circuit in the *Brookville Glove* case.²⁴ The court found that the question of the legality of the strike was foreclosed by the Supreme Court's ruling in the *Arkansas Oak Flooring* case.²⁵

One case before the Fourth Circuit involved a Board order enjoining the respondent employer from further recognizing and contracting with a union—a noncomplying labor organization—which, the Board found, had received employer assistance prohibited by section 8 (a) (2), until the union was certified under section 9 of the act.²⁶ Resisting enforcement, the employer challenged the validity of the Board's unfair labor practice finding. The union, likewise resisting enforcement, asserted that, because its noncompliance status prevented it from seeking Board certification, the Board could not resort to the otherwise proper remedy directing the employer to withhold recognition until certification of the 8 (a) (2) union. While remanding the case for the Board's reconsideration of its unfair labor practice finding, the court also expressed the view that the cease and desist provisions of the order were inappropriate under the circumstances. The Board has petitioned the Supreme Court to determine the issue in another case in which enforcement was similarly denied to this extent by the Court of Appeals for the District of Columbia.²⁷

3. Employer Unfair Labor Practices

In addition to the usual evidentiary questions, the cases under subsection (a) of section 8 of the act presented for court of appeals decision such issues of general importance as the extent to which union activities may be prohibited in the plant, the status of the lockout in "whipsawing" situations, and the scope of the statutory bargaining obligation of employers.

a. Interference With Section 7 Rights

Three of the cases involving the general prohibitions of section 8 (a) (1) against interference with statutory employee rights turned on the propriety of prohibitions against certain union activities on company property.

²⁴ *N. L. R. B. v. David G. Leach and Doyle H. Wallace, d/b/a Brookville Glove Co.*, 234 F. 2d 400.

²⁵ *United Mine Workers v. Arkansas Oak Flooring*, 351 U. S. 62. See Supreme Court Rulings, pp. 126-127, above.

²⁶ *District 50, United Mine Workers of America v. N. L. R. B.*, 234 F. 2d 565.

²⁷ See *District 50, United Mine Workers v. N. L. R. B.*, 237 F. 2d 585, modifying 113 NLRB 786.

The employers in *Kimble Glass*²⁸ and *Caterpillar Tractor*,²⁹ while recognizing the employees' right to wear union insignia during working time, insisted that special circumstances existed at the times in question which justified the ban on the display of campaign badges or buttons in the plant.³⁰

The Sixth Circuit in *Kimble Glass* sustained the conclusion of a Board majority³¹ that the incumbent union's threat that a walkout and violence would follow unless a small group of dissident employees were stopped from wearing rival union badges was not a special circumstance which validated the employer's action. The Board had taken the view that, while the employer was not required to await actual violence before taking appropriate action, it was not entitled to submit to the demands of the incumbent union and to curtail the right of some of its employees to carry on legitimate organizational activities without first resorting to other means for preventing possible disturbances in the plant.

On the other hand, the Seventh Circuit in *Caterpillar Tractor* held that the employer did not, as found by a majority of the Board,³² exceed its right to maintain plant discipline by prohibiting employees engaged in organizing the plant from wearing campaign buttons inscribed "Don't Be A Scab." The court here agreed with the dissenting Board Member that the term "scab" was inherently so opprobrious that its use justified the employer's anticipation of disturbances in the plant. However, the court made it clear that the wearing by the employees of campaign buttons which were differently inscribed could not also be forbidden. The court pointed out that the employer's right was "limited to the restriction of activities which disrupt, or tend to disrupt, production and to break down employee discipline, and [did] not include restrictions of passive inoffensive advertisement of organizational aims and interests."

In *Monsanto Chemical Company*³³ the Ninth Circuit was faced with the question of the employer's right to exclude nonemployee organizers from plant premises. A majority of the court concluded that the employer's refusal to permit distribution of union literature on its parking lot did not under the circumstances improperly interfere with the employees' organizational freedom. The Supreme Court has sanctioned such a view.³⁴

²⁸ *Kimble Glass Company v. N. L. R. B.*, 230 F. 2d 484, 485, certiorari denied 352 U. S. 836

²⁹ *Caterpillar Tractor Co. v. N. L. R. B.*, 230 F. 2d 357

³⁰ The validity of the ban on the particular activities in turn was determinative of whether or not the employer violated section 8 (a) (3) by discharging disobedient employees

³¹ The Board's decision is discussed at p. 76.

³² The Board's decision is discussed at p. 76.

³³ *N. L. R. B. v. Monsanto Chemical Company*, 225 F. 2d 16

³⁴ See *N. L. R. B. v. The Babcock & Wilcox Co.*, 351 U. S. 105, Supreme Court Rulings, pp. 123-125, above.

b. Employer Discrimination Under Section 8 (a) (3)

Among the more important nonevidentiary issues involved in the cases under section 8 (a) (3) were (1) the right of the members of a multiemployer group to meet "whipsawing" of the employees' common bargaining agent with a lockout, and (2) the Board's remedial discretion in a section 8 (a) (3) situation.

(1) Lockout Defense Against "Whipsawing"

In *Truck Drivers Local 449 (Buffalo Linen Supply)*³⁵ the Second Circuit was confronted with the "whipsawing" problem, which had previously been dealt with by the Seventh, Eighth, and Ninth Circuits.³⁶ A majority of the court³⁷ reversed the Board's dismissal of the complaint in *Buffalo Linen* which alleged that certain members of an employer association violated section 8 (a) (1) and (3) by locking out their employees for the period during which the common bargaining agent conducted a strike against one association member. The Board dismissed the complaint because of its current view that where, as here, a strike against one member of a multiemployer unit carries with it an implicit threat of future strike action against other members of the employer group, the nonstruck employer members may impose a lockout in order to defend their endangered interests and to meet the "economic pressure to atomize the employer solidarity" of the group. The Board had made it clear, however, that the rule does not apply if there is independent evidence of antiunion motivation on the part of the particular employers, and that the rule does "not establish that the employer lockout is the corollary of the employees' statutory right to strike." The Second Circuit noted that the Board in *Buffalo Linen* adopted the position of the Ninth Circuit in *Leonard (Davis Furniture)*³⁸ regarding the right of nonstruck members of an employer group to meet the threat of extension of the strike with a lockout.³⁹ Expressing disagreement with the Ninth Circuit's reasoning in the *Leonard* case,⁴⁰ the Second Circuit believed that problems involved in legalizing the lockout in multiemployer situations are such that their solution must be left to Congress. The issue is now awaiting decision by the Supreme Court which granted certiorari in the *Buffalo Linen* case.

³⁵ *Truck Drivers Local Union No 449, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL v N L R B*, 231 F. 2d 110, 118, certiorari granted 352 U S 818

³⁶ *Morand Bros Beverage Co v N L R B*, 190 F 2d 576 (C A 7), *N L R B v Continental Baking Co.*, 221 F. 2d 427, and *N L R B v Spalding Avery Lumber Co*, 220 F. 2d 623 (C A 8), *Leonard, d/b/a Davis Furniture Company v N L R B*, 197 F 2d 435 (C A 9)

³⁷ Judge Waterman dissenting

³⁸ See footnote 36, above

³⁹ For the Board's former view see *Morand Bros Beverage Co*, 99 NLRB 1448

⁴⁰ Which, as noted by the court, was approved by the Eighth and Seventh Circuits, footnote 36, above

(2) Remedial Discretion

In *Wheeling Pipe Line*⁴¹ the Eighth Circuit enforced in full a Board order in favor of strikers who were found to have been treated as new employees upon returning to work, and to have been deprived of their accumulated seniority for the purpose of their annual bonuses. The court held that it was within the Board's statutory power to take cognizance of the resulting discrimination between strikers and non-strikers, and to remedy it by directing that the employer make up the difference between the amount the returning strikers received as a bonus and the amount they should have received on the basis of their accumulated seniority

c. Refusal To Bargain

The more important questions on which enforcement of orders under section 8 (a) (5) turned concerned (1) the duty of an employer to bargain regarding the establishment of an employee stock purchase plan, and (2) the scope of the employer's obligation to furnish information requested for bargaining purposes.

(1) Stock Purchase Plan as Bargainable Subject

In *Richfield Oil*⁴² the Court of Appeals for the District of Columbia sustained the Board's finding that the company violated section 8 (a) (5) when it refused to honor the request of the representative of its employees to bargain regarding a stock purchase plan it had unilaterally put into effect. The court rejected the company's contention that its plan was not subject to bargaining because its only purpose was to afford employees an opportunity to invest in stock and thereby to promote a close association with the company's business. Upon analysis of the plan, which provided for correlated monthly employee and employer contributions, the court agreed that the benefits accruing to the employees under the plan were in the nature of "emoluments of value flowing from the employment relationship" and therefore constituted "wages" for the purposes of section 8 (a) (5). The court also approved the Board's conclusion that the plan in its objectives and operation affected "conditions of employment" and on that account again was a matter for compulsory bargaining. As noted by the court, the Board's views were predicated on the plan's "unmistakable emphasis upon the long term accumulation of stock for future needs rather than upon stock ownership as such, its requirement that participants be employees, and its provision for benefits which are related to the employees' length of service and amount of

⁴¹ *N L R B v. Wheeling Pipe Line, Inc.*, 229 F. 2d 391, 395.

⁴² *Richfield Oil Corporation v. N. L. R. B.*, 231 F. 2d 717, 722-723, certiorari denied 351 U. S. 909, Judge Miller dissenting.

wages while participating." The Board had observed that the benefits accruing to the employees thus differed from their weekly wages only in form and time of payment.

The court found no merit in the company's argument that the Board's bargaining order here interferes with the company's management rights, and that bargaining about its plan "necessarily and inevitably involves bargaining about the conditions and prerogatives of ownership." Noting the Board's explication that the employees' bargaining agent would have no voice whatever in matters in which only stockholders have a right to be heard, the court further pointed out that the "bargaining the Union sought involves, not control of the Company, but the status of the offer and of the employees who rely on it."

(2) Duty To Furnish Information

In several cases involving refusals to furnish bargaining information the employers contended that the circumstances under which the data were sought, or the nature of the requested information, justified the refusal.

In *Utica Observer*,⁴³ the Second Circuit held that the complaining union was entitled to individual salary data which it requested in anticipation of the reopening of the wage provisions of its contract. The court pointed out that it was immaterial that the union had never before requested similar information, for "the information was relevant and the Local had a right to request it whenever it chose to do so." As to the union's good faith in requesting the information, a majority of the court⁴⁴ agreed with the Board's finding that the information was sought for bargaining purposes, and that it was therefore immaterial that it may also have been useful to the union in collecting dues.

The employer's action here in conditioning the furnishing of individual salary data on the employees' consent and advising each employee by letter that the information would be supplied unless objected to, was unanimously held to have violated section 8 (a) (5).

In *Taylor Forge*,⁴⁵ the Seventh Circuit enforced an order directing the employer to comply with the bargaining agent's request for certain "job rating substantiating data."⁴⁶ The information, which had been requested in connection with wage increase negotiations, related to certain factors used by the company in evaluating jobs and determining salaries. In the view of a majority of the court,⁴⁷ the complaining union was entitled to the information because only a full

⁴³ *Utica Observer-Dispatch, Inc. v. N. L. R. B.*, 229 F. 2d 575, 576.

⁴⁴ Judge Swan dissenting.

⁴⁵ *Taylor Forge & Pipe Works v. N. L. R. B.*, 234 F. 2d 227.

⁴⁶ The Board's decision in the case (113 NLRB 693) is noted at page 95

⁴⁷ Judge Finnegan dissenting.

disclosure of the employer's point-evaluation system would enable the union to know whether to press particular wage demands, or whether the wage structure was such as to require discussion or correction. The court also agreed with the Board's conclusion that, having conceded the relevance of the information in connection with individual wage grievances, the employer could not deny its equal relevance in connection with negotiations for the establishment of broad pay formulas intended to eliminate individual grievances.

In *Truitt Manufacturing Co.*⁴⁸ the Fourth Circuit refused to enforce an order in which the Board required the company to furnish information substantiating its claim of financial inability to increase wages. However, as noted above,⁴⁹ this decision was reversed by the Supreme Court on May 7, 1956.

The Ninth Circuit's refusal in *F. W. Woolworth*⁵⁰ to enforce an order remedying the employer's refusal to furnish payroll information which the Board deemed relevant, either to pending wage negotiations or to the administration of the union's contract, was reversed by the Supreme Court after the close of the fiscal year.

4. Union Unfair Labor Practices

The courts of appeals cases under subsection (b) of section 8 of the act for the most part were concerned with questions affecting the administration of the antidiscrimination provisions of section 8 (b) (2) and the ban on secondary boycotts in section 8 (b) (4). One case involved the prohibition of section 8 (b) (1) (A) against union coercion of employees in their section 7 rights, and another case involved the bargaining mandate of section 8 (b) (3). A third case required definition of the term "labor organization" for the purpose of section 8 (b) (4) (C).

a. Definition of "Labor Organization" Under Section 8 (b) (4) (C)

In the *Bonnaz* case,⁵¹ the Board had held that the respondent union violated section 8 (b) (4) (C) by picketing an employer in order to obtain recognition as bargaining agent for his employees when the Board had certified another representative who was an individual. The court reversed the Board's holding on the ground that this section did not contemplate a representative who was an individual but only those which were "labor organizations." The Board had concluded that the legislative history of section 8 (b) (4) (C) in-

⁴⁸ *N L R B v. Truitt Mfg Co*, 224 F 2d 869

⁴⁹ See Supreme Court Rulings, p 123

⁵⁰ *F W Woolworth Co v N L R B*, 235 F 2d 319, 323, reversed 352 U S 938 Dec 10, 1956

⁵¹ *Bonnaz, Hand Embroiderers, Tuckers, Stitchers, Pleaters Union, Local 66, International Ladies Garment Workers Union, AFL and George Triestman v N L R B*, 230 F 2d 47, 48 (C A, D. C)

licated Congress' intent to protect *all* Board certifications and that, in order to effectuate that intent, it was necessary to interpret section 8 (b) (4) (C) so as to accord the same status to a certified individual as to a certified labor organization. The court, on the other hand, took the view that the definition of "labor organization" in section 2 (5) of the act is controlling and that an individual is not, "in any literal sense," such an organization. According to the court, such a construction of section 8 (b) (4) (C) is not plainly at variance with the act's policy, and extension of the protection of section 8 (b) (4) (C) to certified individuals must be left to Congress.

b. Threat To Refuse To Process Grievances as Illegal Coercion

In the *Die and Tool Makers* case⁵² the Seventh Circuit sustained the Board's finding that the union violated section 8 (b) (1) (A) by threatening to stop processing the grievances of employees who failed to pay a strike fund assessment. The Board had pointed out that the payment of strike fund assessments clearly was to "assist" the union, and that the employees under section 7 had the right to refrain from giving such assistance. The court agreed with the Board's conclusion that the union's threat was not protected by the so-called union rules proviso to section 8 (b) (1) (A), which permits a union "to make its own rules with respect to the acquisition or retention of [union] membership," because the processing of grievances is not a matter of internal union administration to which the proviso is confined. The court held that as statutory representative it was the union's duty to represent all employees equally,⁵³ and that the threat not to process grievances for employees who refused to pay their strike assessment was therefore coercive within the meaning of section 8 (b) (1) (A).

c. Discrimination Under Section 8 (b) (2)

In the section 8 (b) (2) cases, the courts were concerned with the general scope of the section, certain specific forms of violations, and remedies provided by the Board.

Enforcing the Board's section 8 (b) (2) order in one case, the Fifth Circuit affirmed the view that union pressure intended to bring about the discharge of employees is equally violative of section 8 (b) (2) whether exerted directly against the immediate employer or through another employer.⁵⁴ The court noted the like conclusion of the Tenth Circuit in an earlier case.⁵⁵

⁵² *N. L. R. B. v. Die and Tool Makers Lodge No. 118, International Association of Machinists, A. F. L. (Peerless Tool Co.)*, 231 F. 2d 298, certiorari denied October 8, 1956, 352 U. S. 834.

⁵³ The court cited *Ford Motor Co. v. Huffman*, 345 U. S. 330, 337.

⁵⁴ *N. L. R. B. v. United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the U. S. and Canada, AFL, Local Union 234*, 231 F. 2d 447.

⁵⁵ *N. L. R. B. v. Local Union No. 55, United Brotherhood of Carpenters*, 218 F. 2d 226, 232.

In another case, the Seventh Circuit held that the Board properly held that work stoppages of an automobile manufacturer's employees, which brought about the discriminatory suspension of fellow employees who owned "off-brand" cars did not violate section 8 (b) (2).⁵⁶ Noting that the respondent union had no policy as to the make of cars its members might buy, and neither caused nor attempted to cause the work stoppages and suspensions, the court agreed that the union could not be held to have violated section 8 (b) (2) since that "section does not place upon the Union the duty of stopping a 'wild-cat' strike by some of its members."

(1) Discriminatory Administration of Seniority

Two cases, 1 in the Eighth Circuit⁵⁷ and 1 in the Fifth,⁵⁸ turned on whether or not the maintenance of an agreement giving a union exclusive control over the determination of the seniority standing of employees violates section 8 (b) (2), irrespective of actual discrimination by the union in exercising its contractual authority. While noting that in the earlier *Firestone* case⁵⁹ the Board had answered the question in the negative, each court held that the Board could properly reverse its position and conclude that such a seniority arrangement inherently encourages union membership and is therefore unlawful. Both courts quoted with approval the Board's view that, because all information which is relevant to the determination of an employee's seniority is peculiarly with the knowledge of the employer, there is

no basis for presuming that when an employer delegates to a union the authority to determine the seniority of its employees, or even to settle controversies with respect to seniority, such control will be exercised by the union in a nondiscriminatory manner. Rather, it is to be presumed, we believe, that such delegation is intended to, and in fact will, be used by the union to encourage membership in the union.

The two courts likewise approved the Board's further conclusion that because of this effect

the inclusion of a statement . . . that seniority will be determined without regard to union membership is not by itself enough to cure the vice of giving to the union complete control over the settlement of a "controversy" with respect to seniority.

⁵⁶ *Elmer E. Kovach v. N. L. R. B.*, 229 F. 2d 138.

⁵⁷ *N. L. R. B. v. International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local 41 (Pacific Intermountain Express Co.)*, 225 F. 2d 343. However, the Eighth Circuit enforced the Board's order only to the extent that it related to the union's abuse of authority under the contract immediately involved. See footnote 18.

