

TWENTY-SECOND
ANNUAL REPORT
OF THE
NATIONAL LABOR
RELATIONS BOARD

FOR THE FISCAL YEAR

ENDED JUNE 30

1957

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NATIONAL LABOR RELATIONS BOARD

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Division of Operations *Division of Law*

¹ Appointed March 28, 1957, to succeed Ivar H. Peterson

² Appointed March 4, 1957, to succeed Theophil C. Kammholz

LETTER OF TRANSMITTAL

NATIONAL LABOR RELATIONS BOARD,
Washington, D. C., January 6, 1958.

SIR: As provided in section 3 (c) of the Labor Management Relations Act, 1947, I submit herewith the Twenty-second Annual Report of the National Labor Relations Board for the fiscal year ended June 30, 1957, 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.

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I

Operations in Fiscal Year 1957

The National Labor Relations Board received 13,356 cases of all types during fiscal year 1957, compared with 13,388 cases filed during the preceding year.

The filings of unfair labor practice cases—against employers and unions—increased from 5,265 in fiscal 1956 to 5,506 in fiscal 1957.

Representation cases filed during fiscal 1957 totaled 7,797, compared with 8,076 filed in fiscal 1956.

During fiscal 1957 the Board closed 12,708 cases,¹ leaving 4,416 cases pending disposition at various procedural levels of the agency. This was the highest pending caseload in 5 years.

In the field of unfair labor practice cases, charges against employers continued to predominate during fiscal 1957: charges against employers were filed in 3,655 cases; charges against unions were filed in 1,851 cases. The comparable figures for the preceding year of 1956 were, respectively, 3,522 and 1,743.

The most frequent filings of unfair labor practice cases continued to come from unions and individuals. In fiscal 1957, unions filed 2,403, or 43.6 percent, of the 5,506 unfair labor practice cases; individuals filed 2,299, or 41.8 percent; employers filed 804, or 14.6 percent; these ratios have been maintained at approximately the same levels since fiscal 1955.

Filings of charges by individuals against employers continued at about the same ratio as in the preceding 2 years; in each of these 3 years individuals filed about 37 percent of all cases filed against employers.

Filings of charges by individuals against unions rose, both in number and in percentage, over fiscal 1956. In fiscal 1957 individuals filed 947 cases against unions, or 51 percent of all cases against unions; in fiscal 1956 individuals filed 807 such charges, or 46 percent.

Filings by employers against unions for fiscal 1957 totaled 803 cases, compared with 826 cases filed in 1956.

¹ For detailed statistical reports of NLRB activities during fiscal 1957, see tables in appendix A, beginning at p 161.

Filings of secondary boycott charges were the highest on record. In fiscal 1957, a total of 462 such charges were filed. In fiscal 1956, the previous highest year, 421 such charges were filed.

In the field of representation cases, unions filed 6,764 petitions for elections during fiscal 1957, compared with 7,103 filed in fiscal 1956. Employers requested elections in 654 cases, compared with 595 in fiscal 1956. Employees' petitions for elections to decertify incumbent unions numbered 366, compared with 356 filed the preceding year.

1. Decisional Activities of the Board

The Board Members issued decisions in 2,199 cases of all types. Of these cases, 1,844 were brought to the Board on contest over either the facts or the application of the law; 248 were unfair labor practice cases, and 1,596 were representation cases. The remaining 355 cases were uncontested; in these, the Board issued orders to which the parties had consented or made rulings as to conduct of elections held by agreement of the parties.

In the representation cases, the Board directed 1,387 elections; the remaining 209 petitions for elections were dismissed.

Of the unfair labor practice cases, 136, or 55 percent, involved charges against employers; 112, or 45 percent, involved charges against unions.

Of the 248 contested unfair labor practice cases, the Board found violations in 203 cases, or 82 percent.

The Board found violations by employers in 114, or 84 percent, of the 136 cases against employers. In these cases, the Board ordered employers to reinstate a total of 655 employees and to pay back pay to a total of 723 employees. Illegal assistance or domination of labor organizations was found in 40 cases and ordered stopped. In 23 cases the employer was ordered to undertake collective bargaining.

The Board found violations by unions in 89 cases, or 80 percent of the 112 cases against unions. In 37 of these cases the Board found illegal secondary boycotts and ordered them halted. In 20 cases the Board ordered unions to cease requiring employers to extend illegal assistance. Nineteen other cases involved the illegal discharge of employees, and back pay was ordered for 105 employees. In the case of 87 of these employees found to be entitled to back pay, the employer, who made the illegal discharge, and the union, which caused it, were held jointly liable.

2. Activities of the General Counsel

The statute gives the General Counsel the sole and independent responsibility for investigating charges of unfair labor practices, issu-

ing 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 5,892 representation cases during the 1957 fiscal year without necessity of formal decision by the Board Members. This comprised 78 percent of the 7,514 representation cases closed by the agency.

Of the representation cases closed in the field offices, consent of the parties for holding elections was obtained in 3,647 cases. Petitions were dismissed by the regional directors in 583 cases. In 1,662 cases, the petitions were withdrawn by the filing parties.

b. Unfair Labor Practice Cases

The General Counsel's staff in the field offices closed 4,444 unfair labor practice cases without formal action, and issued complaints in 689 cases.

Of the 4,444 unfair labor practice cases which the field staff closed without formal action, 631, or 14 percent, were adjusted by various types of settlements; 1,678, or 38 percent, were administratively dismissed after investigation. In the remaining 48 percent of the cases closed without formal action, the charges were withdrawn; in many of these cases, the withdrawals actually reflected settlement of the matter at issue between the parties.

The regional directors, acting pursuant to the General Counsel's statutory authority, issued formal complaints alleging violation of the act in 689 cases. Complaints against employers were issued in 394 cases; complaints against unions, in 295 cases

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

Of the total 689 complaints, 269 were based on charges filed by unions, 251 by individuals, and 169 by employers.

Of the 394 complaints issued against employers, 257 were based on charges filed by unions and 137 on charges filed by individuals.

Of the 295 complaints issued against unions, 169 were based on charges filed by employers, 114 on charges filed by individuals, and 12 were based on charges filed by unions.

c. 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 2,789 cases filed during the 1957 fiscal year. This was 76 percent of the 3,655 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 827 cases, or 23 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 1,107 cases, or 60 percent of the 1,851 cases filed against unions.

Discrimination against employees because of their lack of union membership was also alleged in 1,003 cases, or 54 percent. Other major charges against unions alleged secondary boycott violations in 462 cases, or 25 percent, and refusal to bargain in good faith in 123 cases, or 7 percent.

d. Division of Law

The Division of Law, which is located in the Washington office of the General Counsel, is responsible for the handling of all court litigation involving the agency—in the Supreme Court, in the courts of appeals, and in the district courts.

During fiscal 1957, the Supreme Court handed down decisions in seven cases involving Board orders. Three Board orders were enforced in full, 3 were set aside, and 1 was remanded to the court of appeals.

The courts of appeals reviewed 84 Board orders during fiscal 1957. Of these 84 orders, 47 were enforced in full and 19 with modification; 13 orders were set aside, 4 were remanded to the Board, and 1 order was partially enforced and partially remanded to the Board.

Petitions for injunctions in the district courts reached an all-time high during fiscal 1957. Of the 100 petitions filed during the year, 98 were filed under the mandatory provision, section 10 (1), of the

act. (One of these petitions was filed, settled, and reinstated during the year.) Two petitions were filed under the discretionary provision, section 10 (j), of the act.

During the year, 50 petitions for injunctions were granted, 4 petitions were denied, 47 petitions were settled or placed on the courts' inactive docket, and 8 petitions were awaiting action at the end of the fiscal year.

3. Division of Trial Examiners

Trial examiners, who conduct hearings in unfair labor practice cases, held hearings in 550 cases³ during fiscal 1957, and issued intermediate reports and recommended orders in 370 cases. These figures, when compared with the preceding year, represent an increase of 42 percent in the number of cases heard and an increase of 16 percent in the number of cases in which intermediate reports were issued.

In 83 unfair labor practice cases⁴ which went to formal hearing during the year, the trial examiners' findings and recommendations were not contested; this comprised 22 percent of the 370 cases in which trial examiners issued reports. In the preceding year, trial examiners' reports which were not contested numbered 57, or 18 percent of the 319 cases in which reports were issued.

4. Results of Representation Elections

The Board conducted a total of 4,874 representation elections during the 1957 fiscal year. This was a decrease of 4 percent from the 5,075 representation elections conducted in fiscal 1956.

In the 1957 representation elections, collective-bargaining agents were selected in 2,988 elections. This was 61 percent of the elections held, and compared with selection of bargaining agents in 64 percent of the 1956 elections.

In these elections, bargaining agents were chosen to represent units totaling 269,050 employees, or 57 percent of those eligible to vote. This compares with 63 percent in fiscal 1956, and 73 percent in fiscal 1955.

Of the 469,922 who were eligible to vote, 90 percent cast valid ballots.

Of the 420,775 employees actually casting valid ballots in Board representation elections during the year, 266,402, or 63 percent, cast ballots in favor of representation.

Unions affiliated with the American Federation of Labor-Congress of Industrial Organizations won 2,663 of the 4,603 elections in which

³ During the year, 114 cases were closed by settlement agreements reached after the hearing opened but before issuance of intermediate report.

⁴ This figure does not include 75 cases in which a hearing resulted in agreement providing for the entry of Board decisions.

they took part. This was 58 percent of the elections in which they participated, compared with 59 percent in 1956.

Unaffiliated unions won 325 out of 516 elections; this was 63 percent, compared with 60 percent in 1956.

5. Fiscal Statement

The expenditures and obligations of the Board for fiscal year ended June 30, 1957, are as follows:

Salaries.....	\$7, 595, 374
Travel.....	542, 029
Transportation of things.....	32, 685
Communication services.....	235, 375
Rents and utility services.....	33, 509
Printing and reproduction.....	135, 826
Other contractual services.....	222, 746
Supplies and materials.....	92, 160
Equipment.....	89, 247
Refunds, awards and indemnities.....	1, 493
Taxes and assessments.....	9, 415
Grand total, obligations and expenditures.....	
	8, 989, 859

II

Jurisdiction of the Board

The Board's jurisdiction under the act¹ extends to all cases involving enterprises whose operations "affect" interstate commerce.² However, the Board has discretion to limit the assertion of its broad statutory jurisdiction to those cases which, in its opinion, have a substantial effect on commerce. In the exercise of this discretion, the Board has adopted "jurisdictional standards" which are set out in the last annual report (fiscal 1956). During fiscal 1957, the Board, pursuant to its stated policy of periodically reevaluating the standards in the light of current experience,³ modified and clarified the application of certain standards. These modifications and clarifications are indicated below.

1. Elimination of Multistate Standards for Retail and Nonretail Enterprises

The *T. H. Rogers* case⁴ eliminated the separate standards for multistate enterprises, both retail⁵ and nonretail.⁶ The dollar volumes which had been applied to single establishments and intra-state chains were made applicable.

Under the modified standards, jurisdiction is asserted over all or

¹ The Board has no jurisdiction over railways and airlines, which come under the Railway Labor Act; and a rider to the Board's appropriation act denies it jurisdiction over "mutual, nonprofit" water systems of which 95 percent of the water is used for farming.

² See section 10 (b) of the act.

³ *The T. H. Rogers Lumber Company*, 117 NLRB 1732, see also *Coca Cola Bottling Company of New York, Inc.*, 114 NLRB 1423, 1424 (1955).

⁴ *The T. H. Rogers Lumber Company*, *supra*.

⁵ The standard for retail multistate enterprises was established by *Hogue and Knott Supermarkets*, 110 NLRB 543 (1954).

⁶ The standard for nonretail multistate enterprises was established by *Jonesboro Gram Drying Cooperative*, 110 NLRB 481 (1954), and *Coca Cola Bottling Company of New York, Inc.*, 114 NLRB 1423 (1955). See also *Whappany Motor Co., Inc.*, 115 NLRB 52 (1956).

any part of a nonretail or retail enterprise if the enterprise as a whole *annually* meets the following minimum requirements:

1. Nonretail enterprises with—
 - a. Direct outflow of \$50,000, or
 - b. Indirect outflow of \$100,000, or
 - c. Direct inflow of \$500,000, or
 - d. Indirect inflow of \$1,000,000.
2. Retail or service enterprises with—
 - a. Direct outflow of \$100,000, or
 - b. Direct inflow of \$1,000,000, or
 - c. Indirect inflow of \$2,000,000.

The Board made clear that, since "it is the totality of an employer's operations which is the proper yardstick for determining whether jurisdiction would be asserted, [the new] standards will be applied to all enterprises which constitute a single employer without regard to evidence of integration of the establishments within the enterprise."⁷

In the *Rogers* case the Board applied the single establishment nonretail standards to assert jurisdiction over an enterprise which was engaged in both nonretail and retail operations, emphasizing that it would so apply the nonretail standards to all such combination enterprises, except of course where the nonretail portion of the enterprise is clearly *de minimis*. This formula was later applied in the case of an employer engaged in the operation of a coffee plant in one State, a commissary and bakery in another State, and a restaurant chain in both States.⁸ The employer's business constituting a combination nonretail-retail enterprise, the Board followed its practice of applying its nonretail standard, and asserted jurisdiction on the basis of the employer's nonretail operations.

2. Indirect Outflow Standard

The Board indicated during fiscal 1957 that, where neither the direct nor indirect outflow of an employer separately meets established standards, jurisdiction will be asserted if the combined direct and indirect outflow are sufficient to meet the indirect outflow standard.⁹ The Board held that direct out-of-State sales, insofar as their impact on commerce is concerned, should be treated as the equivalent of intrastate sales to concerns in interstate commerce. In applying the indirect inflow standard the Board similarly combines direct and indirect inflow.¹⁰

⁷ *The T. H. Rogers Lumber Company*, 117 NLRB 1732. See also *Pacific Fine Arts*, 116 NLRB 1607.

⁸ *Chock Full O'Nuts*, 118 NLRB 156.

⁹ *Pacific Fine Arts*, *supra*. Compare *Star Garter Company*, 114 NLRB 957 (1955).

¹⁰ See *The Brass Rail, Inc.*, 110 NLRB 1656 (1954); *Kenneth Chevrolet Company, et al.*, 110 NLRB 1615, 1616. footnote 4; *Autry Greer & Sons*, 112 NLRB 44 (1955).

In one case, a majority of the Board declined to assert jurisdiction over an employer engaged in drilling offshore oil wells for a multistate oil company.¹¹ The majority held that the employer's intrastate services to the oil company did not satisfy indirect outflow requirements because the oil company's operations in the State themselves were local. According to the majority, the fact that the oil company had no outflow from the State where it received drilling services precluded assertion of jurisdiction over the drilling company even though jurisdiction might be asserted over the oil company itself as a multistate enterprise.

3. Jurisdiction in Secondary Boycott Cases

In determining whether to assert jurisdiction in secondary boycott situations, the Board looks first to the primary employer. If his operations do not satisfy jurisdictional requirements, the operations of the affected secondary employers are taken into consideration. Jurisdiction may be asserted on the basis of the operations of the primary employer and "the entire business of the secondary employer at the location affected."¹²

During fiscal 1957, the question of the assertion of jurisdiction was dealt with in a secondary boycott situation where the primary employer's business operations did not meet jurisdictional standards and 10 secondary employers were affected. The business of at least 1 of the 10 met the jurisdictional requirements, but that of the others did not, either standing alone or in conjunction with the business of the primary employer.¹³ A majority of the Board asserted jurisdiction over the boycott activities at the premises of all 10 secondary employers. The majority relied on the fact "that all the secondary employers were victims of a pattern of unfair labor practices and that the business of one or more of the secondary employers, each standing alone, meets the jurisdictional requirements." The majority declared that "The power of the Board . . . having been invoked to deal with a pattern of conduct affecting enterprises both within and without the jurisdictional standards, it seems to us only reasonable and effectuating the purposes of the Act to give the broadest scope to the remedy we apply."

¹¹ *Brown Marine Drilling Company*, 117 NLRB 331, Member Murdock dissenting.

¹² *McAllister Transfer, Inc.*, 110 NLRB 1769 (1954); Twenty-first Annual Report (1956), pp. 12-13.

¹³ The *McAllister* decision adopted the view expressed in Member Peterson's dissent in *Earl Vann (Lincoln Beer Distributors)* (106 NLRB 405), that consideration of the secondary employer's operations is not to be limited to "the particular business between the primary employer and the secondary employer at the location affected." See also *Jamestown Builders Exchange, Inc.*, 93 NLRB 386 (1951).

¹⁴ *Commission House Drivers, Helpers and Employees Local No. 400 etc. (Euclid Foods, Incorporated, d. b. a. Bondi's Mother Hubbard Market)*, 118 NLRB 130, Member Murdock dissenting.

III

Representation 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.¹ It also has the power to determine the unit of employees appropriate for collective bargaining.

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

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

¹ See the Board's standards for asserting jurisdiction, discussed at pp. 7-9, and Twenty-first Annual Report, pp. 7-28.

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 1957 fiscal year which involve novel questions or set new precedents in representation cases.

1. Showing of Employee Interest To Justify Election

Under section 9 (c) (1), the Board requires that a petitioner seeking a representation election, other than an employer,² make a showing that the proposed election is favored by at least 30 percent of the employees. The showing must relate to the unit found appropriate.³

a. Intervenor's Interest

The Board permits intervening parties to participate in representation and decertification elections upon a showing of a contractual interest⁴ or other representative interest.⁵

A 30-percent interest showing has been required of an intervenor opposing withdrawal of a representation petition, but the Board held this year that this requirement applies only to a petition initiated by a bargaining agent, and not to employer petitions.⁶ Overruling prior inconsistent cases, the Board noted that, since a petitioning employer is not required to make any interest showing, the union involved should not be required to make such a showing to obtain the election originally asked by the employer.

b. Sufficiency of Showing of Interest

The cases where the sufficiency of a party's showing of interest had to be determined⁷ during fiscal 1957 involved questions as to the identity of the party whose interest was shown by the proof submitted, and as to whether the proof had been obtained with illegal assistance.⁸

In one case turning on identity, a Board majority held that authorization cards signed by employees before the petitioner transferred

² *Hooker Electrochemical Co*, 116 NLRB 1393. NLRB Statements of Procedure Sec 101.17 (a). The Board during the past year rejected an employer's objection to the application of the 30-percent rule to seasonal industries. *Minute Maid Corp*, 117 NLRB 68.

³ See, e g, *Carlo Santarelli and Sesto Santarelli, a Partnership d/b/a Santarelli Vibrated Block Co*, 116 NLRB 1532, *Gibson Refrigerator Co, Division of Hupp Corp*, 117 NLRB 561; compare *The Peoria Journal Star, Inc*, 117 NLRB 708.

⁴ *The Bonney Forge & Tool Works*, 117 NLRB 1765, *Hardboard Fabricators Corp*, 117 NLRB 823.

⁵ Twentieth Annual Report, p 12, footnote 3. See *Olin Mathieson Chemical Corp*, 117 NLRB 1441, footnote 2.

⁶ *International Aluminum Corp*, 117 NLRB 1221.

⁷ Sufficiency of a showing of interest is determined administratively and may not be litigated. See *Wyman-Gordon Co, Ingalls Shepard Division*, 117 NLRB 75, and *Myron Building Products Co, Inc., et al*, 116 NLRB 1406.

⁸ In two cases the Board rejected allegations of fraud either because the evidence submitted was insufficient (*Babcock & Wilcox Co*, 116 NLRB 1542) or because the party alleging fraud failed to comply with a request to submit supporting evidence (*International General Electric, S A, Inc*, 117 NLRB 1571).

affiliation to another international did not indicate the employees' wishes as to representation by the petitioner as presently affiliated. The Board required that the petitioner make a new showing.⁹ Earlier cases¹⁰ were overruled insofar as inconsistent. But a mere change in the petitioner's name was held not to require a new showing.¹¹

The validity of a showing of interest was challenged in one case on the ground that in procuring it, the petitioner was illegally assisted by a supervisor.¹² While a showing of interest based on memberships solicited by a supervisor has been held invalid,¹³ the Board here found that the showing of interest was not invalidated by a supervisor's activity on behalf of the petitioner because over 30 percent of the employees in the proposed unit had signed designation cards before they became aware of the supervisor's participation in the petitioner's organizational efforts.

In a decertification case, the Board rejected the contention that the petition was not properly supported because the petitioner had been assisted by the Board's regional office in preparing a document to circulate among the employees to establish the petitioner's interest.¹⁴ The Board held that the preparation of the heading of this document by regional office personnel did not render it defective because it did not, as asserted, create the impression that it had the approval of the Board. Nor, the Board noted, was there any evidence that the employees signing the document were given to understand that it had such approval.

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. But whether an election will be held also depends on other statutory and administrative provisions such as the qualification of the proposed bargaining agent; bars to a present election, such as contracts or prior determinations; and the appropriateness of the proposed bargaining unit.

To have a petition processed by the Board, the petitioner must disclose all the required information in its possession. Thus, the Board made it clear during the past year that it is the duty of a peti-

⁹ *Mohawk Business Machines Corp.*, 118 NLRB 168, Member Murdock dissenting.

¹⁰ *The Great Atlantic & Pacific Tea Co., National Produce Division*, 113 NLRB 865; *Westinghouse Electric Supply Co.*, 83 NLRB 174 (1949); and *Dolese Bros. Co.*, 65 NLRB 1124 (1946).

¹¹ *Wm. R. Whittaker Co., Ltd.*, 117 NLRB 339.

¹² *Midland Container Corp.*, 116 NLRB 1116.

¹³ *Desilu Productions, Inc.*, 106 NLRB 179 (1953).

¹⁴ *Langenberg Hat Co.*, 116 NLRB 198.

tioner to inform the regional director of any claims to representation of which he may be aware.¹⁵

a. Bargaining Agent's Petition

A petition for certification as bargaining agent is generally regarded as raising a question of representation if it is based on the employer's denial of the petitioner's claim for recognition, or if it appears from the record that the employer will not recognize the petitioner.¹⁶ A petition by a representative which has a contract, but desires the benefits of a certification, also is sufficient to raise a question concerning representation.¹⁷ In another case, a Board majority declared that once a question of representation is found to exist the direction of an election is mandatory.¹⁸

b. Employer Petitions

An employer's petition for a representation election must be based on a present demand for recognition from a candidate bargaining agent. Consequently, it is "the claiming individual or labor organization that raises the question concerning representation, not the employer."¹⁹ But no formal request is required, and picketing for the manifest purpose of obtaining recognition is tantamount to a demand.²⁰

(1) Effect of Contract

In several cases the existence of a question of representation depended upon the effect of the execution of a contract by the petitioning employer with the union involved. The Board in one case had occasion to reiterate that an employer petition, filed for the purpose of obtaining the benefits of dealing with a certified union, is not exempt from the contract-bar rule.²¹

No question of representation was found to exist where the petition was filed while negotiations for contract renewal with the certified representative were pending, and a new contract, recognizing the union, was signed during the pendency of the petition.²² The Board pointed out that, while the contract's recognition clause conditioned the unit to be covered on the Board's determination in the represen-

¹⁵ *Somerville Iron Works, Inc.*, 117 NLRB 1702. In this case, the employer-petitioner purposely failed to disclose the claims of a union which had been picketing the employer's plant. Setting aside the consent election which had been held, the Board pointed out that it is for the regional director and ultimately the Board, and not the parties, to determine whether a claim has sufficient validity to entitle the claimant to notice of the proceeding and to a place on the ballot.

¹⁶ *Plant City Welding & Tank Co.*, 118 NLRB 280

¹⁷ *Printing Industry of Seattle, Inc.*, 116 NLRB 1883.

¹⁸ *Dongan Electric Mfg. Co.*, 116 NLRB 1440, Member Bean dissenting.

¹⁹ *Darling & Co.*, 116 NLRB 374.

²⁰ See, e. g., *Jerome E. Mundy Co., Inc.*, 116 NLRB 1487. *Indegro, Inc.*, 117 NLRB 386, Member Bean dissenting in other respects.

²¹ *Pazan Motor Freight, Inc.*, 116 NLRB 1568, 1570.

²² *United States Gypsum Co.*, 116 NLRB 1771.

tation proceeding, the union was nevertheless unequivocally recognized. Thus, the Board noted, the employer took a position wholly inconsistent with its attempt to establish the existence of a question and, therefore, was not entitled to an election.

Conversely, postpetition negotiations and execution of a new contract were held not to be inconsistent with the employer's petition where the recognition clause of the new contract specifically conditioned recognition on the outcome of the pending representation proceeding.²³ The Board held it was proper for the employer to negotiate with the union during the pendency of the petition in order not to leave a gap between the old contract and any new contract that might have to be negotiated if the union won the election.

In another case, it was also made clear that the mere existence of a contract between an employer-petitioner and the union, covering the unit specified in the petition, does not negate the existence of a question of representation if the petition is timely filed with respect to the contract and the contracting union has never been certified and desires certification.²⁴ The Board noted that in a prior case²⁵ where the employer's petition was dismissed under otherwise similar circumstances, the contracting union had previously been certified and opposed the holding of an election.

c. Decertification Proceedings

A question of representation may also be raised by the filing of a decertification petition by or in behalf of the employees in the unit, challenging the representative status of the currently recognized or previously certified bargaining representative. Such a petition need not be filed by an employee of the employer.²⁶ But if the employer improperly assists in the filing of the petition, it will be dismissed, because

the "precise language of section 9 (c) (1) (A) of the act indicates . . . that decertification proceedings provide a remedy exclusively for and on behalf of employees, and not employers. With this principle in mind, the Board cannot, as a matter of policy, permit an employer to do indirectly, through instigating and fostering a decertification petition, that which we would not permit him to do directly."²⁷

A Board majority here found such improper employer assistance and dismissed the petition. The employer had informed employees that they could rid themselves of the union through decertification, fur-

²³ *United States Gypsum Co.*, 117 NLRB 1677.

²⁴ *Machinery Movers and Erectors Division, Michigan Cartagemen's Association*, 117 NLRB 1778.

²⁵ *United States Gypsum Co.*, 116 NLRB 1771.

²⁶ Nineteenth Annual Report, p. 21.

²⁷ *Bond Stores, Inc.*, 116 NLRB 1929, Member Bean dissenting on other grounds.

nished the decertification forms, and supplied advice and company facilities and time for preparing the petition.

However, a motion to dismiss a decertification petition because of employer assistance was denied where there was no evidence of employer instigation. In this case, the record showed only that the employer complied with the petitioner's request for information as to the procedure to be followed and for data necessary to complete the petition; that the necessary forms were typed in the employer's office by a supervisor; and that employees signed the showing-of-interest form in the company's office during working hours but without being urged to do so by the employer.²⁸ Nor was a petition held invalid because it was filed by a labor relations consultant who represented employer clients in the community where the employer's business was located, including one which had done considerable work for the employer.²⁹ The Board noted that more than 30 percent of the employees concerned had signed the showing-of-interest petition, and that there was no direct evidence that the employer sponsored the petition.

d. Disclaimer of Interest

A question of representation raised by a petition may be defeated if the party whose representative status is in issue disclaims its interest in the employees involved. The Board gives effect to such a disclaimer only when it is in unequivocal terms³⁰ and the disclaimant's other conduct is not inconsistent with its disclaimer.³¹

3. Qualification of Representatives

Section 9 (c) (1) provides that 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). Moreover, section 9 (b) (3) of the act 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." In addition, the Board will not certify a repre-

²⁸ *Southeast Ohio Egg Producers*, 116 NLRB 1076

²⁹ *Armo Drainage & Metal Products, Inc.*, 116 NLRB 1260

³⁰ See, e. g., *Nathan Warren & Sons, Inc.*, 116 NLRB 1662

³¹ See, e. g., *Indegro, Inc.*, 117 NLRB 386, Member Bean dissenting. Here, an unequivocal disclaimer of interest in an associationwide unit comprising 17 stores was held not defeated by the union's picketing of 4 of the stores whose employees the union desired to represent. Compare *H. A. Fider & Sons*, 117 NLRB 517, where repeated demands for recognition and a contract, threatened and actual picketing as well as utterances, were held inconsistent with the union's disclaimer. See also *Jerome E. Mundy Co., Inc.*, 116 NLRB 1487.

sentative which is found to lack the qualifications of a bona fide bargaining agent.

a. Filing Requirements

In a number of cases the Board again had occasion to take appropriate action to prevent labor organizations,³² which were not in compliance with the filing requirements from benefiting by the representation proceedings in which they participated.

In 1 case, the union receiving the largest number of votes in an inconclusive election had been placed on the ballot on the basis of its certificate of intent to renew its filings within a 90-day period expiring on the day of the election.³³ When the union failed to file, the Board directed a new election, rather than the normal runoff election, and omitted the defaulting union from the ballot.

When it was found that the petitioner, whether a complying labor organization or an individual, was "fronting" for a noncomplying union, the Board dismissed the petition.³⁴ But where the petitioner had a direct interest in the employees involved, the Board rejected the contention that the petitioner was fronting for its noncomplying subordinate.³⁵

(1) Compliance in Employer-Petition Proceedings

The Board was called upon during fiscal 1957 to reconsider the doctrine announced in the *Loewenstein* case³⁶ that the Board is without power to direct an election on an employer petition for investigation of a question of representation raised by a noncomplying labor organization.³⁷ Reaffirming the earlier interpretation of the filing requirements, a majority of the Board declared that

"Although it is the employer's petition in such a case that sets the Board's machinery in motion, it is an individual's or a labor organization's initial claim for recognition that makes it possible for the employer to invoke that machinery." It is therefore the claiming individual or labor organization that raises the question concerning representation, not the employer. When the em-

³² The filing requirements being applicable only to labor organizations as defined in section 2 (5) of the act (see *Endicott Johnson Corp*, 117 NLRB 1886), the Board held in a decertification proceeding that the employee group which had banded together solely for decertification purposes was not subject to the filing requirements and that the decertification petitioner therefore was not, as contended, "fronting" for a non-complying union. *Gill Glass & Fixture Co*, 116 NLRB 1540.

³³ *Duval Sulphur & Potash Co.*, 116 NLRB 1250.

³⁴ See, e. g., *Bay City Division, The Dow Chemical Co*, 116 NLRB 1602. Compare *Great Atlantic & Pacific Tea Co., National Bakery Division*, 116 NLRB 1463, where the Board rejected the contention that the petitioning individual and independent union in a consolidated decertification and representation proceeding were "fronting" for a noncomplying union. The decertification petitioner's initial relationship with the noncomplying union began only after the filing of the petition, and the relationship of the noncomplying union with the two petitioners ceased abruptly when it was decided to form the independent union.

³⁵ *Endicott Johnson Corp.*, 117 NLRB 1886.

³⁶ *Herman Loewenstein, Inc.*, 75 NLRB 377 (1947).

³⁷ *Darling & Co.*, 116 NLRB 374, Member Rodgers dissenting.

ployer files its petition, it is invoking the Board's machinery for the purpose of resolving the question concerning representation raised by the representation claim or claims of "one or more individuals or labor organizations."

The majority expressed agreement with the conclusion in the *Loewenstein* case that the policy of denying noncomplying unions the benefits of the act is paramount and must be given effect even though this may result in depriving an employer of information which otherwise it has the right to obtain by an election.³⁸

The majority also rejected the employer's contention that an election was proper because the real claimant was not the noncomplying incumbent, but its international which had placed the local under a receiver and was itself in compliance. It was found that the receivership had not extinguished either the local's life or its claim and it did not make the international the claimant within the rule of the *Calcasieu* case.³⁹ There an election was directed upon an employer's petition based on the claims of the incumbent internationals which, after certification, had formed several locals. The locals' compliance had lapsed prior to the hearing on the employer's petition. In placing the internationals on the ballot in *Calcasieu*, the Board conditioned their certification on the locals' compliance by the date of the election. This procedure, according to the Board, was inapplicable in the *Darling* case because the international was never the majority representative and did not claim representation in the historical unit.

b. Other Questions of Qualification

In the cases where the qualifications of the proposed bargaining representative were challenged, the Board had occasion to reiterate that "excepting only the few restrictions explicitly or implicitly present in the Act" the Board has no general authority to subtract from the right of employees to select *any* labor organization they wish as exclusive bargaining representative.⁴⁰ The Board held that internal union matters, such as illegality of the formation of a labor organization,⁴¹ revocation of a petitioner's charter by its international,⁴² or jurisdictional limitations in the union's constitution,⁴³ do not necessarily affect the capacity of the union to act as bargaining representative.

³⁸ The majority believed that, the *Loewenstein* doctrine having been continuously in effect since 1947, it is now for Congress, rather than the Board, to determine whether the doctrine does not correctly express the legislative intent that underlies section 9 (f) and (h).

³⁹ *Calcasieu Paper Co., Inc.*, 109 NLRB 1186 (1954).

⁴⁰ *National Van Lines*, 117 NLRB 1213. Here the Board rejected the contention that a city local could not be certified as representative for a nationwide group of contract drivers.

⁴¹ *Silvino Giannasca, d/b/a Imperial Reed & Fattan Furniture Co.*, 117 NLRB 495. Here it was found that the petitioner existed at least in part for the purposes specified in the definition of labor organizations in section 2 (5) of the act, and was entitled to certification notwithstanding the finding of a Federal court in an intraunion dispute that the union had been "fraudulently chartered."

⁴² *Avning Research Institute*, 118 NLRB 505.

⁴³ *Walton-Young Corp.*, 117 NLRB 51.

Regarding "managerial taint" as a ground for disqualification, the Board again noted that a showing of the participation of supervisors in a petitioning union's affairs may warrant dismissal of the petition.⁴⁴ But it was also made clear that a party who seeks to disqualify an intervening union for alleged employer domination or assistance contravenes the Board's established policy against litigating unfair labor practice charges in a representation proceeding.⁴⁵

(1) Craft Representatives

Under the *American Potash* rule,⁴⁶ a union seeking craft or departmental severance has the burden of showing that it is "a union which has traditionally devoted itself to serving the special interest of the employees" to be severed from the existing unit. Restating the rule, the Board dismissed a petition by a local of the Oil Workers' Union for severance of salaried truckdrivers because the petitioner had not shown that it traditionally represented truckdrivers.⁴⁷ The parent union divided its locals into those representing manufacturing employees and those representing marketing employees. Petitioner was a "marketing" local. The Board found no special effort on the petitioner's part to devote itself to the particular interests of truckdrivers,⁴⁸ but that the union's truckdriver membership was explained by the fortuitous fact that the majority of the employees within its territorial jurisdiction as a "marketing" local were truckdrivers.

However, the "traditional representative" test is applicable only where severance from an established unit is sought, and need not be met by a union seeking to represent employees who have not previously been represented.⁴⁹

4. Contract as Bar to Election

The Board, under its "contract bar rule," will deny a request for a determination of bargaining representatives among employees pres-

⁴⁴ See *Associated Dry Goods Corp*, 117 NLRB 1069. Here, the mere signing by a supervisor of an application for himself, and his joining a strike called by the petitioner, was held insufficient to disqualify the petitioner.

⁴⁵ *Bi-States Co*, 117 NLRB 86. Member Murdock, dissenting, would deny the intervenor a place on the ballot under the *Pochester and Pittsburgh Coal Co* rule, 56 NLRB 1760 (1944), since its dominated character was shown by the record.

⁴⁶ *American Potash & Chemical Corp*, 107 NLRB 1418 (1954).

⁴⁷ *Standard Oil Co*, 116 NLRB 1017.

⁴⁸ Compare *Hughes Aircraft Co (Tucson Operations)*, 117 NLRB 98.