⁵⁸ *N. L. R. B. v. Dallas General Drivers, Warehousemen and Helpers, Local Union 745, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL (North East Texas Motor Lines)*, 228 F. 2d 702, 706.

⁵⁹ *Firestone Tire & Rubber Co.*, 93 NLRB 981 (1951).

(2) Refusal To Accept Dues Tender

In three cases the courts sustained the Board's finding that the respondent unions, having caused the discharge of employees for alleged dues delinquency, violated section 8 (b) (2) because the employees either had made a sufficient, timely tender of their dues, or had failed to make tender knowing that it would have been futile.

In *Aluminum Workers Local 135*,⁶⁰ the union requested the discharge of an employee whose tender of dues had been refused first because it was made by mail rather than at a union meeting in accordance with union rules, and later because the employee's tender did not include a reinstatement fee. The court agreed that the employee's initial tender was sufficient (1) because under the act's union-security provisions an employee's discharge can be requested only for nonpayment of dues, but not for failure to observe union rules; and (2) because, under applicable rules of general law, the union's initial refusal to accept tender for a reason unrelated to the sufficiency of the amount tendered constituted a waiver of the union's right to insist later that the employee's tender include both dues and a reinstatement fee. The court also sustained the Board's alternative finding that the union's request for the employee's discharge before her expulsion was untimely under the union's contract. The court noted that, although the employee finally tendered all charges claimed to be due, the union nevertheless expelled her and insisted that the employer comply with the antecedent request for her discharge. The court agreed that this was not a "free rider" situation such as Congress had in mind when permitting the discharge of dues delinquents under union-security agreements.

In two cases, the Seventh Circuit⁶¹ and the Third⁶² reaffirmed the rule that, while employees in order to be protected against discharge under a union-security agreement must make tender of "periodic dues and initiation fees," such a tender need not be made if the union has indicated that the tender will be accepted only if accompanied by performance of other union obligations not required by the act. Thus, in the *Die and Tool Makers* case, where the union had caused the discharge of employees who tendered their dues but refused to pay strike fund assessments, the court rejected the union's contention that the employees' failure to tender dues each month as they became due subjected them to discharge. Noting that the union's policy to

⁶⁰ *N. L. R. B. v. Aluminum Workers International Union, Local No 135, AFL*, 230 F. 2d 515, 519, 520 (C. A. 7).

⁶¹ *N. L. R. B. v. Die and Tool Makers Lodge No 113, International Association of Machinists, AFL*, 231 F. 2d 298, 301 (C. A. 7); certiorari denied October 8, 1956, 352 U. S. 834.

⁶² *N. L. R. B. v. Murphy's Motor Freight, Inc., and Local 107, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL*, 231 F. 2d 654, 655 (C. A. 3).

make payment of assessments a condition precedent to the acceptance of dues payments, the court agreed that repeated dues tender by the employees clearly would have been a futile gesture which the law did not require them to make. In *Murphy's Motor Freight*, the Third Circuit similarly held that the union's request for the discharge of an employee who owed membership dues for a period before his present employment could not be justified on the ground that the employee, long suspended by the union, had also failed to tender dues which accrued during his present employment. The court pointed out that by demanding all back dues the union indicated that no smaller payment would be accepted, and that the employee could reasonably assume that tender of back dues for the period of his present employment alone would be futile.

(3) Remedial Provisions

In *Teamsters Local 823*,⁶³ the court approved the Board's direction that the union, which had unlawfully caused the discharge of 2 employees, notify the employer in writing that (1) it has no objection to the reinstatement of the 2 employees and (2) it formally requests their reinstatement. The court held that the order was justified under the circumstances of the case, and was not punitive or arbitrary merely because the union's attorney had orally notified representatives of the NLRB General Counsel that it had no objection to the employees' reinstatement, and had reiterated this statement in the union's answer to the complaint.

In *Teamsters Local 182*,⁶⁴ the Second Circuit enforced a Board order requiring the union which caused the discharge of employees to reimburse them for pay lost from the time of their discharge to the date when the union notified them that it had no objection to their reinstatement. The court here held that the Board could properly require that the union notify the employees directly in order to stop the running of back pay, although in another case, where the back-pay order ran jointly against both the employer and the union responsible for discrimination, notice to the employer had been held sufficient. According to the court, there were reasonable grounds for differentiating between section 8 (b) (2) situations where the union is the sole respondent, and situations where both the employer and the union are held liable for back pay in a combined proceeding under sections 8 (a) (3) and 8 (b) (2).

⁶³ *N. L. R. B. v. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 823 (Roadway Express)*, 227 F. 2d 439, 441 (C. A. 10)

⁶⁴ *N. L. R. B. v. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 182, Utica, N. Y. and Vicinity, AFL (Lane Construction Co.)*, 228 F. 2d 83.

d. Refusal To Bargain

The Court of Appeals for the District of Columbia Circuit in one case declined to enforce the part of a Board order which was based on the finding that the respondent union's "harassing tactics" during bargaining negotiations constituted a refusal to bargain in good faith within the meaning of section 8 (b) (3) of the act.⁶⁵ A majority of the court⁶⁶ was of the view that economic pressure on the employer during bargaining negotiations does not permit an inference of failure to bargain in good faith, whether it takes the form of a total withholding of services or, as here, a partial withholding of services. The majority of the court noted that in the *International Union, UAW* case⁶⁷ the Supreme Court had held that a State was free to prohibit union conduct of the kind here involved, and that the National Labor Relations Act did not authorize the Board to "deal with it in any manner." The Board, on the other hand, believed that its decision was not in conflict with the *International Union, UAW* case because there the Supreme Court was not concerned with the question whether such conduct may constitute evidence of a lack of good-faith bargaining.

e. Secondary Boycotts

In the cases under section 8 (b) (4) (A) the courts of appeals were primarily concerned with Board determinations of the legality of "common situs" picketing, i. e., extension of picketing to the premises of a neutral employer where the disputing primary employer carries on business. In one case, the question of how the Board's jurisdiction in secondary boycott situations must be determined was raised. Another case turned on the legality of the picketing of customers of a struck employer, and picketing of secondary employers who performed struck work.

(1) Jurisdiction in Boycott Cases

In the *Associated Musicians* case⁶⁸ the union, whose activities were held to have violated section 8 (b) (4) (A), contended that the business of the secondary employers involved did not constitute commerce within the meaning of the act, and that the Board was therefore without jurisdiction. The union asserted that the primary employer's business is not to be taken into consideration in secondary boycott cases. While noting that the union, without sufficient cause,

⁶⁵ *Textile Workers Union of America, CIO, et al. v N L R. B.*, 227 F. 2d 409, 410, certiorari granted, 350 U. S. 1004, vacated and denied 352 U. S. 864 (Oct. 15, 1956).

⁶⁶ Judge Danaher dissenting.

⁶⁷ *International Union UAW v. Wisconsin Employment Relations Board*, 336 U. S. 245

⁶⁸ *N. L. R. B. v. Associated Musicians, Local 802, AFL*, 226 F. 2d 900 (C. A. 2), certiorari denied 351 U. S. 962.

had failed to raise the issue before the Board, and consideration of the issue on enforcement was therefore precluded by section 10 (e) of the act, the court nevertheless expressed its view that the union's contention lacked merit. According to the court, not only were some, if not all, of the secondary employers here engaged in operations which "affect commerce," but it was "doubtful under the Act whether coverage of the secondary employer need be established independent of the primary employer." The "better view," the court continued, "is that the secondary activity is but an extension of the labor dispute with the primary employer and that the businesses of both employers are to be considered in determining jurisdiction of the secondary activity. The opposite conclusion would require fragmentation of the authority of the Board over labor disputes—a result which, lacking specific legislative command, we should shun." ⁶⁹

(2) "Common Situs" Picketing

In four cases reviewed by the courts of appeals during fiscal 1956, the Board's order was predicated on the finding that section 8 (b) (4) (A) was violated by certain picketing activities at common premises where both the primary employer—with which the union had a dispute—and neutral employers were engaged in business operations. The Board's order was enforced in 2 cases, and reversed in 2 cases.

The *General Drivers Local 968 (Otis Massey)* case,⁷⁰ where the Fifth Circuit denied enforcement, arose from the union's contract dispute with a company whose warehouse employees it represented. The union picketed both the warehouse and several construction sites where the company, as subcontractor, employed construction employees. The company's many construction workers rarely went to the warehouse, and the four warehouse employees seldom had occasion to go to construction projects. The Board found that under the circumstances the situs of the union's dispute remained throughout at the warehouse and that the "common premises"—the construction sites—never "harbored the dispute." The picketing of the construction sites was therefore held to be secondary rather than primary under the Board's *Moore Dry Dock* rule.⁷¹ The Board made it clear that it considered the requirement that picketed common premises "harbor the dispute" was "the most fundamental requirement in achieving a fair balance between the right of a union to publicize its labor dispute and the right of neutral employers to be free from con-

⁶⁹ The court here cited the Board's decisions in *Truck Drivers Local 649 (Jamestown Builders Exchange)*, 93 NLRB 386, and *McAllister Transfer, Inc.*, 110 NLRB 1769. For discussions of the Board's jurisdictional standards in secondary boycott cases, see chapter II, pp. 12-13.

⁷⁰ *N. L. R. B. v. General Drivers, Warehousemen and Helpers, Local 968 (Otis Massey)*, 225 F. 2d 205, 210, certiorari denied 350 U. S. 914.

⁷¹ 92 NLRB 547, 549.

troversies not their own." Citing its *Washington Coca Cola* decision,⁷² the Board also noted that the union could adequately publicize its dispute by picketing the Massey warehouse alone. The Board concluded that, while the union's picketing ostensibly was directed only against Massey, it was at least in part intended to induce work stoppages by secondary employees in order to force their employers to cease doing business with Massey. The Fifth Circuit approved the Board's *Moore Dry Dock* criteria as "evidentiary tests" but declined to accord them controlling weight. In the court's view of the facts, the picketing at the construction sites was aimed only at the primary employer and had no proscribed secondary object. The court also took the view that the union could take effective action on behalf of the four warehouse employees only by enlisting the assistance of Massey's other employees who almost never came to the warehouse.

In *Truck Drivers Local No. 728 (National Trucking Co.)*,⁷³ the same court sustained the Board's finding that the common situs picketing involved was unlawful. Here, the union had a dispute over recognition with a trucker whose only operation was to pick up motor vehicles at a car manufacturer's nearby assembly plant. Three or four drivers were regularly driven to the pickup gate for the purpose of inspecting new cars and driving them back to the trucker's terminal. The drivers made about 40 such trips daily. In support of its demand for recognition, the union began to picket the trucker's terminal as well as its truck whenever it arrived with pickup drivers at the car manufacturer's pickup gate which was located about 30 feet from the plant entrance used by the manufacturer's own employees. The court agreed with the Board's finding that the union's manifest object in picketing at the manufacturer's premises was not to reach the trucker's employees, but to induce the manufacturer's employees to cease work and thus to force the manufacturer to discontinue the use of the struck trucker's services. The union's object, the court held, could properly be inferred from the fact that the trucker's pickup drivers during their 40 daily trips had to cross the union's primary picket line at the terminal twice, and that the picketing at the assembly plant was therefore superfluous. Distinguishing the present situation from that in the *Massey* case, the court further pointed out that, unlike *Massey*, the union here did not comply with the *Moore Dry Dock* requirement that common situs picketing must disclose "clearly" that the dispute is with the primary employer.

In *Associated Musicians (Gotham Broadcasting)*,⁷⁴ the Second Cir-

⁷² *Washington Coca Cola Bottling Works, Inc.*, 107 NLRB 299, enforced 220 F. 2d 380 (C. A., D. C.).

⁷³ *N. L. R. B. v. Truck Drivers & Helpers Local Union No. 728, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL (National Trucking Co.)*, 228 F. 2d 791.

⁷⁴ *N. L. R. B. v. Associated Musicians, Local 802 (Gotham Broadcasting)*, 226 F. 2d 900, certiorari denied 351 U. S. 962.

cuit affirmed the Board's finding that the respondent union violated section 8 (b) (4) (A) by extending its dispute with a radio station to two separately owned stadiums from where sports events were broadcast. The dispute concerned musicians who worked at the station's studio which could readily be picketed and who never worked at either of the secondary locations (the stadiums). The musicians had no connection with the broadcasts made from the stadiums. The court agreed that the picketing at the secondary locations did not satisfy the Board's *Moore Dry Dock* criteria because the stadiums at no time were the situs of the union's dispute with the broadcasting station. Distinguishing the situation here from that in the *General Drivers (Otis Massey)* case,⁷⁵ the court pointed out that (1) here it was not necessary for the union to picket the stadiums in order to reach other employees of the primary employer and the few station employees who went to the stadiums could be reached at the broadcasting station; and (2) here, unlike *Massey*, the union did not take positive steps to limit its picketing at the stadiums to the primary employer.

*Sales Drivers Local 859 (Campbell Coal)*⁷⁶ also involved common situs picketing. Here the District of Columbia Circuit remanded the case for further consideration. In the court's view, the Board's conclusion that the picketing was unlawful rested on the sole ground that the respondent union could, and did, effectively picket the primary employer at its regular place of business. The union had a dispute with a ready-mix concrete manufacturer and picketed its two ready-mix plants, as well as its trucks as they made deliveries at various construction projects of other employers. The Board found that the truckdrivers entered and left the ready-mix plants several times each day, spending about 25 percent of their working time at the plants, 25 percent enroute, and 50 percent at the construction sites. In the Board's view, the union's common situs picketing was intended to bring about cessation of work by secondary employees and violated section 8 (b) (4) (A). The Board cited its *Washington Coca Cola* decision⁷⁷ where it had reached a like result under similar circumstances. In setting the Board's finding aside, the court pointed out that, while it enforced the order in the *Coca Cola* case,⁷⁸ it did not thereby intend to approve a rule that common situs picketing is unlawful whenever the primary employer has a separate place of business which can effectively be picketed

⁷⁵ See pp. 144-145.

⁷⁶ *Sales Drivers, Helpers & Building Construction Drivers, Local Union 859, of International Brotherhood of Teamsters, etc. (Campbell Coal Co)*, 229 F. 2d 514, certiorari denied 351 U. S. 972

⁷⁷ *Washington Coca Cola Bottling Works, Inc. (Brewery & Beverage Drivers and Workers Local 67, International Brotherhood of Teamsters, etc.)*, 107 NLRB 299.

⁷⁸ *Brewery and Beverage Drivers and Workers Local Union No. 67, International Brotherhood of Teamsters, etc. (Washington Coca Cola Bottling Works, Inc.) v. N. L. R. B.*, 220 F. 2d 380.

by the striking union. The court expressed agreement with the Fifth Circuit's reasoning in the *Massey* case which it believed applicable.

(3) Picketing of Customers and Employers Performing Struck Work

In *Business Machine Mechanics Local 459 (Royal Typewriter)*⁷⁹ the Second Circuit reversed the Board's finding that it was unlawful for the respondent union to extend its dispute with a typewriter manufacturer by picketing (1) some of the manufacturer's larger customers, and (2) certain companies which made typewriter repairs—a service which the struck manufacturer was contractually obligated to furnish its customers. Picketing of repair companies took place before entrances used in common by employees, deliverymen, and the general public, whereas customer picketing occurred at entrances used by members of the public, employees of the picketed firm, employees of other building tenants, and deliverymen.

Contrary to the Board, the court held that the union had a right to picket the repair companies because they had become "allies" of the struck employer. The arrangement was that the struck firm's contract customers were to obtain service from other companies and then submit the bills to the struck concern for reimbursement. Such customers, by contract with the struck employer entered into before the strike, were entitled to such repair service from the primary employer.

The court took the view that section 8 (b) (4) (A) was not intended to proscribe union activity designed to prevent employers from doing the farmed-out work of a struck employer. According to the court, an employer is not protected "when he knowingly does work which would otherwise be done by the striking employees of the primary employer and where this work is paid for by the primary employer pursuant to an arrangement devised and originated by him to enable him to meet his contractual obligations." The court concluded that the result "must be the same whether or not the primary employer makes any direct arrangement with the employer providing the services."

In the view of a majority of the court, the customer picketing also could not be found to have violated section 8 (b) (4) (A). It was pointed out that, while the picketing was "secondary" in that it was intended to force the picketed customers to cease doing business with the struck employer, there was no sufficient showing that the union intended to bring about the desired result by inducing secondary employees to cease work, or that such cessation of work was the

⁷⁹ *N. L. R. B. v. Business Machine and Office Appliance Mechanics Conference Board, Local 459 (Royal Typewriter Co.)*, 228 F. 2d 553, certiorari denied 351 U. S. 962.

“natural and probable consequence” of the picketing. There was “neither intent to induce, nor even probable inducement of employees,” according to the majority.⁸⁰

5. Board Discretion Under Section 9

Enforcement of bargaining orders was resisted in several cases on the ground that the representation proceedings in which the complaining union was certified as bargaining agent were invalid. The courts generally reaffirmed the Board’s wide discretion in administering the provisions of section 9 of the act.

a. Election Procedures

In *Shirlington Supermarket*⁸¹ the Board had certified the complaining union on the basis of an election directed after an earlier election was set aside because of the employer’s preelection conduct. The employer challenged the Board’s rule, in effect at the time, that an employer prevents a free election if he makes a last-minute electioneering speech on company time and property without allowing the union an adequate opportunity to reply.⁸² Upholding the Board’s action, the court once again pointed out that “[W]hether a representation election has been conducted under conditions compatible with the exercise of a free choice by the employees, is a matter which Congress has committed to the discretion of the Board.”⁸³ In the court’s view, the rule applied by the Board in setting aside the first election was not arbitrary or unreasonable. It was also pointed out that the question involved was not whether the employer’s preelection speech was an unfair labor practice, but whether the action infringed rules reasonably adopted by the Board to secure a fair and untrammelled expression by the employees of their choice. While an unfair labor practice might or might not be ground for invalidating an election, the court concluded, infringement of such rules unquestionably furnished a sufficient ground for invalidating the election. A majority of the court further noted that what was in issue was not the employer’s freedom of speech⁸⁴ but only the soundness of the Board’s judgment regarding the effect of last-minute, one-sided appeals to employees on company time and property. The fact that the Board later modified its rule on preelection speeches by prohibiting addresses

⁸⁰ Judge Hand (concurring) believed that the case should be remanded to the Board in order to supply the necessary finding of the existence of unlawful intent.

⁸¹ *N. L. R. B. v. Shirlington Supermarket, Inc., et al.*, 224 F. 2d 649, 652-653, certiorari denied 350 U. S. 914.

⁸² See *Bonwit Teller, Inc.*, 96 NLRB 608.

⁸³ The court here cited *N. L. R. B. v. A. J. Tower Co.*, 329 U. S. 324, 330, and *N. L. R. B. v. Waterman Steamship Corp.*, 309 U. S. 206, 226.

⁸⁴ But see the dissenting opinion of Judge Soper.

by either side within 24 hours of a Board election,⁸⁵ was held not to affect the validity of the Board's action in the *Sharlinton* case.⁸⁶

*Cone Brothers*⁸⁷ likewise involved an employer's attack on a Board certification. The Fifth Circuit similarly pointed out that Congress entrusted to the Board "the control of the election proceedings and the determination of the steps necessary to conduct an election." The court rejected the employer's contention that the complaining union was invalidly certified on the basis of a runoff election where the same eligibility date was used as in the original election.⁸⁸ The employer asserted that the intervening turnover in personnel caused a substantial number of the employees in the voting unit to be denied their right to express their wishes. Approving the Board's published rule⁸⁹ regarding runoff eligibility, the court held that barring unusual circumstances not present here, the use of a single eligibility date "is a reasonable and practical adjustment in the election machinery to assure a free and just result by avoidance of the opportunity or temptation to manipulate the electorate through purposeful hirings or firings by either union or employer." Analogizing Board and political elections, the court noted that advance determination of eligibility is a necessary practice⁹⁰ even though it may result in partial disfranchisement.

In *N. L. R. B. v. Fresh'nd-Aire*⁹¹ the Seventh Circuit approved the Board's practice of (1) permitting laid-off employees to vote in an election if they have a reasonable expectation of reemployment within a reasonable time; and (2) permitting such employees to vote by mail. However, the court refused to enforce the Board's bargaining order because it believed that certain alleged misrepresentations of the certified union regarding the invalidation by the Board of one election impaired the validity of the second election, on which the order here was based. The Board had declined to consider the employer's objections which were not filed until 5 months after the second election, and therefore outside the 5-day period specified in the Board's rules and regulations.

b. Unit Determinations

In *American Steel Buck*⁹² the employer challenged the Board's certification of a unit of the company's technical employees on the ground that, since its nontechnical employees had been represented

⁸⁵ See *Peerless Plywood Co.*, 107 NLRB 427.

⁸⁶ See also p. 131.

⁸⁷ *Cone Brothers Contracting Company v. N. L. R. B.*, 235 F. 2d 37, 40-41, certiorari denied 352 U. S. 916.

⁸⁸ The Board's order was modified by the court on other grounds.

⁸⁹ 29 CFR 102.62.

⁹⁰ The court cited *N. L. R. B. v. A. J. Tower Co.*, 329 U. S. 324, 330.

⁹¹ *N. L. R. B. v. Fresh'nd-Aire Company*, 226 F. 2d 737.

⁹² *N. L. R. B. v. American Steel Buck Corp.*, 227 F. 2d 927 (C. A. 2).

in an associationwide unit, only a unit of technical employees of all association members was therefore appropriate. The court, however, held that it was within the Board's discretion to establish a single-employer unit for the company's technical employees. The Board's determination was predicated on the views expressed in the *Seagram* case⁹³ that "bargaining history for one group of organized employees, although persuasive, should not invariably control the bargaining pattern for every other group of employees," and that where "the nature of [a group of employees] is sufficiently different, the bargaining history or lack thereof of the very group of employees concerned should not . . . be ignored by giving binding effect to the pattern established by another group not directly involved." As to the employer's contention that the unit determination was in conflict with Board precedent, the court pointed out that, even if this were so, "the Board acted within section 9 (b) which calls for a decision 'in each case.'" Moreover, the court noted, the cases cited by the employer either had been overruled by the *Seagram* decision or were distinguishable.⁹⁴

⁹³ *Joseph E Seagram & Sons, Inc*, 101 NLRB 101, 103

⁹⁴ See also *N. L. R. B v American Loose Leaf Corporation*, 231 F 2d 664, where the Second Circuit cited *American Steel Buck* in enforcing the Board's order. The employer in *American Loose Leaf* had refused to bargain with a certified union, asserting that the Board should have found that two units of its employees, rather than a single production and maintenance unit, were appropriate.

VII

Injunction Litigation

Subsections (j) and (l) of section 10 of the amended act provide for injunctive relief in the United States district courts on the petition of the Board or petition on behalf of the Board to halt conduct alleged to constitute an unfair labor practice pending the final adjudication of the Board.

Section 10 (j) confers discretion on the Board to petition for an injunction against any type of conduct, by either an employer or a union, which is alleged to constitute an unfair labor practice forbidden by the act. Such injunctive relief may be sought when a formal complaint is issued in the case by the General Counsel.

Under section 10 (l), it is mandatory upon the Board to seek an injunction in a United States district court against a labor organization charged with a violation of section 8 (b) (4) (A), (B), or (C) of the act,¹ whenever the General Counsel's investigation reveals "reasonable cause to believe that such charge is true and that a complaint should issue." Section 10 (l) also provides for the issuance of a temporary restraining order without prior notice to the respondent party upon an allegation that "substantial and irreparable injury to the charging party will be unavoidable" unless immediate relief is granted. Such an *ex parte* restraining order may not be effective for more than 5 days. In addition, section 10 (l) provides that its procedures shall be used in seeking an injunction against a labor organization charged with engaging in a jurisdictional strike under section 8 (b) (4) (D), "in situations where such relief is appropriate."

During fiscal 1956, the Board filed 77 mandatory petitions for injunctions under section 10 (l).² Sixty-one of these petitions were based on charges alleging violations of the secondary-boycott prohibitions of section 8 (b) (4) (A) or (B) or both. Of the remaining petitions filed, 6 alleged violations of subsection (C), 4 of subsection (D), 2 of subsections (A), (B), and (C), 3 of subsections (A) and (D), and 1 of subsections (C) and (D).

¹ These sections contain the act's prohibitions against secondary strikes and boycotts, certain types of sympathy strikes, and strikes or boycotts against a Board certification of representative.

² For the actions on injunction petitions, see table 18, appendix A. The injunction cases in which any action was taken during fiscal 1956 are listed in table 20, appendix A.

The only petition filed under section 10 (j) during fiscal 1956 was withdrawn upon settlement of the unfair labor practice charges against the respondent union.

A. Injunction Under Section 10 (l)

Injunctive relief under section 10 (l) was granted in 21 cases and denied in 5 cases during the past year. All but 1 of the 21 orders issued enjoined secondary activities prohibited by section 8 (b) (4) (A) and (B). One injunction was directed against strike activity prohibited by section 8 (b) (4) (C).

Four of the five cases in which relief was denied involved section 8 (b) (4) (A) and (B) charges, and one case was based on a charge under section 8 (b) (4) (C).

1. Injunctions Against Secondary Boycotts³

Except for two cases involving section 8 (b) (4) (C) charges, the proceedings under section 10 (l) were concerned with secondary-boycott situations. In these cases issuance of an injunctive order depended on whether the court found reasonable cause to believe that the respondent union induced employees of secondary employers to cease work for the objects prohibited by section 8 (b) (4) (A) and/or (B).⁴ Some of the cases discussed below turned on the legality of "common situs" picketing, and one group of cases involved the question whether a "hot cargo" agreement immunizes otherwise prohibited secondary union action.

a. Common Situs Picketing

In the case of charges alleging picketing activities at locations where both the primary employer involved in a dispute with the respondent union and neutral employers carried on business, the appropriateness of section 10 (l) relief was determined on the basis of principles applied by the Board and the courts of appeals in such common situs situations.⁵

³ Board decisions in boycott cases are discussed at pp. 106-113.

⁴ See e. g. *Schauffler v. Highway Truck Drivers Local 107*, 230 F. 2d 7 (C. A. 3), affirming the finding of the District Court for Eastern Pennsylvania (July 27, 1955) that 10 (l) relief was appropriate. The court of appeals, however, eliminated certain notice provisions from the district court's decree. And see *Getreu v. Teamsters, Chauffeurs, Helpers & Taxicab Drivers Local Union 327, International Brotherhood of Teamsters, etc. (B & S Motor Lines)*, November 14, 1955 (D. C., Tenn.); *Yager v. International Union of Operating Engineers, Local Union No. 12, AFL (Shepherd Machinery Co.)*, 133 F. Supp. 362 (D. C., S. D., Calif.); *Penello v. Roanoke Building & Construction Trades Council, AFL-CIO (Kroger Co.)*, June 2, 1956 (D. C., W. D. Va.); *Getreu v. United Glass and Ceramic Workers of North America, AFL-CIO (Mason & Dixon Lines)*, June 12, 1956 (D. C., M. D. Tenn.); *Jaffee v. Local Union No. 469, International Brotherhood of Teamsters etc., (Ford Motor Co.)*, May 3, 1956 (D. C., N. J.).

⁵ For Board and court decisions in "common situs picketing" cases, see pp. 111-113.

In one case⁶ the union was charged with seeking to further its recognition dispute with certain Utah dairy firms by picketing their trucks while delivering dairy products at the New York City premises of a neutral dairy products distributor. The alleged purpose of the picketing was to bring about cessation of business between the New York distributor and the Utah producer in violation of section 8 (b) (4) (A) and (B). Granting the Board's request for injunctive relief, the district court held that the picketing of the Utah trucks at their New York destination, by pickets sent from Utah, could not be justified under the rules applied in similar situations. The court noted that, the primary employer having a separate, permanent place of business, the common situs picketing rules of the *Washington Coca Cola* case⁷ and similar cases⁸ were applicable, rather than the rule of the *Moore Dry Dock* case⁹ where the picketed primary employer had no fixed business situs. The court concluded that under the *Washington Coca Cola* rule the picketing at the New York location was unlawful (1) because the Utah firms' fixed location where most of their employees worked could be picketed effectively, and was in fact picketed in a manner that received nationwide publicity; and (2) because the union's activities at the New York location were not confined to picketing of the Utah trucks, but included direct appeals to employees of the New York distributor not to handle the Utah dairy products.

Injunctive relief was likewise granted in a case where the respondent, an uncertified union, allegedly sought to obtain recognition from an employer by stationing pickets both at the employer's warehouse and at the premises of secondary employers while trucks carrying freight to and from the warehouse were present.¹⁰ The result of the truck picketing was that the secondary employees refused to handle freight consigned to or by the primary employer. Upon reviewing the principles applied by the Board in determining the legality of common situs picketing,¹¹ the district court concluded that the truck picketing here was unlawful for the reason that all of the struck employer's employees, with the exception of the drivers of its two trucks, were available at the primary premises all day; the picketing of the trucks when present at secondary premises caused disruptive

⁶ *Douds v. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 976 (Cache Valley Dairy Association)*, January 17, 1956 (D. C., S. D. N. Y.).

⁷ 107 NLRB 299, enforced 220 F. 2d 380 (C. A., D. C.).

⁸ See footnote 5, above.

⁹ 92 NLRB 547, approved in *N. L. R. B. v. Service Trade Chauffeurs*, 191 F. 2d 65 (C. A. 2).

¹⁰ *LeBus v. General Truck Drivers, Chauffeurs, Warehousemen & Helpers Local No. 270 of the International Brotherhood of Teamsters Chauffeurs, Warehousemen & Helpers of America, AFL-CIO (Genuine Parts Co)*, June 11, 1956 (D. C., E. D. La.).

¹¹ See footnote 5, above.

work stoppages; and the respondent union's officers who supervised the picketing had been seen to confer directly with secondary employees. The court held that under these circumstances there was reasonable cause to believe that the truck picketing violated section 8 (b) (4) (A) and (B) of the act.

In one case,¹² the court denied the Board's petition for relief against "common situs" picketing because the union had stipulated to limit picketing of the disputing primary employer's trucks at the premises of secondary employers in a manner which, in the court's view, precluded a reasonable belief that the picketing would be held violative of the act by the Board or the courts under applicable precedents.¹³

b. Effect of "Hot Cargo" Agreement

In several cases, the respondent unions resisted issuance of a section 10 (l) injunction, asserting that they did not, as charged, unlawfully induce secondary work stoppages, but that they merely invoked collective-bargaining contract clauses obligating the particular employers not to require their employees to handle "hot cargo," i. e., goods of a struck employer.

In one case,¹⁴ the respondent union was charged with (1) instructing and inducing members employed by certain motor transport companies not to handle freight consigned by or to a disputing employer; and (2) striking one carrier and threatening another carrier with a strike, because each continued to handle freight of the primary employer. The district court enjoined the conduct over the union's objection that its actions were justified by certain clauses of its collective-bargaining contracts with the transportation companies. The clauses invoked provided that employees may refuse to handle "unfair goods," and that a contracting employer's insistence that his employees handle such goods, contrary to the employees' union-approved refusal, shall be cause for an immediate strike. The court here noted the position taken by the Board in the *Sand Door*¹⁵ and *American Iron*¹⁶ cases to the effect that, while the act does not prohibit the inclusion of hot cargo clauses in collective-bargaining agreements or union appeals to *employers* to honor the contract, union appeals to *employees* to exercise contractual hot cargo rights are forbidden regardless of whether or not the employer acquiesces in the

¹² *Alpert v. United Steelworkers of America, AFL-CIO (Barry Controls, Inc)*, 38 L. R. R. M. 2193, May 17, 1956 (D. C., Mass.).

¹³ See the common situs cases discussed at pp. 111-113, to which the district court here referred.

¹⁴ *Madden v. General Teamsters, Chauffeurs, Warehousemen and Helpers Union Local 126, et al (Fred Rueping Leather Co.)*, May 25, 1956 (D. C., E. D. Wisc.).

¹⁵ *Sand Door and Plywood Co (Local 1976, Carpenters)*, 113 NLRB 1210. See p. 110.

¹⁶ *American Iron and Machine Works Co. (General Drivers, Chauffeurs, Warehousemen and Helpers Union, Local No. 886)*, 115 NLRB 800.

union's demand that the employees refuse to handle "hot goods." Noting further that the Board's position had not yet been reviewed and reversed by a court of appeals, the district court held that the Board was entitled to appropriately limited injunctive relief.¹⁷

In another case,¹⁸ the Board's petition for a section 10 (l) injunction against inducement of the employees of several milk distributors not to handle the products of a producer with whom the union had a dispute was similarly resisted on the ground that the distributors were subject to a "hot cargo" agreement.¹⁹ Here it appeared that the union wrote to the secondary employers requesting them to honor their "hot cargo" obligations, and had its shop stewards advise employees of this request and instruct them to "abide" by their "hot cargo" rights. Most of the distributors then ceased to handle the struck producer's product. However, one distributor ordered its employees to handle the struck goods, and the union directed its members to disobey the order. This directive was, however, rescinded the next day. The court here held that the conduct with which the union was charged tended to encourage employees not to handle struck goods and was an "'unfair labor practice' . . . regardless of whether or not this encouragement actually resulted ultimately in such a refusal due to other causes." Nor, the court concluded, did the union's hot cargo agreements immunize the conduct from the act's prohibition against secondary boycotts. Hot cargo agreements, according to the court, are not operative as a limitation on the statutory protection of the public against secondary boycotts, but must be held to have no other effect than to protect employees who refuse to handle "hot goods" against discharge.²⁰ However, the court withheld issuance of an injunction because (1) there had been but a single union-induced refusal to handle the struck products; (2) the union immediately countermanded its directive to the employees; and (3) the union had stated to the court that it would not countenance disobedience by its members of orders of secondary employers to handle the struck goods. On the other hand, the court retained the case on its docket in order to enable the Board to renew its application for injunctive relief promptly in the event of evidence of further violations on the part of the union.

¹⁷ The Board's conclusions in the *Sand Door* case were sustained by the Ninth Circuit Court of Appeals after the close of the fiscal year. See *N L R B v Local 1976, United Brotherhood of Carpenters*, February 12, 1957 (C A 9)

¹⁸ *Douds v Milk Drivers and Dairy Employees Local No 680, International Brotherhood of Teamsters, etc. (Crowley's Milk Co)*, 133 F Supp 336 (D C, N. J.)

¹⁹ The clause invoked provided that it shall not be a violation of the union's agreement with the employer for union members "to refuse to handle material in the possession of the Employer, received from any Employer with whom [the union] is directly engaged in a labor dispute"

²⁰ The court, whose ruling antedated the Board's decisions in *Sand Door* and *American Iron* (*supra*, footnote 15), noted the views expressed by Chairman Farmer in the earlier *McAllister Transfer Co* case (110 NLRB 1769).

The Board's petition for an injunction against secondary action was denied in one case because of the court's belief that the refusal of certain secondary employees to handle goods of a struck employer constituted a voluntary exercise of their contractual "hot cargo" privilege.²¹ In the court's view, the evidence here did not indicate that there was reasonable cause to believe that the employees' refusal had been unlawfully induced by the respondent union.

c. Injunctions Against Strikes in Disregard of Board Certification

The Board's petition for an injunction in connection with pending charges under section 8 (b) (4) (C) was granted in one case²² and denied in another case.²³

In the *District 50* case, the district court found that there was reasonable cause to believe that the respondent union violated section 8 (b) (4) (C). The union here was charged with strike action for the apparent purpose of obtaining recognition as bargaining agent for employees who were presently represented by a certified labor organization with which the complaining employer had maintained contractual relations since its certification by the Board 10 years earlier. The court noted that, while the certified union had become merged with another union, a change in name rather than a change in identity was involved.

In the *Local 688* case, on the other hand, the court took the view that the Board was not entitled to relief because the respondent union's alleged strike for recognition occurred at a time when, according to the court, the incumbent union's certification was no longer effective. Contrary to the Board's position, the court held that the certification being more than 1 year old, and the employer having a bona fide doubt regarding the certified union's continued majority, section 8 (b) (4) (C) was no longer operative.

²¹ *Getreu v. Truck Drivers Local 728 (Genuine Parts Co.)*, May 28, 1956 (D. C., N. D. Ga.).

²² *Shore v. District 50, United Mine Workers (Carnation Co.)*, June 22, 1956 (D. C., N. D. W. Va.).

²³ *Kennedy v. Warehouse & Distribution Workers Union, Local 688 (Coca-Cola Bottling Co. of St. Louis)*, January 27, 1956 (D. C., E. D. Mo.).