⁴⁹ *E I du Pont de Nemours & Co (Dana Plant)*, 117 NLRB 1048. *Pittsburgh Plate Glass Co.*, 117 NLRB 1728.

ently covered by a written⁵⁰ collective-bargaining contract properly executed.⁵¹

To constitute a bar, the contract must be binding and operative. Thus, an election was directed where the asserted contract was subject to approval by the parties' counsel and approval had been withheld by the employer's counsel.⁵² And a renewal contract, conditioning continued recognition of the incumbent union upon the outcome of the representation proceeding instituted by the employer, likewise was held not a bar.⁵³

In addition to current validity, the Board requires that the contract be of "reasonable" duration and that it contain substantive terms and conditions of employment consistent with the policies of the act.

a. The Contract Term

Generally, a term of more than 2 years is considered unreasonable for contract-bar purposes. Contracts for a longer duration are therefore ordinarily effective as a bar only during the first 2 years of their existence.⁵⁴

Contract terms in excess of 2 years, however, are considered reasonable where it is shown that a substantial part of the particular industry is covered by contracts of 3 or more years' duration.⁵⁵ Thus, in the *Thompson Wire* case a change in the collective-bargaining pattern in the basic steel industry from 2-year to 3-year contracts was recognized by giving effect to the 3-year contract of the employer whose operations constituted an integral part of the basic steel industry and who customarily followed the industry's bargaining pattern. The change in industry bargaining did not occur until after the hearing in the case, but a majority of the Board⁵⁶ held that recognition of the change was proper because it was a clear indication that stability in the steel industry is best served by contracts of more than 3 years' duration. On the other hand, the Board declined to recognize an asserted 5-year contract custom in the Douglas fir plywood industry.⁵⁷

⁵⁰ An oral agreement is insufficient to bar a petition for representation, *Hardboard Fabricators Corp.*, 117 NLRB 823.

⁵¹ See *Gibson Refrigerator Co.*, 117 NLRB 561, where contract-bar effect was denied to an unsigned memorandum agreement setting forth the terms of a final contract to be executed later. Distinguishing *Natona Mills, Inc.* (112 NLRB 236 (1955)), *Oswego Falls Corp.* (110 NLRB 621 (1954)), and *Mervin Wave Chip Co., Inc.* (114 NLRB 157 (1955)), the Board pointed out that unsigned agreements in those cases were held to constitute a bar because important provisions were put into effect, whereas here no provision of the memorandum agreement became effective pending execution of the final document. See also *Highway Transport Association of Upstate New York, Inc.*, 116 NLRB 1718.

⁵² *Illinois Farm Supply Corp.*, 116 NLRB 793.

⁵³ *United States Gypsum Co.*, 117 NLRB 1677. See also *Highway Transport Association of Upstate New York, Inc.*, where the Board held that a present determination of representatives was not barred by a master contract which was not to become effective until the expiration of the current "memorandum agreement," and which had not been put into effect and signed at the time the petition was filed.

⁵⁴ See, e. g., *Pazan Motor Freight, Inc.*, 116 NLRB 1568.

⁵⁵ *Thompson Wire Co.*, 116 NLRB 1933. Compare the *C. A. Olsen Manufacturing Co.*, 118 NLRB 362.

⁵⁶ Member Bean dissenting.

⁵⁷ *Diamond Lumber Co.*, 117 NLRB 135.

No reason was found for treating that as a separate industry rather than as a segment of the entire plywood or lumber industry where contracts of more than 2 years' duration had not been shown to be customary.

For an industry pattern to apply, the contracting employer must be primarily engaged in the particular industry.⁵⁸ Thus, a 3-year contract of a company which sold both aircraft and automotive parts was held of unreasonable duration, because 50 to 60 percent of the company's sales and employee complement fell into the metal stamping and miscellaneous fabricating industry where, unlike in the aircraft and automotive industries, long-term contracts do not prevail.

In one case, special circumstances were found to require that a 3-year contract be held a bar even though such contracts were not customary in the industry involved.⁵⁹ The Board held that the contract tended to stabilize bargaining relations between employer and employees at the time of a union schism, which was accompanied by an unresolved dispute over the title to certain assets and the continuing dissipation of union property for partisan purposes.

Contracts which amount to no more than temporary or provisional agreements again have been held no bar. Thus, a petition was held not barred by a stopgap agreement extending an existing contract for the indefinite period, until the parties terminated negotiations for a new contract or until a new contract was executed.⁶⁰ Similarly, a supplemental agreement, terminable on 24 hours' notice and providing for continuation of an expired contract pending execution of a new agreement, was held no bar.⁶¹ But a contract of indefinite duration which is intended to serve as the permanent agreement will be held a bar for 2 years after execution.⁶²

b. The Contract Unit

For a contract to constitute a bar to an election, it must cover the employees specified in the petition in an appropriate unit.⁶³

The existence of a contract bar in several cases turned on the effect of the expansion of the contracting employer's operations.

In 1 case, a substantial increase in the employee complement of 1 of the 2 divisions in the contract unit was held not to remove the contract as a bar because the resulting increase in the overall unit

⁵⁸ *Heintz Manufacturing Co.*, 116 NLRB 183.

⁵⁹ *Kearney & Trecker Corp.*, 116 NLRB 1879.

⁶⁰ *Universal Match Corp.*, 116 NLRB 1388. Compare *Diamond Lumber Co.*, 117 NLRB 135.

⁶¹ *White Provision Co.*, 116 NLRB 1552. See also *The M. B. Farrin Lumber Co.*, 117 NLRB 575. To the same effect *General Refractories Co.*, 117 NLRB 81.

⁶² *Diamond Lumber Co.*, 117 NLRB 135.

⁶³ See, e. g., *Seallst, Ohio Division of the National Dairy Products Corp.*, 117 NLRB 1628.

was insignificant and there were no plans for further expansion.⁶⁴ However, where the original contract unit was expanded, not through a normal accretion to the working force, but by adding a new operation not contemplated when the original contract was signed, the contract was held inoperative as a bar even though the parties had extended it to cover the employer's entire operation.⁶⁵ Thus, a pre-expansion contract was held no bar to an election in a newly acquired department which was independently operated and had a separate bargaining history.⁶⁶ And in 1 case, a majority of the Board found no bar to an election in the employer's 2 operations because the asserted contract and supplementary agreement were both executed at a time when the employer had not yet hired any employees for its new operation, and did not then employ a substantial and representative segment of the ultimate total employee complement.⁶⁷ The employer's new operation here was more than three times as large as its old operation and had become the employer's main operation.⁶⁸

The Board had occasion in another case to reiterate that a contract ceases to be a bar if the contracting employer's operation becomes merged with the operation of another employer and the resulting consolidation is comparable to an entirely new operation.⁶⁹

c. Terms of Contract

The Board has consistently denied contract-bar effect to an agreement which does not contain substantive terms and conditions of employment and thus does not stabilize the labor-management relationship and encourage industrial peace. Thus, a contract limited to a supplemental matter, such as pensions, was held insufficient to bar a present determination of representatives for the employees involved.⁷⁰

Moreover, the Board will not recognize as a bar a contract which on its face patently contravenes the act.⁷¹

(1) Illegal Union-Security Provisions

Contracts asserted as a bar were again disregarded where they were found to contain union-security clauses which were invalid either

⁶⁴ *Ingersoll-Humphries Division, Borg-Warner Corp.*, 117 NLRB 1715 The Board rejected the petitioner's contention that an existing contract covering production and maintenance employees in 2 divisions was not a bar because 1 division was a new and separate operation and could only constitute a separate unit. It was pointed out that, as the contract covered all of the employer's production and maintenance employees, the contract unit was presumptively appropriate and the contract was a bar to the petition for a one-division unit.

⁶⁵ See, e. g., *Byron-Jackson Division, Borg-Warner Corp.*, 117 NLRB 1613.

⁶⁶ *Ibid.*

⁶⁷ *Consolidated Cement Corp.*, 117 NLRB 492, Member Murdock dissenting.

⁶⁸ See also *Pittsburgh Plate Glass Co.*, 117 NLRB 1728.

⁶⁹ *Hooker Electrochemical Co.*, 116 NLRB 1393.

⁷⁰ See, e. g., *General Refractories Co.*, 117 NLRB 81.

⁷¹ See *Awning Research Institute*, 116 NLRB 505.

because the contracting union had not timely complied with the filing requirements of the act or because the clauses failed to observe the union-security limitations.

(a) Noncompliance with the filing requirements

The act requires that a union making a union-security contract must be in compliance with the filing requirements⁷² at the time the agreement is made, or within the preceding 12 months.⁷³ The Board has held that a contract providing for automatic renewal is "made" each time it is renewed for an additional period.⁷⁴ Consequently, the union-security clause in such a contract becomes invalid if the union's filings have lapsed at the time of automatic renewal.⁷⁵ In the Board's view, this accords with the intention of Congress that labor organizations should be encouraged to achieve and renew compliance at regular intervals to insure permanent removal of Communists from positions as union officers.

In one case, the Board rejected a union's contention that under the *Dichello* decision⁷⁶ its union-security agreement was a bar even though compliance forms, signed before the contract was executed, were not timely filed.⁷⁷ The Board pointed out that in *Dichello* the union, which was not in full compliance, filed a statement with the Board before executing the contract indicating its intention to effect compliance. Here, the Board noted, no timely statement was filed and the union thus failed to indicate appropriately its intention to comply.

The Board rejected an employer's contention that a union-security agreement with a noncomplying union may not be denied contract-bar effect under the Supreme Court's ruling in the *Arkansas Oak Flooring* case.⁷⁸ The Board held that the Court's ruling may be held to sanction the practice of according valid contracts of noncomplying unions the same contract-bar effect as those of complying unions, but it does not apply to a union-security agreement which is unlawful because the contracting union did not make the filings specifically required by section 8 (a) (3) as a condition to the validity of such an agreement.⁷⁹

(b) Failure to provide 30 days' grace

In several cases, contracts containing union-security agreements were again held ineffective for contract-bar purposes because em-

⁷² Section 9 (f), (g), and (h).

⁷³ Section 8 (a) (3).

⁷⁴ See *Miron Building Products Co., Inc.*, 116 NLRB 1406.

⁷⁵ *Stemar Co.*, 116 NLRB 578.

⁷⁶ *Dichello, Inc.*, 107 NLRB 1642 (1954), see also Twenty-first Annual Report, p. 41.

⁷⁷ *Paul M. O'Neill International Detective Agency, Inc.*, 117 NLRB 578

⁷⁸ *United Mine Workers of America v. Arkansas Oak Flooring Co.*, 351 U. S. 62, 73. Twenty-first Annual Report, pp 126-127

⁷⁹ *Bonney Forge & Tool Works*, 117 NLRB 1765.

ployees were not afforded the full 30-day grace period for acquiring union membership as required by the proviso to section 8 (a) (3). One union-security clause was held defective in that inexperienced, i. e., new, employees were required to acquire membership after a 2-week "trial period."⁸⁰ In another case, the union-security clause failed to accord old employees, who were not union members when the contract was executed, a 30-day grace period from that date.⁸¹ Moreover, the record showed that union dues were checked off from the pay of such employees immediately after the contract was executed.

A contract in 1 case was held no bar because its originally valid union-security clause had been modified in a manner which clearly did not afford new employees 30 days to join the union.⁸² A majority of the Board rejected the union's offer to show that the amended clause as applied was lawful. It was made clear that, where a union-security clause is clearly unlawful on its face, evidence of the practice under it is not admissible.

d. Change in Identity of Contracting Parties

Where the identity of the employees' representative is in doubt because of a schism within the union, the Board will entertain a petition for an election even though a contract is in effect. However, the Board again made it clear that the schism doctrine will be applied only if the Board is convinced that the bargaining relationship is so confused that no stabilizing purpose would be served by applying the contract-bar rule.⁸³ As also pointed out again, no schism will be found if the contracting union has continued to function as the recognized bargaining representative during the period of dissension, or where "the expression of disaffiliation is indicative merely of dissatisfaction by a dissident element, rather than of a substantial and effective change in the existence and functioning of the recognized bargaining agent."⁸⁴ Thus, no effective schism was found where, despite some dissension, the membership of an expelled local acquiesced in the organization's continued functioning, and no attempt was made to oust the incumbent union and to substitute a rival.⁸⁵ Nor was a contract signed by a local and its parent removed as a bar by disaffiliation action of the local's membership, where the signatory parent organization appointed an administrator to take over the local's affairs, indicated that it did not relinquish its rights under the

⁸⁰ *Auning Research Institute*, 116 NLRB 505.

⁸¹ *Industries Freight Service*, 116 NLRB 1164

⁸² *The Steel Products Engineering Co.*, 116 NLRB 811, Members Murdock and Peterson dissenting.

⁸³ *Thompson Wire Co.*, 116 NLRB 1933.

⁸⁴ *Ibid.*

⁸⁵ *Ibid.* The Board here distinguished *Globe Forge, Inc.*, 115 NLRB 862 (1956)

contract and was in a position to administer it, and was willing to negotiate modifications proposed before the disaffiliation movement.⁸⁶

The Board also reaffirmed the *Lawrence Leather* principle⁸⁷ that where a local group effectively disaffiliates from a union expelled from its parent for such reasons as Communist domination, the union's pre-shipment contract ceases to be a bar to an election.⁸⁸

Regarding change of identity of one of the contracting parties, the Board again had occasion to make clear that a mere change of a union's designation or affiliation, which does not affect the union's representative status, is insufficient to remove the union's contract as a bar.⁸⁹ And in one case, an employer's identity was held not affected for contract-bar purposes by a change in stock ownership which resulted in a change in the managerial hierarchy.⁹⁰ There was little if any change among the rank-and-file employees, and no change in the employer's business operations and in the composition of the contract unit.

e. Effect of Rival Petition—Notice to Employer

The Board generally follows the rule that a contract executed,⁹¹ renewed,⁹² or to become effective⁹³ after the filing of a rival petition is not a bar to a present determination of representatives.

However, early in fiscal 1957, the Board reversed its policy of considering the mere filing of a petition sufficient notice to the employer for contract-bar purposes.⁹⁴ Declaring that the former rule places too heavy a burden upon voluntary collective bargaining, the Board announced that where no actual notice of the filing of a rival petition is given the employer before a contract is executed, the contract will be held a bar to an election. Later, the Board made clear that this rule applies only in the case of a newly executed contract. Notice to the employer of a pre-*Mill B* date petition is not necessary to prevent automatic renewal of a contract from constituting a bar.⁹⁵

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

An unsupported claim of representation, if followed within 10 days by an adequately supported petition for an election, will prevent a contract executed during the 10-day period from becoming a bar to an

⁸⁶ *The Youngstown Steel Door Co.*, 116 NLRB 986

⁸⁷ *A. C. Lawrence Leather Co.*, 108 NLRB 546 (1954).

⁸⁸ *Westinghouse Electric Corp.*, 116 NLRB 1642.

⁸⁹ *Dryden Rubber Division of Sheller Manufacturing Co.*, 118 NLRB 369, *Thompson Wire Co.*, 116 NLRB 1933.

⁹⁰ *The M. B. Farrin Lumber Co.*, 117 NLRB 575.

⁹¹ E. g., *The Wayne Pump Co.*, 117 NLRB 25.

⁹² E. g., *F. C. Russell Co.*, 116 NLRB 1015, *Minute Maid Corp.*, 117 NLRB 68.

⁹³ See, e g., *Hargrun Corp.*, 117 NLRB 556

⁹⁴ *Anheuser-Busch, Inc.*, 116 NLRB 186

⁹⁵ *Westinghouse Electric Corp.*, 117 NLRB 520.

election.⁹⁶ However, it was held in the *Spencer Kellogg*⁹⁷ case that the 10-day rule does not apply to a contract made during the *Mill B* period, that is, the period between the automatic renewal or notice date⁹⁸ and the terminal date of a then current contract.⁹⁹ In this period, a supported petition must actually be filed to forestall a contract from becoming a bar; a naked claim of representation has no effect if the contract is executed during this period. But the Board held that this exception to the 10-day rule did not apply where the new contract was executed after the terminal date of the old one, even though negotiations on the new contract had begun during the *Mill B* period.¹ In this case, the rival union had made its claim before execution of the new contract and filed its petition 8 days later. The Board held the contract no bar and ordered an election. But the 10-day rule and its exception have no application when the petition is filed before the automatic renewal or notice date of an existing contract.²

g. Termination of Contract

The existence of a contract bar depends at times upon whether or not the asserted contract has in fact been terminated, either automatically by operation of its terms,³ or by the action of the parties.

(1) Notice of Termination

Where notice of termination has been given⁴ in accordance with specific provisions, the contract ceases to operate as a bar.⁴ Thus, notice which under the terms of the contract forestalled its automatic renewal was held to have removed the contract as a bar even though it provided also for continuation of the agreement until the complete breakdown of negotiations or adoption of a new contract.⁵ The Board noted that since the old contract had terminated there remained only a stopgap agreement, which would not constitute a bar.⁶

Whether a contract survived notice of a desire of a party to negotiate changes at times must be determined on the basis of the intent of the party or the scope of the notice. However, where a notice is

⁹⁶ See *General Electric X-Ray Corp*, 67 NLRB 997 (1946), and *Boston Quilting Corp*, 115 NLRB 491 (1956), Twenty-first Annual Report, p 44

⁹⁷ *Spencer Kellogg and Sons, Inc*, 115 NLRB 838 (1956), Twenty-first Annual Report, pp 44-45

⁹⁸ Also called the *Mill B* date in Board documents

⁹⁹ This period is often referred to as the *Mill B* period. It is the period which contracts frequently provide for the negotiation of new agreements, and a contract made during it will bar a petition filed after execution of the contract even though the petition precedes the terminal date of the original contract. See p 29.

¹ *Gibson Refrigerator Co*, 117 NLRB 561

² *Rathbun Molding Corp*, 116 NLRB 1002.

³ See, e g, *Southeast Ohio Egg Producers*, 116 NLRB 1076, where no bar was found because under its terms the asserted contract had terminated 90 days after the employer commenced operation at a new location following abandonment of the former location of its business

⁴ A notice to "amend" has been held sufficient to terminate a contract which provided for automatic renewal absent notice "to modify, change, or terminate." *New England Fish Co*, 118 NLRB 119

⁵ *Universal Match Corp*, 116 NLRB 1388, see also *New England Fish Co.*, *supra*.

⁶ See Terms of Contract, p. 21.

unambiguous and clearly comes within the contract's termination clause, later conduct of the parties will not be considered as evidence that termination was not intended.⁷

In one case, the Board held that a union's request for changes of nearly all provisions terminated the contract. This contract provided for automatic renewal of provisions not sought to be changed⁸ rather than renewal of the contract. The Board also noted that the portions of the contract not affected by the union's request did not constitute the essentials of a collective-bargaining agreement, and that the union had itself characterized the requested changes as a "new" agreement.

An international representative's timely notice to terminate the contracts of 2 local unions was held sufficient to remove the affected contracts as a bar because it was found that the international representative had negotiated the contracts, had signed 1 of them, and had represented the locals at the hearing.⁹ Thus, the Board noted, the representative had at least apparent authority to give effective notice of termination. On the other hand, an employer association's notice to terminate the associationwide contract was held not sufficient to also terminate the separate contract of a nonmember employer which was identical and had been signed in accordance with the practice of nonmembers in the area to adopt the contract pattern established by the association.¹⁰ The Board noted that the petitioning employer was not bound as a member of the contracting association, and that there was nothing to indicate that the association had authority to act for the employer.¹¹

h. Effect of Reopening

The Board reaffirmed the companion *Western Electric*¹² and *General Electric*¹³ rules that (1) voluntary renegotiation or modification of contract provisions, or the mere existence of a provision for midterm modification, does not render the contract vulnerable to an otherwise untimely petition; and (2) on the other hand, reopening under an unlimited midterm modification clause, which is coupled with a provision for unilateral termination, opens up the contract to a rival petition.

⁷ *The Great Atlantic & Pacific Tea Co., National Bakery Division*, 116 NLRB 1463

⁸ *Colorado Builders Supply Co.*, 116 NLRB 1391. The Board distinguished the situation here from that in the *Michigan Gear* (114 NLRB 208 (1955)) and *Mallinckrodt Chemical Works* (114 NLRB 187 (1955)) cases (Twenty-first Annual Report, p 47) where the termination clauses of the contracts respectively provided for automatic renewal of the contract as a whole absent agreement on changes, or for renewal for a full term subject to whatever changes were agreed upon.

⁹ *Duval Sulphur & Potash Co.*, 116 NLRB 1073

¹⁰ *Non-Corrosive Products Co. of Texas*, 116 NLRB 1027

¹¹ Compare *Encino Shirt Co.*, 117 NLRB 48. Here the Board held that the association contract by which the employer-petitioner may have become bound was not a bar because the employer's petition, filed near the termination date of that contract and prior to its automatic renewal date, indicated that the employer no longer desired to bargain on a multiple-employer basis.

¹² *Western Electric Co., Inc.*, 94 NLRB 54 (1951)

¹³ *General Electric Co.*, 108 NLRB 1290 (1954); and *General Electric Co.*, 110 NLRB 992 (1954).

Thus, where the parties had commenced negotiations under mid-term modification provisions, and their contracts were subject to termination absent agreement on changes by a specified date, the contracts were held open to a rival petition.¹⁴ The Board again pointed out that in this type of situation, until the time for giving midterm notice has passed or the parties have executed a new or modified contract, the degree of industrial stability which the contract-bar rule is designed to preserve does not exist.

Conversely, a fixed-term contract containing a broad midterm modification provision, but no provision for termination before the end of the term, was held a bar to a petition which was untimely with respect to the full term of the contract.¹⁵ And a contract limiting the right to reopen to a general and uniform change in rates of pay, and permitting a strike or lockout but not contract termination in connection with midterm negotiations, was held to have sufficiently stabilized labor relations not to be open to a petition during such negotiations.¹⁶ And in 1 case the Board rejected the contention that a contract was open to a petition because of a provision that any article could be reopened on 15 days' notice.¹⁷ The Board here pointed out that, since any article not so opened was to continue in effect, the reopening clause was not equivalent to an unlimited modification clause, but rather had the effect of rendering the contract terminable at will, so that the contract continued to be a bar during the first 2 years of its existence.

i. Premature Extension of Contract

The Board has adhered to the rule that a petition filed timely in relation to the termination date or the automatic renewal date of an outstanding contract is not barred by the earlier extension of the contract. The Board pointed out again that

The basic purpose of the premature extension doctrine is to protect employees' freedom of choice in the selection of bargaining representatives by insuring them the right to select, reject, or change representatives at reasonable and predictable intervals of time.¹⁸

This being the purpose of the rule, the Board held—as it had previously held¹⁹—, that an extension agreement does not become operative as a bar merely because there was ample opportunity for the filing of a petition during the interval between notice of termination

¹⁴ *Westinghouse Electric Corp*, 116 NLRB 1574; *Armstrong-Cork Co*, 117 NLRB 262

¹⁵ *Beloit Eastern Corp*, 117 NLRB 329

¹⁶ *The Youngstown Steel Door Co*, 116 NLRB 986. See also *Kearney & Trecker Corp.*, 116 NLRB 1879, *Westinghouse Electric Corp*, *supra*.

¹⁷ *Diamond Lumber Co*, 117 NLRB 135.

¹⁸ *Stubnitz Greene Corp.*, 116 NLRB 965.

¹⁹ *Congoleum-Nairn, Inc.*, 115 NLRB 1202 (1956).

of the old contract and the execution of the new contract. For, the Board noted, "the interval was not a predictable one, but was the result of actions by the contracting parties which could not have been reasonably anticipated by the petitioner."

The premature extension rule, however, does not apply to contracts executed during, and extending, the term of another agreement, where the earlier agreement itself was not a bar at the time the new one was consummated.²⁰ Thus, a petition was held barred by a new 2-year contract executed during the third year of an earlier contract which, being of unreasonable duration, was no longer operative.²¹

Similarly, the premature extension rule has not been applied where the original contract ceased to be a bar because of its midterm reopening provisions. Thus, a supplemental amendatory agreement was held not a premature extension for contract-bar purposes, since it was made at a time when the original contract was no bar because it had been opened for negotiations under an unlimited reopening clause which permitted unilateral termination by the parties if agreement on changes was not reached within a specified time.²² On the other hand, the Board held that an amendatory agreement made under a narrow wage-reopening provision and extending the term of the original contract was a premature extension.²³ Distinguishing the *Westinghouse* case,²⁴ the Board pointed out that, aside from difference in the scope of the reopening clause, the *Westinghouse* contract limited the time for giving notice to a specific 60-day period, whereas here notice to reopen, with the possibility of termination, was entirely within the discretion of the parties after a certain date. To consider the amendatory agreement here a bar, the Board said, "would preclude the employees from exercising the right to change bargaining representatives at predictable and reasonable intervals and thus contravene the purpose of the premature extension rule."

The Board had occasion to reiterate that the premature extension rule applies regardless of whether the extension is embodied in an entirely new and separate agreement, rather than in an amendment, supplement, or extension of the existing contract.²⁵ The rule also applies regardless of whether the extension agreement was made, not to forestall rival claims, but for valid economic or business reasons.²⁶ In another case, the Board rejected the contention that an extension

²⁰ *Hentz Manufacturing Co.*, 116 NLRB 183.

²¹ *Ibid.* Compare *Central San Vicente, Inc.*, 117 NLRB 397, where an extension agreement executed within the initial 2-year period of a contract of unreasonable duration was held a premature extension and therefore not a bar to a petition filed timely with respect to the expiration of the reasonable and permissible 2-year bar period of the original contract. See also *Diamond Lumber Co.*, 117 NLRB 135.

²² *Westinghouse Electric Corp.*, 116 NLRB 1574. See *Effect of Reopening*, p. 26.

²³ *Armstrong Cork Co.*, 117 NLRB 262.

²⁴ See footnote 22.

²⁵ *Stubnitz Greene Corp.*, 116 NLRB 965

²⁶ *Wyman-Gordon Co.*, 117 NLRB 75. See *Twenty-first Annual Report*, pp. 47-48.

agreement should not be considered "premature" because passage of a new minimum wage law necessitated changes in the existing contract.²⁷ The Board noted that wage rates could have been altered without extending the contract.

The Board also reaffirmed the rule that a contract executed during the *Mill B* period of an earlier contract and before the filing of a rival petition or claim will not be considered a premature extension. Such a contract is a bar to a petition filed before the expiration date of the original contract.²⁸

5. Impact of Prior Determinations

In order to promote the statutory objective of stability in labor relations, the frequency of representation elections is limited administratively by the Board's 1-year rule as to certifications of representatives, and by the complementary prohibition of section 9 (c) (3) against more than 1 Board election in the same employee group within any given 12-month period.

a. One-Year Certification Rule

Under the 1-year rule on certifications, the Board ordinarily dismisses a petition for an election during the year following certification of a bargaining agent.²⁹ This rule is primarily designed to allow a reasonable time within which the employer and employee representative can negotiate a contract. The Board has therefore held that if the parties execute a contract within that time the certification year becomes merged with the contract and the latter is controlling with respect to the timeliness of a representation petition.³⁰

b. Twelve-Month Limitation on Elections

The applicability of the 12-month rule was involved in several cases during fiscal 1957. In 1 case³¹ the contention was made that, where a union's certification is revoked for lapse of compliance with filing requirements of section 9,³² the revocation automatically invalidates the election on which the certification is based, and therefore renders the 12-month limitation inoperative. The Board rejected the contention. It was pointed out that the Board's order was limited to revocation of the certifications, and the elections were not declared invalid. Otherwise the purpose of insuring strict mainte-

²⁷ *Central San Vicente, Inc*, 117 NLRB 397.

²⁸ *Ingersoll-Humphries Division, Borg-Warner Corp*, 117 NLRB 1715.

²⁹ See Twenty-first Annual Report, p. 49. See also *Weston Biscuit Co., Inc*, 117 NLRB 1206.

³⁰ Nineteenth Annual Report, p. 35; Twentieth Annual Report, p. 34; Twenty-first Annual Report, pp. 49-50.

³¹ *Weston Biscuit Co., Inc*, *supra*.

³² Revoked in accord with the rule of *Monsanto Chemical Co.*, 115 NLRB 702 (1956). See Twenty-first Annual Report, p. 36.

nance by certified unions of their compliance status would be largely nullified by permitting a defaulting union to obtain a new election at any time after renewal of its compliance.

In another case, the Board had occasion to reaffirm its earlier interpretation³³ of section 9 (c) (3) that the 12-month limitation period runs from the date of the earlier ballot and not from the time of the Board's certification of the results.³⁴ Here, the Board rejected the employer's contention that a new election, less than 12 months after the certification of the petitioning union's loss of an earlier election, was improper because it would deprive the employer of "a year of peace from the date of the final determination" on the last election. The Board noted that, while the employer invoked section 9 (c) (3), its contention apparently was based on the administrative practice under which a representation petition ordinarily will not be entertained during the year following the certification of a bargaining representative. It was made clear that this administrative rule of 1 year for a bargaining representative, being intended to give stability to the bargaining process, does not apply where no bargaining agent is chosen. Section 9 (c) (3), on the other hand, requires a 12-month interval between elections regardless of the outcome of the first election.

Representation elections conducted by State authorities under proper safeguards ordinarily are accorded the same effect as Board-conducted elections for the purpose of the limitation of section 9 (c) (3).³⁵ However, a majority of the Board held during fiscal 1957 that an election under State auspices in a unit including supervisory employees was not a valid election, and that a new Board election within 12 months was therefore not barred by section 9 (c) (3).³⁶

6. Unit of Employees Appropriate for Bargaining

Section 9 (b) requires the Board to decide in each representation case "whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof."³⁷ This section also provides for certain limitations on the unit placement of professional employees, craft employees, and plant guards. Section 9 (c) (5) precludes the Board from deciding the appropriateness of a bargaining unit solely on the basis of the extent to which the employees involved

³³ See *Mallinckrodt Chemical Works*, 84 NLRB 291 (1949).

³⁴ *Kolcast Industries, Inc.*, 117 NLRB 418

³⁵ See Twenty-first Annual Report, p 51.

³⁶ *Clements Auto Co d/b/a Southern Minnesota Supply Co.*, 116 NLRB 968, Member Rodgers dissenting.

³⁷ Unit determinations also have to be made in unfair labor practice proceedings where the existence of a violation of section 8 (a) or (b) depends on whether or not the bargaining representative involved had majority status in an appropriate bargaining unit

have been organized. A bargaining unit may include only "employees" within the definition of section 2 (3).

The following sections discuss the more important fiscal 1957 cases dealing with factors considered in unit determinations, particular types of units, and the treatment of particular categories of employees or employee groups.

a. Factors Considered

The appropriateness of a proposed bargaining unit is determined on the basis of the common employment interests of the group involved. In making such determinations, the Board has continued to give particular weight to any antecedent bargaining history of the group and—in some situations—to take into consideration the wishes of the employees. Extent of organization may be a factor but it cannot be given controlling weight.

(1) Bargaining History

In determining the bargaining units for previously represented employees, the Board is reluctant to disturb a unit established by collective bargaining over a substantial period of time.³⁸ Such a bargaining history will be given effect, unless of very short duration,³⁹ or based on a unit which is repugnant to the policies of the act or which does not give the employees the fullest freedom in exercising their rights under the act.⁴⁰

In one case, the appropriateness of several separate craft units depended on whether past bargaining had been conducted on a separate craft unit basis or whether the petitioning internationals' practice of negotiating and signing joint contracts indicated bargaining on an industrial basis.⁴¹ A majority of the Board took the view that separate units were appropriate because the practice of joint contracts had been a matter of convenience and the bargaining had in fact proceeded on a basis of recognizing and preserving separate craft groups. A similar question arose where the union named in a decertification petition alleged that it and another union had bargained jointly for two groups of employees and that the unit in which decertification was sought was therefore inappropriate.⁴² Rejecting the contention, the Board found that, while the 2 unions had negotiated jointly, the resulting contracts and other evidence indicated that the bargaining was intended to and did in fact preserve the

³⁸ See, e g , *Printing Industry of Seattle, Inc* , 116 NLRB 1833

³⁹ See *Puerto Rico Steamship Association*, 116 NLRB 418, where the Board noted that a bargaining history of somewhat more than 1 year had been held substantial and controlling.

⁴⁰ See *Standard Oil Co. of California*, 116 NLRB 1762 The Board pointed out that a historical unit is not repugnant to the act merely because it may not always be appropriate.

⁴¹ *Shell Oil Co.*, 116 NLRB 203

⁴² *Wyandotte Chemicals Corp* , 116 NLRB 972.

separate representative interests of the 2 unions. The mere execution of a single contract and the joint meetings of the union with the employer were held not to preclude a finding that the bargaining had been on the basis of two separate units.

(2) Employees' Wishes in Unit Determinations

Where a homogeneous employee group, such as a craft or departmental group, is sought to be represented either separately or as part of a larger unit, or where a separately represented group is sought to be added to another existing unit, the Board has continued to direct self-determination elections to ascertain whether the group desires representation in a separate unit or as part of a larger unit. Similarly, where an unrepresented fringe group is sought to be added to an existing unit, the group is accorded a separate election to determine whether they wish to join the existing unit or continue without representation.⁴³

A self-determination election is mandatory under section 9 (b) (1) where it is proposed to include professional employees⁴⁴ in a unit with nonprofessionals. However, the Board considers section 9 (b) (1) as not requiring a separate election on the question of joint representation if the proposed unit is so predominantly professional that a separate election among the professionals on inclusion in a mixed unit would serve no useful purpose.⁴⁵

In one case, the Board rejected an intervening union's contention that professionals whom the petitioner sought to represent, either in a mixed unit or separately, should not be polled regarding their wishes because in an earlier election they had voted against separate representation.⁴⁶ The Board's view was that there is nothing in the act limiting the self-determination privilege of professionals to a single opportunity in the course of their employment for a particular employer. Moreover, the Board could find nothing in section 9 (b) (1) that frees the Board from that section's requirement merely because the Board has once conformed to it with respect to any particular group of professional employees.

(3) Extent of Organization

As noted above, a bargaining unit may not be held appropriate solely on the ground that it is to include all the employees presently organized.⁴⁷ The Board has given effect to this rule by denying unit

⁴³ See, e. g., *Remington Rand Division of Sperry Rand Corp*, 116 NLRB 137, *Rathbun Molding Corp*, 116 NLRB 1002, *Harvey Paper Products Co*, 116 NLRB 1624.

⁴⁴ The term "professional employee" is defined in section 2 (12) of the act. For applications of the statutory definition see *Westinghouse Electric Corp*, 116 NLRB 1545, *Boeing Airplane Co*, 116 NLRB 1775, *Combustion Engineering, Inc.*, 117 NLRB 1589.

⁴⁵ See *Combustion Engineering, Inc*, *supra*

⁴⁶ *Westinghouse Electric Corp.*, *supra*.

⁴⁷ Section 9 (c) (5).

requests whose only apparent basis was the extent of the petitioner's organization of the employer's employees.⁴⁸ Conversely, the Board has rejected contentions that a requested unit was inappropriate under section 9 (c) (5) where the unit clearly satisfied traditional requirements. Thus, the fact that the petitioner in one case requested a unit of a garment manufacturer's cutters after it failed to organize all of the employer's production and maintenance employees was held immaterial, because the cutters unit was found appropriate "by reason of its own homogeneity and distinctiveness."⁴⁹ And in another case the Board held that section 9 (c) (5) did not require that a requested 1-department unit be held inappropriate because the petitioner previously had failed in 2 elections to poll a majority in an overall unit and had indicated its intention to seek another election in the larger unit.⁵⁰ It was pointed out that the unit here was found appropriate, not by giving *controlling* weight to the extent of the union's organization, but on the basis of "clear and decisive factors wholly unrelated to extent of organization."⁵¹

b. Multiemployer Units

The Board had occasion during the past year to restate certain principles which govern the appropriateness of multiemployer units.

Bargaining history plays a very large part in determinations as to multiemployer units. Thus, since a single employer is presumed to be appropriate, to defeat a claim for such a unit in favor of a multi-employer unit a controlling history of bargaining on the broader basis must exist.⁵² To be controlling, the multiemployer bargaining history must have been substantial.⁵³ Thus, where less than a year had elapsed between the effective date of an asserted multiemployer contract and the filing of the petition,⁵⁴ and where bargaining on a narrower basis had continued up to the filing of the petition,⁵⁵ the Board again made it clear that a multiemployer bargaining history is not controlling if it is of such brief duration and not predicated on a

⁴⁸ See, for instance, *Alfred Shaheen, Ltd.*, 117 NLRB 96.

⁴⁹ *The Berger Bros. Co.*, 116 NLRB 439.