VIII

Contempt Proceedings

The Board's petitions for adjudications in contempt for failure to comply with enforcement decrees were granted in two cases—in one case by the Ninth Circuit against an employer;¹ and in the second case, by the Second Circuit against a union.²

In the *Shannon* case, the Board petitioned for an adjudication of an employer in civil contempt because of the employer's failure to bargain with a union as directed by the court's decree. The employer in a motion to construe or modify the decree asserted that, after the hearing before the Board, the plant in question had been transferred to another location and its operations changed. Predicated on this, the employer contended that the unit referred to in the court's decree no longer existed and therefore that it was not required to bargain with the union for the employees at the new location. The court rejected the contention, holding that the specific reference in the decree to the employees at the old location was merely descriptive and for the purpose of identifying the company's employees; and "in no manner prohibits the reach of the decree to respondent's plant in its removed location." The court pointed to the Board's uncontradicted statement that the plant removal had not resulted in a material change in the basic character of the original bargaining unit, and noted that the asserted changes in the circumstances had occurred prior to the Board's order, stating, "[T]he law does not permit a respondent in this situation to withhold and husband defenses which it had at the time of the hearing . . . and choose to defend on other grounds and then, having lost, to come in . . . and assert that [it] had the other defenses all the time." In concluding that the employer's refusal to bargain at the new location was contemptuous, the court also observed that the employer had initially petitioned the Board to be relieved from the obligation of the enforcement decree and the Board had denied the petition. In this connection, the Ninth Circuit cited the Supreme Court's recent statement in another con-

¹ *N. L. R. B. v. Shannon & Simpson Casket Company*, 229 F. 2d 652 (C. A. 9).

² *N. L. R. B. v. International Hod Carriers, Building & Common Laborers Union of America, Local 210, AFL*, 228 F. 2d 589 (C. A. 2).

tempt case³ that the act "contemplates cooperation between the Board and the courts of appeals both at the enforcement and the contempt stages in order to effectuate its purposes." The court ordered that unless the respondents began compliance with the decree within 30 days, they would be fined \$100 per day for each day of disobedience thereafter.

In the *Hod Carriers'* case, the Board sought to have a union and its agents adjudged in both civil and criminal contempt because they had disobeyed a consent decree prohibiting them from "causing or attempting to cause any employer" to discriminate against employees or applicants in regard to employment and from "restraining or coercing employees of any employer" in the exercise of their statutory rights. The decree had been predicated on discrimination and interference with respect to employees of certain employers;⁴ the contempt proceedings involved such conduct with respect to employees of employers not involved in the original case.

On the evidence and the recommendations of a Special Master, the court found that the union and its agents had violated the decree by causing one employer to require nonunion employees to sign a dues checkoff agreement as a condition of employment, and by causing another employer to fire employees to whom the union had denied membership. The court held that the respondents were guilty of civil contempt.

Although recognizing that the violations had been wilful, the court declined to adjudicate respondents in criminal contempt as well, noting that the union's conduct had ceased, and that the relief fixed in the contempt order should deter future violations. The union and its agents were ordered to purge themselves of their contempt by, among other things, reimbursing one of the employers for what he had paid discriminatees to make them whole for the dues checked off from their wages; posting notices in appropriate places; and publishing similar notices in local newspapers and paying the expenses incurred by the Board and the Special Master's fees and expenses.

³ *N. L. R. B. v. The Warren Company, Inc.*, 350 U. S. 107, 112. See Supreme Court Rulings, p. 126.

⁴ See *Carpenter & Skaer, Inc., et al.*, 93 NLRB 188.

IX

Miscellaneous Litigation

Litigation for the purpose of aiding or protecting the Board's statutory processes during fiscal 1955 included subpoena enforcement proceedings, an action to prevent State court intervention in matters within the Board's jurisdiction, defense of suits to enjoin Board action, and defense of a suit against Board agents for damages.

1. Subpena Enforcement

In the *Gunaca* case, enforcement of a subpoena issued by the trial examiner at the request of the respondent in an unfair labor practice proceeding was resisted on the ground that the witness, John Gunaca, was under indictment in the State where he was to testify and extradition proceedings were pending in the State of his residence, where he was served with the subpoena. The United States District Court for Eastern Wisconsin directed obedience to the subpoena.¹ The Seventh Circuit Court of Appeals, adopting the District Court's decision, affirmed the order.² Rejecting Gunaca's main contentions, the district court held that enforcement of the Board's subpoena would neither interfere with the pending extradition proceeding nor deny him any legal rights. In the court's view, the citizens of one State have no immunity from facing trial on a criminal charge in another State, and have no constitutional right of asylum to avoid trial if regularly indicted or charged with a felony in another State. Nor, according to the court, was Gunaca immune from service of a Federal subpoena because he was a defendant in a criminal proceeding and in the custody of a State. The court pointed out that the National Labor Relations Act itself makes no provision for excepting such a person from service of Board subpoenas.

The district court also rejected Gunaca's other defenses, holding that (1) the Board was not required to seek subpoena enforcement in the district court within the jurisdiction where the subpoenaed witness resided, but had the alternative statutory power to apply for the enforcement within the jurisdiction where the unfair labor practice

¹ *N. L. R. B. ex rel. Kohler Co. v. John Gunaca*, 135 F. Supp. 790.

² 230 F. 2d 542. The Supreme Court granted the respondent's petition for certiorari (351 U. S. 981) but vacated the writ after the case became moot (March 27, 1957).

hearing was in progress; (2) the Board had authority to delegate its power to rule on petitions to revoke subpoenas to the trial examiner;³ and (3) it was not for the court to determine *de novo* whether the testimony of the subpoenaed witness was material in the case. As to (3), the court pointed out that in the absence of a "clear and strong showing" that the required testimony did not meet statutory relevancy criteria, the judgment of the trial examiner or the Board was not to be disturbed.

In the *Duval Jewelry* case⁴ the district court's order—from which the Board has appealed—quashed subpoenas *ad testificandum* and *duces tecum*, issued in a representation proceeding at the request of the regional director's attorney. The subpoenas sought information regarding the dollar value of the employer's business operations for the purpose of enabling the Board to determine, on the basis of the applicable jurisdictional standards, whether to exercise jurisdiction in the case.

The district court held that the subpoenas were invalid because they were not issued "upon the application of [a] 'party'" within the meaning of section 11 of the act. The fact that under the Board's Rules and Regulations⁵ the term "party" includes "the regional director in whose region the proceeding is pending," was held not controlling because, in the court's view, the Board was without authority to confer a party status upon "persons directly associated with the 'disinterested' tribunal before which both sides (here union and management)" were submitting their cause. The court also held that the subpoenas *duces tecum* here were oppressive because of the volume of books and records requested and the shortness of time allowed for their production. The court did not take into consideration that the subpoenas, being in the usual form, provided that "in lieu of" producing the books and records containing the necessary jurisdictional data a signed and certified statement setting forth the information could be submitted.

2. Proceedings To Enjoin Recourse to State Court

In the *Swift* case,⁶ the Eighth Circuit Court of Appeals sustained the refusal of the District Court for Eastern Missouri to restrain an employer from availing himself of a State court injunction against a union's picketing activities which had also been the subject of Board

³ The court referred to the like conclusion in *N. L. R. B. v. International Typographical Union*, 76 F. Supp. 895 (D. C., N. Y.), and in *N. L. R. B. v. Barnes*, 178 F. 2d 156 (C. A. 7). Compare *N. L. R. B. v. Pesante*, 119 F. Supp. 444 (D. C., So. Calif.).

⁴ *N. L. R. B. v. Duval Jewelry Co. of Miami, Inc.*, March 30, 1956 (D. C., So. Fla.).

⁵ Sec 102 8; C. F. R. sec 102.8.

⁶ *N. L. R. B. v. Swift & Company*, 233 F. 2d 226.

unfair labor practice charges.⁷ The court of appeals held that, while the district court had jurisdiction under 28 U. S. C. A. sections 1337 and 1651 to take cognizance of the Board's application, it was precluded from granting the requested relief because 28 U. S. C. A. section 2283 prohibits a Federal court from enjoining State court proceedings "except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments." In the view of the court of appeals, the Board had not brought itself within any of the exceptions to section 2283. Because of its conclusion that the district court had no jurisdiction to grant the Board's application, the court of appeals did not reach the further question whether the union activity specified in the employer's State court complaint was preempted by the National Labor Relations Act and therefore not subject to State injunction.

3. Requests for Relief Against Representation Proceedings

Requests for injunctive relief in connection with representation proceedings under section 9 of the act were denied in two cases during fiscal 1956. In one case, certain employees sought to enjoin the Board from ascertaining and certifying the results of an election from which they had been excluded under the provisions of section 9 (c) (3) that "[E]mployees on strike who are not entitled to reinstatement shall not be eligible to vote."⁸ The complainants asserted alternatively that this provision is unconstitutional, and, in any event, it was improperly applied by the Board. A statutory three-judge court⁹ was first convened, but it remanded the matter to the conventional district court upon finding that there was no substantial contention that the section was unconstitutional on its face. The district court held that the Board properly construed section 9 (c) (3) as preserving the voting eligibility of "unfair labor practice strikers" and barring from a Board election only "economic strikers" whom the employer had lawfully replaced. The court rejected the contention that denial of eligibility to the complainants on the basis of this distinction violated their constitutional rights. Regarding the assertion of irreparable injury, the court held that no such impending or present injury having been shown, there was no basis for the relief sought.

In another case, the Court of Appeals for the District of Columbia Circuit affirmed the district court's decision that it was without jurisdiction to enjoin the Board from certifying the results of a consent election as requested by employees who were excluded from the

⁷ *N. L. R. B. v Swift & Company*, 130 F. Supp. 214. See Twentieth Annual Report, p. 156.

⁸ *International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local 554 (Coffey Transfer) et al. v. N. L. R. B.*, March 20, 1956 (D. C., D. C.).

⁹ 28 U. S. C. 2284.

voting unit.¹⁰ The employees concerned were held ineligible to vote because of the parties' understanding that the stipulated unit was to exclude employees who performed production duties only part of the time. The employees complained that their exclusion was an arbitrary denial of their right to cast their ballots which would have affected the results of the election. The court of appeals held, however, that district court review of Board representation determinations was barred where as here the Board's determination of the bargaining unit and the employees' voting eligibility was within the Board's discretion and was not a "departure from statutory requirements or from those of due process."¹¹

4. Injunction Against Decompliance Action

In the *Mine, Mill and Smelter Workers* case, the union had petitioned the District Court for the District of Columbia to enjoin the Board from giving effect to its order depriving the union of the benefits of the act on the ground that the non-Communist affidavit of one of its officers was false and that the union's membership was aware of that fact.¹² The district court's order denying relief¹³ was reversed by the Court of Appeals for the District of Columbia. The court reaffirmed its ruling in the *Fur and Leather Workers* case¹⁴ that the only sanction for the filing of false non-Communist affidavits was the criminal penalty provided in section 9 (h). The view of the court of appeals that the Board was without power to issue the decompliance order here was affirmed by the Supreme Court after the close of the fiscal year.¹⁵

5. Damage Action Against Board Agents

In *Gala-Mo Arts*,¹⁶ the employer filed suit for damages against two Board agents and certain unions and their officers for alleged conspiracy in the filing and prosecution of unfair labor practice charges against the employer. The district court granted the Board agents' motion for summary dismissal on the ground of their immunity from damage suits for acts committed in performing their official duties. The court pointed out that application of the principle of immunity,¹⁷ under circumstances such as were involved, is necessary in order to safeguard the Board's effectiveness in enforcing the act.

¹⁰ *Ruth DePratter et al v. Guy Farmer*, 232 F. 2d 74.

¹¹ The court citing *Inland Empire District Council v. Millis*, 325 U. S. 697, 700

¹² *Maurice E. Travis and Compliance Status of International Union of Mine, Mill and Smelter Workers*, (Ind.), 111 NLRB 422.

¹³ The district court's order was entered February 11, 1955.

¹⁴ *Farmer v. Fur & Leather Workers Union*, 221 F. 2d 862 (C A , D. C). See Twentieth Annual Report, pp. 157-158.

¹⁵ *Boyd Leedom v International Union of Mine, Mill and Smelter Workers*, December 10, 1956 (352 U. S. 145) See also *Amalgamated Meat Cutters v. N L R B (Lannom Mfg Co.)* Dec 10, 1956 (352 U. S. 153)

¹⁶ *Gala-Mo Arts, Inc. v. George Laiben, et al.*, March 12, 1954 (D. C., E. Mo).

¹⁷ The court cited *Gregoire v. Biddle*, 177 F. 2d 579 (C A. 2), and *Gibson v. Reynolds*, 172 F. 2d 195 (C A 8)

APPENDIX A

Statistical Tables for Fiscal Year 1956

Table 1.—Total Cases Received, Closed, and Pending (Complainant or Petitioner Identified), Fiscal Year 1956

	Number of cases						
	Total	Identification of complainant or petitioner					
		AFL affiliates ¹	CIO affiliates ¹	AFL-CIO affiliates ²	Unaffiliated unions	Individuals	Employers
All cases ³							
Pending July 1, 1955.....	4,114	1,542	758	-----	191	1,232	391
Received fiscal 1956.....	13,388	2,833	1,216	4,638	754	2,525	1,422
On docket fiscal 1956.....	17,502	4,375	1,974	⁴ 6,536	945	3,757	1,813
Closed fiscal 1956.....	13,734	3,122	1,329	4,403	759	2,759	1,362
Pending June 30, 1956.....	3,768	-----	-----	2,133	186	998	451
Unfair labor practice cases							
Pending July 1, 1955.....	2,672	733	418	-----	89	1,147	285
Received fiscal 1956.....	5,265	692	304	1,170	167	2,105	827
On docket fiscal 1956.....	7,937	1,425	722	⁵ 2,132	256	3,252	1,112
Closed fiscal 1956.....	5,619	827	358	1,165	184	2,325	760
Pending June 30, 1956.....	2,318	-----	-----	967	72	927	352
Representation cases							
Pending July 1, 1955.....	1,438	809	339	-----	102	82	106
Received fiscal 1956.....	8,076	2,141	912	3,467	587	374	595
On docket fiscal 1956.....	9,514	2,950	1,251	⁶ 4,402	689	456	701
Closed fiscal 1956.....	8,070	2,295	971	3,236	575	391	602
Pending June 30, 1956.....	1,444	-----	-----	1,166	114	65	99
Union-shop deauthorization cases							
Pending July 1, 1955.....	4	0	1	-----	0	3	-----
Received fiscal 1956.....	47	0	0	1	0	46	-----
On docket fiscal 1956.....	51	0	1	⁷ 2	0	49	-----
Closed fiscal 1956.....	45	0	0	2	0	43	-----
Pending June 30, 1956.....	6	-----	-----	0	0	6	-----

¹ Includes cases filed prior to AFL-CIO merger of Dec. 5, 1955

² Includes cases filed since AFL-CIO merger of Dec. 5, 1955

³ Definitions of Types of Cases Used in Tables The following designations, used by the Board in numbering cases, are used in the tables in this appendix to designate the various types of cases

CA A charge of unfair labor practices against an employer under sec 8 (a)

CB A charge of unfair labor practices against a union under sec 8 (b) (1), (2), (3), (5), (6).

CC A charge of unfair labor practices against a union under sec 8 (b) (4) (A), (B), (C)

CD A charge of unfair labor practices against a union under sec 8 (b) (4) (D)

RC A petition by a labor organization or employees for certification of a representative for purposes of collective bargaining under sec 9 (c) (1) (A) (i)

RM A petition by employer for certification of a representative for purposes of collective bargaining under sec 9 (c) (1) (B).

RD A petition by employees under sec 9 (c) (1) (A) (ii) asserting that the union previously certified or currently recognized by their employer as the bargaining representative, no longer represents a majority of the employees in the appropriate unit.

UD A petition by employees under sec 9 (e) (1) asking for a referendum to rescind a bargaining agent's authority to make a union-shop contract under sec 8 (a) (3)

⁴ Includes 1,898 cases filed by AFL and CIO unions and still pending at the time of the merger of AFL and CIO

⁵ Includes 962 cases pending at time of merger.

⁶ Includes 935 cases pending at time of merger.

⁷ Includes 1 case pending at time of merger.

Table 1A.—Unfair Labor Practice and Representation Cases Received, Closed, and Pending (Complainant or Petitioner Identified), Fiscal Year 1956

	Number of unfair labor practice cases							Number of representation cases						
	Total	Identification of complainant						Total	Identification of petitioner					
		AFL affiliates ¹	CIO affiliates ¹	AFL-CIO affiliates ²	Unaffiliated unions	Individuals	Employers		AFL affiliates ¹	CIO affiliates ¹	AFL-CIO affiliates ²	Unaffiliated unions	Individuals	Employers
	CA cases ³							RC cases ³						
Pending July 1, 1955	1,804	689	402	-----	78	635	0	1,252	809	339	-----	102	2	-----
Received fiscal 1956	3,522	671	300	1,105	147	1,298	1	7,121	2,141	912	3,467	583	18	-----
On docket fiscal 1956	5,326	1,360	702	2,022	225	1,933	1	8,373	2,950	1,251	4,402	685	20	-----
Closed fiscal 1956	3,841	799	346	1,114	158	1,424	0	7,093	2,295	971	3,236	572	19	-----
Pending June 30, 1956	1,485	-----	-----	908	67	509	1	1,280	-----	-----	1,166	113	1	-----
	CB cases ³							RM cases ³						
Pending July 1, 1955	683	36	15	-----	11	505	116	106	-----	-----	-----	-----	-----	106
Received fiscal 1956	1,171	17	4	25	18	803	304	595	-----	-----	-----	-----	-----	595
On docket fiscal 1956	1,854	53	19	66	29	1,308	420	701	-----	-----	-----	-----	-----	701
Closed fiscal 1956	1,245	20	11	31	25	891	267	602	-----	-----	-----	-----	-----	602
Pending June 30, 1956	609	-----	-----	35	4	417	153	99	-----	-----	-----	-----	-----	99
	CC cases ³							RD cases ³						
Pending July 1, 1955	151	2	1	-----	0	6	142	80	0	0	-----	0	80	-----
Received fiscal 1956	421	1	0	23	2	3	392	360	0	0	0	4	356	-----
On docket fiscal 1956	572	3	1	24	2	9	534	440	0	0	0	4	436	-----
Closed fiscal 1956	384	2	1	6	1	8	366	375	0	0	0	3	372	-----
Pending June 30, 1956	188	-----	-----	18	1	1	168	65	-----	0	-----	1	64	-----
	CD cases ³													
Pending July 1, 1955	34	6	0	-----	0	1	27							
Received fiscal 1956	151	3	0	17	0	1	130							
On docket fiscal 1956	185	9	0	20	0	2	157							
Closed fiscal 1956	149	6	0	14	0	2	127							
Pending June 30, 1956	36	-----	-----	6	0	0	30							

¹ Includes cases filed prior to AFL-CIO merger of Dec. 5, 1955.