⁵⁰ *Kwikset Locks, Inc.*, 116 NLRB 1648.

⁵¹ *Westinghouse Electric Corp.*, 115 NLRB 1381 (1956), cited by the employer in support of its request for dismissal, was held inapplicable, since there the limited unit sought was based entirely on extent of organization and had no decisive affirmative support such as the unit here.

⁵² See, e. g., *Indegro, Inc.*, 117 NLRB 386, and *Arden Farms*, 117 NLRB 318, where it was held immaterial that the employers involved had formed an association and had indicated their desire to conduct future bargaining on an associationwide basis. See also *Rainbo Bread Co.*, 92 NLRB 181 (1950).

⁵³ The Board had occasion during the past year to also make it clear again that participation in multiemployer bargaining and execution of a joint contract by an employer is not binding on his employees unless they have designated the joint representative as their statutory bargaining agent or have acquiesced in joint representation under the contract. See *Mohawk Business Machines Corp.*, 116 NLRB 248. The Board here cited *Pepsi-Cola Bottling Co. of Kansas City*, 55 NLRB 1183, where it had held that absent such designation or acquiescence a multiemployer "history of collective bargaining" is not determinative of the form of unit appropriate for bargaining on behalf of the particular employer's employees.

⁵⁴ *Miron Building Products Co., Inc.*, 116 NLRB 1406

⁵⁵ *Highway Transport Association of Upstate New York, Inc.*, 116 NLRB 1718.

Board certification, particularly where preceded by single employer bargaining.

Bargaining by an areawide employer association for a unit of employees over a number of years has been held controlling even though the unit covered only a limited group of association members and did not include similar employees of other association members.⁵⁶ And withdrawal of some members from employer associations has been held not to be sufficient, in and of itself, to preclude a determination that a multiemployer unit comprising the employees of the remaining members is appropriate.⁵⁷ On the other hand, association bargaining is not considered binding on members which have not indicated any intention to delegate their bargaining authority to the association, but have manifested an intention not to be bound by the contract negotiated by the association.⁵⁸

Although there is no multiemployer bargaining history for a particular group of an employer's employees sought to be included in a larger unit, effect may be given to a successful history of multiemployer bargaining with respect to substantially all other employees of the employer. But for such bargaining history to be controlling, there must be a fixed pattern of multiemployer bargaining for the other employees, and the multiemployer unit sought for the particular group must be coextensive with the established multiemployer unit for the other employees.⁵⁹ This was held to be in harmony with the rule that where a multiemployer bargaining history is established on the basis of the bargaining history of the very employees involved, the Board will neither enlarge nor diminish the historic multiemployer unit. Applying these rules, the Board held that a multiemployer bargaining history for various groups of employees, other than those sought, was not controlling where bargaining was found to vary considerably both as to numbers and identity of employers covered, with no fixed pattern, and where the unit sought was not coextensive with any of the established multiemployer units.⁶⁰

c. Craft and Quasi-Craft Units

Requests for separate craft or departmental units during fiscal 1957 again presented questions as to whether the particular employees constituted a true craft group or a traditional department for the purpose of separate representation. The further question of whether the group could properly be severed from a larger existing unit also was involved in a number of cases.

⁵⁶ *Printing Industry of Seattle, Inc.*, 116 NLRB 1883.

⁵⁷ *Puerto Rico Steamship Association*, 116 NLRB 418

⁵⁸ *Berghuis Construction Co.*, 116 NLRB 1297

⁵⁹ *Arden Farms*, 118 NLRB 117, *Borden's Capital Dairy*, 118 NLRB 114.

⁶⁰ *Ibid.*

(1) Welders as Craftsmen

A reexamination of the status of welders in the *Hughes Aircraft* case⁶¹ resulted in the overruling of prior decisions⁶² where the Board, on the record then before it, had concluded that welding was not a distinct craft under the *American Potash*⁶³ test. The present record, the majority of the Board noted, showed that the petitioning welders union has a 20-year history of separate welder representation. In recent times, the Board noted also, the skill required of welders had greatly increased because of new techniques necessary to produce welds which will pass rigid tests such as are applied in the critical aircraft and guided missiles industries. Further, while many welders may not be subject to a formal apprenticeship program, the majority found they usually have an experience which the Board recognizes as the equivalent of an apprenticeship.⁶⁴ The majority noted that the United States Government requires 2 years' experience before qualifying a welder, and that in the aircraft industry welders with 3 to 5 years' experience are sought and welders have a formal program of merit advances while they are on the job. In view of these considerations, the majority held that both the production and maintenance welders sought by the petitioners were craftsmen and together constituted an appropriate unit.⁶⁵ Regarding the maintenance welders, the majority noted that these employees have substantially the same job descriptions, classifications, skills, and rates of pay as the production welders, and, while working with other crafts throughout the plant, they spend 50 percent of their time in maintenance welding.⁶⁶

(2) Factors in Craft Grouping

Employees engaged in a recognized craft are entitled to separate representation only if they constitute an "identifiable, skilled, and homogeneous craft group."⁶⁷ The Board held in one case that the requisite functional identity of a craft group was not destroyed by the transfer and promotion to the group of employees in other classifications on the basis of ability.⁶⁸ Such transfers and promotions, in the

⁶¹ *Hughes Aircraft Co (Tucson Operations)*, 117 NLRB 98, Member Bean dissenting

⁶² *Clayton and Lambert Manufacturing Co*, 111 NLRB 540 (1955) Similar later cases were also overruled.

⁶³ *American Potash & Chemical Corp*, 107 NLRB 1418 (1954).

⁶⁴ See also *Koppers Co, Inc*, 117 NLRB 422, where maintenance electricians and instrument mechanics, as well as pipefitter-welders, of an employer which maintained no apprenticeship or formalized training program were held to constitute craft groups because the employees utilized the skills and equipment generally identified with their crafts. See also *Universal Match Corp*, 116 NLRB 1388. Finding the employer's electricians to be craftsmen, the Board here noted that, while there was no formalized apprenticeship program, it took approximately 3 years for an inexperienced electrician performing progressively more difficult tasks with experienced electricians to reach the job rate for electricians.

⁶⁵ Silver solderers were excluded from the welders group because silver soldering is a skill separate from welding, and the solderers are not in line of progression to become welders

⁶⁶ *International Paper Co (Southern Kraft Division)*, 96 NLRB 295 (1951), and similar later cases were overruled insofar as they included welders who worked with other crafts, in craft units of the particular crafts to which they were regularly assigned.

⁶⁷ See, e g, *San Manuel Copper Corp*, 116 NLRB 1153.

⁶⁸ *E. I. Du Pont de Nemours & Co (Pompton Lakes Works)*, 117 NLRB 849.

Board's view, are distinguishable from frequent interchange between classifications doing closely related work. A heterogeneous grouping of employees performing different tasks, with varying degrees of skill, does not constitute an appropriate craft unit.⁶⁹ Nor, as often held by the Board, may employees who constitute only a segment of a craft group be represented in a separate unit.⁷⁰

(3) Departmental Groups

The Board has also continued to recognize the historically established separate interests of departmental groups which by tradition and practice have acquired craftlike characteristics.⁷¹ On the basis of this test, the request for a departmental unit of motion picture employees employed by a manufacturer was granted.⁷² The motion picture group of the employing aircraft manufacturer was generally comparable to production units in the motion picture industry. Also, it contained a nucleus of highly skilled cameramen such as are usually included in separate units in the broadcasting industries. The Board held that the group therefore satisfied the requirements for a departmental unit. But in a later case,⁷³ the Board denied the request for a unit of employees performing photographic and related work in connection with the manufacturer's production of documentary motion pictures. Here, it was pointed out, the group, unlike that in *Boeing*, did not have "all the skills necessary to plan and produce finished motion pictures," i. e., skills necessary to prepare the scripts; to shoot, develop, process, and edit the film; to do narrations; to arrange and set up lighting equipment; to create sets when necessary; and to cut sound tracks for finished motion pictures. Rather, the Board noted, the employees here worked as a team with skilled employees from other departments and they had no special community of interest apart from other employees engaged in producing motion pictures. Consequently, they were held not to constitute a separate, homogeneous, functionally distinct group.

In one case, a machine shop with the usual machine shop functions was held an appropriate departmental unit even though it had also an important production function.⁷⁴ A majority of the Board noted that the machine shop was a functionally separate department containing employees identified with trades or occupations distinct from those of other employees. Rejecting the view that the machine shop was a pure production department, as the one in the *Bossert* case,⁷⁵ the majority pointed out that the shop was separately housed

⁶⁹ *Wyman-Gordon Co.*, 117 NLRB 75.

⁷⁰ See, e. g., *Bethlehem Pacific Coast Steel Corp.*, 117 NLRB 579.

⁷¹ See *American Potash & Chemical Corp.*, 107 NLRB 1418, 1424 (1954).

⁷² *Boeing Airplane Co.*, 116 NLRB 1101.

⁷³ *North American Aviation, Inc.*, 116 NLRB 1876.

⁷⁴ *General Refractories Co.*, 117 NLRB 81, Member Bean dissenting.

⁷⁵ *Bossert New Castle Div., Rockwell Spring & Axle Co.*, 111 NLRB 331 (1955).

and the work done by the shop employees was not, as in *Bossert*, duplicated by employees in other departments. But the fact that a group happens to be an administrative department in an employer's organization does not alone qualify it as a "traditional department" entitled to separate representation.⁷⁶ Also, in one case, a truck-drivers unit sought to be severed from an overall unit was held inappropriate because the employees were not shown to spend the major portion of their working time in actual driving, or in duties incidental to driving, and therefore did not constitute a traditional truckdriver unit.⁷⁷

(4) Craft and Departmental Severance

Employees who constitute a true craft group or a traditional, distinct departmental group, and who are presently represented as part of a larger unit, may be severed and placed in separate units under the *American Potash* rule, provided the union seeking severance has traditionally represented the particular type of employees.⁷⁸ The Board had occasion to make clear again that, if these tests are satisfied, severance will not be denied because of a long history of bargaining for the employees involved on a broader basis or the possibility of jurisdictional disputes or the possible disruptive effects of severance on labor relations.⁷⁹ Nor does the Board deny severance of craft or departmental units because of similarity of benefits received by employees throughout the employer's operation.⁸⁰ Also, severance will be granted notwithstanding plant integration, except in those industries where the integration factor had been recognized before *American Potash*.⁸¹ Adhering to the policy announced in *American Potash*, the Board during the past year declined to extend the *National Tube*⁸² integration doctrine to a variety of other industries.⁸³

Under *American Potash*, severance is granted only if the petitioner is shown to have traditionally represented the craft or quasi-craft employees involved.⁸⁴ Thus, a union's petition for severance of truck-

⁷⁶ *Parker Brothers & Co, Inc*, 117 NLRB 1462.

⁷⁷ *Bethlehem Pacific Coast Steel Corp*, 117 NLRB 579.

⁷⁸ *American Potash & Chemical Corp*, 107 NLRB 1418 (1954).

⁷⁹ *Bethlehem Pacific Coast Steel Corp*, *supra*.

⁸⁰ See *United States Smelting, Refining & Mining Co*, 116 NLRB 661.

⁸¹ *Viz*, basic steel (*National Tube Co*, 76 NLRB 1199 (1948)), aluminum (*Permanente Metals Corp*, 89 NLRB 804 (1950)), lumber (*Weyerhaeuser Timber Co*, 87 NLRB 1076 (1949)), and wet milling (*Corn Products Refining Co*, 80 NLRB 362 (1948)).

⁸² *National Tube Co*, *supra*.

⁸³ *United States Smelting, Refining & Mining Co*, *supra* (gold dredging), *Bay City Division, The Dow Chemical Co*, 116 NLRB 1602 (magnesium), *General Refractories Co*, 117 NLRB 81 (silica refractory), *Bethlehem Pacific Coast Steel Corp*, *supra* (shipbuilding). See also *Olin Mathieson Chemical Corp*, 117 NLRB 1411, and *Pittsburgh Plate Glass Co*, 117 NLRB 1728, where integration in the cellulose film and glass industries similarly was held not to preclude the establishment of separate craft or departmental units.

⁸⁴ See *Hughes Aircraft Co*, 117 NLRB 98, where earlier holdings that welders were not a distinct craft were reversed (*supra*, p 35), and where the petitioning welders union was found to qualify as a traditional welding union *Clayton & Lambert Manufacturing Co*, 111 NLRB 540 (1955) and similar later cases were overruled.

drivers from an oil company's marketing division employees was denied because the petitioner was found to be a "marketing local" which devoted itself to serving the special interests, not of truckdrivers, but of all employees connected with the marketing of petroleum products.⁸⁵ The Board noted that the petitioner's large truckdriver membership was to be explained by the fortuitous fact that the majority of employees who were engaged in marketing petroleum products within the union's territorial jurisdiction were truckdrivers.

The *American Potash* requirement that a severance request be supported by strict proof regarding the existence of a severable group⁸⁶ and the petitioner's qualification⁸⁷ was clarified in a case where the Board rejected the contention that the petitioner, not having called any witnesses, did not meet its burden of proof.⁸⁸ The Board pointed out that the requirement of proof did not alter the nonadversary character of a representation proceeding instituted by a severance petitioner. All the requirement means, the Board said, is that the facts necessary to justify severance are adduced at the hearing. The burden of proof is met when, as here, the necessary facts are established through the examination of witnesses by the Board's hearing officer and without the calling of any witnesses by the petitioner.

d. Units in Insurance and Warehousing

The Board had occasion during fiscal 1957 to give special consideration to the grouping of employees in the insurance and warehousing industries.

In the *Travelers Insurance* case,⁸⁹ a unit of insurance claims adjusters was held properly limited to one of the company's branches. The Board held that the requirement that insurance agents units be state-wide or employerwide⁹⁰ is inapplicable to claims adjusters whose organization has not proceeded at the pace or along the lines which made smaller units for insurance agents unnecessary to make collective bargaining reasonably possible for them. "We see no compelling reason," the Board said, "to apply a rule based on the actual situation in one segment of the insurance business to another segment where different conditions prevail." In finding a branchwide claims adjusters unit appropriate, the Board noted that it corresponded to a principal administrative division of the company. In a later case the Board held that one of an insurance company's field offices corresponded to

⁸⁵ *Standard Oil Co.*, 116 NLRB 1017.

⁸⁶ See, e. g., *Bethlehem Pacific Coast Steel Corp.*, 117 NLRB 579

⁸⁷ See, e. g., *Standard Oil Co.*, 116 NLRB 1017

⁸⁸ *United States Smelting, Refining & Mining Co.*, 116 NLRB 661

⁸⁹ *The Travelers Insurance Co.*, 116 NLRB 387

⁹⁰ See *Monumental Life Insurance Co.*, 90 NLRB 941, and *Metropolitan Life Insurance Co.*, 56 NLRB 1635 (1944).

the type of administrative division contemplated by the *Travelers Insurance* case, and that a unit limited to the field office's claims adjusters was appropriate.⁹¹ While the adjusters' jobs had some companywide characteristics and other factors indicated the appropriateness of a unit covering an entire regional department, it was held more significant that the field office was an autonomous administrative unit, was separately supervised, and had a substantial degree of independent authority in the settlement of claims.

Regarding the warehousing operations of retail department stores the Board made it clear that, as indicated by its earlier decisions, a separate warehousing unit is appropriate if (1) the employer's warehousing operation is geographically separated from its retail store operations; (2) there is separate supervision of the employees engaged in warehousing; and (3) there is no substantial integration among the warehousing employees and those engaged in other store operations.⁹² A warehouse unit will not be approved if it does not meet all three of the foregoing conditions.⁹³ Moreover, a warehouse unit must be limited to employees who perform typical warehouse functions. Thus, the Board has excluded from such units employees located in the warehouse but engaged in upholstery, appliance service, fur storage, unit control, mail order, phone order, and auditing departments;⁹⁴ and appliance and TV workroom employees, furniture workroom employees, and rug department employees.⁹⁵

e. Plant Guards

Section 9 (b) (3) provides that plant guards may not be placed in units with nonguard employees.⁹⁶ To be a guard within the meaning of the section, an employee must "enforce against employees and other persons rules to protect property of the employer or to protect safety of persons on the employer's premises." The Board held in one case that this definition applied to employees at an atomic energy plant who were charged with escorting trucks from certain plant entrances to locations within the plant's security area.⁹⁷ These employees, the Board held, performed a "guard" function in that an essential purpose of their duties was to protect employer and Government property and to exclude unauthorized persons from restricted plant areas. The Board has continued to treat as "guards" employees whose primary function is fire prevention work, but who, as an es-

⁹¹ *The Employers' Liability Assurance Corp., Ltd.*, 117 NLRB 92.

⁹² *A. Harris & Co.*, 116 NLRB 1628.

⁹³ *Sears Roebuck & Co.*, 117 NLRB 133.

⁹⁴ *A. Harris & Co.*, *supra*.

⁹⁵ *Associated Dry Goods Corp.*, 117 NLRB 1069.

⁹⁶ The section further provides that a union which admits to membership or is affiliated with one that admits employees other than guards may not be certified as bargaining representative of a guard unit. See, e.g., *Consolidated Rendering Co.*, 117 NLRB 1784.

⁹⁷ *Carbide and Carbon Chemical Corp.*, 116 NLRB 1843.

stantial part of their duties and responsibilities, also enforce other plant protection rules.⁸⁸ Under the *Wallerboro* rule,⁸⁹ employees who perform regular guard duties during a part of their working time have been consistently excluded from nonguard units.¹ But an individual hired as an "extra" who acted as a watchman only sporadically was held not to be a guard for unit purposes.²

In one case, the contention that a receptionist's functions constituted her a guard was rejected.³ Assuming the facts in the case to be, as asserted, the Board pointed out that (1) a receptionist, who controlled admission to the employer's offices and was replaced by a guard when off duty, had been held not a guard herself because she called upon guards for actual enforcement of plant protection rules;⁴ and (2) authority to issue keys, badges, or passes only to authorized personnel also has been held not to establish guard status.⁵ Nor does the mere placement of a receptionist in the same department and under the same supervision as guards and supplying her with a uniform make her a guard if she does not actually perform guard duties.

f. Individuals Excluded From the Unit by the Act

A bargaining unit may include only individuals who are "employees" within the definition of section 2 (3) of the act. The exempt employee categories with which the Board was concerned during fiscal 1957 were agricultural laborers, independent contractors, and supervisors.

(1) Agricultural Laborers

In the *H. A. Rider*⁶ case, which involved employees of a cider processing plant who spent about 30 percent of their working time in agricultural work, the Board reconsidered its *Clinton Foods* decision⁷ that employees who divide their time between agricultural and non-agricultural work and spend a substantial part of their time in agricultural work must be deemed agricultural laborers for the purposes of the act. The Board noted that the *Clinton Foods* decision was based on the same conflict-of-interest rationale used in determining whether employees are to be considered guards or supervisors if any substantial part of their time is spent in guard or supervisory duties. Taking the view that this rationale is inapplicable to employees who divide their time between agricultural and nonagricultural work, the Board held

⁸⁸ *Boeing Airplane Co*, *Seattle Division*, 116 NLRB 1265 see also *Consolidated Rendering Co*, *supra* (combination firemen-watchmen)

⁸⁹ *Wallerboro Manufacturing Corp*, 106 NLRB 1383

¹ *United States Gypsum Co*, 118 NLRB 20 (boilerhouse operators serving as part-time guards).

² *Barrett Division, Allied Chemical & Dye Corp*, 116 NLRB 1649

³ *Livonia Plant of Automatic Transmission Division, Ford Motor Co*, 116 NLRB 1995

⁴ See *Girdler Co*, *Division of National Cylinder Gas Co*, 115 NLRB 726

⁵ See *Caterpillar Tractor Co*, 109 NLRB 871 (1954)

⁶ *H. A. Rider & Sons*, 117 NLRB 517

⁷ *Clinton Foods, Inc*, 108 NLRB 85 (1954)

that employees who spent more than 70 percent of their time at the processing plant could properly be included in a plantwide unit.⁸ However, the Board did not find it necessary to lay down a general rule as to what proportion of time spent in nonagricultural work is necessary for an employee with varied duties to be included in a bargaining unit.⁹

(2) Independent Contractors

The Board has consistently held that the act requires that the question whether an individual is an independent contractor be determined by applying the "right-of-control" test. Thus, where the record shows that the person for whom services are performed reserves control only as to the result sought, the person performing the services will be held to be an independent contractor. On the other hand, if the record indicates that control is also retained over the manner and means by which the result is to be accomplished, an employer-employee relationship will be found.¹⁰

(a) Television and radio personnel

Composers of musical themes, scores, and incidental music for television and radio productions were found to be independent contractors under this test.¹¹ The Board pointed out that, because of the nature of the art of musical composition, specifications issued to a composer, of necessity, relate principally to the effects to be produced by the music and not to the manner in which that effect is to be achieved. It was further noted that, other than setting deadlines, the network had no control over the composers' hours, working conditions, or their place of work; that no right was reserved to require revision of any composition; and that the composers may work for more than one producer at the same time.

But two members of a part-time television team, who worked both on and off the TV station's premises in preparing their daily one-half hour program, were found to be regular part-time programming employees rather than independent contractors.¹² Taking into consideration the extent to which the team's operations were controlled by the station, the Board noted that the content of the program presented by the team was dictated insofar as the station specified a framework within which the team must develop their ideas in order to

⁸ *Clinton Foods* and later similar cases were overruled insofar as inconsistent. In *Clinton*, the employees excluded spent about one-third of their time in agricultural work.

⁹ See also *Hubbard Apiaries*, 116 NLRB 1468, where an apiary employee, who performed some agricultural tasks but spent a major portion of his time in processing honey and making beehives, was included in a processing plant unit.

¹⁰ See, e.g., *American Broadcasting Co.*, 117 NLRB 13, see also *Bob, Inc.*, 116 NLRB 1931, *National Van Lines*, 117 NLRB 1213, *Provident Life and Accident Insurance Co.*, 118 NLRB 412, *Sweet-Orr & Co., Inc.*, 117 NLRB 796.

¹¹ *American Broadcasting Co.*, *supra*.

¹² *Cornhusker Television Corp.*, 117 NLRB 1065.

keep their material up to date. In another case, a part-time artist who drew stills and did lettering work for a TV station also was held to be an employee rather than an independent contractor.¹³ The station furnished the artist his art materials, carried him on the payroll as an employee, and deducted social-security deductions from his pay. Noting that the artist clearly performed his work as an integral part of the station's television business, the Board held that his employee status was not affected by the fact that he had a separate place of work, other means of livelihood, and a different amount and method of compensation.

(b) Truckdrivers

Several cases again required determination of the status of leased-truck drivers. Applying the "right-of-control" test, the Board held in one case that the drivers sought by the petitioner were independent contractors rather than employees of the company, which was engaged in leasing tractors and trailers to interstate trucking firms.¹⁴ The drivers received 65 percent of the company's remuneration from those firms and paid their own expenses and help. Upon being assigned to perform hauling services for a trucker, the latter assumed direction and control. The drivers selected their own routes and determined their own schedules, and were permitted to obtain a hauling job on their own account on return trips.

In another case, truckdrivers who had been employees of a beverage distributor were held not to have become independent contractors upon the execution of a contract transferring ownership of the trucks used to the drivers.¹⁵ The drivers' duties here remained unchanged and, according to the record, the employer exercised the same degree of control over their work as before the execution of the contract. The discontinuance by the employer of social-security and income-tax deductions, because of an asserted Internal Revenue Service "determination" that the drivers were independent contractors, was held not controlling. Conversely, the independent-contractor status of lessor-drivers was held to have been converted into employee status when the certified carrier for whom they worked undertook to conform to a new State law requiring that any vehicle operated by certified carriers be driven by their employees.¹⁶ The Board noted that under the State law employee-status was determined under the same "right-of-control" test that is applied by the Board.

A van line's long-time contract drivers who used their own equipment also were found to be employees rather than independent

¹³ *Bi-States Co.*, 117 NLRB 86.

¹⁴ *Bob, Inc.*, *supra*.

¹⁵ *Burton Beverage Co.*, 116 NLRB 634.

¹⁶ *G. L. Allen Co.*, 117 NLRB 1055.

contractors as contended.¹⁷ In addition to numerous other factors, the Board gave special consideration to the fact that the drivers were subject to the company's manual of rules and regulations which regulated the conduct of drivers in the performance of their duties in minute and comprehensive detail. This, the Board held, showed "conclusively" that the employer controls not only the end to be achieved but also the means to be used in reaching such end, such as the rules and regulations with respect to "Customer Relations," "Ethics of Personal Conduct," "Placing and Setting Up Furniture," "Removing Furniture from Residence and Loading Van," "Accidents," and "Safety."¹⁸ In another case, a company's driver-salesmen, who were shown by the record to perform the customary functions of route deliverymen, were held to be employees rather than independent contractors.¹⁹ The Board declined to give controlling effect to the company's contract with the drivers, which provided that "the contract shall not be construed as creating any agency or employee relationship and the representative shall always act as an independent contractor."

(c) Others

In one case, the control retained by a clam canning company over its clam dredging boats and crews, while substantial, was held insufficient to establish an employee relationship.²⁰ The captains of the company's boats were therefore held independent contractors, and the petition seeking a unit of boat crews was dismissed. The Board excluded from a newspaper publisher's circulation department unit "honor box attendants" who serviced honor boxes by distributing to them newspapers bought at wholesale prices and by collecting receipts and unsold copies.²¹ The attendants were found to be independent contractors because they were not on the company's payroll, and they depended for their income, not upon wages, but upon the profits represented by the difference between the wholesale and retail price of the papers sold.

(3) Supervisors

The supervisory status of an employee under the act depends on whether he possesses authority to act in the interest of his employer in

¹⁷ *National Van Lines*, 117 NLRB 1213.

¹⁸ See also *Provident Life & Accident Insurance Co*, 118 NLRB 412, where an insurance company's full-time and part-time agents were found to be employees, particularly because under the agents' contract, as implemented by the agents' manual, the company "reserves and exercises the right to control many aspects of their relationship with it and with its policy holders, actual and prospective." And see *Sweet-Orr & Co., Inc*, 117 NLRB 796. Here sales and industrial representatives, while permitted considerable latitude as to the manner and means of servicing their territories, were found to be employees, particularly because of the close supervision exercised over them by means of weekly reports.

¹⁹ *Orange Crush of P R, Inc*, 118 NLRB 217.

²⁰ *F. H. Snow Canning Co, Inc*, 118 NLRB 284.

²¹ *The Peoria Journal Star, Inc*, 117 NLRB 708.

the matters and the manner specified in section 2 (11) which defines the term "supervisor." Where it does not clearly appear from the record whether an employee exercises supervisory authority such as is contemplated by section 2 (11), the Board may take into consideration other factors, such as the ratio of supervisory to non-supervisory employees in the particular plant or department. Thus for instance, "assembly supervisors" in an electrical products plant were excluded from the unit because, aside from other considerations, their treatment as nonsupervisory employees would have resulted in a ratio of at least 60 employees to each admitted supervisor.²² Similarly, the finding that floorladies of a clothing manufacturer had supervisory status was held supported by the fact that otherwise there would have been about 100 sewing room employees to 1 supervisor.²³ And employees who acted as leaders were likewise held to be supervisors in view of the fact that there were no other supervisors under the plant manager to supervise some 110 employees.²⁴ Conversely, a resulting ratio of, for instance, 1 supervisor to 3 or fewer employees was held indicative of the nonsupervisory status of contested employee categories.²⁵

In determining whether employees who possess supervisory authority are to be excluded from the bargaining unit, the Board has also continued to take into consideration the extent and regularity of the employee's exercise of his powers. Thus, employees with regular nonsupervisory duties were held not to have supervisory status merely because they substituted for foremen on infrequent and sporadic occasions in the event of the foremen's illness or absence on vacation.²⁶ Former supervisors who do not presently exercise any supervisory authority ordinarily are not excluded from the bargaining unit as supervisors.²⁷

In several cases, the Board during fiscal 1957 was also concerned with the status of employees in training for supervisory positions. Where it was found that the trainee was actually carrying on the job of a supervisor during the training period,²⁸ and would continue to exercise the same authority after being fully trained,²⁹ the Board excluded the trainee from the bargaining unit. On the other hand, a supervisor-in-training—a department scheduler—was held properly

²² *Controls Company of America, Schiller Park Plant*, 118 NLRB 170

²³ *Jolly Kids Togs*, 117 NLRB 393

²⁴ *Pearl Packing Co*, 116 NLRB 1489

²⁵ *United States Gypsum Co*, 118 NLRB 20, *Toledo Board of Trade*, 117 NLRB 1504, *The Peoria Journal Star, Inc*, *supra*

²⁶ *United States Gypsum Co*, 116 NLRB 1771, see also *Harvey Paper Products Co*, 116 NLRB 1624, *Plankton Packing Co*, 116 NLRB 1225, *Gary Steel Products Corp*, 116 NLRB 1192, *Dixie Lou Frocks, Inc*, 117 NLRB 1583

²⁷ *International Aluminum Corp*, 117 NLRB 1221, *Dixie Wax Paper Co*, 117 NLRB 548.

²⁸ *Burrus Mills, Inc*, 116 NLRB 384

²⁹ *Hirsch Broadcasting Co*, 116 NLRB 1780

in the unit because he did not presently exercise any supervisory authority, and his assignment to a supervisory position was contingent upon his demonstrating the necessary qualifications.³⁰ The Board here distinguished the earlier *WTOP* case³¹ where trainees, who did not continue with the company after completion of the training program unless retained as supervisors, were held to have supervisory status for unit purposes. Here, it was pointed out, trainees who lacked qualification for a supervisory job apparently were retained in a nonsupervisory position. However, the Board excluded from a textile mill production and maintenance unit trainees who were graduates of 4-year courses in textile colleges and were to become supervisors after a 15-month probational period if qualified and if appropriate openings were available.³² The ground for the exclusion was that, because of their background and the probability of their becoming supervisors, the trainees had interests different from those of production and maintenance employees.

g. Exclusion of Managerial Employees From Unit

The Board has consistently excluded from bargaining units "managerial" employees, i. e., executives who formulate and effectuate management policies by expressing and making operative the decisions of their employer.³³ "Managerial" status, like "supervisory" status, is determined on the basis of the degree of authority exercised.

As heretofore, the Board has generally treated as managerial those whose primary function is to make purchases for the account of the employer and who, in the exercise of that function, have authority to pledge the employer's credit. Thus, the Board excluded from bargaining units an assistant director of purchases with complete control of purchasing certain materials and authority to pledge the company's credit, as well as authority to schedule certain deliveries;³⁴ buyers and assistant buyers who, under supervision of a purchasing agent, placed purchase orders, pledged the employer's credit in large amounts, and had authority to negotiate prices, change delivery dates, and adjust disputes with suppliers;³⁵ a ship's clerk—the wife of a barge captain—with authority to make substantial purchases for the company's account and in charge of loading and payroll records and the ship's log;³⁶ department heads and an assistant department head of a packing

³⁰ *Continental Can Co*, 116 NLRB 1202 See also *International General Electric, S. A., Inc.*, 117 NLRB 1571, where "technician trainees," who were to be promoted to supervisory classifications at the end of the training period, but were not presently supervisors, were included in the bargaining unit

³¹ *WTOP, Inc.*, 114 NLRB 1236 (1955), 115 NLRB 758 (1956), Twenty-first Annual Report, p. 13.

³² *Cherokee Textile Mills, Inc.*, 117 NLRB 350

³³ See *Palace Laundry Dry Cleaning Corp.*, 75 NLRB 320 (1947), footnote 4

³⁴ *Peninsular Metal Products Corp.*, 116 NLRB 452.

³⁵ *Mack Trucks, Inc.*, 116 NLRB 1576 The previous inclusion of buyers in office clerical units in other plants of the employer was held not controlling

³⁶ *A & S Transportation Co.*, 116 NLRB 1025

firm, who were in charge of purchases and sales of certain meat cuts and poultry and dairy products, exercised judgment as to value and quantity of purchases and had authority to obligate the packer for the purchase price, and had absolute discretion as to sources of supply.³⁷ On the other hand, a rendering company's procurement drivers, whose principal function was to obtain raw materials, were held not managerial employees.³⁸ The Board pointed out that the drivers here, unlike those in the *Swift* case,³⁹ were not required to use extensive discretion and judgment in on-the-spot transactions as to prices to be paid, but purchased at prices specifically prescribed by management.

Authority to extend credit to customers has been held insufficient, in itself, to confer managerial status. A credit manager was therefore held properly in an overall retail store unit.⁴⁰ Nor is managerial status established *per se* where an employee performs duties requiring the exercise of judgment as, for instance, in making recommendations to management regarding costs.⁴¹ Similarly, employees were held not to have managerial status merely because their determinations as to the quality, suitability, or cost of materials and tools needed in manufacturing operations affected the success and efficiency of the employer's manufacturing process.⁴² Nor will employees be held managerial merely because they are in a position to injure the employer's business through possession of trade or other secrets.⁴³ The Board in one case rejected the contention that an employee was managerial on the sole ground that he was the brother of the chairman of the employer's board of directors.⁴⁴ Employees hired for possible promotion to a managerial position, or in training for such a position, will not be excluded from the bargaining unit, because the determination of an employee's unit status must be based on his present duties.⁴⁵

h. Unit Placement of Clerical Employees

The Board has continued to differentiate between plant clerical employees and office clerical employees, including the former in production and maintenance units,⁴⁶ but excluding the latter and placing them in separate units⁴⁷ except in the case of retail stores. In the

³⁷ *Plankinton Packing Co. (Division of Swift & Co.)*, 116 NLRB 1225.

³⁸ *Farmers Union Livestock Association d/b/a St. Cloud Rendering Co.*, 116 NLRB 1069.

³⁹ *Swift & Co.*, 115 NLRB 752.

⁴⁰ *Franklin's Stores Corp.*, 117 NLRB 793.

⁴¹ *Eastern Corp.*, 116 NLRB 329.

⁴² *Peninsular Metal Products Corp.*, 116 NLRB 452.

⁴³ *Barrett Div., Allied Chemical & Dye Corp.*, 116 NLRB 1649.

⁴⁴ *International Aluminum Corp.*, 117 NLRB 1221.

⁴⁵ *Plankinton Packing Co. (Division of Swift & Co.)*, 116 NLRB 1225, *Heckett Engineering Co.*, 117 NLRB 1395.

⁴⁶ See, e. g., *Wm. R. Whittaker Co., Ltd.*, 117 NLRB 339, *Jones-Dabney Co.*, 116 NLRB 1556; *White Provision Co.*, 116 NLRB 1552.

⁴⁷ See, e. g., *The Rudolph Wurltzer Co.*, 117 NLRB 6; *Solar Aircraft Co.*, 116 NLRB 200, see also *Otis Elevator Co.*, 116 NLRB 262.

absence of a contrary bargaining history and where no labor organization seeks to represent retail store office clericals separately, they are included in units of selling and nonselling employees.⁴⁸ Such combined units were held justified because of the integrated nature of retail store operations and the community of interests of employees in such operations.

The Board during fiscal 1957 reconsidered the previous like treatment of office clericals in wholesale operations.⁴⁹ Concluding that the reasons underlying the unit treatment of retail store office clericals do not apply to units in wholesale establishments, the Board announced that in the future office clericals will be excluded from wholesale units if any party objects to their inclusion.

i. Units for Decertification Purposes

The Board has adhered to the rule that the only appropriate unit in decertification proceedings is the existing bargaining unit. One case turned on whether the stipulated certified unit sought to be decertified was appropriate, rather than the historical broader unit in which the employer had bargained both before and after the certification.⁵⁰ The Board held that in view of the circumstances both before and after the certification, and the fact that the appropriateness of the smaller stipulated unit had not been raised in the representation proceeding, the historical unit was appropriate for decertification purposes. The petition was therefore dismissed. In another case, the scope of the existing unit depended on whether joint negotiations by two unions, and the incorporation of agreements reached in a single document, established a single production and maintenance unit rather than separate units for the employees represented by each union.⁵¹ The Board found that the evidence here clearly indicated the parties' intent to preserve separate units, and that therefore 1 of the 2 units could properly be decertified.

7. Conduct of Representation Elections

Section 9 (c) (1) provides that if a question of representation exists the Board must resolve it through an election by secret ballot. The election details are left to the Board. Thus, voting eligibility, timing of elections, and standards of election conduct are subject to rules laid down in the Board's Rules and Regulations and in its decisions.

⁴⁸ See *Interstate Supply Co.*, 117 NLRB 1062

⁴⁹ *Interstate Supply Co.*, *supra*; *Farwell, Ozmun, Kirk & Co.*, 61 NLRB 875 (1945), was overruled insofar as it is inconsistent.

⁵⁰ *San Juan Mercantile Corp.*, 117 NLRB 8

⁵¹ *Wyandotte Chemicals Corp.*, 116 NLRB 972

a. Voting Eligibility

A voter, in order to qualify, must have employee status both on the applicable payroll date and on the date of the election.⁵² Eligibility for purposes of a runoff election, though based on the same eligibility date as that used in the original election, requires employee status on the date of the runoff.⁵³ Moreover, a voter must have worked in the voting unit during the eligibility period and on the date of the election.⁵⁴ Thus, where only permanent workers were included in the unit, a temporary employee who did not work as a permanent employee at any time during the eligibility period was held not entitled to vote, even though he later attained permanent status.⁵⁵

As specified in the Board's usual direction of election or election agreement, the requirement that the voter must be working on the particular dates does not apply to employees who are ill or on vacation or temporarily laid off, or employees in the military service who appear in person at the polls, or strikers who are entitled to reinstatement.

As the date of determining eligibility, the Board customarily uses the payroll period immediately before 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.⁵⁶ During the past year, a high rate of turnover among the employees in the bargaining unit was held insufficient reason to use a different payroll date.⁵⁷ But in stevedoring operations, the Board extended voting eligibility to all intermittent employees in certain categories who worked for the employer a minimum of 210 hours during the 12-month period immediately before the direction of election.⁵⁸

(1) Effect of Eligibility List

It is the established practice of the Board to require that the employer in a representation election furnish a list of his employees in the voting unit and eligible to vote.⁵⁹

In several cases, the question arose whether such an eligibility list

⁵² See *Shaw-Randall Co., Inc.*, 116 NLRB 444

⁵³ Section 102.62 (b) of the Board's Rules and Regulations. See *O. E. Szekeley and Associates, Inc.*, 117 NLRB 42.

⁵⁴ *Food Machinery & Chemical Corp.*, 116 NLRB 552

⁵⁵ *Food Machinery & Chemical Corp.*, *supra*

⁵⁶ See Twenty-first Annual Report, p. 65.

⁵⁷ *A & S. Transportation Co.*, 116 NLRB 1025.

⁵⁸ *San Juan Mercantile Corp.*, 117 NLRB 8. The earlier 12-month period stipulated by the parties was rejected because it would have disfranchised certain employees. In *New York Shipping Association, Inc.*, 116 NLRB 1183, the direction of election (not reported in printed volumes of Board Decisions and Orders) provided, as in an earlier case involving the same group of employees (107 NLRB 364 (1953)), that eligibility should depend on 700 hours of employment during a specified 12-month period.

⁵⁹ See, e. g., *Plainfield Courier-News Co.*, 97 NLRB 260 (1951). The Board's consent-election agreement provides that "at a date fixed by the Regional Director, the employer will furnish the Regional Director an accurate list of all the eligible voters, together with a list of the employees, if any, specifically excluded from eligibility."

is binding in determining challenges. While pointing out that the use of an agreed eligibility list is highly desirable, if not essential, as a means of facilitating the conduct of an election and enabling Board agents and election observers to perform their functions intelligently,⁶⁰ the Board made it clear that: (1) The preparation and checking by the parties of an eligibility list ordinarily is not regarded as a binding agreement upon issues of eligibility—either as to names appearing on or omitted from the list—but rather the list is a tool to facilitate the election;⁶¹ (2) an eligibility list is binding only where the parties, following discussion by name of the affected persons, have specifically agreed that the list is the entire eligibility list;⁶² (3) a binding agreement will be honored by the Board, unless it is contrary to the act or established Board policy;⁶³ (4) an agreement adopting an eligibility list for use in an original election does not preclude the right to challenge in a runoff election.⁶⁴

b. Timing of Elections

Ordinarily the Board provides that elections be held within 30 days from the date of the direction of election. However, a different date is selected if this is required because of fluctuations in the employee complement or other circumstances. Thus, the Board usually directs that elections in seasonal industries be held near the peak of the business season, the exact date to be set by the regional director.⁶⁵ But where peak seasonal employment will occur within the usual time for holding elections, an immediate election will be directed.⁶⁶ The Board again rejected the contention that it may not direct an election for peak-season employees who have not yet been hired.⁶⁷

It is the Board's practice not to direct an immediate election where the employer contemplates expansion or curtailment of operations with a corresponding adjustment in the employee complement.⁶⁸ But

⁶⁰ *O. E. Szekely and Associates, Inc.*, 117 NLRB 42.

⁶¹ See *Lloyd A. Fry Roofing Co.*, 118 NLRB 312. And see *The Jacksonville Journal Co.*, 117 NLRB 1828, where it was pointed out that omission of an eligible voter from the eligibility list does not preclude him from voting under challenge, since it is the function of the Board's challenge procedure to clarify after the election the status of any voters whose eligibility is in doubt.

⁶² The Board distinguished the situation in the *Szekely* case from that in *Consolidated Industries, Inc.* (116 NLRB 1204). Compare *Brown Wood Preserving Co.*, 116 NLRB 437, where omission of the name of a voter in the appropriate unit from the eligibility list attached to the parties' stipulation for consent elections was held not to foreclose his eligibility. It was pointed out that the employee's eligibility was not discussed when the stipulation was signed, and that there was no agreement that only persons on the list were eligible.

⁶³ The Board noted in *Szekely* that, even had there been a binding agreement, it could not be given effect insofar as it included among the eligibles two office clerical employees while at the same time excluding the employer's other office employees.

⁶⁴ Eligibility may change between elections. An employee must be employed in an eligible category on the date of the runoff election in order to vote in it.

⁶⁵ See, e. g., *The Cleveland Cliffs Iron Co.*, 117 NLRB 668, and *Bordo Products Co.*, 117 NLRB 313, Member Rodgers dissenting on a jurisdictional point.

⁶⁶ See *Central San Vicente, Inc.*, 117 NLRB 397.

⁶⁷ *Bordo Products Co.*, *supra*.

⁶⁸ See Twentieth Annual Report, p. 56.

if the present working force is representative of the ultimate force, or if it appears that a full complement will be reached by the time of the Board's decision, the date of the election will not be delayed.⁶⁹ An immediate election was also directed where the contemplated change in operations was speculative and the present working force was representative;⁷⁰ and where no detailed plan had been adopted and the effect of the contemplated change on the present unit was unknown.⁷¹ In one case, an immediate election was directed although the employer expected to cease operations under a Government order.⁷² The Board noted that operations would continue with a substantial and representative force for about 6 months, and there was a possibility that the Government order might be revoked.

Where unfair labor practice charges have been filed, it is the Board's policy to direct an immediate election only if the charging party waives the charges as a basis for later objections to the election; or where the regional director has dismissed the charges, even though an appeal from the dismissal pends.⁷³ The Board again rejected the contention that as long as unfair labor practice charges are pending a fair election cannot be held, and that an election should not be directed except where the party against whom the charge was filed has waived the charge and does not object to the holding of an immediate election.⁷⁴

c. Standards of Election Conduct

Board elections are conducted in accordance with strict standards designed to assure that the participating employees have an opportunity to register a free and untrammelled choice in selecting a bargaining representative. Any party to an election who believes that the 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.⁷⁵

⁶⁹ *Wallon-Young Corp*, 117 NLRB 51, where the Board directed an election on a date to be selected by the regional director. Cf. *San Manuel Copper Corp*, 116 NLRB 1153, see *General Motors Corp*, *Fisher Body Division*, 117 NLRB 947, compare *Pittsburgh Plate Glass Co*, 117 NLRB 1728.

⁷⁰ *Hancock Electronics Corp*, 116 NLRB 442.

⁷¹ *Dixie Wax Paper Co.*, 117 NLRB 548.

⁷² *E I DuPont de Nemours and Co (Dana Plant)*, 117 NLRB 1048.

⁷³ Twenty-first Annual Report, p. 66. And see *Langenberg Hat Co*, 116 NLRB 198.

⁷⁴ *Southern Waste Material Co, Inc*, 117 NLRB 1653.

⁷⁵ 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.

(1) Mechanics of Election

Election details, such as the time, place, and notice of an election, or preelection conferences⁷⁶ are largely left to the regional director. Absent unusual circumstances, the Board will not interfere with the regional director's exercise of discretion in making arrangements for elections and the counting of the ballots.⁷⁷ However, if the Board finds that challenged arrangements prevented the proper exercise of the voting rights of a sufficient number of employees the election will be set aside.⁷⁸

(a) Opportunity to vote

Elections must be arranged so that all eligible employees have an opportunity to vote. Where this requirement was not met and a sufficient number of employees to affect the election results were thereby prevented from voting, the election was set aside.⁷⁹ Thus, where the stipulated 1-hour voting period did not afford employees working away from the plant an opportunity to cast their ballots, the election was held invalid regardless of the parties' understanding.⁸⁰ The Board made it clear that the requirement that all eligible employees be given an opportunity to vote is a matter of Board responsibility and not subject to waiver by the parties.

However, failure to comply with an employer's request just before the election to permit a hospitalized employee to vote at the hospital or by mail ballot was held not to have invalidated the election.⁸¹ The Board restated the rule that where a stipulation provides for a normal election at a designated location, and no timely request is made for other arrangements, the request may properly be rejected.

i. Illiterate voters

To afford illiterate and foreign language employees an opportunity to express their true voting intention, it is customary to make arrangements, usually by agreement of the parties, for explaining the nature of the voting procedure and the meaning of the ballots. In one case, the Board found that, whether or not an agreement had been reached as to how Spanish-speaking and illiterate employees were to be informed of the nature of the election and ballots, these voters had had an opportunity to express their choice freely.⁸² The Board noted that

⁷⁶ As noted by a regional director, the need for preelection conferences varies with the size of the election, the purpose being to acquaint the interested parties with the mechanics of the election, to examine the eligibility list, and to designate observers *Elsner Grocery Co.*, 116 NLRB 976, 978.

⁷⁷ *Continental Smelting & Refining Co.*, 117 NLRB 1388.

⁷⁸ See, e. g., *Alterman-Big Apple, Inc.*, 116 NLRB 1078, compare *The Jacksonville Journal Co.*, 117 NLRB 1828

⁷⁹ *Alterman-Big Apple, Inc.*, *supra*.

⁸⁰ *Ibid.*

⁸¹ *Franklin's Stores Corp. of Daly City*, 117 NLRB 793.

⁸² *Palm Container Corp.*, 117 NLRB 434.

the election notices had been properly posted. The employer explained the ballot to its employees before the election; and the Board agent explained the ballot to certain non-English-speaking and illiterate employees. Some of the employees were bilingual and there was considerable preelection discussion among employees; and there was no evidence that any employee claimed that his ballot did not express his true intent.

(2) Irregularities

The Board will set aside an election attended by irregularities on the part of a Board agent which might impair the integrity and secrecy of the election. To protect its own processes, the Board takes appropriate action even though the objecting party may have abandoned its position that the irregularity requires setting aside the election.⁸³

One election was held invalid because the election examiner failed to seal the ballot box, then took the unsealed box away from the voting place and permitted it to be transported, either by the employer or a participating union, under conditions permitting access to the box by their representatives.⁸⁴ The Board held that, while the personal integrity of the election examiner was not questioned, the failure to seal the ballot box was sufficient ground for setting the election aside.

Similarly, the Board held that it was a serious irregularity for a Board agent to leave an unsealed package of uncounted blank ballots unguarded some 20 minutes when access to the ballot box was possible.⁸⁵ The Board noted that, while there was no evidence that any ballots had been removed or that improper voting had occurred, this occurrence was sufficient to raise doubts as to the integrity and secrecy of the election and required its being set aside.

On the other hand, no ground for setting the election aside was found where, during a break in the election schedule, the Board agent removed the ballot box, which had been sealed in the presence of all the parties, from the employer's premises and retained it in his custody until voting was resumed.⁸⁶ The Board rejected the employer's contention that he should have been given an opportunity to suggest a different method for guarding the ballot box during this period.

Nor was an election invalidated by the fact that the only employee who voted by mail was furnished a ballot of a different color than those cast by voters appearing in person.⁸⁷ The Board held that, since the mail ballot could not affect the results of the election,⁸⁸ the objection was without merit.

⁸³ *Tidelands Marine Services, Inc.*, 116 NLRB 1222, *F. J. Stokes Corp.*, 117 NLRB 951.

⁸⁴ *Tidelands Marine Services, Inc.*, *supra*.

⁸⁵ *Hook Drugs, Inc.*, 117 NLRB 846.

⁸⁶ *Continental Smelting & Refining Co.*, 117 NLRB 1388.

⁸⁷ *The Jacksonville Journal Co.*, 117 NLRB 1828.

⁸⁸ Citing the rule of *Machinery Overhaul Co., Inc.*, 115 NLRB 1787 (1956).

In one case, the Board overruled the regional director's recommendation that the election be set aside because an unfolded marked ballot was found in a voting booth when the polling place was dismantled.⁸⁹ The ballot, never having been placed in the ballot box, was held not cast, and therefore analogous to a ballot which is void because destroyed or defaced.

(3) Electioneering Rules

To assure that employees in a Board election have an opportunity to express their free and uncoerced choice, the Board requires the parties to abide by certain rules limiting the place and time for electioneering and campaigning and prohibiting preelection conduct or statements which tend to have a coercive effect on the voters.

For an election to be set aside because of a party's preelection conduct, direct and positive proof that the conduct actually interfered with the employees' choice is not required. Thus, it was again made clear that the Board is concerned not with the employees' subjective reaction but with whether the conduct reasonably tends to interfere with a free choice.⁹⁰

(a) Preelection speeches—the 24-hour rule

The Board this year was faced in 2 cases with contentions that the election should be set aside because the *Peerless Plywood*⁹¹ prohibition against campaign speeches during the 24-hour period before the election prevented the objecting party from making a full last-minute presentation of its views to the employees, or otherwise meeting the opponent's propaganda statements. In one case,⁹² the employer complained that a last-minute employee meeting was interrupted by a false fire alarm turned in by an unknown person, and that resumption of the meeting would have violated the 24-hour ban. Finding no ground for setting the election aside, the Board said

Neither the act nor Board policy requires that either a union or an employer be guaranteed sufficient time for a full last-minute expression of its views concerning an impending election and if, during the course of a meeting called for that purpose, an interruption occurs which is not attributable to any party to the proceeding, the risk of such eventuality should rightly fall on the party whose choice as to time and place has set the circumstances under which the scheduled meeting is held. [Footnotes omitted.]

Nor was an election invalidated because the distribution of allegedly false union propaganda was timed so that the employer could no

⁸⁹ *F J Stokes Corp*, 117 NLRB 951

⁹⁰ *L C Ferguson and E G Von Seggern, d/b/a Shovel Supply Co.*, 118 NLRB 315.

⁹¹ *Peerless Plywood Co.*, 107 NLRB 427.

⁹² *American Wholesalers*, 116 NLRB 1492.

longer address the employees on company time and property without violating the *Peerless* rule.⁹³ It was pointed out again that that rule bans only 1 form of campaigning during the 24-hour period,⁹⁴ and the employer was free to reply to the union's statements by other means. The Board also noted that, while propaganda, such as the statements here, which does not amount to campaign trickery, will not be censored,⁹⁵ the Board's policy in this respect "is not premised on any assumption that an employer may always have an opportunity to reply to any specific union utterance."

The prohibition against electioneering speeches to assembled employees *on company time* within 24 hours of an election was held violated in 1 case where the employer permitted a local businessman to address the employees during their coffeebreak.⁹⁶ Neither the fact that the employees were free to leave the premises during the coffeebreak nor the fact that the speaker was a guest made the rule inapplicable. However, since the rule does not apply to speeches on or off company property *on the employees' own time if attendance is voluntary*,⁹⁷ no violation was found where a participating union addressed the employees at a voluntary meeting during a lunch hour.⁹⁸

(b) Election propaganda and campaign tactics

The Board again made clear during the past year that, in the absence of coercion, it will not undertake to police or censor the propaganda material used by the parties in a Board election, but leaves the opposing parties to correct, and the employees themselves to evaluate, the distortions, untruths, and half-truths which frequently accompany election campaigns.⁹⁹

Thus, references by an employer to the petitioner's record of violence, not associated with the union's present administration, was held to be obvious propaganda, clearly recognizable as such by the employees, and therefore not ground for setting aside the election.¹ Also, it was held noncoercive campaign propaganda for a union to state that the employer had endorsed a rival union and that the election issue therefore was which union to join, rather than whether to join a union.² The union named not being a party to the election, its alleged endorsement by the employer was held too remote to be misleading.

⁹³ *Allis-Chalmers Manufacturing Co*, 117 NLRB 744.

⁹⁴ See also *Vita Food Products, Inc. of Maryland*, 116 NLRB 1215; and *Chicopee Manufacturing Corp.*, 116 NLRB 196.

⁹⁵ *Mercik & Co., Inc.*, 104 NLRB 891 (1953). See also (b), below.

⁹⁶ *Mid-South Manufacturing Co., Inc.*, 117 NLRB 1786.

⁹⁷ See *The Palmouth Co.*, 115 NLRB 1533 (1956).

⁹⁸ *Superior Sleeprite Corp.*, 117 NLRB 430.

⁹⁹ *The Calidyne Co.*, 117 NLRB 1026.

¹ See, e. g., *Tuttle & Kist, Inc.*, 118 NLRB 125.

² *The Elm City Broadcasting Corp.*, 116 NLRB 1670.

However, when one of the parties deliberately misstates material facts which are within its special knowledge, under such circumstances that the other party cannot learn about them in time to point out the errors to the employees and the employees do not have independent knowledge which will enable them properly to evaluate the misstatements, the Board will set aside the election.³ Thus, in two cases, the elections were set aside because on the eve of the election union handbills were distributed, deliberately misrepresenting wage rates in the union's contracts with other companies.⁴ The Board held that the late distribution of the wage information, which was misleading on a matter vital to the employees, exceeded the bounds of legitimate campaign propaganda, because the employees had no independent means of knowing that the rates quoted were inaccurate and it was too late for the employer to correct the union's misstatement.⁵

i. Employee interviews

The Board had occasion to reiterate that, absent unusual circumstances, speeches to employees are a legitimate method of electioneering and employer talks to individual employees regarding an impending election do not *per se* justify its being later set aside. Thus, it was held not improper for an employer to talk for about 5 minutes to all employees singly or in groups *near their place of work*, with the power shut off where necessary, in order to induce them to vote against an intervening union.⁶ On the other hand, elections were set aside where all or a majority of the employees were interviewed for a like purpose either privately at their homes,⁷ or individually or in a group in private offices,⁸ or in special areas away from where the employees worked.⁹ In 1 case, sufficient ground for setting the election aside was found where about one-half of the employees at 1 of the employer's 28 stores were individually urged at the manager's desk to vote against the union.¹⁰ The Board noted that, while the interviews were not conducted in a private enclosure, they were not—as in *Mall Tool*,¹¹—held at the job site, and that,

³ *The Caladyne Co*, *supra*

⁴ *Reiss Associates, Inc*, 116 NLRB 217, and *The Caladyne Co*, *supra*

⁵ The Board in the *Reiss* case distinguished *Horner's, Inc*, 114 NLRB 751 (1955), where the employer characterized the quoted rates as "phony," and *Otis Elevator Co*, 114 NLRB 1490 (1955), where the employees were in a position to evaluate the propaganda, the inaccuracies were apparently inadvertent, and the information was substantially correct. Compare also *Avon Products, Inc*, 116 NLRB 1729, where the employer's statements concerning wages at another of its plants were essentially correct.

⁶ *The Bryant Electric Co*, 118 NLRB 232. The situation here was found comparable to that in *Mall Tool Co*, 112 NLRB 1313 (1955), and unlike that in *Mrs. Baird's Bakeries, Inc*, 114 NLRB 444 (1955), where the employer contacted the employees at their homes, on their work routes, and in company offices in order to induce them to vote against the union.

⁷ *Peoria Plastic Co*, 117 NLRB 545

⁸ *General Cable Corp*, 117 NLRB 573

⁹ *Radiant Lamp Corp*, 116 NLRB 40

¹⁰ *Hook Drugs, Inc*, 117 NLRB 846

¹¹ *Mall Tool Co*, 112 NLRB 1313 (1955).

while interviews were conducted at only one of the employer's chain of stores, the number of employees subjected to interviews was substantial.

In the cases where the election was set aside, it was again made clear that it was the circumstances under which interviews were conducted that prevented the employees from expressing themselves freely in the election, and that it was therefore immaterial whether or not the employer's remarks during the interviews were coercive.

ii. Preelection concessions

In connection with objections based on preelection announcements of wage increases, or other employee benefits, the Board reaffirmed the rule that the granting of such benefits shortly before an election does not *per se* invalidate the election. For the election to be set aside, it must be shown that the timing of the announcement was governed by the proximity of the election and not by other factors.¹² In *Bata Shoe*, a majority of the Board found that the employer had failed to show a proper motive for announcing a revised vacation plan 1 week before the election. In view of the majority, the inference that the announcement was timed so as to have its maximum impact upon the employees' minds was not rebutted by the assertion that previous vacation plans had been announced about the same time of the year, and that the sole purpose was to advise the employees of the change in vacation policy. Conversely, a majority of the Board declined to set aside an election on the ground that 2 days before the election the employer announced a payment to an existing profit-sharing trust fund.¹³ The benefit here was one that had been previously granted and would be an annual practice. The fact that during the preceding year a similar announcement was made a month earlier was held sufficiently explained. Moreover, the majority held that the employer had merely followed the normal business course of advising the employees as soon as possible after the date as of which the contribution was computed. And he was not required to defer announcement until after the election.

¹² *Bata Shoe Co., Inc.*, 116 NLRB 1239, Member Rodgers dissenting

¹³ *Good-All Electric Mfg. Co.*, 117 NLRB 72, Member Murdock dissenting. See also *Stratford Furniture Corp. and Futoron Manufacturing Co.*, 116 NLRB 1721, where the Board noted that in the case of a preelection wage increase "the most significant date would be when the information . . . was first made known to the employees." The increase here having been announced before the direction of election, an objection was held precluded under the *Woolworth* cutoff formula (109 NLRB 1446 (1954)). It was further noted that since the wage increase was put into effect more than 3 weeks before the election, there was no question regarding the timing of the granting of a preannounced wage increase to take effect immediately before the election.

iii. Threats of reprisals

As heretofore, elections were set aside where the employer had attempted to influence the outcome by threats of reprisals.¹⁴ In one case the Board held that a free election was not possible because of the extemporaneous remarks of the employer's president during a prepared speech that he would leave the company if the union won, and that this in turn might prevent profitable operations and the payment of an anticipated substantial bonus to the employees.¹⁵

iv. Effect of contract with incumbent

One case during fiscal 1957 involved the question of whether a free election was prevented by a strike settlement between the employer and the certified incumbent union in the period between the direction of election and the election.¹⁶ The parties' oral agreement, terminating the strike called by the intervening incumbent in connection with bargaining demands, provided for new benefits in pay and conditions of employment which were to be incorporated in a written contract. They were made known to the employees as part of the intervenor's election campaign. The Board concluded that the election should be set aside, even though it has been held¹⁷ that an employer does not commit an unfair labor practice by continuing to recognize and contract with the incumbent union during the pendency of a representation petition. Holding that the *Gibson* case did not dispose of the issue here, the Board pointed out that its primary concern in *Gibson* was to encourage continuity in collective bargaining and industrial stability, whereas here the immediate consideration was the preservation of the freedom of employees in the selection of a bargaining representative. The Board concluded that this freedom "must be preserved even if collective bargaining is disrupted for a limited time." Moreover, the Board observed, "The brief and temporary interruption of bargaining is counterbalanced by the ultimate stability in labor-management relations which results from the selection of a bargaining representative by a free and unpressured vote of the employees."

¹⁴ See, e g, *Lloyd A. Fry Roofing Co., Inc.*, 116 NLRB 1300, *Norris-Thermador Corp.*, 117 NLRB 1340, *The Humko Co Inc.*, 117 NLRB 825. For cases where the objections were overruled because the challenged statements were found noncoercive and therefore within the free speech protection of section 8 (c), see, e g, *Nash-Finch Co.*, 117 NLRB 808, *Westinghouse Electric Corp (Meter Plant)*, 118 NLRB 364, *Tyler Pipe & Foundry Co.*, 116 NLRB 1258, and *Vita Food Products, Inc of Maryland*, 116 NLRB 1215

¹⁵ *Rempel Manufacturing, Inc.*, 116 NLRB 1220. See also *Audubon Cabinet Co., Inc.*, 117 NLRB 861, finding that a similar threat to withdraw from management violated section 8 (a) (1) and interfered with the election.

¹⁶ *The Electric Auto-Lite Co.*, 116 NLRB 788; motion for reconsideration denied, 116 NLRB 1246, Chairman Leedom dissenting.

¹⁷ *William D Gibson Co., Division of Associated Spring Corp.*, 110 NLRB 660 (1954).

v. Effect of violation of no-solicitation rule

In one case, a retail store employer made the novel contention that the union's violation of the company's rule against solicitation on selling floors interfered with the election and required its being set aside.¹⁸ The Board rejected the contention because (1) the employer had in fact waived its no-solicitation rule, and (2) the reasons for which prohibitions against union solicitation on retail selling floors have been held valid were unrelated to the question of interference with the employees' free choice in an election. It was pointed out that, while solicitation on selling floors may disrupt the employer's business and may therefore be prohibited, such solicitation does not in any way disrupt an 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.¹⁹ 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.²⁰

During fiscal 1957 questions arose again both as to the timeliness and sufficiency of objections under the applicable rules.

(1) Timeliness of Objections

Section 102.61 of the Board's Rules and Regulations requires objections to be filed "within 5 days after the tally of ballots has been furnished." The Board held in one case that, the tally of ballots having been "furnished" by mail, rather than personal delivery, the date of the receipt of the tally controlled the computation of the time for filing objections.²¹

The Board also had occasion to make clear that in computing the 5-day period Saturdays and Sundays are excluded,²² and where a legal holiday falls on Sunday and the following day is an officially declared holiday, that day is also excluded.²³

The mailing of a copy of objections to the opposing party simultaneously with the mailing of the objections to the Board's office was held to satisfy the requirement that copies shall be immediately served, even though the opposing party may not have received its copy within 5 days after the election.²⁴

¹⁸ *The Gallaher Drug Co.*, 116 NLRB 1263

¹⁹ Sections 102.61 and 102.83

²⁰ See Twenty-first Annual Report, p. 73.

²¹ *The Jacksonville Journal Co.*, 117 NLRB 360.

²² "*M*" System, Inc., 116 NLRB 1725.

²³ *The Jacksonville Journal Co.*, *supra*.

²⁴ *Audubon Cabinet Co., Inc., and Period Tables, Inc.*, 117 NLRB 861

(2) 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." This requirement is not met if the objections contain merely a general conclusive allegation of interference with the election.²⁵ Specificity is necessary, the Board reiterated, "to discourage attempts to delay the effectuation of conclusive election results by a party invoking the Board's objections procedures without having knowledge at the time of filing of any basis for invalidating the election."²⁶ This being the reason for the rule, the Board declined to overrule the objections because the lack of specificity was not due to the party's inability to furnish more details but rather to an effort to conform with the regional director's suggestion that details already furnished be omitted.

A party which objects to the conduct of an election also is required to furnish supporting evidence within the 5-day filing period. Absent such evidence, the regional director is not required to investigate objections.²⁷ In one case, the Board rejected an employer's contention that it was the Board's duty to investigate even unsupported objections because an investigation by the employer "could or might" constitute a violation of section 8 (a) (1) of the Act.²⁸ The Board pointed out that section 8 (a) (1) does not prevent an employer from making investigations essential to the preparation of a case.²⁹

In one case, evidence of objectionable preelection conduct, which did not come into the employer's possession until long after the election, was held properly admitted and considered at a reopened hearing.³⁰

8. Amendment of Certification

The Board at times has to pass on requests to amend or clarify an outstanding certification because of asserted changes in the identity of the bargaining representative or ambiguity as to the scope of the bargaining unit.

During fiscal 1957 the Board had occasion to point out that its express authority under section 9 (c) (1) to issue certifications necessarily carries with it the implied authority to police its certifications and to amend or clarify them as a means of effectuating the policies of the

²⁵ See Twenty-first Annual Report, pp 73-74.

²⁶ *Montgomery Ward & Co*, 118 NLRB 310 The Board quoted its statement in *Don Allen Midtown Chevrolet, Inc*, 113 NLRB 879 (1955).

²⁷ Twenty-first Annual Report, p 74.

²⁸ *The Rackle Co. of Texas*, 117 NLRB 462.

²⁹ The Board cited *Parlee Flooring Mill*, 107 NLRB 1177 (1954).

³⁰ *Poinsett Lumber & Manufacturing Co*, 116 NLRB 1732 Compare *Eastern Metal Products Corp*, 116 NLRB 1382, where the Board overruled the objections of a party who relied on the testimony of a witness it could not produce and who could not be located by the Board agent

act. However, a majority of the Board held ³¹ that, while a request for clarification of a certified bargaining unit may thus be entertained, there is no similar statutory power to clarify a unit established by contract, rather than certification, and to determine the status of employees in a unit which has never been found appropriate by the Board. Such a determination, according to the majority, would be an advisory opinion which the Board has no statutory power to give. The majority here said:

We cannot believe that Congress, having specifically provided an effective procedure for definitive resolution of unit issues in Section 9 (c) (1), at the same time intended to authorize the Board to derogate from that procedure in cases of this type by giving an advisory opinion which is not binding upon the parties or the Board, and where if one of the parties is dissatisfied with the Board's view, it could file a petition at an appropriate time covering all employees in the unit or a refusal-to-bargain charge seeking to obtain a redetermination of the status of the employees involved.

In view of its conclusion, the majority overruled earlier cases where petitions in the nature of motions for clarification of contract units had been treated the same as motions to clarify certified units.

During the past year, one certification was amended where the certified union had become consolidated with another union, the consolidation having taken place "with the knowledge, participation, and apparent approval" of the employees in the certified unit.³² The Board found that the consolidated organization was a continuance of the certified union and succeeded to the latter's bargaining status. The certification was therefore amended by substituting the name of the successor organization for that of the union originally certified.

In a case where the employer's petition for redetermination of the certified incumbent's bargaining status was dismissed for lack of a question of representation,³³ the Board nevertheless treated the petition as a motion to amend the outstanding certification because at the hearing the parties had indicated their desire for a determination of the supervisory status of employees in certain categories in the certified unit.³⁴ Finding the employees in one disputed category to be supervisors, the Board amended the certification accordingly.

In another case, the Board granted an employer's motion to clarify a certified unit by determining the effect of certain operational changes

³¹ *The Bell Telephone Co. of Pennsylvania*, 118 NLRB 371, Chairman Leedom and Member Bean dissenting. See also *Ohio Consolidated Telephone Co.*, 118 NLRB 375.

³² *National Carbon Co., A Division of Union Carbide and Carbon Corp.*, 116 NLRB 488. See also *Butler Chemical Co., successor to Gulf Chemical Co.*, 116 NLRB 1041.

³³ The Board here found that the employer's continued recognition and bargaining with the incumbent was inconsistent with its petition.

³⁴ *United States Gypsum Co.*, 116 NLRB 1771.

on the unit status of two fork-lift operators.³⁵ They were found to belong in the certified unit. The Board noted that unit clarification is the appropriate means for resolving disputes arising from the insistence of a union, not a party to the certification proceeding, that certain employees be removed from the unit although they perform virtually the same work as the other employees in the unit.³⁶ The intervening union's contention that unit clarification here would amount to an improper work assignment under the *General Aniline* decision³⁷ was rejected. There, it was pointed out, the motion for clarification was denied because it sought a determination as to whether employees in the certified unit should perform *all* of the work of their classification.

It was again made clear that a motion to clarify or amend a certification will be dismissed if it raises a question of representation which can be resolved only by an election. The Board denied a union's request that its certificate be clarified to include a group of employees whose duties were similar to those of other employees in the unit and who, assertedly, were not employed at the time of the election.³⁸ The Board found that the employees involved were in fact employed at the time, were expressly excluded from the stipulated unit, and were presently within the contract unit of another union. The motion to clarify was therefore held to raise a question concerning the representation of the particular employees which could be resolved only through an election. Nor was the possibility that an election was presently barred by the contract covering the employees held "sufficient justification for abandonment or evasion of the petition and election procedure."

³⁵ *Anheuser-Busch, Inc., et al.*, 116 NLRB 1988.

³⁶ Citing *Radio Station KHQ and KHQ-TV*, 111 NLRB 874 (1955).

³⁷ *General Aniline & Film Corp., Ansco Division*, 89 NLRB 467 (1950).

³⁸ *General Motors Corp., Chevrolet Motor Division, Chevrolet Experimental Engineering Center*, 117 NLRB 750. See also *Weatherhead Co. of Antwerp*, 106 NLRB 1266, and *Gulf Oil Corp.*, 109 NLRB 861 (1954), where the Board on similar grounds declined to amend certifications by substituting for the name of the certified union that of the petitioner because of alleged disaffiliation.

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 1957 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 cases involving allegations of independent violations of section 8 (a) (1) were largely concerned with such matters as interrogation² and surveillance³ of employees in connec-

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

² The Board continues to apply the test formulated in *Blue Flash Express Inc*, 109 NLRB 591 (1954) (see Twentieth Annual Report, pp. 67-69), "whether under all the circumstances, the interrogation reasonably tends to restrain or interfere with the employees in the exercise of rights guaranteed by the Act." Thus, interrogation as to union activities in the context of other unfair labor practices has again been held violative of section 8 (a) (1).

³ *Linn Mills Co.*, 116 NLRB 96, *Lithium Corp. of America, Inc.*, 116 NLRB 602.

tion with their union activities; threats⁴ or promises⁵ intended to discourage union activity or adherence to a particular union; changes in terms of employment in derogation of and without acquiescence of the employees' majority representative;⁶ attempts to influence the outcome of Board elections;⁷ or the sponsorship of antiunion petitions.⁸ Some cases involved contracts which interfered with employees' rights because made with a union not designated as their representative⁹ by the employees covered, or because illegally requiring union membership.¹⁰

The Board again held that the discharge of a supervisor for giving testimony in a Board proceeding violated section 8 (a) (1). The Board cited its prior holding¹¹ that such a discharge necessarily causes nonsupervisory employees to fear that they would expose themselves to similar discrimination if they were to testify against the employer before the Board.¹²

a. Prohibitions Against Distribution of Literature

The extent of an employer's right to prohibit the distribution of union literature on its property was again involved in several cases. In one case,¹³ the Board held that the employer's notice forbidding the distribution of "propaganda on behalf of any group or organization . . . during working hours," but not forbidding the distribution of propaganda *against* any organization or the distribution of literature other than "propaganda," was discriminatory and for that reason was unlawful.¹⁴

One case presented the question whether an employer could lawfully prohibit the distribution of union literature on the company's parking lot by an employee who at the time was on leave of absence.¹⁵ The Board rejected the contention that the employer had a right to prohibit the distribution of union literature on company property by

⁴ *Nylon Molded Products Corp*, 116 NLRB 73, *Ekco Products Co.*, 117 NLRB 137; compare *Atlas Boot Mfg Co, Inc.*, 116 NLRB 565. See *infra* footnote 15.

⁵ *Adhesive Products Corp*, 117 NLRB 265, *Mitchell Plastics, Inc.*, 117 NLRB 597.

⁶ *Mitchell Plastics, Inc.*, *supra*, *Keil Co*, 117 NLRB 828

⁷ *Mitchell Plastics, Inc.*, *supra*, *Audubon Cabinet Co, Inc.*, 117 NLRB 861.