² Includes cases filed since AFL-CIO merger of Dec. 5, 1955.

³ See table 1, footnote 3, for definitions of types of cases.

⁴ Includes 917 cases filed by AFL and CIO unions and still pending at the time of the merger of AFL and CIO.

⁵ Includes 41 cases pending at time of merger.

⁶ Includes 1 case pending at time of merger.

⁷ Includes 3 cases pending at time of merger.

⁸ Includes 935 cases pending at time of merger.

Table 2.—Types of Unfair Labor Practices Alleged, Fiscal Year 1956

A. CHARGES FILED AGAINST EMPLOYERS UNDER SEC. 8 (a)

	Number of cases showing specific allegations	Percent of total cases		Number of cases showing specific allegations	Percent of total cases
Total cases.....	1 3,522	1 100 0	8 (a) (3).....	2,661	75 6
8 (a) (1).....	2 3,522	2 100 0	8 (a) (4).....	74	2 1
8 (a) (2).....	383	10 9	8 (a) (5).....	838	23 8

B. CHARGES FILED AGAINST UNIONS UNDER SEC. 8 (b)

	Number of cases showing specific allegations	Percent of total cases		Number of cases showing specific allegations	Percent of total cases
Total cases.....	1 1,743	1 100 0	8 (b) (3).....	97	5 6
8 (b) (1).....	1,072	61 5	8 (b) (4).....	572	32 8
8 (b) (2).....	857	49 2	8 (b) (5).....	9	. 5
			8 (b) (6).....	6	. 3

C ANALYSES OF 8 (b) (1) AND 8 (b) (4)

	Number of cases showing specific allegations	Percent of total cases	Total cases 8 (b) (4)	Number of cases showing specific allegations	Percent of total cases
Total cases 8 (b) (1).....	1 1,072	1 100 0	Total cases 8 (b) (4).....	1 572	1 100 0
8 (b) (1) (A).....	1,054	98 3	8 (b) (4) (A).....	397	69 4
8 (b) (1) (B).....	22	2 1	8 (b) (4) (B).....	135	23 6
			8 (b) (4) (C).....	66	11 5
			8 (b) (4) (D).....	151	26 4

¹ A single case may include allegations of violations of more than 1 section of the act. Therefore, the total of the various allegations is more than the figure for total cases.

² An 8 (a) (1) is a general provision forbidding any type of employer interference with the rights of the employees guaranteed by the act, and therefore is included in all charges of employer unfair labor practices.

Table 3.—Formal Actions Taken, by Number of Cases, Fiscal Year 1956

Formal action taken	All cases	Unfair labor practice cases			Representation cases
		All C cases	CA cases ¹	Other C cases ¹	
Complaints issued.....	713	713	314	399	-----
Notices of hearing issued.....	3,805	29	-----	29	3,776
Cases heard.....	2,309	386	218	168	1,923
Intermediate reports issued.....	319	319	192	127	-----
Decisions issued, total.....	2,151	400	233	167	1,751
Decisions and orders.....	332	332	210	122	-----
Decisions and consent orders.....	68	68	23	45	-----
Elections directed.....	1,357	-----	-----	-----	1,357
Rulings on objections and/or challenges in stipulated election cases.....	155	-----	-----	-----	155
Dismissals on record.....	239	-----	-----	-----	239

¹ See table 1, footnote 3, for definitions of types of cases

² Includes 19 cases decided by adoption of intermediate report in absence of exceptions.

³ Includes 20 cases decided by adoption of intermediate report in absence of exceptions.

Table 4.—Remedial Action Taken in Unfair Labor Practice Cases Closed, Fiscal Year 1956

A. BY EMPLOYERS ¹			
	Total	By agreement of all parties	By Board or court order
Cases			
Notice posted.....	625	402	223
Recognition or other assistance withheld from employer-assisted union.....	103	63	40
Employer-dominated union disestablished.....	39	31	8
Workers placed on preferential hiring list.....	38	36	2
Collective bargaining begun.....	117	58	59
Workers			
Workers offered reinstatement to job.....	1,841	687	1,154
Workers receiving back pay.....	1,955	² 635	³ 1,320
Back-pay awards.....	\$1,322,904	\$200,520	\$1,122,384
B. BY UNIONS ⁴			
Cases			
Notice posted.....	256	167	89
Union to cease requiring employer to give it assistance.....	45	18	27
Notice of no objection to reinstatement of discharged employees.....	68	41	27
Collective bargaining begun.....	7	6	1
Workers			
Workers receiving back pay.....	205	164	41
Back-pay awards.....	\$65,410	\$24,070	\$41,340

¹ In addition to the remedial action shown, other forms of remedy were taken in 17 cases
² Includes 133 workers who received back pay from both employer and union.
³ Includes 26 workers who received back pay from both employer and union
⁴ In addition to the remedial action shown, other forms of remedy were taken in 43 cases This included the refund of union dues illegally required, totaling \$1,549 during the fiscal year.

Table 5.—Industrial Distribution of Unfair Labor Practice and Representation Cases Received, Fiscal Year 1956

Industrial group ¹	All cases	Unfair labor practice cases				Representation cases		
		CA ²	CB ²	CC ²	CD ²	RC ²	RM ²	RD ²
Total.....	13,341	3,522	1,171	421	151	7,121	595	360
Manufacturing.....	8,011	2,206	404	93	19	4,721	311	257
Ordnance and accessories.....	56	22	0	0	1	28	2	3
Food and kindred products.....	1,050	260	61	26	2	625	42	34
Tobacco manufacturers.....	29	7	0	0	0	21	1	0
Textile mill products.....	306	145	8	2	0	135	9	7
Apparel and other finished products made from fabrics and similar materials.....	306	155	21	2	0	97	25	6
Lumber and wood products (except furniture).....	393	109	16	8	0	227	24	9
Furniture and fixtures.....	398	135	16	5	3	216	18	5
Paper and allied products.....	314	62	19	6	4	207	8	8
Printing, publishing, and allied industries.....	345	68	31	2	0	229	6	9
Chemicals and allied products.....	436	96	13	6	0	275	25	21
Products of petroleum and coal.....	152	38	8	1	0	86	10	9

See footnotes at end of table.

Table 5.—Industrial Distribution of Unfair Labor Practice and Representation Cases Received, Fiscal Year 1956—Continued

Industrial group ¹	All cases	Unfair labor practice cases				Representation cases		
		CA ²	CB ²	CC ²	CD ²	RC ²	RM ²	RD ²
Manufacturing—Continued								
Rubber products.....	88	29	0	0	0	57	0	2
Leather and leather products.....	164	46	4	8	1	96	5	4
Stone, clay, and glass products.....	305	65	14	2	2	206	11	5
Primary metal industries.....	446	107	25	2	2	286	13	11
Fabricated metal products (except machinery and transportation equipment).....	874	226	39	9	0	542	34	24
Machinery (except electrical).....	826	188	29	6	1	544	26	32
Electrical machinery, equipment, and supplies.....	499	143	27	2	1	285	14	27
Aircraft and parts.....	192	63	18	1	1	95	6	8
Ship and boat building and repairing.....	69	20	4	0	0	39	2	4
Automotive and other transportation equipment.....	248	64	15	3	0	149	6	11
Professional, scientific, and controlling instruments.....	81	21	11	1	1	42	2	3
Miscellaneous manufacturing.....	434	137	25	1	0	234	22	15
Agriculture, forestry, and fisheries.....	31	18	3	1	0	9	0	0
Mining.....	216	72	12	12	2	107	6	5
Metal mining.....	64	14	2	0	0	43	3	2
Coal mining.....	43	33	7	3	0	0	0	0
Crude petroleum and natural gas production.....	12	6	0	0	0	6	0	0
Nonmetallic mining and quarrying.....	97	19	3	9	2	58	3	3
Construction.....	934	232	271	185	109	119	18	0
Wholesale trade.....	1,003	203	35	33	1	621	90	20
Retail trade.....	1,289	267	42	23	3	796	75	33
Finance, insurance, and real estate.....	38	9	1	0	0	25	2	1
Transportation, communication, and other public utilities.....	1,541	408	375	73	15	553	79	38
Highway passenger transportation.....	53	18	6	0	0	23	2	4
Highway freight transportation.....	509	164	76	32	2	170	57	8
Water transportation.....	384	145	145	15	5	68	5	1
Warehousing and storage.....	160	24	11	7	2	102	5	9
Other transportation.....	40	6	3	7	0	22	1	1
Communication.....	280	33	129	6	2	97	6	7
Heat, light, power, water, and sanitary services.....	115	18	5	6	4	71	3	8
Services.....	328	107	28	1	2	170	14	6

¹ Source: Standard Industrial Classification, Division of Statistical Standards, U. S. Bureau of the Budget, Washington, 1945

² See table 1, footnote 3, for definitions of types of cases.

Table 6.—Geographic Distribution of Unfair Labor Practice and Representation Cases Received, Fiscal Year 1956

Division and State ¹	All cases	Unfair labor practice cases				Representation cases		
		CA ²	CB ²	CC ²	CD ²	RC ²	RM ²	RD ²
Total.....	13,341	3,522	1,171	421	151	7,121	595	360
New England.....	836	186	44	41	4	519	17	25
Maine.....	79	20	1	3	1	50	0	4
New Hampshire.....	42	7	1	2	0	31	0	1
Vermont.....	27	2	0	3	0	22	0	0
Massachusetts.....	382	89	16	14	0	240	12	11
Rhode Island.....	124	26	10	16	1	63	4	4
Connecticut.....	182	42	16	3	2	113	1	5

See footnotes at end of table.

Table 6.—Geographic Distribution of Unfair Labor Practice and Representation Cases Received, Fiscal Year 1956—Continued

Division and State ¹	All cases	Unfair labor practice cases				Representation cases		
		CA ²	CB ²	CC ²	CD ²	RC ²	RM ²	RD ²
Middle Atlantic.....	2,760	812	310	70	35	1,323	147	68
New York.....	1,418	463	188	41	15	584	95	32
New Jersey.....	555	131	44	11	10	331	17	11
Pennsylvania.....	787	218	78	18	10	408	35	20
East North Central.....	2,785	668	187	47	15	1,666	104	98
Ohio.....	666	144	35	17	1	411	34	24
Indiana.....	368	97	24	7	4	219	9	8
Illinois.....	883	222	72	4	7	511	33	34
Michigan.....	668	165	52	14	3	391	21	22
Wisconsin.....	200	40	4	5	0	134	7	10
West North Central.....	1,208	265	51	28	9	762	56	37
Iowa.....	111	25	2	0	0	73	7	4
Minnesota.....	278	38	3	3	3	205	23	3
Missouri.....	500	130	41	18	6	276	17	12
North Dakota.....	41	6	0	0	0	34	0	1
South Dakota.....	24	2	0	0	0	19	2	1
Nebraska.....	102	30	2	3	0	62	4	1
Kansas.....	152	34	3	4	0	93	3	15
South Atlantic.....	1,522	459	153	101	12	700	65	32
Delaware.....	44	17	12	0	0	15	0	0
Maryland.....	181	32	14	7	0	118	6	4
District of Columbia.....	66	7	4	4	2	37	8	4
Virginia.....	199	49	7	3	1	103	29	7
West Virginia.....	90	17	9	6	1	54	1	2
North Carolina.....	210	109	8	1	0	84	5	3
South Carolina.....	60	33	5	1	1	19	0	1
Georgia.....	348	90	72	69	0	102	9	6
Florida.....	324	105	22	10	7	168	7	5
East South Central.....	815	212	112	61	52	336	26	16
Kentucky.....	168	36	16	2	0	105	8	1
Tennessee.....	345	92	25	49	38	123	9	9
Alabama.....	228	59	62	10	14	74	4	5
Mississippi.....	74	25	9	0	0	34	5	1
West South Central.....	873	232	63	8	9	489	44	28
Arkansas.....	95	26	2	0	0	57	8	2
Louisiana.....	170	51	19	2	0	93	2	3
Oklahoma.....	80	15	2	0	3	50	6	4
Texas.....	528	140	40	6	6	289	28	19
Mountain.....	573	154	28	11	3	322	39	16
Montana.....	50	12	4	1	1	23	8	1
Idaho.....	68	15	0	0	0	44	7	2
Wyoming.....	10	2	0	2	0	4	1	1
Colorado.....	231	65	13	0	0	130	13	10
New Mexico.....	54	14	3	1	1	34	1	0
Arizona.....	79	20	4	2	1	47	4	1
Utah.....	46	13	1	4	0	22	5	1
Nevada.....	35	13	3	1	0	18	0	0
Pacific.....	1,610	429	171	47	12	823	88	40
Washington.....	231	64	34	8	4	102	14	5
Oregon.....	182	49	8	9	0	100	14	2
California.....	1,197	316	129	30	8	621	60	33
Outlying areas.....	359	105	52	7	0	181	9	5
Alaska.....	46	16	10	1	0	17	2	0
Hawaii.....	53	4	1	0	0	46	1	1
Puerto Rico.....	256	84	41	5	0	116	6	4
Canada.....	1	0	0	1	0	0	0	0
Virgin Islands.....	3	1	0	0	0	2	0	0

¹ The States are grouped according to the method used by the Bureau of the Census, U. S. Department of Commerce.

² See table 1, footnote 3, for definitions of types of cases.

Table 7.—Disposition of Unfair Labor Practice Cases Closed, Fiscal Year 1956

Stage of disposition	All C cases		CA cases ¹		CB cases ¹		CC cases ¹		CD cases ¹	
	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed
Total number of cases closed.....	5,619	100.0	3,841	100.0	1,245	100.0	384	100.0	149	100.0
Before issuance of complaint.....	5,030	89.5	3,457	90.0	1,111	89.2	313	81.5	149	100.0
After issuance of complaint, before opening of hearing ²	145	2.6	71	1.8	33	2.7	41	10.7	0	0
After hearing opened, before issuance of intermediate report ²	32	.6	16	.4	8	.7	8	2.1	0	0
After intermediate report, before issuance of Board decision.....	25	.5	17	.5	6	.5	2	.5	0	0
After Board order adopting intermediate report in absence of exceptions.....	24	.4	21	.6	3	.2	0	.0	0	.0
After Board decision, before court decree.....	198	3.5	147	3.8	39	3.1	12	3.1	0	.0
After Board order adopting intermediate report followed by circuit court decree.....	8	.1	5	.1	0	0	3	.8	0	.0
After circuit court decree, before Supreme Court action.....	121	2.2	77	2.0	39	3.1	5	1.3	0	.0
After Supreme Court action ⁴	36	.6	30	.8	6	.5	0	.0	0	.0

¹ See table 1, footnote 3, for definitions of types of cases.

² Includes cases in which the parties entered into a stipulation providing for Board order and consent decree in the circuit court.

³ Includes 25 cases in which a notice of hearing issued pursuant to sec. 10 (k) of the act. Of these 25 cases, 11 were closed after notice, 3 were closed after hearing, and 11 were closed after Board decision.

⁴ Includes either denial of writ of certiorari or granting of writ and issuance of opinion.

⁵ Includes 1 NLRA case

Table 8.—Disposition of Representation Cases Closed, Fiscal Year 1956

Stage of disposition	All R cases		RC cases ¹		RM cases ¹		RD cases ¹	
	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed
Total number of cases closed.....	8,070	100.0	7,093	100.0	602	100.0	375	100.0
Before issuance of notice of hearing.....	4,169	51.7	3,666	51.7	322	53.5	181	48.3
After issuance of notice of hearing, before opening of hearing.....	1,851	22.9	1,626	22.9	140	23.2	85	22.7
After hearing opened, before issuance of Board decision.....	315	3.9	282	4.0	19	3.2	14	3.7
After issuance of Board decision.....	1,735	21.5	1,519	21.4	121	20.1	95	25.3

¹ See table 1, footnote 3, for definitions of types of cases.

Table 9.—Analysis of Stages of Disposition of Unfair Labor Practice Cases Closed, Fiscal Year 1956

Stage and method of disposition	All C cases		CA cases ¹		CB cases ¹		CC cases ¹		CD cases ¹	
	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed
Total number of cases closed.....	2 5,619	100 0	3,841	100 0	1,245	100 0	384	100 0	149	100 0
Before issuance of complaint.....	5,030	89 5	3,457	90 0	1,111	89 2	313	81 5	149	100 0
Adjusted.....	562	10 0	382	9 9	115	9 2	50	13 0	3 15	10 1
Withdrawn.....	2,379	42 3	1,574	41 0	490	39 3	198	51 6	4 117	78 5
Dismissed.....	2,065	36 8	1,487	38 7	499	40 1	62	16 1	5 17	11 4
Otherwise.....	24	4	14	4	7	6	3	.8	0	0
After issuance of complaint, before opening of hearing.....	145	2 6	71	1 8	33	2 7	41	10 7	0	0
Adjusted.....	63	1 1	39	1 0	13	1 1	11	2 9	0	0
Compliance with stipulated decision.....	1	(⁰)	1	(⁰)	0	0	0	0	0	0
Compliance with consent decree.....	33	6	13	3	4	3	16	4 2	0	0
Withdrawn.....	38	7	14	4	10	.8	14	3 6	0	0
Dismissed.....	10	2	4	1	6	5	0	0	0	0
After hearing opened, before issuance of intermediate report.....	32	6	16	4	8	.7	8	2 1	0	0
Adjusted.....	12	2	7	3	4	.3	1	3	0	0
Compliance with stipulated decision.....	2	(⁰)	1	(⁰)	1	1	0	0	0	0
Compliance with consent decree.....	10	2	4	1	2	2	4	1 0	0	0
Withdrawn.....	5	1	2	(⁰)	0	.0	3	.8	0	0
Dismissed.....	3	1	2	(⁰)	1	1	0	0	0	0
After intermediate report, before issuance of Board decision.....	25	5	17	5	6	5	2	5	0	0
Compliance.....	23	5	16	.5	6	5	1	.3	0	0
Withdrawn.....	1	(⁰)	1	(⁰)	0	0	0	.0	0	0
Dismissed.....	1	(⁰)	0	0	0	0	1	1 2	0	0
After Board order adopting intermediate report in absence of exceptions.....	24	4	21	6	3	2	0	.0	0	0
Compliance.....	10	2	9	3	1	1	0	0	0	0
Dismissed.....	13	2	11	3	2	1	0	0	0	0
Otherwise.....	1	(⁰)	1	(⁰)	0	0	0	0	0	0
After Board decision, before court decree.....	198	3 5	147	3 8	39	3 1	12	3 1	0	0
Compliance.....	155	2 8	119	3 1	27	2 1	9	2 3	0	0
Withdrawn.....	1	(⁰)	0	0	1	1	0	.0	0	0
Dismissed.....	36	.6	24	6	9	7	3	.8	0	0
Otherwise.....	6	.1	4	1	2	2	0	.0	0	0

After Board order adopting intermediate report followed by circuit court decree.....	8	1	5	1	0	.0	3	.8	0	.0
Compliance.....	7	.1	4	1	0	.0	3	.8	0	.0
Otherwise.....	1	(⁶)	1	(⁶)	0	0	0	.0	0	.0
After circuit court decree, before Supreme Court action.....	121	2 2	77	2 0	39	1	5	1 3	0	.0
Compliance.....	96	1 7	59	1 5	33	2 6	4	1 0	0	.0
Dismissed.....	23	.5	17	5	5	4	1	3	0	.0
Otherwise.....	2	(⁶)	1	(⁶)	1	.1	0	.0	0	.0
After Supreme Court denied writ of certiorari.....	34	6	28	8	6	5	0	0	0	0
Compliance.....	² 31	6	26	8	5	4	0	0	0	0
Dismissed.....	3	(⁶)	2	(⁶)	1	1	0	0	0	0
After Supreme Court opinion—dismissed.....	2	(⁶)	2	(⁶)	0	.0	0	0	0	0

¹ See table 1, footnote 3, for definitions of types of cases.