⁸ See *Imn Mills Co*, 116 NLRB 96, *Keil Co*, *supra*.

⁹ *Mohawk Business Machines Corp*, 116 NLRB 248

¹⁰ *County Electric Co., Inc.*, 116 NLRB 1080 Concerning 8 (a) (3) violation, see *infra* pp. 73, 74

¹¹ *Better Monkey Grip Co.*, 115 NLRB 1170 See Twenty-first Annual Report, p. 79. For court of appeals enforcement of the Board's order in this case see p. 122, *infra*.

¹² *Modern Linen & Laundry Service, Inc.*, 116 NLRB 1974. The Board did not find it necessary to consider whether, as found by the trial examiner, the discharge also violated section 8 (a) (3) and (4) of the act. Members Murdock and Bean, however, would have sustained the trial examiner's finding that the discharge was also violative of section 8 (a) (4).

¹³ *Puerto Rico Rayon Mills, Inc.*, 117 NLRB 1355.

¹⁴ Compare *Atlas Boot Manufacturing Co, Inc.*, 116 NLRB 565, where the Board reversed the trial examiner's finding that, absent any known company rule, the employer violated section 8 (a) (1) by threatening employees with discharge "if they did not quit passing literature and talking on company time" "The Board held that the "remark was merely the expression of the Respondent's right as an employer to insist that employees devote working time to work."

¹⁵ *Cranston Print Works Co.*, 117 NLRB 1834.

an employee who, being on leave of absence, was not on the employer's premises in connection with the duties of his employment. It was pointed out that, in defining the right to distribute union literature on company property, the Supreme Court in *Babcock & Wilcox*¹⁶ distinguished only between employees and nonemployee organizers, saying, with certain limitations not here relevant, "no restrictions may be placed upon the employees' right to discuss self-organization among themselves." The Board declared that the right to distribute union literature, as part of the right to self-organization, extends to all employees of a single employer who have mutual employment interests, "whether they are working, on strike or leave of absence or sick leave or temporary layoff or temporary transfer, or have been discriminatorily discharged or are about to quit." The Board concluded that the employer violated section 8 (a) (1) by refusing to permit the employee on leave to distribute literature and by causing his arrest for doing so. On the other hand, the Board held, the employer was within its rights when it prevented the distribution of literature on the company parking lot by his nonemployee companions.¹⁷

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." The section provides, however, that an employer may permit employees to confer with him during working hours without loss of pay.¹⁸

The Board pointed out that in administering the anti-domination and anti-interference provisions of section 8 (a) (2) it has only the limited powers expressly conferred by the act, and may not concern itself with such matters as corruption and maladministration in the union involved.¹⁹ The opinion said:

The Board does not have criminal, restraint of trade, or antitrust jurisdiction. It has been given no power to deal with corruption within a labor union. Neither the possibility of the perpetration of such offenses nor whatever findings may be made respecting

¹⁶ *N. L. R. B. v. The Babcock & Wilcox Co.*, 351 U. S. 105. See Twenty-first Annual Report, pp. 123-125.

¹⁷ As to the right of access of union organizers to an employer's property, compare *National Organization Masters, Mates and Pilots, etc. (J. W. Banta Towing Co., Inc., and Plaquemine Towing Corp.)*, 116 NLRB 1787, where a majority of the Board held in an 8 (b) (1) (A) case that union organizers who boarded a vessel at the crew's invitation but without permission of the captain were trespassers and were properly ordered to leave the ship.

¹⁸ In *The Summers Fertilizer Co., Inc.* (117 NLRB 243), the Board held during the past year that an employer could properly compensate members of employee committees for time spent in negotiations with the employer, but that payment for time spent in organizing the committees and attending committee meetings constituted unlawful assistance and financial support.

¹⁹ *Nassau and Suffolk Contractors' Association, Inc.*, 118 NLRB 174, Member Murdock dissenting on another ground.

their commission by duly constituted authority has any bearing upon our determination of whether, on the record before us, the statute has been violated. [Footnote omitted.]

* * * * *

[T]he Board has no jurisdiction over what employees themselves do in the administration of their labor union affairs.

In determining appropriate remedies for section 8 (a) (2) violations the Board distinguished domination of a labor organization from lesser forms of interference. In cases of employer domination, the usual remedy is the complete disestablishment of the dominated organization. Where assistance and support not amounting to domination are found, the usual remedy is to order the employer to cease recognizing or giving effect to any contract with the assisted organization unless and until it is certified by the Board. In the case of unlawful checkoff and illegal union-security agreements, the Board in appropriate circumstances has ordered reimbursement of the dues collected thereunder.²⁰

a. Domination versus Interference

In several cases under section 8 (a) (2), the nature of the violation had to be determined in the light of the trial examiner's conclusion that the employer's participation in the affairs of the union amounted to domination. In each case the Board found interference only.

In one case,²¹ the employer brought about reactivation of a defunct employee association for the purpose of forestalling affiliation of its employees with an outside organization. The employer immediately entered into an agreement granting wage increases and union security and continued to accord the association assistance in the form of a free meeting place, company facilities, and a checkoff. Holding there was no domination, the Board noted that, simultaneously with the execution of the contract, the employees on their own initiative proceeded to reconstitute the association as an independently functioning organization, and that the employer was not in a position to control it and did not actively participate in its internal affairs. In rejecting the trial examiner's contrary conclusion, the Board cited earlier cases where domination was found on the basis of a combination of factors. In such cases, it was pointed out,

the employer not only furnished the original impetus for the organization but there were present such additional factors as (a) the employer also prescribed the nature, structure, and functions

²⁰ See, e g , *Mohawk Business Machines Corp* , 116 NLRB 248, *Adhesive Products Corp* , 117 NLRB 265; *Broderick Wood Products Co.* , 118 NLRB 33. In cases where the assisted union is a party to the proceeding and is found to have violated section 8 (b) (2), the employer and the union are directed to effect reimbursement jointly and severally

²¹ *Adhesive Products Corp.* , *supra*.

of the organization;²² (b) the organization never developed any real form at all, such as a constitution or bylaws, dues or a treasury, never held any meetings, and had no assets other than a contract bestowed by the employer;²³ (c) representatives of management actually took part in the meetings or activities of the committee or attempted to influence its policies.²⁴

In another case,²⁵ the Board held that, while the employer had assisted and supported an employee committee, the circumstances surrounding the negotiation of a contract with the committee did not, as found by the trial examiner, justify a finding of domination.

In *Nassau Contractors'*,²⁶ a 2-member panel majority held that, while negotiations with a union committee which included 2 supervisory master mechanics constituted unlawful interference on the part of the employer, this did not warrant the trial examiner's conclusion that the employer thereby dominated the union. The majority noted the absence of any evidence that the employer was responsible for the master mechanics' appointment to the negotiating committee, and there was no reason for the union's members to believe that they were employer instruments for the control of the committee. The master mechanics were among the union's oldest members. As stewards, they represented the union and its members on the job; and they held their master mechanics' positions only with the approval of the union and subject to its discipline.

b. Interference, Assistance, and Support

Most of the cases of employer assistance and support of labor organizations involved conduct which traditionally has been held to violate section 8 (a) (2), such as permitting a favored union to use company premises and facilities;²⁷ instigation of formation of an inside union to combat affiliation with an outside union;²⁸ discrimination against

²² The Board here cites *Standard Coil Products Co., Inc.*, 110 NLRB 412, enforced 224 F. 2d 465 (C. A. 1), certiorari denied 350 U. S. 902, *Ed Taussig, Inc.*, 108 NLRB 470, *Essex Wire and Associated Machines, Inc.*, 107 NLRB 1153.

²³ The Board here cites *Ben Corson Manufacturing Co., et al.*, 112 NLRB 323. See also *N. L. R. B. v. Stow Mfg. Co.*, 217 F. 2d 900 (C. A. 2), enforcing 103 NLRB 1280, certiorari denied 348 U. S. 964.

²⁴ The Board here cites *Nutone, Inc.*, 112 NLRB 1153, *Ephraim Haspel*, 109 NLRB 37, enforced 228 F. 2d 155 (C. A. 2); *N. L. R. B. v. Wemyss*, 212 F. 2d 465 (C. A. 9), enforcing as modified 102 NLRB 586. See also *California Cotton Cooperative Association, Ltd.*, 110 NLRB 1494, and *Tri State Manufacturing Co.*, 109 NLRB 410.

²⁵ *The Summers Fertilizer Co., Inc.*, 117 NLRB 243.

²⁶ *Nassau and Suffolk Contractors' Association, Inc.*, 118 NLRB 174. Member Murdock dissented, agreeing with the trial examiner that the employer's total conduct constituted domination of the union.

²⁷ *Mohawk Business Machines Corp.*, 116 NLRB 248 (use of company premises during working time to address employees and solicit members in face of a rival union's recognition claim), *Adhesive Products Corp.*, 117 NLRB 265 (use of rent-free meeting place), *The Summers Fertilizer Co., Inc.*, 117 NLRB 243 (use of company property to form employee committees and hold meetings).

²⁸ *Adhesive Products Corp.*, *supra*.

employees who failed to support a favored organization;²⁹ or contractual assistance³⁰ according illegal union security.³¹

(1) Supervisors' Participation in Union's Internal Affairs

In *Nassau*,³² the question of whether the participation of supervisory employees in the union's affairs constituted unlawful interference depended upon whether the supervisors' activities were attributable to the employer.

As noted by the majority, an employer is liable for the acts of his supervisors under the applicable common law rules of agency,³³ and ordinarily is liable where a supervisor injects himself into union affairs. However, the majority further pointed out that this rule does not apply invariably, and employer responsibility does not follow automatically where a supervisor participates in union matters as an individual rather than in his representative capacity. Citing both Board and court precedents, the majority took the view that where supervisors as members of the rank-and-file unit and union have a voice and vote in the administration of the union's affairs, employer responsibility should not be held to attach automatically. The majority declared: "There is an obvious difference between the situation where foremen organize employees into one union in a context of unfair labor practices and hostility to another union, and . . . where, as here, the foremen are merely active in the administration of their own union to which they have belonged for many years as is customary in the industry." The proper rule to be applied, the majority continued, was that stated in *Indianapolis Newspapers*³⁴ to the effect that an employer is not to be held responsible for participation of a supervisor in the affairs of his union unless the employer "encouraged, authorized, or ratified" the activities "or acted in such manner as to lead employees reasonably to believe that the supervisors were acting for and on behalf of management."

(a) Supervisors' participation in election

The majority in *Nassau*³⁵ held that under the foregoing rule the voting of certain supervisory master mechanics at union meetings did

²⁹ *Adhesive Products Corp.*, *supra* ("discharging" employees until they join a local of the favored international).

³⁰ Extension of an existing contract to an "accretion" to the plant covered again was held not unlawful where the employees in the enlarged operation constituted a single appropriate unit. See *Broderick Wood Products Co.*, 118 NLRB 38. See also Twenty-first Annual Report, pp 80-81.

³¹ *Mohawk Business Machines Corp.*, 116 NLRB 248 (union-security contract with union representing multiemployer unit without express or implied consent of employees), *Adhesive Products Corp.*, 117 NLRB 265 (contract clause requiring union membership within 2 weeks after employment), *Enterprise Industrial Piping Co.*, 117 NLRB 995.

³² *Nassau and Suffolk Contractors' Association*, 118 NLRB 174.

³³ Section 2 (13) of the act.

³⁴ *Indianapolis Newspapers, Inc.*, 103 NLRB 1750, set aside on other grounds in 210 F. 2d 501 (C. A. 7)

³⁵ *Nassau and Suffolk Contractors' Association, Inc.*, 118 NLRB 174.

not constitute prohibited interference on the part of the employer. The master mechanics were included in the unit represented by the union, were covered by the union's contract, and were required to maintain good standing in the union, and their designation by the employer was subject to union approval. The master mechanics also were shop stewards and as such were "responsible for working conditions on the job" according to the union's bylaws. Thus, the majority noted, the master mechanics owed allegiance at least as much to the union as to their employer. The majority concluded that in these circumstances responsibility for the master mechanics' participation in the affairs of their union could not be attributed to the employer.

On the other hand, voting in union elections by other supervisors, not included in the bargaining unit, and by some executives was found to be chargeable to the employer and to have violated section 8 (a) (2). For, the Board said,

[V]oting in union elections is plainly a form of interference with the administration of a labor organization. It may not be unlawful for company executives and high-ranking supervisors to retain the union membership they acquired as rank-and-file employees as job insurance in the event they should revert to ordinary employee status, but that does not make it lawful for them to participate in elections to determine who is to administer the affairs of the union. It is quite conceivable that in a closely divided vote executive and high-ranked supervisors would have the balance of power and be in a position to select the union officials who are to deal with them in their separate capacity as employer agents.

(2) Supervisors on Union's Bargaining Committee

The employer in *Nassau* was held to have further unlawfully interfered with the administration of the representative of its employees by acquiescing in the participation of supervisory master mechanics in bargaining negotiations as members of the union's negotiating committee.³⁶ It was pointed out that bargaining on behalf of the employees went beyond permissible participation in the internal affairs of the supervisor's union, and interfered with the employees' "right to be represented in collective-bargaining negotiations by individuals who have a single-minded loyalty to their interests." The master mechanics, despite the large measure of control exercised over them by the union, remained in part agents of their employers with a divided loyalty and interests. Even though the employer was not responsible for the naming of master mechanics on the union's bargaining com-

³⁶ As noted above, a majority of the three-member panel rejected the view that the employer's acquiescence constituted domination.

mittee, the employer was held under a duty to avoid the appearance that he was "even in slight degree on both sides of the bargaining table," and to protest the composition of the bargaining committee which included its own agents and to refuse to deal with it.

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 this section 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.

a. Protected and Unprotected Activities

Section 7 of the act protects the right of employees to organize for collective-bargaining purposes, and to engage in "other concerted activities"³⁷ for the purpose of collective bargaining or other mutual aid or protection.³⁸ The section likewise protects the employees' right to refrain from any or all such activities, except where subject to a valid union-security agreement. However, in order to be protected, the exercise by employees of section 7 rights must have a lawful objective and must be carried on in a lawful manner.³⁹ Moreover, employees are not protected if their union or other concerted activities on company time or property violate plant rules which are nondiscriminatory and reasonably necessary to maintain efficiency and discipline. Employees also may forfeit their statutory protection if their activities violate obligations under a valid collective-bargaining agreement, as, for instance, by striking in the face of a no-strike pledge.⁴⁰

³⁷ Activities for the statutory purposes are "concerted" if they are engaged in by two or more "employees." See *Texas Natural Gasoline Corp.*, 116 NLRB 405, where the Board rejected the trial examiner's finding that an employee who had picketed his employer in the company of a previously discharged fellow worker was not engaged in concerted action because the discharged worker was not an "employee." Pointing out that the definition of "employee" in section 2 (3) of the act includes "any member of the working class," the Board held that the picketing here was concerted rather than individual action.

³⁸ In *Gordon-Ladley Plywood Products Co.*, 118 NLRB 1, the Board adopted the trial examiner's finding that workers who had been required to become stockholders in order to obtain employment were protected in protesting against unsatisfactory working conditions and delayed payment of wages, since they acted not only in their interests as stockholders but also for their mutual aid and protection as employees.

³⁹ Serious misconduct in the course of otherwise protected concerted activities deprives employees of their protection under the act. Thus, participants guilty of such conduct as violence or threats of bodily harm may be discharged or denied reinstatement by their employer. Moreover, where it is found that section 8 (a) (3) was violated because employees were disciplined, not for their misconduct, but for their participation in otherwise protected concerted activities, the Board denies the usual back-pay and reinstatement remedies if the employees' misconduct "was so flagrant as to render them unfit for further service." *Puerto Rico Rayon Mills, Inc.*, 117 NLRB 1355. See also *Ekco Products Co.*, 117 NLRB 137.

⁴⁰ However, a no-strike agreement with an employer-assisted union is invalid and does not affect the employees' statutory right to strike. *The Summers Fertilizer Co., Inc.*, 117 NLRB 243

During the past year, two cases which turned on the protected nature of employee activities involved questions of major importance, one being concerned with the legality of a union's strike for recognition, and the other with the right of employees under section 502 to stop work because of "abnormally dangerous" conditions in the face of a no-strike agreement.

(1) Recognition Strikes

The Board in 1 case⁴¹ was faced with an employer's contention that certain strikers had forfeited their rights under the act because (1) the object of the strike was to force the employer to recognize a union which had not complied with the filing requirements of the act and was not the certified bargaining representative of the employees; and (2) the strike, having been called less than 12 months after the employees had voted in a Board election against representation by another union, deprived the employer of its asserted right under section 9 (c) (3)⁴² to be free of organizational efforts during the year after the election.⁴³ A majority of the Board⁴⁴ held that the strike was protected. As to the union's noncompliance, it was pointed out that the preceding year's *Brookville Glove*⁴⁵ decision made it clear that noncompliance does not preclude a union from seeking recognition, and thereafter the Supreme Court in *Arkansas Oak Flooring*⁴⁶ ruled that a strike for recognition conducted by a noncomplying union is protected by section 7. The majority noted that *Arkansas Oak Flooring* "reaffirms the Board's position that voluntary recognition of a union is an acceptable alternative to a Board election and that the guarantees of section 7 are available to members of a union which is ineligible for certification." The majority further held that a recognition strike within 12 months of a Board election is not in conflict with the policy of the 12-month limitation of section 9 (c) (3). The majority declined to find that section 9 (c) (3), although intended to provide a period of respite from the disruptive effects of an election campaign, must be held to afford a like protection against the similar effects of recognition strikes during the 12-month post-

⁴¹ *Ekco Products Co.*, *supra*.

⁴² Section 9 (c) (3) prohibits more than 1 Board election during any 12-month period.

⁴³ The employer also contended that the strike for recognition was unprotected because the union did not represent a majority of the employees. A majority of the Board, finding that the union in fact had majority status, considered it unnecessary to pass on the question whether a strike for recognition by a minority union is protected concerted activity. Member Rodgers, dissenting, took the view that, a recognition strike by a minority union being unlawful, the General Counsel had the burden of proving that the union here had majority status, that the General Counsel had not sustained this burden, and that the complaint should be dismissed on that account. Member Rodgers therefore did not find it necessary to pass on other issues raised by the employer.

⁴⁴ See preceding footnote.

⁴⁵ *David G. Leach and Doyle H. Wallace, d/b/a Brookville Glove Co.*, 114 NLRB 213, enforced 234 F. 2d 400 (C. A. 3) Twenty-first Annual Report, p. 83.

⁴⁶ *United Mine Workers of America v. Arkansas Oak Flooring Co.*, 351 U. S. 62.

election period. According to the majority, the sole purpose of section 9 (c) (3) is "to prevent the stirring up of industrial unrest through misuse of the very means provided to enhance industrial peace."

(2) Work Stoppage Because of "Abnormally Dangerous" Conditions

Employees in one case, despite a no-strike agreement, walked out because of abnormal heat and dust conditions created by the failure of the plant's blower system. The Board held their action was protected by the act, in view of certain provisions of section 502. This section provides in part that "the quitting of labor . . . in good faith because of abnormally dangerous conditions for work . . . [shall not] be deemed a strike. . . ." The manifest purpose of this provision, the Board held, is to safeguard the right of employees to quit work without penalty in order to protect their health and lives by freeing them to this extent from contractual no-strike obligations and the 60-day waiting provision of section 8 (d).⁴⁷

b. Forms of Discrimination

Discrimination against employees which violates section 8 (a) (3) in that it tends "to encourage or discourage membership in any labor organization" most frequently takes the form of discharge, layoff, changes in employment status or conditions, or refusal of employment or reemployment, because of the employee's participation in union or other concerted activities. Employer actions which presented special problems during fiscal 1957 included discriminatory seniority practices, lockout in anticipation of a strike, and the adoption and enforcement of invalid union-security provisions.

(1) Superseniority for Nonstrikers

In one case,⁴⁸ the Board held—as it had in the similar *Mathieson* case during 1956⁴⁹—that the employer violated section 8 (a) (3) when, after an economic strike, it reduced the seniority of striking employees below that of nonstrikers and replacements. The employer's contention that the action was necessary for economic reasons as a means of continuing its business during the strike was held refuted by the fact that the new seniority policy was not announced until more than 3 months after the strike ended. Moreover, the

⁴⁷ *Knight Morley*, 116 NLRB 140. The cases relied on by the employer to support its contrary view (*N. L. R. B. v. American Mfg. Co. of Texas*, 203 F. 2d 212 (C. A. 5), reversing 98 NLRB 226, *N. L. R. B. v. Kohler Co.*, 220 F. 2d 3 (C. A. 7), enforcing 108 NLRB 207) were distinguished on the ground that there section 502 was held inapplicable because of the circumstances under which the employees' walkout occurred or the unprotected nature of the walkout itself.

⁴⁸ *California Date Growers Association*, 118 NLRB 246

⁴⁹ *Mathieson Chemical Corp., and/or Olin Mathieson Chemical Corp.*, 114 NLRB 486 (1955), enforced 232 F. 2d 158 (C. A. 4), affirmed 353 U. S. 1020 (see *infra* p. 118)

Board held, the commission of other unfair labor practices further indicated the employer's unlawful motive.

As to timing, it was pointed out that the situation was materially different from that in the *Pottlatch Forests* case⁵⁰ where the Board's finding that the employer's strike seniority policy violated section 8 (a) (3) was reversed by the Ninth Circuit because the policy was initiated during a strike with a view to attracting replacements.⁵¹ The Board noted that the significance of the timing of the strike seniority was similarly recognized in the *Mathieson* case where the Fourth Circuit also distinguished *Pottlatch* and sustained the Board's 8 (a) (3) finding.⁵² This decision was affirmed by the Supreme Court.⁵³

(2) Plant Shutdown in Anticipation of Strike

Whether section 8 (a) (3) was violated depended in one case on the employer's right to protect itself against an anticipated strike with resulting delay in deliveries and future loss of customers by shutting down one of its plants and transferring orders to other plants while contract negotiations were in progress.⁵⁴ The employer—a manufacturer of rail equipment on special order from railroads—sought to justify its action on the ground that previous strikes by the same union had caused delays in filling orders which brought complaints from customers accompanied by actual and threatened loss of business.

A majority of the Board⁵⁵ held that the shutdown and layoff of employees was unlawful (1) because no real threat of strike had been shown and the employer's action was motivated solely by a desire to avoid the possibility of a strike; and (2) because, even if a strike threat existed, the employer was not confronted with "unusual operative problems or economic losses over and beyond the ordinary loss of business or customers normally attendant upon any strike." Thus, the majority held, the "unusual circumstances" rule of the *Betts Cadillac* and similar cases⁵⁶ did not apply. In the majority's view, the record did not support a finding that the employer's conduct was based on an actual strike threat, even though strikes over contract negotiations had occurred on two prior occasions. The majority noted particularly that the employer announced its plan for shutting down the plant at the first bargaining session when there was no more

⁵⁰ *N L R B v Pottlatch Forests, Inc.*, 189 F. 2d 82 (C. A. 9), setting aside 87 NLRB 1193

⁵¹ See p. 118, *infra*.

⁵² See footnote 49, *supra*

⁵³ 353 U. S. 1020

⁵⁴ *American Brake Shoe Co.*, 116 NLRB 820, enforcement denied, 244 F. 2d 489 (C. A. 7).

⁵⁵ Member Rodgers dissenting.

⁵⁶ *Betts Cadillac Olds, Inc.*, 96 NLRB 268 (1951), *Duluth Bottling Association*, 48 NLRB 1335, 1336, 1359-60 (1943), *International Shoe Co.*, 93 NLRB 907 (1951), *Central California Chapter, Associated General Contractors*, 105 NLRB 767, *Link-Belt Co.*, 26 NLRB 227 (1940), *Hobbs, Wall & Co.*, 30 NLRB 1027 For the contrary views of the Court of Appeals for the Seventh Circuit which denied enforcement of the Board's order in the case on the ground that the employee's action was privileged under the *Betts Cadillac* rule, see pp. 124-125, *infra*.

reason to believe that negotiations would fail and a strike result than that an agreement would be reached. Steps to put the plan into effect began immediately. Also the union, unlike on the earlier occasions, had made no strike threats and had not sought strike authorization from its membership; and the union's attitude during the ensuing negotiations indicated that no strike was imminent. The majority also believed that the union complied adequately with the employer's request for assurances against a strike even though it did not put them in writing. Regarding the interests the employer sought to protect, the majority found that they were not of the kind which in *Betts Cadillac* and related cases had been held to justify the shutting down of operations. It was pointed out that there was no danger of physical destruction of plant, equipment, or material but only a fear of ordinary economic hardship incident to a strike such as delayed deliveries and possible loss of customers. Moreover, the majority noted, the situation was unlike that in *Betts Cadillac* in that the employer here did not accelerate the normal consequences of a strike by closing down and turning away customers but, on the contrary, eliminated the possibility of effective strike action and completely avoided the normal consequences of a strike by transferring operations to another plant, at a time when the union was precluded from striking under the 60-day limitation of section 8 (d). The majority declared that if "such anticipatory conduct were sanctioned, the employer would be immunized from effective strike action, and the employees' right to strike would be rendered virtually meaningless."

(3) Encouraging Union Membership

The cases under section 8 (a) (3) where employers were found to have unlawfully encouraged union membership involved hiring practices under which employment preference was given to the members of a particular union;⁵⁷ delegation of employment functions to a union which exercised them in a discriminatory manner;⁵⁸ and an agreement under which pension fund benefits were restricted to union members.⁵⁹ Other cases involved execution or enforcement of union-security agreements other than as permitted by the proviso to section 8 (a) (3).

⁵⁷ See, e g , *The Great Atlantic & Pacific Tea Co* , 117 NLRB 1542, *Mountain Pacific, Seattle, and Tacoma Chapters of the Associated General Contractors of America, Inc* , 117 NLRB 1319, *County Electric Co , Inc , et al* , 116 NLRB 1080, *Enterprise Industrial Piping Co* , 117 NLRB 995, *Electrical Contractors of Troy and Vicinity* , 116 NLRB 354, *Gene Compton's Corp* , 116 NLRB 1944, see also *The Marley Co* , 117 NLRB 107.

⁵⁸ *Imparato Stevedoring Corp* , 116 NLRB 667 Member Murdock did not join in the view that an 8 (a) (3) violation necessarily exists whenever a labor organization discriminatorily exercises a delegated employment function.

⁵⁹ *Carty Heating Corp* , 117 NLRB 1417.

(a) Discrimination under union-security agreements

In order to be a valid defense to discrimination charges, a union-security agreement must conform to the limitations of the proviso to section 8 (a) (3), that is, the agreement must have been made with a properly qualified union;⁶⁰ it may require union membership as a condition of employment only after a 30-day grace period;⁶¹ and any request for the discharge or other discrimination against an employee must be based solely on the discriminatee's failure to tender periodic dues and initiation fees.⁶²

The Board also had occasion to reaffirm the rule that the retention of an invalid union-security clause in a collective-bargaining agreement is unlawful and violates both section 8 (a) (1) and 8 (a) (3), even though the clause may not have been enforced.⁶³ The Board made it clear that in the *Port Chester* case⁶⁴ it refrained from making an 8 (a) (3) finding only because the contracting parties had made an oral agreement not to enforce the unlawful clause and there was sufficient evidence that they intended to adhere to this agreement.

In two cases, employers charged with enforcement of closed shop agreements contended that their agreements were valid under section 102, having been made before the 1947 amendment of the act and not having been "renewed or extended" thereafter.⁶⁵ The contention was rejected in both cases on the ground that the agreements did not contain substantive terms as to wages, hours, and other conditions of employment, and therefore were not collective-bargaining agreements such as Congress had in mind when enacting the savings provision of section 102.⁶⁶

(4) Discrimination for Testifying in Board Proceeding

Discrimination against employees for giving testimony or filing charges under the act is specifically prohibited by section 8 (a) (4). But in 1 case where the employer discharged 5 employees because they testified in a representation proceeding the Board held that this conduct not only violated section 8 (a) (4), but also section 8 (a) (3) which prohibits discrimination for the purpose of discouraging union

⁶⁰ The contracting union must be the majority representative of the employees in an appropriate unit, it must be in compliance with the filing requirements of section 9 (f), (g), and (h), and its authority to enter into a union-security agreement must not have been revoked in accordance with section 9 (e).

⁶¹ See, e g, *McCloskey & Co, Inc*, 116 NLRB 1123

⁶² See, e g, *The Great Atlantic & Pacific Tea Co*, 117 NLRB 1542, where the discharge of an employee was held unlawful, having been requested by the employee's union because of his failure to pay a credit union fine rather than for failure to tender dues or initiation fees to which the union was entitled under its union-shop agreement.

⁶³ *County Electric Co., Inc*, 116 NLRB 1080, *The Marley Co*, 117 NLRB 107, *Carty Heating Corp*, 117 NLRB 1417.

⁶⁴ *Port Chester Electrical Construction Corp*, 97 NLRB 354 (1951).

⁶⁵ *The Marley Co*, *supra*, *Merritt-Chapman & Scott Corp*, 118 NLRB 380

⁶⁶ The like holding in *Consolidated Western Steel Corp*, 108 NLRB 1041 (1954), was held applicable.

membership.⁶⁷ The Board held that a discharge for testifying in behalf of a union in a Board proceeding necessarily discourages membership in the union.

c. Discriminatee's Right to Back Pay

The Board is empowered by section 10 (c) of the act to remedy unlawful discrimination against employees by directing their "reinstatement . . . with or without back pay." Payment of back pay is intended "to make whole" the discriminatee for any loss of pay suffered. The amount to be paid is computed on the basis of what the employee would have normally earned but for the discrimination.⁶⁸ From this amount are deducted the employee's net earnings during the period involved, i. e., actual earnings from other employment, or earnings which the discriminatee would have had if he had made a "reasonable search" for other employment. If the discriminatee incurs wilful loss of earnings by his failure to make a reasonable effort to find other employment or by unreasonably refusing other employment, the Board assumes that any other employment would have yielded earnings equal to that of the work from which the discriminatee had been discharged.⁶⁹ However, it is the Board's practice to make no deductions, either for interim earnings or wilful loss, during a period when the discriminatee would have received no pay from the employer because, for instance, no work was performed during the period.⁷⁰ "The reason for this rule is that, under these circumstances there is no occasion for the discriminatee to attempt to minimize his loss of earnings, as there would have been none during this time, even if he had not been unlawfully discharged."

(1) Duty To Mitigate Losses

Several cases during fiscal 1957 involved the test to be applied in determining whether a discriminatee's search for employment was sufficient to constitute compliance with the obligation to minimize his loss of earnings. In *Southern Silk Mills*,⁷¹ the trial examiner found that certain discriminatees, who had made reasonable but unsuccessful efforts to obtain positions substantially equivalent to those

⁶⁷ *Southern Bleachery & Print Works, Inc.*, 118 NLRB 299.

⁶⁸ After issuance of a back-pay order, the exact amount due discriminatees is determined by the regional office where the case originated and which is charged with the duty to seek compliance with the Board's order (Statements of Procedure, section 101 13). The Board's Rules and Regulations (section 102 51a to 102 51h) establish the procedures for resolving back-pay controversies arising after entry of a court decree enforcing a back-pay order. The same procedures are also available where such controversies are sought to be resolved during the pendency of enforcement proceedings (*Brotherhood of Painters, etc., Local 419 (Spoon Tile Co., infra)*, as well as where no enforcement proceedings have been instituted. *J. C. Boespflug Construction Co.*, 118 NLRB 550 (July 9, 1957).

⁶⁹ See *Brotherhood of Painters, Decorators & Paperhangers of America, Carpet, Linoleum & Resilient Tile Layers Local Union No. 419, AFL-CIO (Spoon Tile Co.)*, 117 NLRB 1596.

⁷⁰ *Ibid.*

⁷¹ *Southern Silk Mills, Inc.*, 116 NLRB 769, Members Murdock and Peterson dissenting.

from which they were discharged, should have, after a reasonable period, "lowered their sights" and sought lower-paying employment within their capacities. The trial examiner recommended that the discriminatees' losses which were reasonably attributable to their failure to make such efforts should be deducted from their gross back pay. The Board rejected the recommendation, taking the view that the duty to minimize losses was sufficiently circumscribed by the Supreme Court's *Phelps-Dodge* rule⁷² and the Board's *Ohio Public Service*⁷³ and *Harvest Queen*⁷⁴ rules, requiring discriminatees not to refuse desirable new employment unjustifiably, and to make reasonable efforts to seek desirable new employment. The Board declared:

To extend the duty to minimize loss still further, as recommended by the Trial Examiner, by requiring discriminatees to "lower their sights" after an initial period of unsuccessful effort to find substantially equivalent employment, would, in our opinion, seriously impair the effectiveness of the back-pay remedy as a means of effectuating the purposes of the Act. We do not believe that the Supreme Court's rationale in *Phelps-Dodge* requires us to adopt such an extension of the duty. We conclude that in cases involving the issue of reasonable search, the obligation of a discriminatee to minimize his loss of earnings is satisfied if he makes reasonable efforts to find new employment which is substantially equivalent to the position from which he was discharged and is suitable to a person of his background and experience. The types of employment which fit this standard will depend upon the circumstances of each case.⁷⁵

In *Southern Silk Mills*, the Board also took occasion to reconsider its policy of treating registration by a dischargee with the United States Employment Service⁷⁶ or with State employment services⁷⁷ as conclusive evidence that a reasonable search for employment had been made. A majority of the Board⁷⁸ decided that, in view of the fact that such services are but one of several means normally used in seeking employment and the fact that the services' effectiveness varies

⁷² *Phelps-Dodge Corp v N L R. B.*, 313 U S 177, 197-200 (1941)

⁷³ *The Ohio Public Service Co.*, 52 NLRB 725 (1943).

⁷⁴ *Harvest Queen Mill & Elevator Co.*, 90 NLRB 320 (1950).

⁷⁵ For the disagreement of the Sixth Circuit Court of Appeals with the Board's conclusion, see *infra*, pp. 134-135. Compare *Moss Planning Mill Co*, 116 NLRB 68, where the Board, complying with the remand order of the Fourth Circuit Court of Appeals (224 F. 2d 702), adjusted back pay by taking into consideration interim earnings the discriminatees—lumber mill workers—could have earned if they had used due diligence in securing available agricultural work the court considered suitable employment. See also *American Bottling Co*, 116 NLRB 1303, where the discharged bottling company employees were held not required to minimize their losses by seeking employment on farms located at considerable distance from the city of over 100,000 people where they had been employed. The Board distinguished the *Moss Planning* case on the ground that there the discriminatees worked in a rural community with a population of only 10,000 people. See also *East Texas Steel Castings Co., Inc.*, 116 NLRB 1336, 1345.

⁷⁶ *The Ohio Public Service Co*, 52 NLRB 725 (1943).

⁷⁷ *Harvest Queen Mill & Elevator Co.*, 90 NLRB 320 (1950).

⁷⁸ Members Murdock and Peterson dissenting.

widely with the type and supply of labor involved, conclusive weight should no longer be given to registration with such agencies in determining whether a reasonable search for employment was made. However, such registration will be treated as a factor to be given greater or less weight depending upon all the circumstances of each case. Nor does the new rule relieve an employer of the burden to show that there was in fact a failure to make a reasonable search for other employment.

In a later case, the Board held⁷⁹ that maintenance of registration with a State employment agency together with independent, though fruitless, searches for employment met the Board's reasonable search standard. But in another case, a majority ruled⁸⁰ that a discriminatee who registered with a State employment agency, and also sought employment through his union, had not made a reasonably diligent search for employment because he did not apply to any private employer for work which apparently was available in the area.