² Includes 1 NLRA case.

³ Includes 2 cases adjusted after 10 (k) notice of hearing, 6 cases closed by compliance with Board decision after 10 (k) notice.

⁴ Includes 5 cases withdrawn after 10 (k) notice of hearing, 3 cases withdrawn after hearing, 1 case withdrawn after Board decision.

⁵ Includes 4 cases dismissed after 10 (k) notice of hearing, 4 cases dismissed after Board decision.

⁶ Less than one-tenth of 1 percent.

Table 10.—Analysis of Methods of Disposition of Representation Cases Closed, Fiscal Year 1956

Method and stage of disposition	All R cases		RC cases ¹		RM cases ¹		RD cases ¹	
	Number of cases	Per-cent of cases closed	Num-ber of cases	Per-cent of cases closed	Num-ber of cases	Per-cent of cases closed	Num-ber of cases	Per-cent of cases closed
Total number of cases closed.....	8,070	100.0	7,093	100.0	602	100.0	375	100.0
Consent election.....	2,131	26.4	1,981	27.9	103	17.1	47	12.5
Before notice of hearing.....	1,468	18.2	1,373	19.4	68	11.3	27	7.2
After notice of hearing, before hearing opened.....	584	7.2	535	7.5	34	5.6	15	4.0
After hearing opened, before Board decision.....	79	1.0	73	1.0	1	.2	5	1.3
Stipulated election.....	1,757	21.8	1,634	23.0	97	16.1	26	7.0
Before notice of hearing.....	903	11.2	827	11.7	68	11.3	8	2.2
After notice of hearing, before hearing opened.....	621	7.7	591	8.3	16	2.6	14	3.7
After hearing opened, before Board decision.....	93	1.2	86	1.2	6	1.0	1	.3
After postelection decision.....	140	1.7	130	1.8	7	1.2	3	.8
Withdrawn.....	1,959	24.3	1,624	22.9	203	33.7	132	35.2
Before notice of hearing.....	1,195	14.8	1,004	14.1	112	18.6	79	21.1
After notice of hearing, before hearing opened.....	563	7.0	440	6.2	78	12.9	45	12.0
After hearing opened, before Board decision.....	119	1.5	104	1.5	9	1.5	6	1.6
After Board decision and direction of election.....	82	1.0	76	1.1	4	.7	2	.5
Dismissed.....	975	12.1	739	10.4	123	20.5	113	30.1
Before notice of hearing.....	596	7.4	458	6.4	71	11.8	67	17.9
After notice of hearing, before hearing opened.....	82	1.0	59	.8	12	2.0	11	2.9
After hearing opened, before Board decision.....	24	.3	19	.3	3	.5	2	.5
By Board decision.....	² 273	3.4	203	2.9	37	6.2	33	8.8
Board-ordered election.....	1,240	15.3	1,110	15.7	73	12.1	57	15.2
Otherwise.....	8	.1	5	.1	3	.5	0	.0

¹ See table 1, footnote 3, for definitions of types of cases² Includes 11 RC, 12 RM, and 10 RD cases dismissed by Board order after a direction of election issued but before an election was held.

Table 11.—Types of Elections Conducted, Fiscal Year 1956

Type of case	Total elections	Type of election			
		Consent ¹	Stipulated ²	Board ordered ³	Regional director directed ⁴
All elections, total.....	5, 094	2, 123	1, 736	1, 218	17
Eligible voters, total.....	476, 001	142, 416	182, 952	148, 996	1, 637
Valid votes, total.....	426, 509	123, 629	167, 250	134, 245	1, 385
RC cases, ⁵ total.....	4, 694	1, 977	1, 624	1, 093	-----
Eligible voters.....	448, 115	135, 727	171, 198	141, 190	-----
Valid votes.....	401, 581	117, 801	156, 428	127, 352	-----
RM cases, ⁵ total.....	252	98	86	68	-----
Eligible voters.....	14, 597	4, 264	6, 924	3, 409	-----
Valid votes.....	12, 987	3, 645	6, 275	3, 067	-----
RD cases, ⁵ total.....	129	46	26	57	-----
Eligible voters.....	11, 289	2, 062	4, 830	4, 397	-----
Valid votes.....	10, 289	1, 916	4, 547	3, 826	-----
UD cases, ⁵ total.....	19	2	0	0	17
Eligible voters.....	2, 000	363	0	0	1, 637
Valid votes.....	1, 652	267	0	0	1, 385

¹ Consent elections are held by an agreement of all parties concerned. Postelection rulings and certifications are made by the regional director.

² Stipulated elections are held by an agreement of all parties concerned, but the agreement provides for the Board to determine any objections and/or challenges.

³ Board-ordered elections are held pursuant to a decision and direction of election by the Board. Postelection rulings on objections and/or challenges are made by the Board.

⁴ These elections are held pursuant to direction by the regional director. Postelection rulings on objections and/or challenges are made by the Board.

⁵ See table 1, footnote 3, for definitions of types of cases.

Table 12.—Results of Union-Shop Deauthorization Polls, Fiscal Year 1956

Affiliation of union holding union-shop contract	Number of polls				Employees involved (number eligible to vote)				Valid votes cast					
	Total	Resulting in deauthorization		Resulting in continued authorization		Total eligible	Resulting in deauthorization		Resulting in continued authorization		Total	Percent of total eligible	Cast for deauthorization	
		Number	Percent of total	Number	Percent of total		Number	Percent of total	Number	Percent of total			Number	Percent of total eligible ¹
Total elections.....	19	13	68 4	6	31 6	2 000	831	41 6	1,169	58 4	1,652	82 6	848	42 4
AFL ²	5	4	80 0	1	20 0	412	279	67 7	133	32 3	360	87 4	257	62 4
AFL-CIO ³	7	5	71 4	2	28 6	741	165	22 3	576	77 7	617	83 3	264	35 6
CIO ²	4	2	50 0	2	50 0	450	87	19 3	363	80 7	343	76 2	127	28 2
Unaffiliated.....	3	2	66 7	1	33 3	397	300	75 6	97	24 4	332	83 6	200	50 4

¹ See 8 (a) (3) of the act requires that, to revoke a union-shop provision, a majority of the employees eligible to vote must vote in favor of deauthorization.

² See table 1, footnote 1.

³ See table 1, footnote 2.

Table 13.—Collective-Bargaining Elections ¹ by Affiliation of Participating Unions, Fiscal Year 1956

Union affiliation	Elections participated in			Employees involved (number eligible to vote)			Valid votes cast			
	Total	Won	Percent won	Total eligible	Employees in units selecting bargaining agent		Total	Percent of total eligible	Cast for the union	
					Number	Percent of total eligible			Number	Percent of total cast
Total.....	2 4, 946	3 230	65 3	2 462, 712	291, 292	63 0	2 414, 568	89 6	268, 531	64 8
AFL ³	1, 720	986	57 3	135, 607	63, 092	46 5	121, 760	89 8	61, 691	50 7
AFL-CIO ⁴	2, 316	1, 430	61 7	224, 527	114, 408	51 0	201, 078	89 6	109, 704	54 6
CIO ³	854	486	56 9	124, 117	60, 119	48 4	111, 526	89 9	56, 379	50 6
Unaffiliated.....	539	328	60 9	84, 554	53, 673	63 5	74, 814	88. 5	40, 757	54 5

¹ The term "collective-bargaining election" is used to cover representation elections requested by a union or other candidate for employee representative or by the employer. This term is used to distinguish this type of election from a decertification election, which is one requested by employees seeking to revoke the representation rights of a union which is already certified or which is recognized by the employer without a Board certification.

² Elections involving two or more unions of different affiliations are counted under each affiliation, but only once in the total. Therefore, the total is less than the sum of the figures or the four groupings by affiliation.

³ See table 1, footnote 1.

⁴ See table 1, footnote 2.

Table 13A.—Outcome of Collective-Bargaining Elections¹ by Affiliation of Participating Unions, and Number of Employees in Units, Fiscal Year 1956

Affiliation of participating unions	Number of elections					Number of employees involved (number eligible to vote)					Total valid votes cast		
	Total	In which representation rights were won by—				Total	In units in which representation rights were won by—						
		AFL affiliates ²	CIO affiliates ²	AFL-CIO affiliates ³	Unaffiliated unions		In which no representative was chosen	AFL affiliates ²	CIO affiliates ²	AFL-CIO affiliates ³		Unaffiliated unions	In units where no representative was chosen
Total.....	4,946	986	486	1,430	328	1,716	462,712	63,092	60,119	114,408	53,673	171,420	414,568
1-union elections:													
AFL.....	1,371	818				553	84,871	45,187				39,684	76,472
AFL-CIO.....	2,014			1,239		775	165,547			83,871		81,676	147,659
CIO.....	587		372			215	63,976		33,561			30,415	57,999
Unaffiliated.....	230				162	68	12,125				8,488	3,637	10,581
2-union elections:													
AFL v. CIO.....	158	60	71			27	28,781	8,125	15,854			4,802	26,063
AFL v. unaffiliated.....	71	26			43	2	8,827	3,655			5,015	157	7,758
AFL v. AFL.....	87	63				24	6,560	5,341				1,219	5,886
AFL-CIO v. unaffiliated.....	118			55	57	6	28,668			9,933	17,021	1,714	25,825
AFL-CIO v. AFL-CIO.....	160			122		38	25,893			18,751		7,142	23,598
CIO v. unaffiliated.....	82		40		40	2	25,023		10,189		14,504	330	21,853
Unaffiliated v. unaffiliated.....	10				10	0	966				966	0	854
3-union elections:													
AFL v. CIO v. unaffiliated.....	9	2	1		5	1	2,413	89	195		2,059	70	2,211
AFL v. AFL v. AFL.....	4	3				1	293	232				61	266
AFL v. AFL v. CIO.....	8	6	2			0	562	242	320			0	523
AFL v. AFL v. unaffiliated.....	2	0			1	1	352	0			183	169	281
AFL-CIO v. AFL-CIO v. unaffiliated.....	13			6	7	0	2,949			699	2,250	0	2,684
AFL-CIO v. AFL-CIO v. AFL-CIO.....	10			8		2	1,446			1,154		292	1,289
AFL v. CIO v. CIO.....	1	0	0			1	52	0	0			52	48
CIO v. CIO v. unaffiliated.....	1		0		1	0	488		0		488	0	443
AFL-CIO v. unaffiliated v. unaffiliated.....	1			0	1	0	24			0	24	0	23
4-union elections:													
AFL v. AFL v. AFL v. AFL.....	1	1				0	74	74				0	66
AFL v. AFL v. AFL v. CIO.....	5	5	0			0	86	86	0			0	69
AFL v. AFL v. CIO v. unaffiliated.....	2	1	0		1	0	2,719	44	0		2,675	0	2,301
5-union elections AFL v. AFL v. AFL v. AFL v. CIO.....	1	1	0			0	17	17	0			0	16

¹ For definition of this term, see table 13, footnote 1.

² See table 1, footnote 2.

³ See table 1, footnote 2.

Table 14.—Decertification Elections by Affiliation of Participating Unions, Fiscal Year 1956

Union affiliation	Elections participated in					Employees involved in elections (number eligible to vote)					Valid votes cast			
	Total	Resulting in certification		Resulting in decertification		Total eligible	Resulting in certification		Resulting in decertification		Total	Percent of total eligible	Cast for the union	
		Number	Percent of total	Number	Percent of total		Number	Percent of total eligible	Number	Percent of total eligible			Number	Percent of total cast
Total elections.....	129	40	31 0	89	69 0	11, 289	5, 691	50 4	5, 598	49 6	10, 289	91 1	5, 528	53. 7
AFL ¹	48	12	25 0	36	75 0	2, 278	1, 164	51 1	1, 114	48 9	2, 111	92 7	1, 028	48 7
AFL-CIO ²	47	16	34 0	31	66 0	5, 479	3, 509	64 0	1, 970	36 0	5, 000	91 3	2, 863	57 3
CIO ¹	26	11	42 3	15	57 7	2, 996	910	30 4	2, 086	69 6	2, 666	89 0	1, 198	44 6
Unaffiliated.....	8	1	12 5	7	87 5	536	108	20 1	428	79 9	512	95 5	449	87 7

¹ See table 1, footnote 1.

² See table 1, footnote 2.

Table 14A.—Voting in Decertification Elections, Fiscal Year 1956

Union affiliation	Elections in which a representative was redesignated					Elections resulting in decertification				
	Employees eligible to vote	Total valid votes cast	Percent casting valid votes	Votes cast for winning union	Votes cast for no union	Employees eligible to vote	Total valid votes cast	Percent casting valid votes	Votes cast for losing union	Votes cast for no union
Total.....	5, 691	5, 329	93 6	3, 522	1, 807	5, 598	4, 960	88 6	1, 604	3, 356
AFL ¹	1, 164	1, 085	93 2	665	420	1, 114	1, 026	92 1	193	833
AFL-CIO ²	3, 509	3, 281	93 5	2, 224	1, 057	1, 970	1, 719	87 3	639	1, 080
CIO ¹	910	857	94 2	556	301	2, 086	1, 809	86 7	632	1, 177
Unaffiliated.....	108	106	98 1	77	29	428	406	94 9	140	266

¹ See table 1, footnote 1.

² See table 1, footnote 2.

Table 15.—Size of Units in Collective-Bargaining and Decertification Elections, Fiscal Year 1956

A. COLLECTIVE-BARGAINING ELECTIONS

Size of unit (number of employees)	Number of elections	Percent of total	Elections in which representation rights were won by—								Elections in which no representative was chosen	
			AFL affiliates ¹		CIO affiliates ¹		AFL-CIO affiliates ²		Unaffiliated unions		Number	Percent
			Number	Percent	Number	Percent	Number	Percent	Number	Percent		
Total.....	4,946	100 0	986	100 0	486	100 0	1,430	100 0	328	100 0	1,716	100 0
1-9.....	853	17 3	223	22 6	48	9 9	280	19 6	45	13 7	257	15 0
10-19.....	935	18 9	192	19 5	74	15 2	324	22 7	49	14 9	296	17 2
20-29.....	581	11 7	128	13 0	49	10 1	182	12 7	36	11 0	186	10 8
30-39.....	436	8 8	89	9 0	53	10 9	122	8 5	23	7 0	149	8 7
40-49.....	314	6 3	71	7 2	33	6 8	87	6 1	18	5 5	105	6 1
50-59.....	254	5 1	37	3 8	28	5 8	74	5 2	19	5 8	96	5 6
60-69.....	183	3 7	30	3 1	27	5 6	52	3 6	12	3 7	62	3 6
70-79.....	146	3 0	25	2 5	15	3 1	30	2 1	9	2 8	67	3 9
80-89.....	123	2 5	25	2 5	13	2 7	34	2 4	6	1 8	45	2 6
90-99.....	97	2 0	22	2 2	7	1 4	15	1 0	9	2 8	44	2 6
100-149.....	345	7 0	57	5 8	38	7 8	86	6 0	26	7 9	138	8 0
150-199.....	189	3 8	34	3 5	26	5 3	37	2 6	20	6 1	72	4 2
200-299.....	181	3 7	20	2 0	26	5 3	39	2 7	16	4 9	80	4 7
300-399.....	96	1 9	12	1 2	15	3 1	21	1 5	6	1 8	42	2 5
400-499.....	66	1 3	7	7	12	2 5	18	1 3	8	2 4	21	1 2
500-599.....	34	7	4	4	6	1 3	10	7	5	1 5	9	5
600-799.....	47	1 0	4	4	4	8	8	5	11	3 4	20	1 2
800-999.....	21	4	4	4	3	6	1	1	3	9	10	6
1,000-1,999.....	29	6	0	0	7	1 4	6	4	4	1 2	12	7
2,000-2,999.....	10	2	1	1	2	4	1	1	2	6	4	2
3,000-3,999.....	2	(3)	1	1	0	0	0	0	0	0	1	1
4,000-4,999.....	1	(3)	0	0	0	0	1	1	0	0	0	0
5,000-9,999.....	3	.1	0	0	0	0	2	1	1	3	0	0
10,000 and over.....	0	0	0	0	0	0	0	0	0	0	0	0

B. DECERTIFICATION ELECTIONS

	129	100 0	12	100 0	11	100 0	16	100 0	1	100 0	89	100 0
Total.....												
1-9.....	25	19 4	1	8 3	1	9 1	1	6 3	0	.0	222	24 8
10-19.....	28	21 7	2	16 7	1	9 1	3	18 7	0	.0	222	24 8
20-29.....	11	8 5	2	16 7	0	0	1	6 3	0	.0	8	9 0
30-39.....	10	7 8	2	16 7	0	0	1	6 3	0	.0	7	7 9
40-49.....	7	5 4	1	8 3	1	9 1	1	6 3	0	.0	4	4 5
50-59.....	4	3 1	0	.0	1	9 1	1	6 3	0	.0	2	2 2
60-69.....	7	5 4	0	.0	1	9 1	1	6 2	0	.0	5	5 6
70-79.....	8	6 2	1	8 3	3	27	2	6 2	0	.0	3	3 4
80-89.....	0	0	0	0	0	0	0	0	0	.0	0	0
90-99.....	3	2 3	0	0	0	0	0	6 2	0	.0	0	0
100-149.....	9	7 0	2	16 7	0	0	1	6 2	1	100 0	2	2 2
150-199.....	4	3 1	0	0	1	9 1	1	6 2	0	.0	5	5 6
200-299.....	7	5 4	0	0	1	9 1	2	12 5	0	.0	4	4 1
300-399.....	1	8	0	.0	0	.0	0	0	0	.0	1	1 1
400 and over.....	5	3 9	1	8 3	0	.0	2	12 5	0	.0	2	2 2

¹ See table 1, footnote 1.
² See table 1, footnote 2.
³ Less than one-tenth of 1 percent.