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 representatives selected by a majority of the employees in an appropriate unit. The duty to bargain arises when the employees' representative⁸¹ requests the employer to recognize it and to negotiate about matters which are bargainable under the act.

a. Duty To Honor Certification of Representative

The Board, with Supreme Court approval,⁸² has consistently held that a representative which has been certified on the basis of a Board election is entitled to recognition for a reasonable period—ordinarily a year, absent unusual circumstances. The "1-year rule" applies not only to Board certifications but also to certifications based upon secret-ballot elections properly conducted under the auspices of responsible State government agencies.⁸³ Thus, an employer's refusal to bargain with a State-certified union was held unlawful notwithstanding a change of mind by the employees a few months after the election.⁸⁴ The Board pointed out that such a repudiation "is not the

⁷⁹ *East Texas Steel Castings Co., Inc.*, 116 NLRB 1336, 1346.

⁸⁰ *American Bottling Co.*, 116 NLRB 1303, Member Murdock dissenting.

⁸¹ "The term 'representatives' includes any individual or labor organization." Section 2 (4) of the act. The term "labor organization," as defined in section 2 (5), includes any organization in which employees participate and which exists, at least in part, for the purpose of bargaining collectively with employers on behalf of employees. The Board therefore rejected an employer's contention that the union with which it refused to bargain—and which satisfied the statutory definition—was not a labor organization because, allegedly, it was Communist dominated. *Precision Scientific Co.*, 117 NLRB 476.

⁸² *Ray Brooks v N L R. B.*, 348 U. S. 96. See Twentieth Annual Report, pp 121-122

⁸³ *Bluefield Produce & Provision Co.*, 117 NLRB 1660

⁸⁴ *Ibid*

type of unusual circumstance warranting suspension of the 1-year rule.”

Since a certified union must be recognized during a strike, the Board held during fiscal 1957 that section 8 (a) (5) was violated by an employer who refused to negotiate a new contract which would apply to both nonstrikers and strikers alike. It was pointed out that strikers retain their employee status and that the representative of a bargaining unit is entitled to bargain with respect to striker “employees” as well as nonstriker “employees.”⁸⁵

(1) Change in Status of Party to Certification

In one case,⁸⁶ the Board had to determine whether a certified union’s consolidation with another union destroyed the effectiveness of the certification and relieved the employer of its bargaining obligation.⁸⁷ Taking into consideration all the circumstances of the consolidation, the Board held that the consolidated organization was a continuance of the certified union which succeeded to its status as bargaining representative of the certified unit. The original certification was therefore amended accordingly⁸⁸ and the employer was ordered to bargain with the successor organization.⁸⁹ The Board’s conclusion was based on the finding that the certified international union had been designated by the employees at a time when its consolidation with another organization was contemplated and discussed, that the local chartered to represent the employees in the certified unit as to local matters participated in the consolidation proceedings; and that the final consolidation was thus “accomplished in a democratic manner, with the knowledge, participation, and apparent approval, both in the planning stages and on the decisive votes, of rank-and-file members. . . .” The Board held that the factual situation here was clearly distinguishable from that in the *Dickey* case,⁹⁰ where the court of appeals held that an organization resulting from the merger of 2 unions could not be substituted for 1 of the constituents the Board had certified. The Board noted that here the two consolidated unions were comparable in size, had equal representation on the various consolidation committees, and divided almost evenly the official positions in the consolidated organization, and that

⁸⁵ *Knight Morley Corp*, 116 NLRB 140

⁸⁶ *National Carbon Corp, a Division of Union Carbide and Carbon Corp*, 116 NLRB 488

⁸⁷ The Board had ordered the employer here to bargain with the certified union (110 NLRB 2184 (1954)), but, on being advised of the latter’s merger with another union, reopened the record in order to establish the effect of the merger. The Board’s original and supplemental orders were enforced *sub nom Union Carbide and Carbon Corp v N L R B*, 244 F 2d 672 (C A 6), see *infra*, p 141

⁸⁸ For the Board’s practice in amending certifications see *supra*, pp 59-61

⁸⁹ The Board rejected the employer’s contention that a new election should be held, pointing out that its order was better suited to effectuate the policies of the act, produced a more equitable result, and achieved greater stability in bargaining relations.

⁹⁰ *Dickey, formerly d/b/a Ohio Hoist & Mfg. Co. v N L. R. B.*, 218 F 2d 652 (C. A. 6).

the latter, in addition to acquiring the assets and bargaining rights of the constituent unions, also assumed their liabilities and contractual obligations. While basing its conclusions on the totality of the enumerated circumstances, the Board noted that it was not thereby holding "that all of the circumstances here present would be essential in all cases to support a finding that a consolidated labor organization succeeded to the status of a certified constituent union."

In a later case, the consolidated organization involved in *National Carbon* was likewise held to be a continuance of the second constituent and to have succeeded to the latter's representation rights.⁹¹ The opinion noted, however, that the Board does not consider it necessary to redetermine a union's representative status whenever it merges or consolidates with another union, changes its name or affiliation, or makes other administrative or structural changes.

The same case presented the question of whether a company which had taken over the business of the employer named in the Board's certification was bound to bargain with the representative the Board had certified. The Board rejected the contention that the company was not the original employer's "successor" because it acquired the business from an individual who had taken over the business from the original owner. The Board noted that the individual was "the boss" in control of the business at all times, and that the present company was but the *alter ego* of the original employer and as such was under the same duty to recognize and bargain with the employees' certified representative.⁹²

b. Request To Bargain for Appropriate Unit

The Board in *Washington Coca-Cola*⁹³ had occasion to reaffirm the principle that an employer cannot be found to have refused to bargain with the representative of an appropriate unit until the representative has first sought to bargain for that unit. In this case, the union sought to bargain for a unit of "drivers and driver-salesmen," which included 44 employees. However, in a bill of particulars at the hearing, the General Counsel alleged that the appropriate unit was "driver-salesmen, full service drivers, cup route drivers, and salesman-trainees," which totaled 58 employees. The latter unit was found appropriate by the trial examiner who heard the case. A majority of the Board held this variance to be fatal to the case⁹⁴ because the unit found appropriate was substantially different from the unit

⁹¹ *Butler Chemical Co.*, 116 NLRB 1041.

⁹² The Board also held that, since the plant throughout was under the control of the same person, the present corporate owner could not be viewed as a bona fide successor not implicated in the predecessor's unfair labor practices and therefore relieved of liability under the rule of *Symms Grocer Co.*, 109 NLRB 346.

⁹³ *Washington Coca-Cola Bottling Works, Inc.*, 117 NLRB 1163, Member Murdock dissenting.

⁹⁴ The majority distinguished *Barlow-Maney Laboratories, Inc.*, 65 NLRB 928 (1946), on which the trial examiner relied in finding a refusal to bargain proved despite the unit variance.

for which the union sought to bargain, the majority found that the union had not made proper bargaining demand and therefore dismissed the charge against the employer of refusal to bargain. The majority said:

We do not intend, of course, hereby to require that a labor organization shall always precisely define the unit it seeks to represent. Our holding does not, in our opinion, place an undue or improper burden upon the Union, for when in an instance where it has not secured the benefit of the Board's determination of its representative status it seeks to enforce its demand for bargaining through the Board's unfair labor practice procedure, it must of necessity be prepared to meet the requirements of proof of all the elements essential to a finding that an unfair labor practice has been committed, including not only its majority status, but also the fact of a proper demand for bargaining and its refusal. If the parties are in dispute, or if any doubt exists, as to the appropriate composition of the unit, the law has provided a ready recourse in the Board's representation procedures.⁹⁵

In one case, the Board rejected the employer's contention that its refusal to bargain was not unlawful because it was in doubt about the composition of the unit.⁹⁶ The Board pointed out that not only had the employer failed to raise the unit issue with the union, but that the employer could not have had a good-faith doubt in this respect because the unit specified in the complaint was essentially identical with the one for which the parties had bargained in the past; the same unit was later found appropriate by the Board; and the record showed that the employer was informed through the union's proposed contract of the unit intended to be covered.

c. Subject Matter of Bargaining

An employer must bargain with the statutory representative of his employees regarding the matters specified in sections 8 (d) and 9 (a) of the act, that is, "rates of pay, wages, hours of employment, or other conditions of employment."

(1) Effect of Contract

The Board held in one case that the complaining union's demand for negotiations on a piecework bonus plan—about which the employer refused to bargain—was not waived by the execution of a contract which made no reference to the plan.⁹⁷ The Board pointed

⁹⁵ The majority rejected the dissenting Member's view that the effect of its decision was to overrule *Sunrise Lumber & Trim Corp.* (115 NLRB 866 (1956), enforced 241 F. 2d 620 (C. A. 2)). The variance here, in the majority's view, was clearly more marked than the one there.

⁹⁶ *Keil Co.*, 117 NLRB 828.

⁹⁷ *Skyway Luggage Co.*, 117 NLRB 681.

out that, after the employer's repeated refusal, the union proposed at the final bargaining session that the bonus matter be reserved for determination by the Board, and that a supplemental agreement be executed should the Board order the employer to bargain on the bonus. The Board also noted that the employer agreed to submitting the matter to the Board. The employer's refusal was held unlawful in that the bonus—being part of wages—was bargainable and not, as contended, a matter of management prerogative.

(a) Bargaining on grievances after contract expires

The employer in one case contended that, after the expiration of its contract, it was under no duty to bargain about grievances which arose under the contract, because they could be processed only under the contract's grievance procedure and therefore the grievances "expired" with the contract.⁹⁸ The Board⁹⁹ rejected the employer's assertion that it had satisfied its "channelized" bargaining duty under the grievance procedure.¹ The Board said:

If that "channel" of bargaining is no longer available for grievances remaining *unsettled* under it, it follows that the general duty to bargain on grievances under the Act is once again operative. Such grievances do not "expire" with the contract simply because they arose under it, but are rather returned to the area of general bargaining under the Act in the absence of any "channelization" of bargaining. And this is certainly so where, as here, the contract does not provide for any such "expiration."

In concluding that the grievances remained unsettled at the end of the contract term, the Board held that the union's failure to resort to the last step in the grievance procedure by requesting arbitration did not result in the grievances being "finally disposed" of under the procedure. The Board noted that, in the absence of any time limit on the several steps in the grievance procedure, the union's failure during the 11-day period before expiration of the contract to invoke the final step was not "unreasonable" or violative of the provisions of the contract.

d. Violation of Bargaining Duty

The duty to bargain, as defined in section 8 (d), requires the employer "to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising

⁹⁸ *Knight Mortley Corp.*, 116 NLRB 140.

⁹⁹ Member Bean, concurring in the finding that the employer violated section 8 (a) (5) in other respects, did not pass on the allegation that the refusal to bargain on grievances also was unlawful.

¹ The Board distinguished the cases concerned with the duty of an employer to discuss grievances during the life of a contract when the grievance procedure was still in effect to be utilized

thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party." Whether an employer has bargained "in good faith" depends on his entire conduct after being requested to bargain by the employees' representative. On the other hand, as the Board again pointed out, "the overall good faith of the [employer] is not a relevant consideration where the [employer's] conduct is in itself a violation of the Act."² Thus, an employer who is under a duty to bargain but refuses to negotiate because of economic expedience violates the act even though he may be acting in good faith.³

Section 8 (a) (5) is violated by such employer conduct as changes in employment terms without consulting the employees' bargaining agent,⁴ and insistence on retaining unilateral control over all major aspects of the employment relationship and improper demands for the surrender of statutory rights.⁵ The Board also had occasion to reiterate that it is unlawful for an employer to refuse to furnish requested information which is necessary to enable the employees' representative to properly and intelligently perform its bargaining functions.⁶

Regarding the duty to supply necessary bargaining information, the Board held in the *Montague* case,⁷ as in *Truitt*,⁸ that the employer failed to fulfill its good-faith bargaining duty when it refused to furnish information in support of its persistent claim of inability to grant a wage increase. The Board noted that, while the employer in *Truitt* had submitted some evidence on the point, the employer here disclosed nothing. Thus, the Board noted,

as in *Truitt*, the Respondent here mechanically stated and restated its inability to pay in varying ways, but it made no effort whatsoever to substantiate its statements. The Union in turn could not determine whether the Respondent's claims were honest claims. It could not intelligently decide whether to continue to press for a wage increase or to make an alternative request. It was forced to negotiate in the dark without regard to the economic realities. It was not even able to make an informed report to its own members as to the merits of their

² *Butler Chemical Co*, 116 NLRB 1041, quoting *Taylor Forge & Pipe Works*, 113 NLRB 693 (1955), enforced 234 F 2d 227 (C A 7).

³ *Ibid*, see also *White's Uvalde Mines*, 117 NLRB 1128

⁴ See, e g, *Fant Milling Co*, 117 NLRB 1277, *White's Uvalde Mines*, *supra*; *Shoreline Enterprises of America, Inc*, 117 NLRB 1619

⁵ See *White's Uvalde Mines*, *supra*

⁶ See, e g, *Winter Garden Citrus Products Cooperative*, 116 NLRB 738 (bonus information); *Skyway Luggage Co*, 117 NLRB 681 (information concerning piecework bonus plan), *Shoreline Enterprises of America, Inc*, 117 NLRB 1619 (information concerning wage scales, job classifications, seniority, vacation policies, and health and welfare insurance)

⁷ *B L Montague Co*, 116 NLRB 554

⁸ *N L R B v. Truitt Mfg Co*, 351 U S 149, reversing 224 F 2d 869 (C A 4), and enforcing 110 NLRB 856. See Twenty-first Annual Report, p 123

demands. It was thus handicapped in carrying out its responsibility to inform and advise the employees whom it represents.

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. Cases decided during fiscal 1957 under subsections (1), (2), (3), (4), and (5) of section 8 (b) are discussed below. No cases came to the Board involving 8 (b) (6) which prohibits so-called "feather-bedding" practices.

1. Restraint or Coercion of Employees

Section 8 (b) (1) (A) ⁹ makes it an unfair labor practice for a labor organization or its agents "to restrain or coerce employees" in the exercise of their right ¹⁰ to engage in or refrain from concerted activities directed toward self-organization and collective bargaining.

To establish a violation of section 8 (b) (1) (A), it must be shown that the conduct of the respondent union tends to restrain or coerce employees in respect to their statutory rights. It is sufficient that the conduct had a tendency to restrain or coerce. As often stated by the Board, "the Act does not require proof that coercive conduct had its desired effect." ¹¹

In addition to manifestly coercive resorts to violence, or threats of violence, by union agents ¹² against employees because of their failure to give expected support,¹³ unlawful restraint and coercion was also found to have resulted from discriminatory employment

⁹ Subsection (B) of section 8 (b) (1) prohibits labor organizations from restraining or coercing employees in the selection of their bargaining representatives. This subsection was not involved in any case decided during fiscal 1957.

¹⁰ This right is set forth in section 7 of the act.

¹¹ See, e. g., *International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Building Material & Construction, Ice & Coal Drivers, Warehousemen & Yardmen, Local No. 659, AFL-CIO (Ready Mixed Concrete Co)*, 117 NLRB 1266.

¹² A union is liable for the acts of its agents, i. e., persons who act with the union's actual or implied authority. See, for instance, *International Woodworkers of America, AFL-CIO, and Locals S-426 and S-429 (W T Smith Lumber Co)*, 116 NLRB 507, where misconduct on the part of pickets was held imputable to the respondent union because the misconduct, which conformed to a pattern established by the union's officers and agents through their own acts of coercion and restraint, had to be regarded as having been instigated by the officers and agents involved. As held in the same case, a union is also responsible for another union's strike misconduct if the strike is in fact a joint venture.

¹³ See *Local 264, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO (Valette Trucking Co)*, 116 NLRB 842, *National Organization Masters, Mates and Pilots of America, Inc., AFL-CIO (J. W. Banta Towing Co)*, 116 NLRB 1787, *The Great Atlantic & Pacific Tea Co (Amalgamated Meat Cutters and Butcher Workmen of North America, Local 88, AFL-CIO)*, 117 NLRB 1542. Compare *International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Building Material & Construction, Ice & Coal Drivers, Warehousemen & Yardmen, Local No. 659, AFL-CIO (Ready Mixed Concrete Co.)*, 117 NLRB 1266, where the section 8 (b) (1) (A) part of the complaint was dismissed because the alleged threatening remarks of 1 out of 69 pickets during a 3-month period, even if attributable to the respondent union, would not warrant issuance of a remedial order.

practices under illegal agreements,¹⁴ and from causing discrimination in employment,¹⁵ as well as from attempts to cause such discrimination.¹⁶ It was pointed out again that "a union's attempt to cause a discriminatory discharge, even though unsuccessful and unaccompanied by threats of physical violence, may constitute an independent violation of Section 8 (b) (1) (A)."¹⁷

The Board had occasion to reaffirm that employees may be coerced by union conduct directed against nonemployees. Thus, coercive acts by pickets against supervisors and independent contractors dealing with the employer, in the presence of strikers, were held to violate section 8 (b) (1) (A) because it could be reasonably inferred that the misconduct had the effect of deterring strikers from abandoning the strike and returning to work.¹⁸ Similarly, physical restraint of supervisors in the presence of employees or under circumstances which insured their hearing about it was likewise held to constitute unlawful coercion.¹⁹ This conduct, it was pointed out, was a clear indication and warning of the type of physical violence that would be exerted by the union against employees as well as employers who refuse to cooperate in the union's organizational efforts.

In one case, the Board sustained the trial examiner's finding that the respondent union unlawfully coerced employees who had engaged in rival union activities by refusing to represent them in processing their grievances.²⁰ The trial examiner cited the earlier *Peerless Tool* case.²¹ There, the Board had made it clear that the duty of an exclusive bargaining agent to act as the genuine representative for all employees in the bargaining unit includes the duty to process their grievances impartially and without discrimination, and that discrimination against employees in the performance of this duty because of the employees' protected activities violates section 8 (b) (1) (A).

One union was found to have engaged in coercive conduct by offering a discharged employee a cash payment and promising him employment in return for the withdrawal of unfair labor practice charges he had filed.²² The Board pointed out that inducement to withdraw charges

¹⁴ *International Union of Operating Engineers, Local Unions Nos. 18, 18A and 18B, AFL-CIO (Hatcher Brothers, Inc)*, 116 NLRB 1145, *The Great Atlantic & Pacific Tea Co (Amalgamated Meat Cutters and Butcher Workmen of North America, Local 88, AFL-CIO)*, *supra*.

¹⁵ See, e. g., *Warehouse & Distribution Workers' Union Local 207 of the International Longshoremen's and Warehousemen's Union (Waterway Terminals Corp)*, 118 NLRB 342

¹⁶ See *Local 294, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO (Valetta Trucking Co)*, 116 NLRB 842.

¹⁷ *Ibid.*

¹⁸ *International Woodworkers of America, AFL-CIO, and Locals S-426 and S-429 (W. T. Smith Lumber Co)*, 116 NLRB 507, Member Peterson dissenting

¹⁹ *National Organization Masters, Mates and Pilots of America, Inc, AFL-CIO (Banta Towing Co)*, 116 NLRB 1787

²⁰ *District 50, Local No. 13366, United Mine Workers of America (Stubnitz Greene Corp)*, 117 NLRB 648.

²¹ *Peerless Tool and Engineering Co*, 111 NLRB 853 (1955)

²² *Local 294, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO (Valetta Trucking Co)*, 116 NLRB 842

coerces employees in the exercise of rights guaranteed by section 7 and, if engaged in by a union, violates section 8 (b) (1) (A) just as it violates section 8 (a) (1) if engaged in by an employer.

The cases where violations of section 8 (b) (1) (A) were found involved coercion against employees for such matters as activities on behalf of rival unions,²³ a refusal to pay a fine imposed by the union's credit union,²⁴ and a refusal to withdraw unfair labor practice charges.²⁵ In connection with union conduct intended to restrain employees from abandoning a strike,²⁶ or to discipline employees for refusing to support strike action,²⁷ the Board again pointed out that "the interdependent guaranties of Section 8 (b) (1) (A) and Section 7 of the Act include the protected right of employees to work in the face of a strike" and that the protection of these sections "extends to the right to work."

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 cases under this section presented the usual questions of whether the respondent union engaged in the conduct with which it was charged, and whether the conduct caused, or was calculated to cause, employer discrimination within the meaning of the section. In some cases, the question of the appropriate relief required special consideration.

a. Indirect Pressure To Discriminate

In several cases during the past year, unions were charged with having violated section 8 (b) (2) by bringing pressure on a general contractor to cause a subcontractor to discriminate against employees who were not members of the union.²⁸ The Board dismissed the charges in each case on the ground that no employment relation existed between the general contractor and the subcontractor's employees.

²³ *International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local 249, AFL-CIO (Lancaster Transportation Co)*, 116 NLRB 399, District 50, Local No. 13366, *United Mine Workers of America (Stubnitz Greene Corp)*, *supra*.

²⁴ *The Great Atlantic & Pacific Tea Co (Amalgamated Meat Cutters and Butcher Workmen of North America, Local 88, AFL-CIO)*, 117 NLRB 1542.

²⁵ *Local 294, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO (Valetta Trucking Co)*, 116 NLRB 842.

²⁶ *International Woodworkers of America, AFL-CIO and Locals S-426 and S-429 (W. T. Smith Lumber Co)*, 116 NLRB 507.

²⁷ *Warehouse & Distribution Workers' Union Local 207 of the International Longshoremen's and Warehousemen's Union (Waterway Terminals Corp)*, 118 NLRB 342.

²⁸ *United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the U. S. and Canada, Local 420, AFL-CIO (Local 161, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO)* 116 NLRB 119; *Local 294, International Brotherhood of Teamsters, etc. (Valetta Trucking Co)*, 116 NLRB 842, *The Great Atlantic & Pacific Tea Co. (Local 294, International Brotherhood of Teamsters, etc)*, 116 NLRB 943.

Adhering to the rule established in earlier similar cases,²⁹ the Board pointed out that for the purpose of section 8 (b) (2) a general contractor cannot be regarded as an employer of a subcontractor's employees unless, as in the *Austin* case,³⁰ "an intimate business relationship" between general contractor and subcontractor,³¹ or the general contractor's contractual control over the subcontractor's employees, constitute the general contractor a joint employer.

b. Discriminatory Practices and Agreements

The cases where section 8 (b) (2) was found to have been violated again involved both individual instances of union-induced discrimination in employment, and adoption and enforcement of agreements which tended to encourage union membership other than as permitted by the union-security proviso of section 8 (a) (3).

The cases not involving discriminatory agreements were concerned with such matters as causing the discharge of an employee for dual unionism,³² and refusal of a union, which was customarily asked by the employer to approve leaves of absence, to approve extension of an employee's leave because of her rival union activity.³³ In 1 case the respondent union was found to have unlawfully caused, or attempted to cause, the discharge of 5 separately complaining employees who were employed by different employers.³⁴ A majority of the Board here held that the union's uniform purpose in each case was to enforce its internal working rules, and to compel the complaining employees to acquire membership in the union's designated branches before accepting certain types of work assignments. Another case involved attempts to cause the discharge of employees who, during an intraunion struggle, had supported officers of the union who were later deposed.³⁵ In another case, the section was held violated by union conduct which brought about denial of employment to workers who had failed to join the union's strike against their employer.³⁶

A Board majority in one case dismissed a complaint alleging that the respondent union unlawfully caused the layoff of certain temporary employees who were not union members, in order that permanent

²⁹ *Austin Co.*, 101 NLRB 1257 (1952), *Standard Oil Co. of California*, 105 NLRB 868, *Carrier Corp.*, 112 NLRB 1385 (1955).

³⁰ *Supra.*

³¹ See the companion *Valetta Trucking* and *A & P* cases, *supra*, footnote 28.

³² *International Brotherhood of Teamsters, et al. AFL-CIO, Local 249 (Lancaster Transportation Co.)*, 116 NLRB 399.

³³ *District 50, Local No. 15366, United Mine Workers of America [Stubnitz Greene Corp.] (International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, AFL-CIO)*, 117 NLRB 648.

³⁴ *Local 542, International Union of Operating Engineers, AFL-CIO, et al. (Koppers Co., Inc.)*, 117 NLRB 1863, Member Murdock dissenting in part.

³⁵ *Local 294, International Brotherhood of Teamsters, et al., AFL-CIO (Valetta Trucking Co.)*, 116 NLRB 842.

³⁶ *Waterway Terminals Corp. (Warehouse & Distribution Workers' Union Local 207 of the International Longshoremen's and Warehousemen's Union)*, 118 NLRB 342.

employees with union membership might be retained during the employer's slack period.³⁷ The majority found that the union was merely insisting that the employer adhere to its practice to pool work among permanent employees and lay off temporary employees during work shortages, and there was no intention to discriminate on the basis of union membership. The majority noted that the laid-off temporary employees had applied for but had not yet been admitted to membership because of the union's policy to accept as members only permanent employees.

(1) Discrimination Under Contractual Arrangements³⁸

Many of the cases under section 8 (b) (2) again involved agreements or understandings with employers which had the purpose of securing preferential treatment of the contracting union's members, either in regard to participation in employment benefits, such as payments under welfare, educational, and pension plans,³⁹ or in respect to hiring. Agreements of the latter type included hiring clauses under which the union's members were given hiring preference⁴⁰ or under which the employer was required to hire employees exclusively through the union, and the latter, in turn, gave preference to members over nonmembers in job referrals;⁴¹ provisions which obligated the employer to employ only union members in good standing or employees acceptable to the union;⁴² and clauses which established closed-shop conditions by requiring that only union members may be hired.⁴³

³⁷ *Glove Workers' Union of Fulton County, etc (Crescendoe Gloves Inc)*, 116 NLRB 681, Chairman Leedom and Member Rodgers dissenting

³⁸ For corresponding violations of section 8 (a) (3) by employer parties to such arrangements, see pp 73-74, *supra*.

³⁹ See *Carty Heating Corp and Mechanical Contractors Association of New York, Inc*, 117 NLRB 1417.

⁴⁰ *County Electric Co et al (Local 781, IBEW, AFL-CIO)*, 116 NLRB 1080.

⁴¹ *The Great Atlantic and Pacific Tea Co (Local 88, Amalgamated Meat Cutters)*, 117 NLRB 1542.

⁴² *Electrical Contractors of Troy and Vicinity, et al. (Local 458, International Brotherhood of Electrical Workers, AFL-CIO)*, 116 NLRB 354.

⁴³ *McCloskey and Co, Inc (Local 470, International Brotherhood of Teamsters, etc, AFL-CIO)*, 116 NLRB 1123; *Gene Compton's Corp. and Golden Gate Restaurant Association (Hotel and Restaurant Employees, etc, AFL-CIO, Local No. 110)*, 116 NLRB 1944, *Enterprise Industrial Piping Co. (Local 322, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry, etc, AFL-CIO)*, 117 NLRB 995, *The Marley Co (Local 269, United Brotherhood of Carpenters and Joiners of America, AFL-CIO)*, 117 NLRB 107, *Nassau and Suffolk Contractors' Association, Inc, and its Members*, 118 NLRB 174, *Merritt-Chapman & Scott Corp (United Brotherhood of Carpenters and Joiners of America, et al)*, 118 NLRB 380

In *The Marley Co* and *Merritt-Chapman*, a Board majority held that the maintenance of the closed-shop agreements could not be excused on the ground that the agreements were originally entered into before the enactment of the union-security proviso to section 8 (a) (3) in 1947, and that section 102 of the amended act preserved their validity. Section 102, in the Board's view, did not apply because the agreements in question, not containing any substantive terms as to wages, hours, or other conditions of employment, were not collective-bargaining agreements such as Congress sought to protect by section 102. Member Murdock dissented in *Marley*, being of the view that the union's original agreement was valid and protected by section 102. He also believed that there was no proper legal or factual basis for a finding that the failure of the two complaining employees to obtain employment was the result of enforcement of a closed-shop agreement. In *Merritt-Chapman*, Member Murdock believed that there was insufficient evidence for finding an unlawful agreement, and that in any event the union, not having "persuaded, urged, or forced" the company to discriminate against any employees, did not "cause" discrimination within the meaning of section 8 (b) (2). In Member Murdock's view, a section 8 (b) (2) violation can be found only in the case of an overt act on the part of a union requiring an employer to discriminate against employees.

The Board has consistently held that not only the enforcement of such discriminatory agreements is unlawful but that the mere inclusion and maintenance of discriminatory provisions in a contract is a violation of section 8 (b) (2) on the part of the contracting union, because "inherent in such discriminatory provisions is the tendency to encourage membership in a union in violation of the Act."⁴⁴ Only where the parties have agreed not to enforce the provision and in fact have not enforced it, and the employees have been informed of the parties' intention, will a violation not be found.⁴⁵ However, in the case of agreed nonenforcement, unaccompanied by notice to the employees, the Board has held that only section 8 (b) (1) (A) but not section 8 (b) (2) is violated by the contracting union.⁴⁶

In the absence of express provisions, the existence of an agreement which unlawfully discriminates in favor of members of the contracting union may be inferred from union rules to which the contract refers, as well as from the conduct of the parties. Thus, an employer's agreement with an international union to employ union members and to "abide by the rules and regulations" established by the union in the locality where the company is engaged in work was held unlawful because it incorporated by reference working rules of a local union which had the effect of requiring closed-shop conditions.⁴⁷ In another case, an unlawful exclusive hiring arrangement was found to exist because of the company's practice to call the union whenever it needed employees and to put to work only employees with a work card from the union, which was shown to have given preference to its members in referring employees.⁴⁸

However, in one case where a union and an employer were found to have given effect to an understanding that the union's members were to be given preference in employment, the Board held that, notwithstanding their unlawful understanding, the parties could not be held liable for the failure of a nonunion worker to obtain employment because the worker only requested clearance from the union but never applied to the employer for a job.⁴⁹ The Board pointed out that the parties' agreement did not make the union the employer's exclusive hiring source, and that the business agent to whom the employee applied for clearance only had authority to refer members of his local when requested by the employer to supply help, and

⁴⁴ *Carty Heating Corp. and Mechanical Contractors Association of New York Inc., supra; The Marley Co. (Local 269, United Brotherhood of Carpenters and Joiners of America, AFL-CIO), supra.*

⁴⁵ *Nassau and Suffolk Contractors' Association, Inc., and its members*, 118 NLRB 174

⁴⁶ *Carty Heating Corp. and Mechanical Contractors Association of New York*, 117 NLRB 1417; compare *County Electric Co., et al (Local 781, IBEW, AFL-CIO)*, 116 NLRB 1080.

⁴⁷ *The Marley Co. (Local 269, United Brotherhood of Carpenters and Joiners of America, AFL-CIO)*, 117 NLRB 107. See also *Merritt-Chapman & Scott Corp. (United Brotherhood of Carpenters and Joiners of America, et al.)*, 118 NLRB 380.

⁴⁸ *The Great Atlantic and Pacific Tea Co. (Local 88, Amalgamated Meat Cutters, AFL-CIO)*, 117 NLRB 1542.

⁴⁹ *County Electric Co., et al (Local 781, IBEW, AFL-CIO)*, 116 NLRB 1080.

therefore was not in a position to accept the nonunion employee's application for employment or to refer him to a job.

(2) Discrimination Under Union-Security Agreements

The union-security proviso to section 8 (a) (3) of the act permits agreements between unions and employers requiring as a condition of employment membership in the contracting union after the expiration of a specified 30 days' grace period. However, a union can validly enter into such an agreement only if it is the bona fide representative of the employees covered in an appropriate bargaining unit. Moreover, the union must be in compliance with the filing and non-Communist affidavit requirements of section 9 (f), (g), and (h), and its authority to enter into a union-security agreement must not have been revoked during the 12-month period before the effective date of the agreement in a "deauthorization" election under section 9 (e). The execution and maintenance of a union-security agreement which exceeds the statutory limitations in any respect constitutes a violation of section 8 (b) (2) on the part of the contracting union.⁵⁰

(a) Illegal enforcement of union-security agreements

A valid union-security agreement may be utilized by the contracting labor organization only to compel the payment of regular dues and initiation fees, the purpose being to bar "free riders."⁵¹ "Congress has [withheld] from unions the power to cause the discharge of employees for any other reason."⁵²

(i) Sufficiency of tender of dues or fees

The proviso to section 8 (a) (3) protects an employee against discharge under the terms of a union-security agreement if he has tendered his dues and initiation fees. The Board has adhered to the previously expressed view⁵³ that "a full and unqualified tender [of dues or initiation fees] made at any time prior to actual discharge, and without regard as to when the request for discharge may have

⁵⁰ See, for instance, *Atlantic Freight Lines, Inc (International Brotherhood of Teamsters, Local 491)*, 117 NLRB 464, where the Board adopted the trial examiner's finding that execution of a union-security agreement by a union which did not have majority status among the employees violated section 8 (b) (2); and *Broderick Wood Products Co (Local 15, International Brotherhood of Teamsters, etc., AFL-CIO)*, 118 NLRB 38, where the Board similarly adopted the trial examiner's finding that a union violated section 8 (b) (2) by maintaining a union-security agreement which afforded employees only 10 days' grace for acquiring membership, and which otherwise exceeded statutory limitations.

⁵¹ *International Woodworkers of America, AFL-CIO, Local Union 15-433 (Ralph L. Smith Lumber Co.)*, 117 NLRB 405.

⁵² *The Great Atlantic and Pacific Tea Co. (Local 88, Amalgamated Meat Cutters and Butcher Workmen, etc., AFL-CIO)*, 117 NLRB 1542, quoting *Radio Officers' Union v. N. L. R. B.*, 347 U. S. 17. The union here was held to have violated section 8 (b) (2) by causing an employee to be discharged and denied further employment not because of dues delinquency but for failure to pay a credit union fine.

⁵³ *Aluminum Workers International Union (The Metal Ware Corp.)*, 111 NLRB 411, 112 NLRB 619. See also *Technicolor Motion Picture Corp.*, 115 NLRB 1607 (1956).

been made, is a proper tender and a subsequent discharge based upon the request is unlawful.”⁵⁴ In one case, the Board held that the employee’s pre-discharge tender was timely although it was made after the employee’s delinquency and the union’s right to demand his discharge had been determined by an arbitrator.⁵⁵ The Board pointed out that the arbitrator’s decision did not consider the effect of tender on the rights of the parties, and that application of the Board’s pre-discharge-tender rule was therefore not inconsistent with the arbitrator’s decision.

Regarding tender, the Board had occasion to reaffirm the rule that tender of the regular dues and fees which a union may require under its contract is excused if it would be futile because it would not be accepted unless accompanied by tender of other charges.⁵⁶ Here, an employee on the union’s “detrimental list” was barred from restoration of his membership rights, except upon payment of an “initiation” fee far in excess of that required from other applicants, and membership was thus not available to him on conditions uniformly required from other applicants.⁵⁷ The Board held that, in view of the union’s intraunion regulations and rulings, the employee could reasonably believe that any tender of dues and fees which did not include the reinstatement fee would be futile for the purpose of acquiring membership benefits, and that tender was therefore excused. The Board noted that the union was aware of the employee’s belief and, rather than dissipate it, acted in a manner which confirmed it.

c. Remedial Provisions in 8 (b) (2) Cases

In 8 (b) (2) situations where it appears that the unfair labor practices committed are part of a pattern of unlawful conduct, or that there is otherwise reason to believe that similar violations may occur in the future, the Board issues a remedial order coextensive with the future violations that may be reasonably anticipated. Thus, a long-shoremen’s union which caused a stevedoring company to deny employment to a member who had been expelled for dual unionism, and had been “black balled” with some 40 other members, was ordered to cease causing discrimination against employees of the stevedoring

⁵⁴ *The International Association of Machinists, AFL-CIO, and Lodge 1021, IAM, AFL-CIO (The New Britain Machine Co)*, 116 NLRB 643, *International Woodworkers of America, AFL-CIO, Local Union 13-433 (Ralph L. Smith Lumber Co)*, 117 NLRB 405

⁵⁵ *The International Association of Machinists, AFL-CIO, and Lodge 1021, IAM, AFL-CIO (The New Britain Machine Co)*, *supra*.