Table 16.—Geographic Distribution of Collective-Bargaining Elections, Fiscal Year 1956

Division and State ¹	Total	Number of elections in which representation rights were won by—				In which no representative was chosen	Employees eligible to vote	Total valid votes cast	Valid votes cast for—					Employees in units choosing representation
		AFL affiliates ²	CIO affiliates ²	AFL-CIO affiliates ³	Unaffiliated unions				AFL affiliates ²	CIO affiliates ²	AFL-CIO affiliates ³	Unaffiliated unions	No union	
Total.....	4,946	986	486	1,430	328	1,716	462,712	414,568	61,691	56,379	109,704	40,757	146,037	291,292
New England.....	376	64	36	120	22	134	46,842	42,319	8,271	7,264	9,242	1,874	15,668	28,683
Maine.....	31	8	1	5	2	15	10,419	9,413	1,843	1,973	1,503	153	3,941	4,134
New Hampshire.....	22	5	2	7	0	8	1,541	1,391	220	330	393	31	417	1,101
Vermont.....	15	0	4	7	1	3	966	880	42	447	129	18	244	866
Massachusetts.....	189	35	21	54	12	67	17,268	15,421	2,345	2,846	3,716	952	5,562	10,462
Rhode Island.....	45	4	6	13	3	19	4,395	4,077	105	735	946	417	1,874	2,177
Connecticut.....	74	12	2	34	4	22	12,253	11,137	3,716	933	2,555	303	3,630	9,943
Middle Atlantic.....	955	196	115	257	90	297	92,237	83,311	10,311	12,163	23,303	11,392	26,142	60,302
New York.....	387	88	34	118	36	111	35,257	30,776	5,452	3,648	8,279	4,714	8,683	23,301
New Jersey.....	236	40	43	59	20	74	22,786	20,646	1,232	4,547	7,867	1,948	5,052	16,556
Pennsylvania.....	332	68	38	80	34	112	34,194	31,889	3,627	3,968	7,157	4,730	12,407	20,445
East North Central.....	1,172	208	148	347	103	366	108,333	98,079	14,068	14,771	24,318	15,386	29,536	77,762
Ohio.....	332	59	45	100	26	102	36,507	33,140	4,607	5,576	7,470	4,445	11,042	23,799
Indiana.....	162	32	18	43	18	51	20,430	18,644	2,407	1,542	4,964	5,992	3,739	16,393
Illinois.....	314	59	22	89	32	112	26,060	23,604	3,597	3,289	7,038	1,872	7,808	18,490
Michigan.....	260	35	57	86	16	66	18,042	15,965	1,841	3,872	3,168	2,372	4,712	13,505
Wisconsin.....	104	23	6	29	11	35	7,294	6,726	1,616	492	1,678	705	2,235	5,575
West North Central.....	564	135	35	189	21	184	36,697	32,681	5,534	3,570	10,726	1,383	11,468	24,159
Iowa.....	65	23	7	15	0	20	5,259	4,368	878	337	1,434	174	1,545	3,717
Minnesota.....	148	34	10	48	11	45	13,468	12,169	1,297	2,147	4,075	293	4,354	8,512
Missouri.....	209	51	12	69	7	70	13,502	12,058	2,510	815	3,893	810	4,021	8,997
North Dakota.....	23	2	0	13	0	8	505	471	43	0	227	0	201	292
South Dakota.....	16	6	0	7	0	3	269	239	98	0	74	0	67	232
Nebraska.....	46	10	2	13	1	20	1,415	1,311	280	116	288	37	590	759
Kansas.....	57	9	4	24	2	18	2,279	2,065	419	155	732	69	690	1,650
South Atlantic.....	461	98	39	114	16	194	47,019	43,271	5,989	5,661	9,889	1,282	20,450	21,985
Delaware.....	9	2	0	2	1	4	389	376	39	0	174	9	154	196
Maryland.....	64	14	4	15	4	27	6,724	6,168	376	2,278	735	696	2,083	5,371

District of Columbia.....	29	4	3	11	1	10	1,006	931	160	128	274	13	356	747
Virginia.....	78	20	8	18	5	27	7,935	7,323	1,540	899	1,906	244	2,734	4,538
West Virginia.....	35	7	5	8	1	14	2,164	1,999	268	72	699	198	3,762	1,313
North Carolina.....	64	11	10	12	2	29	8,230	7,599	908	1,299	1,369	52	3,971	2,713
South Carolina.....	15	1	1	2	2	9	2,450	2,282	172	382	259	61	1,415	380
Georgia.....	74	21	3	19	0	31	7,921	7,380	1,093	139	2,771	0	3,377	3,560
Florida.....	93	18	5	27	0	43	10,200	9,213	1,433	404	1,709	9	5,598	3,167
East South Central.....	225	23	16	54	12	120	28,901	26,707	1,998	1,939	7,168	2,472	13,130	11,436
Kentucky.....	79	16	1	21	5	36	4,270	4,019	607	69	1,057	364	1,922	1,953
Tennessee.....	82	3	8	16	5	50	18,917	17,427	1,022	1,291	4,756	1,949	8,409	7,240
Alabama.....	42	3	5	13	2	19	2,759	2,461	284	513	507	159	998	1,636
Mississippi.....	22	1	2	4	0	15	2,955	2,800	85	66	848	0	1,801	607
West South Central.....	370	83	33	91	15	148	33,337	30,191	5,311	3,628	7,285	1,849	12,118	18,821
Arkansas.....	48	7	5	12	0	24	5,134	4,693	703	642	1,019	126	2,203	1,980
Louisiana.....	57	16	2	14	4	21	5,246	4,655	894	37	2,124	128	1,472	3,581
Oklahoma.....	58	12	9	10	0	27	5,610	5,208	567	1,196	487	61	2,897	1,927
Texas.....	207	48	17	55	11	76	17,347	15,635	3,147	1,753	3,655	1,534	5,546	11,333
Mountain.....	217	50	17	74	6	70	18,920	16,735	2,871	2,771	3,176	2,416	5,501	11,106
Montana.....	19	5	1	4	0	9	1,159	1,073	442	173	155	0	303	863
Idaho.....	34	4	4	14	1	11	3,886	3,198	354	874	359	1,089	522	3,449
Wyoming.....	2	0	0	1	0	1	38	38	0	0	21	0	17	32
Colorado.....	86	18	3	36	0	29	6,703	6,257	636	704	1,705	0	3,212	1,883
New Mexico.....	22	5	2	7	3	5	2,048	1,837	346	241	385	613	252	1,862
Arizona.....	18	6	4	4	1	3	2,149	1,931	214	256	110	672	679	930
Utah.....	21	3	1	5	1	11	1,826	1,437	383	280	334	32	408	1,136
Nevada.....	15	9	2	3	0	1	1,111	964	496	243	107	10	108	951
Pacific.....	524	120	38	161	27	178	44,858	36,436	7,176	3,411	13,281	1,726	10,842	32,571
Washington.....	70	17	3	28	3	19	2,944	2,411	712	266	715	123	595	2,447
Oregon.....	73	13	7	24	4	25	3,276	2,927	419	239	1,168	182	919	2,365
California.....	381	90	28	109	20	134	38,638	31,098	6,045	2,906	11,398	1,421	9,328	27,759
Outlying areas.....	82	9	9	23	16	25	5,568	4,838	162	1,201	1,316	977	1,182	4,467
Alaska.....	12	3	1	6	0	2	511	491	25	35	412	0	19	501
Hawaii.....	27	5	0	3	8	11	948	924	73	0	86	311	444	457
Puerto Rico.....	42	1	8	13	8	12	4,040	3,380	64	1,166	771	666	713	3,440
Virgin Islands.....	1	0	0	1	0	0	69	43	0	0	37	0	6	69

¹ The States are grouped according to the method used by the Bureau of the Census, U. S. Department of Commerce.

² See table 1, footnote 1.

³ See table 1, footnote 2.

Table 17.—Industrial Distribution of Collective-Bargaining Elections, Fiscal Year 1956

Industrial group ¹	Number of elections					Eligible voters	Valid votes cast	
	Total	In which representation rights were won by—			In which no representative was chosen			
		AFL affiliates ²	CIO affiliates ²	AFL-CIO affiliates ³				Unaffiliated unions
Total.....	4,946	986	486	1,430	328	1,716	462,712	414,568
Manufacturing.....	3,457	658	421	975	248	1,155	394,228	354,401
Ordnance and accessories.....	24	14	1	2	2	5	6,242	5,962
Food and kindred products.....	448	98	30	147	19	154	33,758	29,878
Tobacco manufacturers.....	12	0	0	6	2	4	2,420	2,230
Textile mill products.....	79	9	10	18	5	37	23,134	21,176
Apparel and other finished products made from fabrics and similar material.....	61	4	4	7	6	40	11,699	10,366
Lumber and wood products.....	198	37	30	52	8	71	15,425	14,062
Furniture and fixtures.....	137	22	17	43	6	49	12,296	11,336
Paper and allied products.....	171	46	13	51	6	55	20,256	17,994
Printing, publishing, and allied industries.....	141	28	13	46	6	48	6,121	5,721
Chemicals and allied products.....	233	60	29	54	20	70	24,389	22,207
Products of petroleum and coal.....	73	12	16	24	9	12	9,902	9,040
Rubber products.....	53	8	7	18	6	14	7,502	6,947
Leather and leather products.....	72	12	10	19	4	27	21,216	19,486
Stone, clay, and glass products.....	117	25	14	45	7	26	12,060	11,028
Primary metal industries.....	218	39	35	47	28	69	23,894	21,750
Fabricated metal products (except machinery and transportation equipment).....	391	69	58	108	28	128	34,347	31,245
Machinery (except electrical).....	429	73	58	119	27	152	56,868	47,540
Electrical machinery, equipment, and supplies.....	203	33	21	47	27	75	31,945	28,945
Aircraft and parts.....	72	16	6	19	3	28	11,041	10,354
Ship and boat building and repairing.....	19	3	0	9	2	5	1,606	1,396
Automotive and other transportation equipment.....	119	20	24	35	12	28	8,335	7,603
Professional, scientific, and controlling instruments.....	32	8	4	9	3	8	6,441	5,947
Miscellaneous manufacturing.....	155	22	21	50	12	50	13,341	12,188
Fisheries.....	5	0	0	5	0	0	127	94
Mining.....	59	9	7	13	7	23	6,987	6,363
Metal mining.....	19	6	4	1	4	4	3,395	2,979
Coal mining.....	0	0	0	0	0	0	0	0
Crude petroleum and natural gas production.....	6	0	0	4	0	2	295	282
Nonmetallic mining and quarrying.....	34	3	3	8	3	17	3,297	3,102
Construction.....	46	14	5	18	1	8	6,716	4,911
Wholesale trade.....	472	96	23	148	19	186	16,066	14,542
Retail trade.....	470	114	8	137	20	191	18,012	15,992
Finance, insurance, and real estate.....	13	0	1	1	0	11	835	779
Transportation, communication, and other public utilities.....	355	79	14	113	28	121	16,754	14,894
Highway passenger transportation.....	8	2	1	1	0	4	418	397
Highway freight transportation.....	129	38	1	30	12	48	3,943	3,400
Water transportation.....	28	5	3	6	5	9	1,695	1,545
Warehousing and storage.....	67	13	4	22	6	22	1,323	1,251
Other transportation.....	14	0	1	7	3	3	751	701
Communication.....	69	16	4	33	1	15	2,182	1,722
Heat, light, power, water, and sanitary services.....	40	5	0	14	1	20	6,442	5,878
Services.....	69	16	7	20	5	21	2,987	2,592

¹ Source Standard Industrial Classification, Division of Statistical Standards, U. S. Bureau of the Budget, Washington, 1945.² See table 1, footnote 1.³ See table 1, footnote 2.

Table 18.—Injunction Litigation Under Sec. 10 (j) and (l), Fiscal Year 1956

Proceedings	Number of cases instituted	Number of applications granted	Number of applications denied	Cases settled, withdrawn, inactive, pending, etc.
Under sec. 10 (j):				
(a) Against unions.....	1	0	0	1 withdrawn.
(b) Against employers.....	0	0	0	0
Under sec 10 (l).....	78	22	5	32 settled ³ 6 withdrawn. 7 alleged illegal activity suspended. ⁴ 9 pending.
Total.....	¹ 79	22	5	55.

¹ 1 injunction granted in case instituted during previous fiscal year.² 1 injunction denied in case instituted during previous fiscal year.³ 1 case settled which was instituted during previous fiscal year.⁴ Petitions filed although illegal activity suspended prior to filing; no order to show cause issued.⁵ See footnotes 1, 2, and 3.

Table 19.—Litigation for Enforcement or Review of Board Orders, July 1, 1955, to June 30, 1956; and July 5, 1935, to June 30, 1956

Results	July 1, 1955, to June 30, 1956		July 5, 1935, to June 30, 1956	
	Number	Percent	Number	Percent
Cases decided by United States courts of appeals.....	1 95	100 0	1, 633	100 0
Board orders enforced in full.....	1 57	60 0	977	59 8
Board orders enforced with modifications.....	13	13 7	327	20 0
Remanded to Board.....	5	5 3	34	2 1
Board orders partially enforced and partially remanded.....	2	2 0	11	.7
Board orders set aside.....	18	19 0	284	17 4
Cases decided by United States Supreme Court.....	7	100 0	97	100 0
Board orders enforced in full.....	3	43 0	67	69 1
Board orders enforced with modifications.....			11	11 3
Board orders set aside.....	3	43 0	10	10 3
Remanded to Board.....			1	1 0
Remanded to court of appeals.....			6	6 3
Board's request for remand or modification of enforcement order denied.....			1	1 0
Contempt case enforced.....	1	14 0	1	1 0

¹ Includes 1 case summarily enforced because of respondent's failure to take exception to the intermediate report.

Table 20.—Record of Injunctions Petitioned for, or Acted Upon, Fiscal Year 1956

Case No.	Union and company	Date petition for injunction filed	Type of petition	Temporary restraining order		Date temporary injunction granted	Date injunction denied	Date injunction proceedings dismissed or dissolved	Date Board decision and/or order
				Date issued	Date lifted				
14-CD-39...	AFL-Bridge, Structural Iron Workers Local 595 (Bechtel Corp)	Oct 12, 1953	10 (I)	Oct 12, 1953 (consent)	Oct 10, 1955	-----	-----	Oct 10, 1955	May 20, 1955
16-CC-22....	AFL-Teamsters, Local 968 (Red Ball Motor Freight)	Feb 24, 1954	10 (I)	-----	-----	-----	-----	Mar 5, 1956 (Tex)	Jan 25, 1955
		Mar 19, 1954	10 (I)					-----	-----
14-CC-56....	AFL-Meat Cutters, Local 88 (Swift & Co)	Apr 20, 1954	10 (I)	-----	-----	-----	-----	July 30, 1954	July 26, 1955
20-CA-958..	Pacific Telephone & Telegraph Co (Order of Repeatermen and Toll Test-board)	June 8, 1954	10 (I)	-----	-----	-----	-----	Feb 7, 1955 ¹	Jan 9, 1956
3-CC-40, 3-CD-9	AFL-Teamsters, Local 182 (Pilot Freight Carriers, Inc)	July 9, 1954	10 (I)	-----	-----	-----	-----	Aug 27, 1954	Sept 16, 1955
6-CD-33, 35.	AFL-Plumbers, Local 449 (Refrigeration Equipment Co)	Aug 9, 1954	10 (I)	-----	-----	-----	-----	Aug 13, 1954	Oct 10, 1955
16-CC-34, 43	AFL-Teamsters, Local 47 (Texas Industries, Inc, and McCann Construction)	Aug 18, 1954	10 (I)	-----	-----	-----	-----	Aug 24, 1954	Oct 14, 1955
8-CC-29....	AFL-Carpenters, Local 11 (General Millwork Corp)	Sept 8, 1954	10 (I)	-----	-----	-----	-----	(?)	Sept 13, 1955
13-CC-90....	AFL-Retail Clerks and Local 1460 (Jewel Food Stores)	Sept 8, 1954	10 (I)	-----	-----	-----	-----	Sept 14, 1954 ³	Nov 21, 1955
21-CC-190..	AFL-Teamsters, Local 6-26 (Lewis Food Co)	Sept 30, 1954	10 (I)	-----	-----	-----	-----	Oct 19, 1954	May 2, 1956
39-CC-20....	AFL-Teamsters, Local 657 et al (Southwestern Motor Transport)	Nov. 24, 1954	10 (I)	-----	-----	-----	-----	-----	June 18, 1956
3-CC-42....	AFL-Teamsters, Local 375 (Service Transport Co)	Dec 20, 1954	10 (I)	-----	-----	-----	-----	(?)	Dec 14, 1955
13-CD-36, 37.	AFL-Sheet Metal Workers, Local 1 and John Stables and AFL-Plumbers, Pipe Trades Council 34 and Local 353 (Refrigeration and Air Conditioning Contractors of Peoria and Meyer Furnace Co)	Mar 24, 1955	10 (I)	-----	-----	-----	-----	(?)	Nov 30, 1955
2-CC-324....	AFL-Carpenters, Casket Makers, Local 3128 (Metropolitan New York and New Jersey Casket Manufacturers Association)	Apr. 11, 1955	10 (I)	-----	-----	-----	-----	(?)	Jan. 19, 1956
35-CC-28, 29.	AFL-Teamsters, Locals 135, 369 (Marsh Foodliners, Inc)	Apr. 12, 1955	10 (I)	-----	-----	-----	-----	May 3, 1955	Dec 21, 1955
17-CC-29....	AFL-Electrical Workers, Local 124 (United Contractors Council).	Apr 14, 1955	10 (I)	-----	-----	-----	-----	May 12, 1955	Sept 6, 1955

16-CC-57	AFL-Teamsters, Local 577 (Ferguson-Steele Motor Co.)	Apr. 19, 1955	10 (1)		(?)		Oct. 7, 1955	Settled.
19-CC-73	AFL-Teamsters, Local 148 (Harold Evans)	Apr. 22, 1955	10 (1)		(?)		Feb. 6, 1956	Dec. 28, 1955.
21-CC-195	AFL-Roofers, Local 45 et al. (Roofing Contractors Association of San Diego County)	Apr. 25, 1955	10 (1)		(?)		Oct. 6, 1955	Withdrawn.
9-CC-73	AFL-Plumbers, Local 108 (Sears, Roebuck & Co.)	May 6, 1955	10 (1)		May 10, 1955 (consent)		Aug. 29, 1955	June 15, 1955.
1-CC-116	AFL-Hod Carriers, Local 560, and Salvatore Pavone and AFL-Teamsters, Local 379, and Nicholas Gargane, agent (Pascale Trucking Co.)	May 17, 1955	10 (1)		(?)		Sept. 30, 1955	Settled in part. Dismissed in part.
2-CC-333	AFL-Teamsters, Local 680 (Crowley's Milk Co., Inc.)	May 31, 1955	10 (1)			July 11, 1955		
16-CC-65	AFL-Teamsters, Local 886 (Galveston Truck Lines)	June 1, 1955	10 (1)		(?)		Dec. 16, 1955	July 29, 1955.
2-CC-337, 338	CIO-Retail and Wholesale Employees District 65 (Cowan Publishing Corp. and Circulation Associates).	June 17, 1955	10 (1)		(?)		Dec. 7, 1955	Nov. 15, 1955
21-CC-198, 200.	AFL-Engineers, Operating, Local 12 (Crook Co. and Shepherd Machinery Co.)	June 17, 1955	10 (1)		July 25, 1955		Jan. 27, 1956	Jan. 9, 1956
2-CC-340	CIO-Furniture Workers, Bedding, Curtain & Drapery Workers Union, Local 140 (Cenit Noll Sleep Products, Inc.).	July 1, 1955	10 (1)		(?)		Mar. 13, 1956	Feb. 3, 1956.
8-CC-33	AFL-Teamsters, Locals 135, 407 (National Terminals Corp.).	July 6, 1955	10 (1)		(?)		Aug. 3, 1955	Withdrawn.
9-CC-75	AFL-Hod Carriers, Local 661, and AFL-Carpenters, Local 2310 (Clark Construction Co.).	July 8, 1955	10 (1)		(?)		Dec. 12, 1955	Settled.
10-CC-109	AFL-Teamsters, Local 79 (Redwing Carriers, Inc. and Haulsmore, Inc.)	July 12, 1955	10 (1)		July 22, 1955		Sept. 26, 1955	Sept. 1, 1955.
4-CC-59	AFL-Teamsters, Local 107 (Horn & Hardart Baking Co.).	July 13, 1955	10 (1)		July 27, 1955		June 27, 1956	Apr. 30, 1956.
2-CC-346, 347, 348	AFL-Machinists, Lodge 1903, and AFL-Teamsters and Local 553 (Flying Tigers Line, Inc.).	July 20, 1955	10 (1)		July 28, 1955 (I. A. M. International only)		Dec. 5, 1955	Withdrawn.
13-CC-108	AFL-Teamsters, Local 672 (Standard Oil Co.).	July 27, 1955	10 (1)		Aug. 15, 1955		Mar. 13, 1956	Feb. 17, 1956.
10-CC-101-108, 110-117	AFL-Atlanta Building & Construction Trades Council (Atlanta Steel Erectors, Inc.).	July 29, 1955	10 (1)		Aug. 20, 1955		Oct. 31, 1955	Withdrawn
10-CC-119, 120	AFL-Garment Workers, Ladies, Local 408 (Hoover Motor Express Co.).	Aug. 11, 1955	10 (1)		(?)		Mar. 19, 1956	Settled.
9-CC-76	CIO-Oil Chemical & Atomic Workers, Local 10-445 (Huntington Coca-Cola Bottling Co.).	Aug. 15, 1955	10 (1)		(?)		Apr. 10, 1956	I. R.

See footnotes at end of table.

Table 20.—Record of Injunctions Petitioned for, or Acted Upon, Fiscal Year 1956—Continued

Case No.	Union and company	Date petition for injunction filed	Type of petition	Temporary restraining order		Date temporary injunction granted	Date injunction denied	Date injunction proceedings dismissed or dissolved	Date Board decision and/or order
				Date issued	Date lifted				
14-CC-78...	AFL-Meat Cutters, Local 585 (Daniel Grocer Co)	Aug. 19, 1955	10 (1)			(2)		Dec. 20, 1955	Settled.
2-CC-357...	AFL-Machinists and Lodge 1903 (Flying Tigers Line, Inc.)	Aug. 22, 1955	10 (1)			(2)		Feb. 1, 1956	Withdrawn.
13-CC-110...	AFL-Engineers, Operating, Local 139 and CIO-Auto Workers and Local 833 et al. (Paper Makers Importing Co.)	Aug. 23, 1955	10 (1)			(2)			Aug. 30, 1955
18-CC-32...	AFL-Teamsters, Locals 827, 120 (Seeger Refrigerator Co.)	Aug. 24, 1955	10 (1)			(2)		Sept. 14, 1955	Withdrawn.
8-CC-37...	AFL-Teamsters, Local 20 (National Cement Products Co)	Sept. 7, 1955	10 (1)			(2)			May 10, 1956.
14-CC-85...	AFL-Teamsters, Local 618 (Mars Oil Co)	Sept 13, 1955	10 (1)			(2)		Mar. 1, 1956	Settled.
2-CC-355...	AFL-Teamsters, Local 338 (Crowley's Milk Co.)	Sept. 15, 1955	10 (1)				Nov. 15, 1955		
2-CC-350...	AFL-Teamsters, Local 810 (Fireproof Products Co., Inc)	Sept 20, 1955	10 (1)			(2)			Settled
6-CC-113, 114.	AFL-Sheet Metal Workers, Local 12 (Felhelm Heating & Roofing Co and H. Platt Co)	Oct. 6, 1955	10 (1)			(2)		Dec. 20, 1955	Nov. 2, 1955.
11-CC-9...	AFL-Sheet Metal Workers, Local 51 (W. H. Arthur Co.)	Oct 11, 1955	10 (1)			(2)		May 21, 1956	Apr. 27, 1956.
2-CC-362, 363.	AFL-Teamsters, Locals 976, 277 and Joint Council No. 67 (Cache Valley Dairy Association and Dairy Distributors, Inc.)	Oct. 13, 1955	10 (1)			Jan. 17, 1956 (in part)			Dec. 16, 1955 (Local 277 only).
17-CC-39...	AFL-Machinists, District Lodge 71 (R. L. Faubion Co.).	Oct 17, 1955	10 (1)			(2)		Mar. 20, 1956	Withdrawn.
2-CC-358 and 2-CD-114	AFL-Engineers, Operating Local 138 and AFL-Teamsters, Local 282, and John Cody et al. (Long Island Lighting Co.).	Oct 18, 1955	10 (1)			(2)			Apr. 17, 1956, as to Cody and Local 282.
17-CC-38...	AFL-Teamsters, Local 659, and AFL-Hod Carriers, Local 1140 (Associated General Contractors of Omaha).	Oct 20, 1955	10 (1)			(2)			
2-CC-360, 361, 364.	{ AFL-Teamsters, Local 560, and AFL-Jewelry Workers, Industrial Prod and Novelty Workers, Local 21 (Swift Package Co., et al)	Oct. 21, 1955	10 (1)			{ Oct. 31, 1955 Local 560 (consent) Nov. 1, 1955 Local 21 Nov. 3, 1955		Jan. 19, 1956	Dec. 28, 1955.
10-CC-131...	AFL-Teamsters, Truck Drivers and Helpers, Local 728 (Empire State Express, Inc.)	Oct. 24, 1955	10 (1)						
1-CC-132...	CIO-Packinghouse Workers, Local 11 et al. (Interstate Beef Co.).	Oct 26, 1955	10 (1)			(2)		Feb. 8, 1956	Settled.

14-CC-86	AFL-(Teamsters) Automotive, Petroleum and Allied Industries Employees Union, Local 618 (Incorporated Oil Co.).	Oct. 31, 1955	10 (1)			Nov. 22, 1955			
10-CC-130	AFL-Teamsters, Local 327 (B & S Motor Lines, Inc.).	Nov. 1, 1955	10 (1)			Nov. 14, 1955			
14-CB-353	AFL-Shoe Workers, Locals 744 et al. and CIO-Shoe Workers, Locals 231 et al. (Brown Shoe Co.).	Nov. 21, 1955	10 (1)			(?)		Jan. 3, 1956	Withdrawn.
10-CC-133	AFL-Electrical Workers, Local 253 (Alabama Broadcasting System).	Nov. 22, 1955	10 (1)			(?)		Apr. 30, 1956	Settled.
2-CC-366	AFL-Auto Workers, Local 224 (Queen Ribbon & Carbon Co.).	Nov. 22, 1955	10 (1)			(?)			
20-CD-45	Longshoremen and Warehousemen Union, Local 54 (Stockton Elevators).	Nov. 23, 1955	10 (1)					Jan. 5, 1956	Withdrawn.
14-CC-87	AFL-Teamsters, Local 688 (Kroger Co.)	Nov. 25, 1955	10 (1)			(?)		Apr. 12, 1956	Withdrawn.
5-CC-51	Longshoremen Association and Locals 953, 858, 829, 921, 1355, 1429 (Steamship Trade Association of Baltimore, Inc.)	Nov. 30, 1955	10 (1)			(?)		Apr. 12, 1956	Settled.
3-CC-47	CIO-Textile Workers (Triangle Finishing Corp)	Dec. 5, 1955	10 (1)			(?)		Apr. 9, 1956	Settled.
21-CC-213	AFL-Teamsters, Locals 208, 224, 630, 595 (California Association of Employers).	Dec. 6, 1955	10 (1)			(?)		June 19, 1956	Settled.
14-CC-88	AFL-Teamsters, Local 688 (Coca-Cola Bottling Co. of St. Louis).	Dec. 6, 1955	10 (1)					Jan. 27, 1956	
2-CC-371	Newspaper & Mail Deliverers Union of New York and Vicinity (Brooklyn Weekly and Brooklyn Daily, Inc.).	Dec. 23, 1955	10 (1)	Dec. 23, 1955	Jan. 26, 1956			Jan. 26, 1956	Withdrawn.
14-CC-91-92	AFL-Plumbers, Building and Construction and Metal Trades Division, Local 562 (St. Louis City Water Co.).	Dec. 27, 1955	10 (1)			(?)			
10-CC-136, 137.	AFL-St. Petersburg Building and Construction Trades Council and AFL-Carpenters, Local 531, and AFL-Painters, Local 233 (A. C. Samford, Inc.)	Jan. 10, 1956	10 (1)			(?)		May 17, 1956	Settled.
17-CC-43, 44.	AFL-Teamsters and Local 554 (Clark Bros. Transfer Co.).	Feb. 3, 1956	10 (1)						
14-CC-93	AFL-Teamsters, Local 688 (Coca-Cola Bottling Co. of St. Louis).	Feb. 13, 1956	10 (1)			Feb. 23, 1956			June 8, 1956.
18-CC-36	AFL-Teamsters, Local 1139 (Telex, Inc.).	Feb. 27, 1956	10 (1)			(?)		Mar. 13, 1956	Settled.
36-CC-45-47.	AFL-Teamsters, Local 324, Joint Council No. 37, and Western Council and AFL-Ladies Garment Workers, Local 1-53 (Yaquina Bay Dock & Dredge Co.).	Feb. 27, 1956	10 (1)			(?)			June 7, 1956 (except as to Local 1-53).
7-CC-42, 7-CD-18.	AFL-Teamsters, Local 299, CIO-Shipbuilding Workers and Local 46 (Detroit Marine Terminals, Inc.).	Mar. 13, 1956	10 (1)			(?)		June 4, 1956	May 17, 1956.

See footnote at end of table

Table 20.—Record of Injunctions Petitioned for, or Acted Upon, Fiscal Year 1956—Continued

Case No.	Union and company	Date petition for injunction filed	Type of petition	Temporary restraining order		Date temporary injunction granted	Date injunction denied	Date injunction proceedings dismissed or dissolved	Date Board decision and/or order
				Date issued	Date lifted				
36-CC-44...	AFL-Teamsters, Local 501, and Joint Council No. 37 (A. F. Lowes Lumber Co.)	Mar. 26, 1956	10 (1) (W. D. Wash.)			(?)			June 7, 1956.
2-CC-379...	AFL-Teamsters and Locals 641, 506 (Ruffalo Trucking Service).	Mar. 26, 1956	10 (1)			Apr. 13, 1956 (consent) locals only			
2-CC-373...	AFL-Teamsters, Local 522 (Fodders-Quigan Corp.).	Mar. 29, 1956	10 (1)			(?)			
36-CC-44...	AFL-Teamsters, Local 162, and Joint Council No. 37 (A. F. Lowes Lumber Co.).	Mar. 29, 1956	10 (1) (Oreg.)			(?)			June 7, 1956.
17-CC-39...	AFL-Machinists, District Lodge No. 71 (R. L. Faubion Co.).	Mar. 29, 1956	10 (1)			(?)		Mar. 20, 1956	Withdrawn.
36-CC-48, 49.	AFL-Teamsters, Western Conference et al. (Central Dock Co. and Pacific Lumber Transport).	Mar. 29, 1956	10 (1)			(?)			June 7, 1956.
35-CC-34...	AFL-Teamsters, Local 135 (Capital Paper Co. and Consolidated Sales, Inc)	Mar. 29, 1956	10 (1)			Apr. 13, 1956			
32-CC-12...	AFL-Teamsters, Local 984 (The Caradine Co., Inc.).	Mar. 30, 1956	10 (1)			(?)			
8-CC-41....	AFL-Teamsters, Local 400, and AFL-Retail Clerks, Locals 880, 41, and AFL-Meat Cutters, Local 427 (Bondi's Mother Hubbard Market).	Apr. 6, 1956	10 (1)			(?)			
15-CC-47...	AFL-Teamsters, Local 270 (George J. Hefler Drayage Co.).	Apr. 19, 1956	10 (1)			(?)		May 31, 1956	May 21, 1956.
2-CC-384...	AFL-Teamsters, Local 852 (Ruffalo Trucking Service).	Apr. 20, 1956	10 (1)			(?)			
13-CC-114..	AFL-Teamsters, Locals 126 and 200 and Central States Drivers Council (Fred Rueping Leather Co.).	Apr. 24, 1956	10 (1)			May 25, 1956			
2-CC-387...	AFL-Teamsters, Local 469 (Ford Motor Co.).	Apr. 25, 1956	10 (1)	Apr. 25, 1956	May 3, 1956	May 3, 1956			
30-CC-28...	AFL-Cheyenne Building and Construction Trades Council et al. (Atlantis Investment Co.).	May 7, 1956	10 (1)			(?)			
8-CC-42....	AFL-Teamsters, Local 92 (Canton Hardware Co.).	May 8, 1956	10 (1)			(?)			Withdrawn.
10-CC-141..	AFL-Teamsters, Local 728 (Genuine Parts Co.).	May 8, 1956	10 (1)				May 23, 1956		
39-CC-27, 39-CD-14,21.	AFL-Engineers, Operating Local 450 (Industrial Painters & Sand Blasters).	May 9, 1956	10 (1)			(?)			

1-CC-149, 151	CIO-Steel Workers and Local 5246 (Barry Control, Inc).	May 11, 1956	10 (1)		May 17, 1956
15-CC-48	AFL-Teamsters, Local 270 (Genuine Parts Co).	May 16, 1956	10 (1)		June 11, 1956
5-CC-61	AFL-Roanoke Building and Construction Trades Council et al (Kroger Co, The).	May 18, 1956	10 (1)		June 2, 1956
35-CC-35, 35-CD-24.	AFL-Carpenters, et al (Wendnagel & Co).	May 24, 1956	10 (1)		(?)
10-CC-205, 206, 211, 212.	CIO-Glass Workers and Local 117 (Mason & Dixon Lines, Inc., and Silver Fleet Motor Express, Inc)	May 29, 1956	10 (1)		June 12, 1956
10-CC-173- 176, 178- 185, 201, 207-210, 187, 189, 191, 193, 200, 202.	AFL-Engineers, Operating Local 926 (Campbell Coal Co and Associated General Contractors of America, Inc., Georgia Branch).	June 6, 1956	10 (1)		
6-CC-121	Mine Workers, United of America, District 50 and Region 22 (Carnation Co)	June 6, 1956	10 (1)		June 22, 1956
2-CD-122- 124.	AFL-Lathers, et al (Newark & Essex Plastering Co. and Alexander Ziemba).	June 7, 1956	10 (1)		
2-CC-388	AFL-Hotel and Restaurant Employees, Local 11 (Hot Shoppes, Inc.).	June 12, 1956	10 (1)		(?)
10-CC-213- 215, 218- 240, 243- 250	AFL-Hod Carriers, Local 286, et al. (T L Herbert & Sons).	June 19, 1956	10 (1)		
2-CD-125	Longshoremen's Association, Locals 976-4, 1277, 1804 (Abraham Kaplan, Association Painting Employers of Brooklyn, Inc.)	June 25, 1956	10 (1)		
1-CC-148	AFL-Teamsters, Local 340 (Mame Canned Foods, Inc).	June 25, 1956	10 (1)		
6-CC-119	AFL-Teamsters, Local 491 (Spitzler's Meat Products)	June 25, 1956	10 (1)		(?)
15-CC-49	CIO-Woodworkers and Locals S-426 S-429 (W. T Smith Lumber Co).	June 27, 1956	10 (1)		
9-CC-84	AFL-Teamsters, Local 175 (R. O. Wetz Transportation).	June 27, 1956	10 (1)		
1-CC-155	AFL-Carpenters et al. (J. G. Roy & Sons Co).	June 28, 1956	10 (1)		
2-CD-127	AFL-Carpenters, Local 11, AFL-Engineers, Operating Local 825 and Branches A, B, C, D (Petry Express & Storage Co).	June 29, 1956	10 (1)	June 29, 1956	

¹ Injunction denied June 24, 1954 On appeal, Ninth Circuit Court of Appeals on Dec 30, 1954 reversed district court and remanded case to lower court to enter 10 (i) injunction

² Because of suspension of unfair labor practice, case retained on court docket for further proceedings if appropriate

³ Granted against local, but denied as to the international.