⁵⁶ *United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the U. S. and Canada, etc (Carrier Corp)*, 117 NLRB 914

⁵⁷ The union-security proviso to section 8 (a) (3) provides in part that an employee may not be discharged for nonmembership if membership “was not available to [him] on the same terms and conditions generally applicable to other members”

company, as well as against employees of any other employer within the union's jurisdiction.⁵⁸ The union had general jurisdiction over longshore work on the piers where the stevedoring company operated. Since the record indicated that the union's past unfair labor practices were part of a pattern of retaliatory action against dissident members, the Board believed that recurrence of similar conduct could be anticipated with respect to employees of other employers operating on the piers within the union's jurisdiction. And in the case of a union which maintained an unlawful hiring arrangement with an employer association, the Board found reason to believe that the union had the same kind of unlawful hiring arrangements with employers who were not association members and were not parties to the proceeding.⁵⁹ The Board therefore directed the union to cease giving effect to its arrangement with the association, as well as to similar arrangements with any employer in the union's jurisdictional area.⁶⁰

In regard to reimbursement of employees for losses sustained because of union-induced discrimination in employment, the Board revised the type of back-pay order heretofore issued in cases where the discriminatee's employer was not a party to the proceeding and back-pay liability was assessed against the union alone. In such situations, unions liable for back pay had been directed to deduct from the amount due the discriminatee such sums as would normally have been deducted from his wages by the employer for deposit with State and Federal agencies for social security and other similar benefits, and pay to such agencies for appropriate credit a sum equal to the amount which, absent discrimination, would have been deposited by the employer, either as a tax on the employee or as a deduction from the discriminatee's wages.⁶¹ However, the Commissioner of Internal Revenue has ruled that back pay under a Board order, directed exclusively against a union in a proceeding to which the employer is not a party, cannot be treated as wages paid by the employer. In view of this, the Board decided to require that in such situations the union pay discriminatees the entire amount of back pay without making deductions for social security and other similar benefits.⁶²

⁵⁸ *Local 791, International Longshoremen's Association, Independent (T Hogan & Sons, Inc.)*, 116 NLRB 1652

⁵⁹ *Nassau and Suffolk Contractors' Association, Inc , and its Members*, 118 NLRB 174.

⁶⁰ See also *Merritt-Chapman & Scott Corp. (United Brotherhood of Carpenters and Joiners of America, et al.)*, 118 NLRB 380.

⁶¹ *Pen and Pencil Workers Union, Local 19598, AFL (Parker Pen Co)*, 91 NLRB 883

⁶² *International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local 249, AFL-CIO (Lancaster Transportation Co)*, 116 NLRB 399. See also *International Union of Operating Engineers, Local Unions Nos 18, 18A and 18B, AFL-CIO (Hatcher Brothers, Inc)*, 116 NLRB 1145; and *Carty Heating Corp , et al. (Local 638, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry etc)*, 117 NLRB 1417.

3. Refusal To Bargain in Good Faith

Section 8 (b) (3), the counterpart to section 8 (a) (5),⁶³ makes it an unfair labor practice for a labor organization or its agents to refuse to bargain in good faith with an employer when the organization represents a majority of the employees in an appropriate unit.

The cases under section 8 (b) (3) this year were primarily concerned with whether strikes in connection with controversies under a contract, or during contract negotiations, constituted a refusal to bargain in good faith on the part of the union responsible for the strike.

a. Strike in Breach of No-Strike Agreement

One case involved a strike over seniority and hiring grievances which, the Board found, were subject to the parties' contractual grievance and arbitration procedures.⁶⁴ The questions to be determined were whether the strike violated the contract and, if so, whether it also violated section 8 (b) (3). The Board held that, since the parties' contract excluded the right to strike over the kind of dispute involved, the strike not only was in derogation of the contract, but also was an activity unprotected by the act and, having occurred in a bargaining context, violated section 8 (b) (3). According to the Board

The Respondents by engaging in such unprotected activity in aid of their bargaining position not only abused their bargaining powers and impaired the collective-bargaining process, but also thwarted the peaceful procedures for the channelization of contract disputes that they had agreed to follow as a substitute for economic conflict. This, in our opinion, constituted bad-faith bargaining contravening the Act's requirements.

The Board cited its decision in the *Personal Products* case.⁶⁵ There unprotected interruptions in work production designed "to force the Employer's hand in negotiating" were similarly held to have constituted bad faith in bargaining.

b. Noncompliance With Section 8 (d)

Section 8 (d) provides that, as part of the statutory bargaining obligation, a party to an existing collective-bargaining agreement may not terminate or modify it without first giving 60 days' written notice and offering to confer with the other party, and notifying Federal and State mediation agencies of the dispute within 30 days.

⁶³ Refusals of employers to bargain as required by section 8 (a) (5) are discussed at pp. 77-83.

⁶⁴ *International Union, United Mine Workers of America; District 17, Local Union No 2935 (Boone County Coal Corp., Kanawha Coal Operators Association)*, 117 NLRB 1095

⁶⁵ *Textile Workers Union of America, CIO (Personal Products Corp.)*, 108 NLRB 743 (1954).

Moreover, even after complying with these requirements, the parties may not resort to strike or lockout for modification or termination of a contract during its term unless the contract is then subject to termination or to reopening on the matter at issue.⁶⁶ Such strike or lockout may not take place until both the statutory and contract requirements are met; that is, the statutory notice period has run and the contract provisions for termination or reopening have taken effect.

In one case, the legality of the respondent union's strike without observance of the requirements of section 8 (d) depended on whether or not the purpose of the strike was modification of the existing contract.⁶⁷ The strike was the result of dissatisfaction with an arbitration award as to the shift seniority of certain employees. The arbitration decision, being final and binding on the parties under the express terms of the contract, was held to have become part of the contract, at least with respect to the grieving employees. The Board observed that to this extent the object of the strike was to force the employer to reverse the arbitration decision, and that the union thus sought to gain by economic pressure what it had failed to attain through the contractual grievance machinery. Contrary to the trial examiner, the Board found that, inasmuch as the arbitration award had become part of the contract, the union's action constituted an attempt to change or modify the contract, and that by striking without observing the requirements of section 8 (d) the union violated its bargaining duty under section 8 (b) (3).

Failure on the part of the union in another case to give the proper State agency 30 days' notice before striking was held to have constituted a violation of section 8 (b) (3) since the record showed that at least 1 of the strike objectives was to secure a modification of wage rates in an existing contract.⁶⁸ Thus, according to the Board, the union was under a duty to comply with section 8 (d) even though it may also have had another reason for striking. In another case, the Board adopted the trial examiner's finding that section 8 (b) (3) was violated by a union which struck for contract modification without giving the required notice to mediation agencies within the 30-day period prescribed by section 8 (d) (3).⁶⁹ The trial examiner concluded that the union, having failed to give timely notice, was in the same position as a union which has given no notice at all.

⁶⁶ *Lion Oil Co.*, 109 NLRB 680 (1954), affirmed 352 U. S. 282, see discussion in chapter on Supreme Court rulings. As to unfair labor practice strikes, see *Mastro Plastics Corp v N L. R. B.*, 350 U. S. 270 (1956).

⁶⁷ *International Union, United Mine Workers of America; District 17; Local Union No 9735 (Westmoreland Coal Co., Kanawha Coal Operators Association)*, 117 NLRB 1072.

⁶⁸ *Local No. 156, United Packinghouse Workers of America, AFL-CIO; District #4 Council (Du Quon Packing Co.)*, 117 NLRB 670.

⁶⁹ *United Mine Workers of America, District 60, and United Mine Workers of America, Local Union No. 12915 (West Virginia Pulp & Paper Co.)*, 118 NLRB 220.

c. Liability for Illegal Strike

Three of the foregoing cases presented the question whether the violation of section 8 (b) (3) was chargeable both to the striking employees' immediate representative and to its affiliates.

In the *Boone County Coal*⁷⁰ and *Westmoreland Coal*⁷¹ cases the statutory representative of the employees was an international union which had delegated some of its bargaining functions to a subordinate "District," and others to the separate locals which acted on behalf of the employees of the two companies.

In *Boone County*, liability for the illegal strike and the resulting violation of section 8 (b) (3) was found on the part of the particular Local as well as the International and its District. As to the Local, it was pointed out that, in view and to the extent of the delegation of bargaining functions, it was the International's agent; that the strike conducted by the Local⁷² was directly related to matters within the scope of its bargaining authority; and that as the International's agent⁷³ the Local violated section 8 (b) (3) because the strike was in violation of its statutory duty to exercise its bargaining functions in good faith. The District, to which the International had delegated the negotiation and settlement of local disputes, was held liable because in dealing with the employer regarding the pending dispute it not only failed to disavow the Local's strike but indicated its approval and support thereof. According to the Board, the District, rather than exercise its delegated agency in good faith, adopted and ratified the Local's illegal strike for its own bargaining purposes. The International was held liable on the ground that, with full knowledge of the strike, it made it unmistakably clear to the employer that the dispute had been turned over to the District as the International's agent with complete authority regarding the matter, and that the District's actions had the International's approval.

In *Westmoreland Coal*, on the other hand, only the local union was held responsible for the strike which related to the matters within the Local's delegated bargaining authority. Here, unlike *Boone*, the International and the District had advised the employer of their disapproval of the strike and had kept the employer informed of their good-faith efforts to end the strike. The fact that no disciplinary action against the striking Local was taken was held sufficiently explained by the International's and the District's belief that such

⁷⁰ *International Union, United Mine Workers of America, District 17; Local Union No. 2935 (Boone County Coal Corp., Kanawha Coal Operators Association)*, 117 NLRB 1095.

⁷¹ *International Union, United Mine Workers of America; District 17, Local Union No. 9735 (Westmoreland Coal Co., Kanawha Coal Operators Association)*, 117 NLRB 1072.

⁷² The Local's responsibility for the strike was held shown by the simultaneous cessation of work by the Local's entire membership including all its officers, and their concerted abstention from the simultaneous resumption of work.

⁷³ See section 8 (b) of the act.

action would have injured rather than promoted bargaining relations with the employer. The Board was of the view that under these circumstances it would be inequitable, and not in the interest of the purposes of the act, to hold the International and the District responsible, regardless of any possible legal basis for so doing.

In *Du Quoin Packing*⁷⁴ the Board, unlike the trial examiner, held that the strike in connection with the renegotiation of wages, which was not preceded by 30 days' notice to the proper State agency, was attributable not only to the striking local but also to the international which had been authorized by the local to renegotiate wages. The Board pointed out that the international, being the local's agent and having, in fact, approved the strike, had the duty to give timely notice under section 8 (d), and that its conduct in connection with the strike violated section 8 (b) (3).

4. 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.⁷⁵

The more important issues raised in secondary boycott cases during fiscal 1957 called for determinations as to: Whether the conduct with which the respondent unions were charged was calculated to "induce or encourage" work stoppages by "employees" for the purposes prohibited by the act; the scope of the terms "employer" and "person" as used in section 8 (b) (4); the neutral status of employers affected by the respondent unions' conduct in connection with primary disputes; and the legality of "common situs" picketing, i. e., picketing at locations where both primary and secondary employees are at work. In some cases special problems arose regarding the type of order required to remedy violations of the prohibition against secondary boycotts.⁷⁶

a. Inducement or Encouragement of Employees To Strike

The prohibitions of section 8 (b) (4) against inducement or encouragement of work stoppages, as held by the Supreme Court,⁷⁷

⁷⁴ *Local No 156, United Packinghouse Workers of America, AFL-CIO, District #4 Council (Du Quoin Packing Co)*, 117 NLRB 670, *supra*

⁷⁵ Subsection (A) also prohibits both primary and secondary strike action intended to force an employer or self-employed person to join any labor or employer organization

⁷⁶ As to rulings on assertion of jurisdiction in secondary boycott cases, see p 9, *supra*

⁷⁷ *International Brotherhood of Electrical Workers v N L R. B.*, 341 U S 694, 701.

includes "every form of influence and persuasion." To hold otherwise, the Board again pointed out during the past year, would permit a labor organization to accomplish indirectly what it is prohibited from accomplishing directly.⁷⁸ Thus, illegal inducement to stop work has been found not only where unions resorted to threats of punitive action⁷⁹ or the use of picket lines,⁸⁰ but also where union representatives merely reminded members of the union's policy against union men working with nonunion help on the same project,⁸¹ or informed employees that goods to be handled by them were "unfair" or "hot."⁸² In one case, employees on a construction project were held to have been unlawfully induced not to install a nonunion product by their foreman who was required to be a union member by the constitution or the parent District Council.⁸³ The foreman had called the employees' attention to the nonunion origin of the material in question, and had polled the employees under his supervision by inquiring of each man whether he would handle the material, without directing him to do so. The majority of the Board held that the foreman, acting as the union's agent, thus first invoked the employees' obligation under the union rules pertaining to the handling of non-union materials, and then indicated during the polling incident that he was unwilling to permit installation of the nonunion material.⁸⁴

Inducement and encouragement to cease work, in order to violate section 8 (b) (4), must be addressed to "employees" as defined in the act. Thus, where the record in one case showed only that independent contractors who operated motor vehicles for a trucking company were induced by their union to cease performing their contracts, the Board dismissed the complaint since no inducement of "employees" was involved.⁸⁵ In another case, inducement of a supervisor not to check a shipment from another employer was held not to violate section 8 (b) (4) even though checking was not a supervisory function.⁸⁶ According to the Board, the supervisor did not lose his supervisory status while performing nonsupervisory duties.

⁷⁸ *Local 1016, United Brotherhood of Carpenters & Joiners of America, AFL-CIO (Booher Lumber Co.)*, 117 NLRB 1739.

⁷⁹ *Roanoke Building & Construction Trades Council, AFL-CIO (The Kroger Co.)*, 117 NLRB 977.

⁸⁰ *Local 135, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO (Capital Paper Co.)*, 117 NLRB 635, Member Murdock dissenting.

⁸¹ *International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO (E G DeLia & Sons Construction Corp.)*, 117 NLRB 1401.

⁸² *Local 135, International Brotherhood of Teamsters, etc., AFL-CIO (Capital Paper Co.)*, *supra*.

⁸³ *Local 1016, United Brotherhood of Carpenters & Joiners of America, AFL-CIO (Booher Lumber Co., Inc.)*, 117 NLRB 1739, Member Murdock dissenting.

⁸⁴ Insofar as the union relied on the provision of its contract that "it will not be a violation of the contract or cause for discharge if employees refuse to handle 'unfair goods,'" the majority of the Board reiterated that such "hot cargo" clauses are no defense to conduct otherwise violative of the act.

⁸⁵ *Chauffeurs, Helpers and Taxis Drivers Local Union No 327, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO (B & S Motor Lines, Inc.)*, 116 NLRB 955.

⁸⁶ *International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, General Drivers and Helpers, Local No 554, AFL-CIO (Clark Bros. Transfer Co. and Coffey's Transfer Co.)*, 116 NLRB 1891.

b. "Concerted Refusal" To Work

Section 8 (b) (4) prohibits a labor organization from engaging in or inducing a strike or "concerted refusal" by employees to perform their work tasks. Inducement of a single employee to stop work, therefore, does not constitute illegal inducement.⁸⁷ However, the fact that inducement is directed against a single person is not necessarily indicative that individual rather than concerted employee response is contemplated. Thus, a Board majority held in 1 case that a remark of a union foreman on a construction job, which amounted to a reminder that union rules forbade the handling of nonunion materials, constituted illegal inducement not to handle such materials even if addressed to only 1 employee.⁸⁸ It could reasonably be expected, in the Board's view, that such a remark by a person with both union and supervisory authority would be transmitted to fellow employees. And in the same case, a directive by the union's business agent to a union steward on the job, regarding the same nonunion material, was likewise found to have been unlawful, because inducement directed at a union steward can reasonably be expected to be likewise transmitted to fellow employees.

c. Meaning of "Employees of Any Employer" in Section 8 (b) (4)

The scope of the prohibition of section 8 (b) (4) against inducement of employees of *any employer* to strike was involved in two cases. One arose from the union-induced refusal of municipal dockworkers to unload goods consigned to a manufacturer with whom the union had a dispute;⁸⁹ the other from union appeals to the employees of a railroad not to handle goods consigned to or from a lumber company.⁹⁰

Section 2 (2) of the act in defining "employer" excludes from the term political subdivisions of a State and any person subject to the Railway Labor Act. The questions to be determined in the two cases were whether strike inducement of municipal employees—i. e., employees of a political subdivision of a State—and of railroad employees—i. e., employees of an employer subject to the Railway Labor Act—violated section 8 (b) (4). Two views were suggested: (1) There as no violation because no employees of an "employer" within the meaning of 8 (b) (4) were involved; or (2) there was a violation because section 8 (b) (4) by referring to employees of "any employer"

⁸⁷ See *Local 450, International Union of Operating Engineers, AFL-CIO (Industrial Painters and Sandblasters)*, 117 NLRB 1310, where the Board adopted the trial examiner's recommendation that the complaint be dismissed.

⁸⁸ *Local 1016, United Brotherhood of Carpenters & Joiners of America, AFL-CIO (Booher Lumber Co., Inc)*, 117 NLRB 1739, Member Murdock dissenting.

⁸⁹ *Local 833, International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (UAW-AFL-CIO) (Paper Makers Importing Co., Inc)*, 116 NLRB 267.

⁹⁰ *International Woodworkers of America, AFL-CIO, Local S-426 (W T Smith Lumber Co)*, 116 NLRB 1756, reversed 246 F. 2d 129 (C. A. 5). The court's decision is discussed *infra*, pp. 130-131.

broadens the term "employer" for secondary boycott purposes so as to prohibit inducement of employees of employers in categories excluded by the definition in section 2 (2)

A majority of the Board⁹¹ adopted the first view, finding the broader interpretation of the term "any employer" not to be justified by the statutory language or legislative history. The majority held that the respondent unions in the two cases did not violate section 8 (b) (4), and rejected the General Counsel's contrary contention, which adopted the reasoning of the Fifth Circuit Court of Appeals in an earlier case,⁹² because it was based on the broader interpretation found to be unjustified. In the view of the majority, section 8 (b) (4) is violated only by inducement of strike action by employees, as defined in section 2 (3), of an employer as defined in section 2 (2). These definitions, according to the majority, are controlling because all section 2 definitions are expressly made to apply generally "when used in this Act," without exception. Congress' intent being thus manifest, the majority of the Board held that the use of the phrase "any employer" in section 8 (b) (4) could be given no meaning other than "any employer" within the definition of section 2 (2), and could not be taken to express an intent to extend the protection of section 8 (b) (4) to employers outside the definition of section 2 (2). The majority further pointed out that to interpret "employees of any employer" as broadly as proposed would result in having the Board regulate labor relations of employers which Congress clearly meant to exclude from the act's operation. Thus, the majority noted, a secondary strike by a union of municipal or railroad workers would be violating section 8 (b) (4), even though such a union is not a "labor organization" under section 2 (5) because no "employees," as defined in section 2 (3), participate in it. Taking the position that a union which does not satisfy the requirements of section 2 (5) does not qualify as the type of "labor organization" contemplated by section 8 (b) (4), the majority concluded that a "secondary boycott by a railroad union or union of municipal employees does not violate section 8 (b) (4) (A) even if such a boycott involves inducement of employees of neutral employers subject to the Act."

The majority rejected the contention that the Supreme Court's ruling in the so-called "piggy-back" case⁹³ required a different conclusion. The issue before the Supreme Court was whether an interstate railroad was entitled to State court relief against an alleged secondary boycott, or whether the matter was one within the jurisdiction of the National Labor Relations Board under section 8 (b) (4).

⁹¹ Member Rodgers dissenting

⁹² *International Rice Milling Co., Inc v N L. R. B.*, 183 F 2d 21 (C. A. 5), setting aside 84 NLRB 360.

⁹³ *Local Union No 25, International Brotherhood of Teamsters v. New York, New Haven & Hartford Railroad Co.*, 350 U. S. 155.

The Supreme Court's ruling that State court intervention was improper because the railroad, being a "person" within the definition of the National Labor Relations Act, was entitled to seek relief under section 8 (b) (4) against the labor organization involved, in the majority's view, was not a ruling that a railroad or a municipality was also an "employer" whose employees may not be induced by a labor organization to engage in a secondary strike. It was pointed out that the terms "employer" and "person" are not interchangeable in the statutory scheme. The term "person," the Board noted, occurs only in that part of section 8 (b) (4) which deals with proscribed objectives, but not in the introductory part of 8 (b) (4) which sets forth the kind of conduct that may not be used to achieve the prohibited end. The Supreme Court, the majority concluded, being concerned only with whether a railroad was a "person" protected by section 8 (b) (4) (A), had no occasion to interpret the phrase "any employer" which was not pertinent to the issue before it.⁹⁴

d. Meaning of "Person" in Section 8 (b) (4) (A)

In one case, the complaint alleged in part that the respondent union had violated section 8 (b) (4) (A) by inducing the employees of various employers to strike for the purpose of (1) forcing some of the struck employers to cease doing business with the county of New Castle, Delaware, and (2) forcing the county to discontinue business relations with another employer.⁹⁵ In two earlier cases,⁹⁶ the Board had held that a political subdivision of a State, such as the county here, is not protected by section 8 (b) (4) (A), because a political subdivision is neither an "employer"—being expressly excluded from the definition of that term in section 2 (2)⁹⁷—nor a "person"—being omitted from the categories enumerated in section 2 (1). However, the Board felt compelled to reexamine its earlier decisions in the light of the Supreme Court's ruling in the *Teamsters* "piggy-back" case⁹⁸ that a railroad is a "person" for the purposes of section 8 (b) (4) (A) and entitled to the section's protection. The majority of the Board⁹⁹ noted that in the view of the Supreme Court Congress' failure to exclude railroads *specifically* from the definition of the term "person"

⁹⁴ Member Rodgers, dissenting, took the view that, as held by the court in *International Rice Milling* (*supra*, footnote 92), Congress in using the word "any employer" in section 8 (b) (4) "intended the word 'any' to embrace the class of employers as a whole, and not merely those within the definition of employer as set forth in Section 2 (2)." Member Rodgers further believes that the majority's construction of section 8 (b) (4) is in conflict with the Supreme Court's ruling in the "piggy back" case.

⁹⁵ *Local Union No 313, International Brotherhood of Electrical Workers, AFL-CIO* (*Peter D Furness*), 117 NLRB 437.

⁹⁶ *International Brotherhood of Electrical Workers, AFL, Local No. 16 (At J. Schneider Co, Inc)*, 87 NLRB 99, 89 NLRB 221 (Fifteenth Annual Report (1950), pp. 147-148), *International Brotherhood of Electrical Workers, Local 5, AFL (Sprys Electric Co)*, 104 NLRB 1128 (Eighteenth Annual Report (1953), p. 47)

⁹⁷ See p. 97, *supra*.

⁹⁸ Cited in footnote 93.

⁹⁹ Member Murdock dissenting.

in section 2 (1) must be held to entitle railroads to the protection of section 8 (b) (4) (A). Thus, the majority pointed out, the Supreme Court implicitly rejected the Board's contrary reasoning in the *Schneider* and *Sprys* cases that Congress' similar failure to refer to political subdivisions in specifying who is a "person" for the purposes of the act indicates that Congress intended to exclude political subdivisions from the protection against secondary boycotts. The majority therefore overruled *Schneider* and *Sprys* insofar as those decisions hold that political subdivisions are not "persons" for secondary boycott purposes. The union in the present case, in turn, was held to have violated section 8 (b) (4) (A) by disrupting business relations between certain employers and the county¹ in the manner proscribed by the section.

e. Secondary Employer Status—The "Ally" Doctrine

In several cases involving conduct which on its face violated the act's secondary boycott provisions, the respondent unions contended that the secondary employer was not a neutral in the union's dispute, but that its relations with the disputing employer were such as to make it the latter's "ally." The contention was sustained in one case.² In this case, the union struck a construction company in support of its dispute with a lumber company over recognition. The lumber firm was the construction company's sole source of supply of millwork and lumber. A majority of the Board held that the two companies were allies because their businesses were commonly owned and controlled, and together were engaged in "one straight line operation." The majority pointed out, however, that "single line operation" is not an indispensable element of an ally relationship and that such a relationship may be held to exist whenever the businesses of the primary and secondary employer, as here, are commonly owned and controlled. The majority rejected the dissenting Member's view that an ally relationship should not be found here because under the *American Furniture* case,³ and related cases, the two companies would not be held to be so closely related as to constitute a single employer. The *American Furniture* type of case, according to the majority, did not apply because there the relationship between the several employers was considered only to determine whether there was

¹ Since there was no allegation of inducement to strike by any of the employees of the county, the latter was considered as involved in the boycott only as a "person" and not as an "employer."

² *United Brotherhood of Carpenters and Joiners of America, AFL-CIO District Council of Springfield, Massachusetts, AFL-CIO, et al. (J. G. Roy and Sons Co)*, 118 NLRB 286, Member Rodgers dissenting. The ally doctrine was first applied by the Board in the *Irwin-Lyons Lumber* case, 87 NLRB 54 (1949). Compare *N. L. R. B. v. Business Machine and Office Appliance Mechanics Conference Board, Local 459, International Union of Electrical, Radio & Machine Workers, CIO*, 228 F. 2d 553 (certiorari denied, 351 U. S. 962); Twenty-first Annual Report, p. 147, where the Second Circuit reversed the Board's finding that no ally relationship existed.

³ *American Furniture Co., Inc., of El Paso, et al.*, 116 NLRB 1496.

a basis for asserting jurisdiction, or to determine the proper scope of a bargaining unit, whereas here the controlling consideration was the congressional purpose to protect innocent third-party employers in a labor dispute.

One of the cases in which the union's ally defense was rejected involved picketing of entrances of a large retail food shopping center some of whose stands were operated by the market's owner while others were operated by the owner's lessees.⁴ The union's dispute was with the market's owner.⁵ In the view of the majority of the Board, the lessees clearly were neutrals, and not allies of the lessor inasmuch as they hired and paid their own employees, had complete autonomy in dealing with the employees regarding terms and conditions of employment, used their own funds, and purchased and sold their own merchandise. The majority also noted that no transfer of struck work was involved. In another case, a majority of the Board held, contrary to the trial examiner, that a trucker who performed local cartage services for an interstate motor carrier was not the latter's ally, and that the respondent union which had a dispute with the motor carrier over recognition violated section 8 (b) (4) (A) and (B) when it picketed the terminal facilities used by the cartage company.⁶ The controlling factors, according to the majority, were that: The cartage company operated its business as an independent contractor; the cartage company, a partnership, and the motor carrier, a corporation, were not under common ownership or control; the cartage company had exclusive and complete control over its employees and equipment; and the company rented and maintained at its own expense terminal premises where it received the motor carrier's freight. The carrier, in turn, was found to own and control its equipment and to operate its business separately with its own personnel. The absence of common ownership and control and of integration of operations, together with the absence of any transfer of struck work from the motor carrier to the cartage company, was held to preclude a finding that the latter was involved as an *alter ego* or ally in the carrier's dispute with the union. Nor did the majority of the Board find that the record warranted the dissenting Member's conclusion that the cartage company performed services for the carrier as its agent and that the carrier and the cartage company together therefore constituted only one employer.⁷

⁴ *Retail Fruit & Vegetable Clerks' Union, Local 1017, and Retail Grocery Clerks' Union, Local 648, Retail Clerks International Association, AFL-CIO [Crystal Palace Market] (Retail Fruit Dealers' Association of San Francisco, Inc)*, 116 NLRB 856, Members Murdock and Peterson dissenting.

⁵ The "common-situs" picketing aspects of the case are discussed at pp 102-103.

⁶ *Truck Drivers and Helpers Local Union No. 728, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO (Empire State Express, Inc.)*, 116 NLRB 615, Member Murdock dissenting.

⁷ *In Roanoke Building & Construction Trades Council, AFL-CIO (The Kroger Co)*, 117 NLRB 977, the respondent union's ally defense was similarly rejected.

f. "Common Situs" Picketing

In a number of cases under section 8 (b) (4), the Board had occasion to restate and reaffirm the rules governing the legality of picketing (1) at premises occupied commonly by the primary employer with whom the picketing union has a dispute and secondary employers who are strangers to the union's dispute, or (2) at the premises of neutral employers where employees of a primary employer with a separate place of business perform services.

In one case in the first category, the respondent union picketed entrances to a retail food shopping center occupied partly by its owner with whom the union had a dispute, and partly by neutral lessees of stands and shops within the market area.⁸ A majority of the Board held that the picketing violated section 8 (b) (4) (A) because it did not conform to established standards for "common situs" picketing. Citing *Moore Dry Dock*⁹ and subsequent cases where the *Moore Dry Dock* rules have received court approval, the majority's main opinion stated:

The gist of these standards is that where picketing occurs at premises which are occupied jointly by primary and secondary employers, the timing and location of the picketing and the legends on the picket signs must be tailored to reach the employees of the primary employer, rather than those of neutral employers. If these standards are observed, the picketing is lawful, and any incidental impact thereof on neutral employees at the common situs will not render it unlawful. Where, however, there is any deviation from these standards, the Board, with judicial approval, has held that the picketing violates section 8 (b) (4) (A) of the Act. In developing and applying these standards, the controlling consideration has been to require that the picketing be so conducted as to minimize its impact on neutral employees insofar as this can be done without substantial impairment of the effectiveness of the picketing in reaching the primary employees. [Footnotes omitted.]

The majority rejected the view that these principles should not apply where, as here, the picketed premises are owned by the primary employer. For, according to the majority, the "impact on neutral employees of picketing which deviates from the standards outlined

⁸ *Retail Fruit & Vegetable Clerks' Union Local 1017, and Retail Grocery Clerks' Union, Local 648, Retail Clerks International Association, AFL-CIO (Crystal Palace Market)*, 116 NLRB 856, Member Bean concurring, Members Murdock and Peterson dissenting.

⁹ *Moore Dry Dock Co*, 92 NLRB 547 (1950)

above is the same whether the common premises are owned by their own employer or by the primary employer.”¹⁰

In concluding that the picketing of market entrances here was unlawful, the majority noted that the union rejected the owner's offer to permit picketing of its operations inside the market, and that such picketing would have been adequate for the union's lawful primary purpose and would have minimized the incidental effect on neutral lessees. The majority also noted that the manner in which the picketing was conducted indicated that the union “did not make any *bona fide* effort to minimize the impact of its picketing upon the operations of the neutral employers in the Market,” although it could have done so without substantially impairing its pressure on the primary employer. The absence of such an effort, together with the direct inducement of some neutral employees to quit work, was found to be evidence that the involvement of neutrals and their employees in the primary dispute was the union's principal object and not merely an unavoidable incident of legitimate picketing.

In the cases involving picketing at a secondary employer's premises where employees of a primary employer with a separate place of business performed work, the Board again pointed out that, under the *Washington Coca-Cola* rule,¹¹ all such picketing is unlawful if the picketing union could effectively publicize its dispute at the primary employer's place of business.¹² As repeatedly noted by the Board,¹³ in this type of situation the *Moore Dry Dock* rule for “ambulatory picketing” does not apply, and the picketing away from the primary employer's place of business is unlawful even though it satisfies the *Moore Dry Dock* tests. In two cases where the respondent union, in support of its dispute with a ready mixed concrete manufacturer,

¹⁰ While the two Members of the majority who joined in the main opinion indicated that they would not adhere to the decisions in *Ryan Construction Corp.*, 85 NLRB 417 (1949), and *Crump, Inc.*, 112 NLRB 311 (1955), insofar as those cases are inconsistent with their views in the present case, it was later made clear that the three-member majority did not overrule those cases. See *Roanoke Building & Construction Trades Council, AFL-CIO (The Kroger Co.)*, 117 NLRB 977, footnote 7.

¹¹ *Washington Coca-Cola Bottling Works, Inc.*, 107 NLRB 299 (1953).

¹² *Commission House Drivers, Helpers, and Employees Local No. 400, etc. (Euclid Foods, Inc.)*, 118 NLRB 130, Member Murdock dissenting on jurisdictional grounds, *Local 117, United Glass and Ceramic Workers of N. A., AFL-CIO (The Mason and Dixon Lines, Inc.)*, 117 NLRB 622; *General Truckdrivers, Chauffeurs, Warehousemen & Helpers, Local 270, International Brotherhood of Teamsters, etc., AFL-CIO (Diaz Drayage Co.)*, 117 NLRB 885, *United Steelworkers of America, AFL-CIO (Barry Controls, Inc.)*, 116 NLRB 1470; *International Brotherhood of Teamsters, etc., Local 659, AFL-CIO, et al. (Ready Mixed Concrete Co.)*, 116 NLRB 461; *General Drivers, Salesmen, Warehousemen & Helpers, Local Union 984, International Brotherhood of Teamsters, etc., AFL-CIO (The Caradine Co., Inc.)*, 116 NLRB 1559. See also *Chauffeurs, Teamsters, Warehousemen and Helpers Union Local No. 190 of Billings & Vicinity, Montana (Babcock & Lee Petroleum Transporters, Inc.)*, 117 NLRB 1344, where the Board held that the facts shown in the record refuted the respondent union's contention that picketing at secondary locations was necessary to get the “message” to all of the primary employees.

¹³ See *Commission House Drivers, Helpers, and Employees Local No. 400, etc. (Euclid Foods, Inc.)*; *United Steelworkers of America, AFL-CIO (Barry Controls, Inc.)*; *Local 117, United Glass and Ceramic Workers of N. A., AFL-CIO (The Mason and Dixon Lines, Inc.)*; *General Truckdrivers, Chauffeurs, Warehousemen & Helpers, Local 270, International Brotherhood of Teamsters, etc. (Diaz Drayage Co.)*, all cited in the preceding footnote.

followed the manufacturer's delivery trucks to neutral job sites and picketed the sites while delivery was being made, the Board held that such picketing in itself violated section 8 (b) (4) (A).¹⁴

In one case, the Board agreed with the trial examiner's conclusion that the respondent union's picketing violated section 8 (b) (4) (A) and (B), but rejected the finding that "common situs" picketing was involved.¹⁵ The union here picketed a site where a radio station was being constructed. The object was to force the contractor to cease doing business with the station owner and thus to bring pressure on the latter to sign a collective-bargaining contract covering prospective employees of the radio station. The Board pointed out that picketing at a location where, as here, no employees of the primary employer have ever worked, or are expected to work for a considerable time, and where not even applicants for employment with the primary employer come or are expected to come, the picketing is inherently unlawful and, unlike "common situs" picketing, can under no circumstances be considered lawful primary picketing. Similarly, a Board majority held in another case that the respondent union violated section 8 (b) (4) (A) when it picketed one of the disputing primary employer's service stations at a time when it was not in operation, and was being rebuilt by a construction firm.¹⁶ The purpose of the picketing was to provoke a strike of the neutral contractor's employees in order to compel the contractor to cease doing business with the primary employer. The majority further held that in the absence of any primary employees at the picketed location, there was no occasion for applying the principles established in "common situs" cases. Nor, in the majority's view, was the situation altered by the fact that the primary employer owned the picketed premises and intended to resume its business operations there at some future date. "Were ownership alone, or even coupled with plans for future operation, sufficient ground to legalize *any* picketing," the majority observed, "there would be no occasion to balance the conflict between protected and unprotected picketing in many common situs cases."¹⁷

¹⁴ *International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 659, AFL-CIO, et al. (Ready Mixed Concrete Co)*, 116 NLRB 461; *International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Building Material & Construction, Ice & Coal Drivers, Warehousemen & Yardmen, Local No. 659, AFL-CIO (Ready Mixed Concrete Co.)*, 117 NLRB 1266.

¹⁵ *Radio Broadcast Technician's Local No 1225, International Brotherhood of Electrical Workers, AFL-CIO (Rollins Broadcasting, Inc)*, 117 NLRB 1491.

¹⁶ *Local 818, Automotive, Petroleum and Allied Industries Employees Union, AFL-CIO, etc. (Incorporated Oil Co)*, 116 NLRB 1844, Member Murdock dissenting.

¹⁷ Member Murdock, dissenting, was of the view that the picketing here was primary, even though no employees of the struck employer were present, and that the picketing, notwithstanding its effect on neutral employees, was lawful under the rule of the *Ryan Construction Corp.* (85 NLRB 417 (1949)), *Crump, Inc* (112 NLRB 311 (1955)), and *Pure Oil Co* (84 NLRB 315) cases on which the trial examiner had relied in recommending dismissal of the complaint.

g. Remedies in Secondary Boycott Cases

A union which has violated the act's secondary boycott provisions usually is ordered to cease and desist from its unlawful conduct and, affirmatively, (1) to post appropriate notices stating that the union will refrain from the proscribed conduct, and (2) to inform the regional director of its compliance.

The usual affirmative remedy was, however, held inadequate where the unfair labor practices also constituted a violation by the union of an earlier settlement agreement requiring it to refrain from inducing employees of various common carriers to refuse to handle the freight of two transfer companies.¹⁸ The Board in this case directed the union to "notify all its members who are employed by employers other than [the two transfer companies], and all employees of said employers who are represented by it, that it has no objection to their transporting or handling, in the course of their employment, freight shipped by or destined for shipment by [the two transfer companies]." The Board rejected the contention that the proposed order would unduly interfere with the employees' statutory right to refuse to handle such freight. On the other hand, the Board sustained the union's objection to the trial examiner's further recommendation that it be required to request the employees involved affirmatively to stop refusing to handle the transfer companies' freight.

The Board in this case also held that effectuation of the policies of the act required that the union be ordered to cease bringing secondary pressure against the two transfer companies, as well as against any other similar motor carrier within the union's jurisdiction. The appropriateness of this requirement, the Board found, was indicated by the fact that in the past the union and its parent council had cooperated in organizing and negotiating with employers in the area, and in resorting to unlawful secondary action against recalcitrant employers in accordance with the council's avowed plan. Thus, the Board held, it was reasonable to anticipate that the respondent union would extend its secondary activities to any motor carrier within its jurisdiction in order to carry out the area council's announced program. In another case, the two respondent unions were prohibited from bringing further secondary pressure on an employer in their own behalf in order to obtain recognition in violation of section 8 (b) (4) (A) and (B), as well as from taking such action in each other's behalf or in behalf of "any other labor organization."¹⁹ Here too, a broad

¹⁸ See *International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, General Drivers and Helpers, Local No. 554, AFL-CIO (Clark Bros. Transfer Co. and Coffey's Transfer Co.)*, 116 NLRB 1891.

¹⁹ *Milk Drivers and Dairy Employees Local Union No. 680, and Local 338, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL-CIO (Crowley's Milk Co., Inc.)*, 116 NLRB 1408.

cease and desist order was held necessary because of evidence indicating that the unions' conduct was part of a more extensive campaign of the parent area "Conference."

5. 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.

Four cases were decided under this section during fiscal 1957. Violations were found in all.

a. Picketing for Prohibited Objective

In two cases—*King's Bakery*²⁰ and *James Knitting Mills*²¹—the principal issues were (1) whether picketing by the respondent union for recognition before the Board certified another union was continued for the same purpose after the certification; and (2) whether the postcertification picketing constituted inducement of employees to strike in support of the union's prohibited objective.

The Board found in each case that the union's postcertification objective was recognition by the picketed employer, and that the picketing was not merely organizational, as asserted. This was found in *King's Bakery* to be shown by statements of union representatives and pickets. The Board rejected the trial examiner's conclusion that the statements and various circumstances attending the picketing indicated that the union was concerned with organization rather than immediate recognition. The Board also pointed out that, even if the union was interested in organizing the employees, this was not inconsistent with the existence of a concurrent purpose to secure immediate recognition from the employer. Thus, the Board observed, *an* object being immediate recognition, the picketing violated section 8 (b) (4) (C), even though it may also have had another objective which was lawful.

In *James Knitting Mills*, the Board held that the union's unlawful postcertification purpose was indicated by the fact that the union had demanded recognition by the employer to the accompaniment of threats to picket, but made no efforts "to reach the employees through any of the ordinary methods traditionally resorted to by unions to organize workers." Moreover, the Board noted, picketing was extended to plant entrances not utilized by the company's em-

²⁰ *Local 85, Bakery & Confectionery Workers International Union of America, and Bakery and Confectionery Workers International Union of America, AFL-CIO (King's Bakery, Inc.)*, 116 NLRB 290.

²¹ *Knit Goods Workers' Union, Local 155, International Ladies' Garment Workers Union, AFL-CIO (James Knitting Mills, Inc.)*, 117 NLRB 1468.

ployees and not limited to times when employees would normally enter or leave the plant.

The contention was made in both cases that the postcertification picketing did not actually induce or encourage employees to strike. The Board reiterated that the traditional union picket line before employee entrances, apart from the literal appeal of the signs carried by the pickets, constitutes inducement and encouragement of employees who must work behind the picket line to engage in "a concerted refusal to perform services for their employer," and that such picketing for any of the purposes proscribed by section 8 (b) (4) is unlawful regardless of whether or not it succeeds in bringing about a cessation of work.²² In *King's Bakery* the Board also noted that the union's maintenance throughout the picketing of a nearby "strike headquarters" manifestly was calculated to induce strike action, and that the picketing therefore could not be viewed as only organizational propaganda.

b. Validity of Certification

In the *Queen Ribbon*²³ and *Coca-Cola Bottling*²⁴ cases, the Board rejected the respondent unions' contention that their strikes for recognition did not violate section 8 (b) (4) (C) because the incumbent union's certification was no longer effective at the time of the strike. In *Queen Ribbon*, where the respondent union asserted employer domination of the certified union and noncompliance with the filing requirements of section 9 (f), (g), and (h), the Board reaffirmed the *Lewis Food Co.*²⁵ rule that neither employer domination nor noncompliance constitutes a valid defense to a section 8 (b) (4) (C) complaint. In that case, it was pointed out that a union may not take it upon itself to decide that an outstanding Board certification is invalid and then proceed as if the certification and certified representative did not exist.

In both *Queen Ribbon* and *Coca-Cola* it was also contended that there could be no violation of section 8 (b) (4) (C) because the beneficiary of the Board's certification had become defunct and no longer existed as a functioning labor organization. A majority of the Board, finding that defunctness had not been shown, did not pass on the question whether defunctness of a previously certified labor organization is a valid defense in a section 8 (b) (4) (C) proceeding. The dissenting

²² The Board here cited its ruling in *Arnold Bakers, Inc.*, 115 NLRB 1333, Twenty-first Annual Report, pp. 114-115

²³ *Local No. 224, International Union, Allied Industrial Workers of America, AFL-CIO (Queen Ribbon & Carbon Co., Inc.)*, 116 NLRB 890

²⁴ *Warehouse & Distribution Workers Union, Local 638, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO (Coca-Cola Bottling Co. of St. Louis)*, 116 NLRB 923

²⁵ *Meat & Poultry Drivers Union, Local No. 626, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL-CIO (Lewis Food Co.)*, 115 NLRB 890. See Twenty-first Annual Report, p. 113.

Members,²⁶ disagreeing with the majority's factual conclusion, expressed the view that a section 8 (b) (4) (C) violation requires an existing certified union, and that the complaints here should therefore be dismissed.

c. Necessity for Remedial Order

In the *Coca-Cola* case, a majority of the Board ²⁷ rejected the view that no order should be issued against the respondent union because allegedly the employer had recognized the union and had executed a 5-year contract with it, and no other labor organization claimed representation rights in the unit involved. The majority held that the asserted facts were insufficient to dispose of the necessity for remedial relief. It was pointed out that not only was contractual recognition of the union by the employer the very purpose of the unlawful strike, but the union made no claim that it had taken any measures to remedy its unfair labor practices and had given no assurance that such practices will not recur in the future.

6. 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 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 if there is a failure to comply with the Board's determination. A complaint may also be issued by the

²⁶ Members Murdock and Peterson in *Queen Ribbon*, and Member Peterson in *Coca-Cola*.

²⁷ Member Peterson dissenting.

General Counsel in case of failure of the method agreed upon to adjust the dispute.²⁸

a. Proceedings Under Section 10 (k)

In a proceeding under section 10 (k), the Board determines whether a dispute within the meaning of section 10 (k) exists and whether there is reasonable cause to believe that the disputing union has, as charged, induced work stoppages in order to obtain assignment of the disputed work and has thereby violated section 8 (b) (4) (D). The 10 (k) proceeding "is not directed to deciding definitely whether the record would sustain a complaint alleging 8 (b) (4) (D) violations."²⁹

Five cases came before the Board under section 10 (k) during fiscal 1957 and in each the prerequisites for a determination were found to exist. In 1 case, the dispute arose from the overlapping jurisdictional claims of 2 unions over certain "oiler" work on loading and unloading equipment.³⁰ The employer filed section 8 (b) (4) (D) charges after he had failed to obtain a compromise or withdrawal of the unions' conflicting demands and had found it necessary to make duplicate oiler assignments to members of each union in order to resume operations. In another case, employees of a subcontractor on a construction job were induced to strike in order to force another subcontractor to cease using members of another union to perform certain work on the job.³¹ A similar situation was involved in a third case, where a building trades union brought about a strike of its members on a water utility's project. The work stoppage was intended to force the utility to assign the installation of water mains to members of the striking union instead of to the utility's own employees who were represented by another union.³² Another case arose out of a dispute between the employer and a union representing its maintenance employees over the contracting out of painting.³³ An officer and other officials of the respondent union ordered two employees of the contractor, who were members of another union, off the job and they declined to return even with police protection. The respondent union was seeking to enforce its demand that maintenance work be done only by its members, whether contracted out or not.

²⁸ *Wood, Wire and Metal Lathers International Union (Acoustical Contractors Assn of Cleveland)*, 119 NLRB No. 166 (January 17, 1958).

²⁹ *Local 675, International Union of Operating Engineers, AFL-CIO (Port Everglades Terminal Co, Inc)*, 116 NLRB 27, 35.

³⁰ *Local 675, International Union of Operating Engineers, AFL-CIO (Port Everglades Terminal Co, Inc)*, *supra* Member Murdock dissented as to the finding of inducement of strike action on the part of one of the unions involved.

³¹ *United Brotherhood of Carpenters and Joiners of America, AFL-CIO, et al. (Wendnagel & Co)*, 116 NLRB 1063

³² *Local 562, Building and Construction and Metal Trades Division, etc. (St. Louis County Water Co)*, 116 NLRB 1111

³³ *International Longshoremen's Association, Ind, et al (Abraham Kaplan)*, 116 NLRB 1533.

The fifth case involved conflicting claims of a building trades union and a longshoremen's union to unloading operations at a construction site.³⁴ The longshoremen's union induced strike action to compel assignment of the work to its members.

(1) Work Claims Based on Contract or Custom

In three of the foregoing cases the disputing unions claimed that they were entitled to the work in question either by contract or by past assignment practices and customs. In 1 case³⁵ a longstanding oral understanding asserted by 1 of the 2 unions was found not to furnish a basis for a contract right, particularly because the union was not recognized by the employer as the exclusive representative of the particular category of employees and because until recently there had been no regular employees in the classification. As to the second union, the Board found that its current contract with the employer did not in *unambiguous terms* provide for the exclusive assignment of the disputed work to the union's members. Moreover, the Board held, both the literal terms of the contract and the circumstances attending its negotiation justified the conclusion that no such assignment was contemplated. In another case, the Board held that the asserted contract could not be construed as assigning work which the employer had insisted it should be free to contract out whenever desirable. Moreover, the Board in both cases again made clear that an agreement or understanding will be recognized as basis of a work assignment claim only if it is clear and unambiguous.³⁶

Regarding the further insistence of the claimants in the three cases that they were entitled to the disputed work by past custom and practice, the Board held that custom and practice are not controlling where the union claiming work has no contractual right to it³⁷ or has no bargaining status.³⁸

(2) Mootness of Dispute

The Board again rejected a contention that the dispute involved in the case became moot with the completion of the project where the strike over a work assignment occurred.³⁹ In this case, while the strike had ended, there was no adjustment of the parties' dispute;

³⁴ *Local 16, International Longshoremen's and Warehousemen's Union (Denali-McCray Construction Co)*, 118 NLRB 109.

³⁵ *Local 675, International Union of Operating Engineers, AFL-CIO (Port Everglades Terminal Co, Inc)*, *supra*

³⁶ *International Longshoremen's Association, Ind, et al (Abraham Kaplan)*, 116 NLRB 1533; *Local 16, International Longshoremen's and Warehousemen's Union (Denali-McCray Construction Co)*, *supra*

³⁷ *Local 675, International Union of Operating Engineers, AFL-CIO (Port Everglades Terminal Co, Inc)*, 116 NLRB 27, *International Longshoremen's Association, Ind. (Abraham Kaplan)*, *supra*

³⁸ *Local 16, International Longshoremen's and Warehousemen's Union (Denali-McCray Construction Co)*, *supra*.

³⁹ *United Brotherhood of Carpenters and Joiners of America, AFL-CIO, and Local 60, United Brotherhood of Carpenters, et al (Wendnagel & Co)*, 116 NLRB 1063.

there was evidence that the striking union did not abandon its claim to the disputed work; and work of the type in progress on the project at the time of the strike might be resumed. Thus, the Board noted, the underlying jurisdictional dispute was not resolved.

b. Violation of Section 8 (b) (4) (D)

Violations of section 8 (b) (4) (D) were found in three cases where complaints had been issued because of alleged noncompliance with Board determinations under section 10 (k).⁴⁰

In *Anning-Johnson*⁴¹ the respondent union was found to have continued to bring pressure on an employer for the contractual assignment of work which was also claimed by another union and to which the striking union was held not entitled in the earlier 10 (k) proceeding.⁴² The work involved installation of acoustical tile ceilings. The union, after the 10 (k) determination, picketed a job where the employer was engaged in installing such tile. A majority of the Board found that this indicated that the jurisdictional dispute was still alive and that the picketing union continued to claim the work and thus did not comply with the Board's determination. The union renewed its assertion, made in the 10 (k) proceeding, that its strike was not unlawful because the purpose was not to obtain an immediate work assignment on the struck job, but to get a contract containing a work assignment clause. The Board majority pointed out again that here, unlike the *Anheuser-Busch*⁴³ case relied on by the union, there was an active jurisdictional dispute between two unions, and that by striking for a contract spelling out assignment of the disputed work the respondent union was forcing the struck employer to assign particular work to its members rather than to members of another union within the meaning of section 8 (b) (4) (D). "To hold otherwise," the majority declared, "would permit a union to avoid the proscription of the Act simply by putting its jurisdictional claims into a contract proposal and striking to achieve this objective."

In *Industrial Painters*,⁴⁴ the majority of the Board affirmed the trial examiner's denial of a motion to dismiss the 8 (b) (4) (D) complaint because the parties had amicably settled the dispute in a manner satisfactory to both parties. The trial examiner cited an earlier

⁴⁰ *Local Union No 9, Wood, Wire and Metal Lathers International Union, AFL-CIO (Anning-Johnson Co)*, 117 NLRB 352, Member Murdock dissenting, *Bay Counties District Council of Carpenters and Joiners of America, AFL-CIO (Associated Home Builders of San Francisco, Inc)*, 117 NLRB 958, Member Murdock dissenting, *Local 450, International Union of Operating Engineers, AFL-CIO (Industrial Painters and Sandblasters)*, 117 NLRB 1301, Member Murdock dissenting.

⁴¹ 117 NLRB 352

⁴² 113 NLRB 1237 (1955), Twenty-first Annual Report, pp. 116-117.

⁴³ 101 NLRB 346 (1952)

⁴⁴ *Local 450, International Union of Operating Engineers, AFL-CIO (Industrial Painters and Sandblasters)*, 117 NLRB 1301.

case ⁴⁵ where the Board declined to give effect to a private settlement in an 8 (b) (4) (D) case because the respondent union had taken no measures to remedy its unfair labor practices and had given no assurance that the practices involved will not occur again.

(1) Parent Organization's Liability for 8 (b) (4) (D) Violation

In *Associated Home Builders*,⁴⁶ the Board was concerned chiefly with whether liability for a strike in violation of section 8 (b) (4) (D) was attributable not only to the striking local but also to the district council with which it was affiliated. A Board majority ⁴⁷ held that there was sufficient evidence to warrant a finding of liability on the part of the district council. It was found that the actual relationship between council and the local indicated that the latter was but an administrative arm or agency of the former. As noted by the majority, under the basic laws—the parent international's constitution and the council's bylaws—affiliated locals functioned under the constant guidance and control of their council. Summarizing, the majority found that:

[I]t is the District Council, rather than its affiliated Local Unions, which has the power to negotiate with employers concerning wages and other conditions of employment, to settle disputes with the employers concerning these matters, to try members of the United Brotherhood within its jurisdiction and even the Local Unions for any violation of its basic laws, and to issue work permits to members of its affiliated Local Unions. Business agents of its affiliated Local Union, regardless of whether they have been appointed directly by the Council or "endorsed" by it after election, are in effect but agents of the District Council who work under its constant and immediate supervision, and subject to its orders, and they are required to "assist in the enforcement of the Laws of District Council." These laws further impose drastic limitations upon the power of an affiliated Local Union to engage in a strike. A trade demand of an affiliated Local Union "must be endorsed" by the District Council before it can be made by the affiliated Local Union. Job and shop strikes must be conducted pursuant to rules laid down by the District Council. It is the District Council, not the Local Union, that has the power to levy a strike assessment.

The council's liability was held further indicated by its approval and ratification of the strike. It was pointed out that trade demands

⁴⁵ *Warehouse & Distribution Workers Union, Local 688, International Brotherhood of Teamsters, etc., AFL-CIO (Coca-Cola Bottling Co. of St. Louis)*, 116 NLRB 923, discussed at pp 107-108.

⁴⁶ 117 NLRB 958.

⁴⁷ Member Murdock dissented from the majority's finding that section 8 (b) (4) (D) had been violated

of affiliated locals required the council's endorsement; that the council had sole power to supervise and direct strikes arising from trade demands; and that the council had refused the employer's request to take affirmative action to terminate or disavow the strike. Moreover, according to the majority, the district council was liable for the strike because the local's business agent who brought it about was also an agent of the council under the council's bylaws.

7. Excessive or Discriminatory Fees for Union Membership

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

Only one case arising under this section came before the Board during the past year. In this case, the Board adopted the trial examiner's finding that a union initiation fee of \$100, which an expelled member was required to pay in order to acquire membership in good standing, was not a fine or penalty for alleged dual unionism.⁴⁸ Nor was it found to be discriminatory within the meaning of the act since such a fee was uniformly required from all new members without exception.

⁴⁸ *Brewery Workers Union Local No 102, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO (Anheuser-Busch, Inc)*, 116 NLRB 178

V

Supreme Court Rulings

Six cases under the National Labor Relations Act decided by the Supreme Court during fiscal 1957¹ were concerned with questions regarding the proper construction and administration of various provisions of the act.

One case involving enforcement of a subpoena against a witness under indictment in the State where he was to testify² was dismissed because of mootness.³

In three cases, the Board was invited as *amicus curiae* to express its views as to the propriety of State intervention in cases where the Board has declined to exercise its statutory jurisdiction.

1. Labor Organizations as Employers

In *Office Employees*⁴ the Supreme Court was asked to review the Board's dismissal of unfair labor practice charges against several labor organizations as the employer of office employees assisting in the performance of the union's collective-bargaining functions. The Board⁵ had held that, while the union was an "employer" within the meaning of section 2 (2) of the act,⁶ labor organizations are in the category of nonprofit organizations over which the Board, for policy reasons, ordinarily does not exercise jurisdiction.⁷

The Court agreed that labor organizations are employers for the purposes of the act in regard to their own employees, and that the Board had legal jurisdiction in the case. On the other hand, a majority

¹ For statistical breakdown see table 19, p 178.

² See Twenty-first Annual Report, pp 159-160.

³ *John Gunaca v N L R B*, 353 U S 902

⁴ *Office Employees International Union, Local No 11 v N L R B (Oregon Teamsters)*, 353 U. S 313 (113 NLRB 987)

⁵ Two Members of the Board majority and the two Members who dissented from the declination of jurisdiction on policy grounds were in agreement that the respondent unions were employers under section 2 (2) and were legally subject to the Board's jurisdiction. One Member took the view that the act requires labor organizations to be treated as employers only when engaged in an enterprise other than organization and representation of employees for collective-bargaining purposes

⁶ Section 2 (2) excludes labor organizations from the term "employer" except "when acting as an employer"

⁷ The Court treated as the Board's opinion in this respect that of the 2 Members of the 3-Member majority who dismissed the case on the basis of the nonprofit standard. As noted by the Court, the third Member of the majority concurred in the dismissal on "more limited grounds" See footnote 5

of the Court held that, while it may be within the Board's discretion to adopt dollar volume jurisdictional standards or to decline jurisdiction because of the local character of an employer's operations, the Board was without power to refuse to assert jurisdiction over labor union employers as a class.⁸ Reversing the judgment in which the Court of Appeals for the District of Columbia sustained the Board's dismissal,⁹ the Supreme Court remanded the case to the Board for appropriate action.

2. Section 8 (d) Limitation on Right To Strike

In *Lion Oil Company*,¹⁰ the Supreme Court was called upon during the past fiscal year to interpret further the requirement of section 8 (d) (4) of the act that an employee representative, which has given the statutory notice of proposed contract changes,¹¹ refrain from strike action "for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later."¹² The Court¹³ sustained the Board's view that this requirement of section 8 (d) (4) "is satisfied where a contract provides for negotiation and adoption of modifications at an intermediate date during its term, and a strike in support of modification demands occurs after the date on which such modifications may become effective—and after the 60-day notice period has elapsed—but prior to the terminal date of the contract."¹⁴ According to the Court, the Eighth Circuit misconstrued the reference in section 8 (d) (4) to the "expiration date" of a contract as a congressional intent to ban strikes for contract changes during the entire term of the contract even though the contract, as the one here, provides for midterm modification. Citing its *Mastro Plastics* decision,¹⁵ the Supreme Court again pointed out that "In expounding a statute, we must not be guided by a single sentence or member of a sentence, but look to the

⁸ Four members of the Court, Justices Brennan, Frankfurter, Burton, and Harlan, were of the view that the Board has discretionary authority to decline jurisdiction over labor organizations as a class, but that the nonprofit standard applied by the Board was not a proper one. The dissenting Justices believed that the case should be remanded for the purpose of reconsideration of the jurisdictional question.

⁹ 235 F. 2d 832

¹⁰ *N L R B v Lion Oil Co.*, 352 U. S. 282, reversing 221 F. 2d 231 (C. A. 8) (109 NLRB 680)

¹¹ Section 8 (d) (1) requires that a party to a collective-bargaining agreement desiring termination or modification of the contract give written notice to the other party.

¹² During the preceding year (fiscal 1956) the Court sustained the Board's view that the strike limitation of section 8 (d) (4) applies only to strikes in connection with contract negotiations but not to unfair labor practice strikes. See *Mastro Plastics Corp v N L R B*, 350 U. S. 270 (103 NLRB 511). Twenty-first Annual Report, pp 122-123

¹³ Justices Frankfurter and Harlan concurring in part and dissenting in part. Justice Brennan did not participate.

¹⁴ It was held immaterial that, in addition to reopening, the contract provided for notice of termination in case of failure to agree on amendments during the 60-day period provided for negotiating amendments and that no such notice had been given. The Court pointed out that "the statutory notice requirement operates wholly independently of whatever notice requirement the parties have fixed for themselves."

¹⁵ See footnote 12.

provisions of the whole law, and to its object and policy," and that, when there is ambiguity, a construction that "would produce incongruous results" must be avoided. Here, the Court continued, the act's dual purpose—to substitute collective bargaining for economic warfare and to protect the right of employees to engage in concerted activities for their own benefit—requires that the term "expiration date" in section 8 (d) (4) be taken to embrace not only the actual terminal date of an existing contract but also the date when midterm modifications may become effective under the contract. The narrow construction given the term "expiration date" by the Eighth Circuit, the Supreme Court pointed out, would have the incongruous result that a union, though obligated to bargain over midterm modifications of its contract, would be deprived of the right to strike in support of proposed modifications. "It would be anomalous for Congress," the Court said, "to recognize such a duty and at the same time deprive the union of the strike threat which, together with 'the occasional strike itself, is the force depended upon to facilitate arriving at satisfactory agreements.' " ¹⁶

The Court rejected the company's alternative contention that, even if not within the ban of section 8 (d) (4), the union's strike here was unlawful because in breach of contract, and that the strikers were not entitled to reinstatement. It was pointed out that there was no express waiver of the right to strike during negotiations over contract modifications, and that a waiver of the right to strike during such a period may not be inferred. The *Sands* case,¹⁷ on which the company relied, was held inapplicable because there the employees refused to continue work "in accordance with their contract" which made no provision for modifications during its term.¹⁸

3. Status of Lockout in "Whipsawing" Situations

In *Truck Drivers Local 449*,¹⁹ the Supreme Court held, in agreement with the Board and contrary to the Second Circuit,²⁰ that it was not an unfair labor practice for the nonstruck members of a multi-employer bargaining association to lay off or "lock out" their employees temporarily as a defense to a strike by the common bargaining agent

¹⁶ The Court quoted from Subcommittee on Labor and Labor Management Relations, Factors in Successful Collective Bargaining, S Rept under S Res 71, 82d Cong, 1st sess 7 (committee print)

¹⁷ *N L R B v Sands Mfg Co*, 306 U. S 332 (1 NLRB 546).

¹⁸ Justices Frankfurter and Harlan concurred in the majority's construction of section 8 (d), but believed that consideration of the breach of contract issue by the Court was either premature or, according to Justice Frankfurter, was possibly foreclosed. Both Justices held that the case should be remanded to the court of appeals for decision of this issue, as well as for determination of the sufficiency of the Board's unfair labor practice findings.

¹⁹ *N L R B v. Truck Drivers Local Union No 449, etc*, 353 U. S 87 (109 NLRB 447) The case is more generally known by the name of the respondent before the Board, Buffalo Linen Supply Company

²⁰ 231 F. 2d 110, Twenty-first Annual Report, p 135.

against one member and the implicit threat of strike to nonstruck members.

The Board had found that the "whipsawing" plan with which the union sought to advance its bargaining position constituted an implicit threat of imminent strikes against other association members, and that the resulting lockout by the threatened employers was defensive and privileged, rather than retaliatory and unlawful. The court of appeals, on the other hand, took the view that the mere threat or anticipation of a strike, absent "unusual economic hardship," was insufficient to justify the lockout. Noting that the court of appeals correctly recognized that a lockout is not unlawful *per se* under the act, the Supreme Court pointed out that the narrow question before it was "whether a temporary lockout may lawfully be used as a defense to a union strike tactic which threatens the destruction of the employer's interest in bargaining on a group basis."²¹

Concluding that preservation of the integrity of a multiemployer bargaining unit may be lawfully achieved by an employer lockout, the Supreme Court held that the Second Circuit's contrary view was erroneously based on the premise that Congress had never sanctioned multiemployer bargaining and intended to leave matters pertaining to such bargaining to future legislative consideration. The Supreme Court noted that multiemployer bargaining antedated the Wagner Act and that limitations on such bargaining were debated in connection with the Taft-Hartley amendments. Rejection of proposals to outlaw such bargaining, according to the Court, indicated that Congress recognized the importance of the existing practice of multiemployer bargaining for promoting labor peace in many industries and that Congress intended "that the Board should continue its established administrative practice of certifying multiemployer units, and . . . to leave to the Board's specialized judgment the inevitable questions concerning multiemployer bargaining bound to arise in the future."²² Thus, the Court continued, it is properly a matter for the Board to balance the legitimate interest of small employers in preserving multiemployer bargaining as a means of bargaining on an equal basis with a large union, and the right of employees to strike in support of their bargaining demands. In the view of the Supreme Court, the Board struck a proper balance by deciding that the temporary lockout to preserve the multiemployer bargaining basis from disintegration was lawful.

²¹ The Court, thus, found it unnecessary to pass upon the question whether, as a general proposition, the employer lockout is the corollary of the employees' statutory right to strike

The Court also pointed out that the question of a union's right to withdraw from a multiemployer bargaining unit was not before it, because the union's strike was not, as held by the court of appeals, an attempt to withdraw from the multiemployer unit

²² The Supreme Court here quoted from the dissenting opinion of Judge Waterman of the Second Circuit.

4. Discrimination in Seniority Against Strikers

In the *Olin Mathieson* case,²³ the Supreme Court affirmed, without opinion, the Fourth Circuit's enforcement of a Board order remedying the employer's poststrike adoption of a seniority policy favoring employees who did not join or abandoned the strike, and penalizing employees who remained out until the strike failed. The Fourth Circuit held that the superseniority policy in favor of "loyal employees" for the manifest purpose of discouraging future strikes clearly violated the act, as found by the Board.²⁴ The Fourth Circuit²⁵ distinguished the *Potlatch* case²⁶ where the Ninth Circuit reversed the Board's conclusion that the employer's "strike seniority" policy there, according replacements for economic strikers preferred layoff status, violated section 8 (a) (3). The Fourth Circuit noted that in *Potlatch* the employer contemplated strike seniority during the strike while he was concerned with attracting replacements, whether old or new employees. This, according to the Fourth Circuit, was a very different situation from the one here where the employer made no promise of permanent tenure to replacements, but adopted its superseniority policy in favor of replacements—all old employees—when the strike was over.

5. Employer's Duty To Furnish Wage Information

The Supreme Court in the *Woolworth* case²⁷ reaffirmed the right of a bargaining representative to get payroll information as to individual employees in the bargaining unit, where the information is needed in connection with pending wage negotiations or for the administration of the bargaining agent's contract. Citing its decision in *Truitt Mfg. Co.*,²⁸ the Court reversed the judgment in which the Ninth Circuit Court of Appeals declined to enforce the Board's order directing the employer to comply with the complaining union's request for such information.

6. Administration of Section 9 (h)

In *International Union of Mine Workers*²⁹ and *Lannom Manufacturing Co.*,³⁰ the Supreme Court held that the only sanction for the

²³ *Olin Mathieson Chemical Corp v N L R B*, 352 U. S 1020 (114 NLRB 486)

²⁴ The Board found that the employer violated section 8 (a) (3) by promulgating and enforcing its discriminatory seniority policy, and section 8 (a) (5) by insisting that the complaining union agree to a discriminatory seniority clause

²⁵ Judge Soper dissenting

²⁶ *N. L. R. B v Potlatch Forests, Inc*, 189 F. 2d 82 (87 NLRB 1193)

²⁷ *N L R B v. F W Woolworth Co*, 352 U. S 938 (109 NLRB 196)

²⁸ *N. L. R. B v. Truitt Mfg Co*, 351 U S 149 (110 NLRB 856), Twenty-first Annual Report, p 123

²⁹ *Boyd Leedom et al v International Union of Mine, Mill and Smelter Workers*, 352 U. S 145 (111 NLRB 422)

³⁰ *Amalgamated Meat Cutters, etc v N L. R. B and Lannom Manufacturing Co*, 352 U S 153 (108 NLRB 847).

filing of a false non-Communist affidavit under section 9 (h) is the criminal penalty provided by section 35 of the Criminal Code, and that the Board may not, after an administrative determination that a false affidavit has been filed, decomply the union involved and withhold from it the benefits of the act until it is in compliance. The Supreme Court therefore affirmed the action of the Court of Appeals for the District of Columbia in *International Union of Mine Workers*, reversing on similar grounds the District Court's denial of an injunction against the Board's decomppliance order.³¹ Conversely, the Supreme Court reversed the action of the Sixth Circuit in the *Lannom* case in dismissing the Board's petition for enforcement of an order after taking cognizance of the conviction of one of the complaining union's officers for having filed a false non-Communist affidavit.³²

Rejecting the contention that the Board must be held to have implied power to protect its processes against such abuses as the filing of false section 9 (h) affidavits, the Supreme Court took the view that the wording and legislative history of section 9 (h) preclude the imposition of an administrative sanction "which in practical effect would run against the members of the union, not their guilty officers."

7. Scope of Federal Jurisdiction Over Labor Relations

The Board participated as *amicus curiae* in three cases where the Supreme Court was concerned with whether the National Labor Relations Act, by conferring on the Board jurisdiction over the labor relations matters specified in the act, precludes State action in these matters even in cases where the Board declines to exercise its statutory jurisdiction for budgetary or other reasons. A majority of the Supreme Court³³ concluded that Federal jurisdiction in such matters is exclusive and that, absent cession of jurisdiction by the Board pursuant to the proviso to section 10 (a),³⁴ State agencies may not enter the field even though the nonexercise of jurisdiction by the National

³¹ 226 F. 2d 780

³² 226 F. 2d 194.

³³ Justices Burton and Clark dissenting. Justice Whitaker did not participate.

³⁴ Section 10 (a) provides that "the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this Act or has received a construction inconsistent herewith "

Board creates a "no man's land."³⁵ According to the Supreme Court, "the proviso to § 10 (a) is the exclusive means whereby States may be enabled to act concerning the matters which Congress has entrusted to the National Labor Relations Board." Moreover, the Court held, the requirement of Board cession of jurisdiction as a prerequisite to State action applies equally to cases the Board would otherwise handle, and to cases over which the Board declines jurisdiction "for budgetary or other reasons." In the Court's view, the National Labor Relations Act's legislative history supports the conclusion that Congress intended to preempt the labor relations field generally, and to make all exercise of State jurisdiction dependent on cession by the National Board pursuant to section 10 (a). Thus, the Court observed, Congress "expressed its judgment in favor of uniformity" in the administration of the act even though this may result in creating a no man's land subject to regulation by no agency or court.

The Court pointed out in *Amalgamated Meat Cutters* that Congress' preoccupation with uniformity is further indicated by the fact that, in providing for cession only where Federal and State laws are consistent,³⁶ Congress did not leave it "to state labor agencies, to state courts or to this Court to decide how consistent with federal policy state law must be," but gave power to make that decision in the first instance to the Board.

³⁵ *Amalgamated Meat Cutters and Butcher Workmen of North America, Local No 427, AFL, et al v. Fair-lawn Meats, Inc*, 353 U S 20, *Guss, d/b/a Photo Sound Products Manufacturing Co. v. Utah Labor Relations Board*, 353 U. S. 1, *San Diego Building Trades Council et al v. Garmon et al*, 353 U S 26

The *Guss* case involved State Board adjudication of unfair labor practice charges against an employer in interstate commerce. Similar charges mutually filed with the National Board, by which the complaining union had been certified as bargaining agent, were dismissed because of the intervening upward revision of the National Board's jurisdictional standards. *Amalgamated Meat Cutters* was concerned with a State court injunction restraining a union from bringing primary and secondary pressure against an employer whose operations were interstate but did not meet the National Board's jurisdictional standards. In *San Diego Trades Council*, an interstate lumber company had secured State court relief in the form of an injunction and damages, in connection with union action which would have been cognizable under the National Labor Relations Act. Previous dismissal of the union's representation petition on the basis of applicable jurisdictional standards indicated that, had the company filed unfair labor practice charges against the union, the National Board would not have entertained them.

³⁶ See footnote 34.

VI

Enforcement Litigation

Board orders in unfair labor practice proceedings were reviewed by the courts of appeals in 87 enforcement cases during fiscal 1957.¹ The more important issues decided by the respective courts are discussed in this chapter.

1. Employer Unfair Labor Practices

Aside from cases which presented purely evidentiary questions, the courts of appeals had occasion to construe the regulatory provisions of section 8 (a) of the act in the context of a number of comparatively novel fact situations.

a. Section 8 (a) (1)—Interference With Section 7 Rights

(1) Discipline of Employees for Work Stoppage To Present Grievance

The Eighth Circuit upheld the Board's decision in one case² that the employer violated section 8 (a) (1) by disciplining employees who concertedly sought to present a grievance during working hours. The court reaffirmed the general proposition that section 7 protects the right of employees "to join other workers in quitting work in protest over the treatment of a coemployee, or supporting him in any other grievance connected with his work or his employer's conduct." The employer had suspended four employees because they participated, along with the others in their department, in staging a brief work stoppage to enforce their demand that a management representative meet with them and explain the summary discharge of a fellow employee. There was no collective-bargaining representative in the plant, although a union organizational drive was in its incipient stages. Noting that the employees' action was motivated by "concern as to [their co-employee's] discharge and . . . fear as to what might happen to them under similar circumstances," the court agreed with the Board that the work stoppage was a form of concerted activity for

¹ This includes summary enforcement in four cases where the respondents had taken no exception to the intermediate report. For statistical breakdown of court actions on these cases, see table 19, appendix A, p. 178.

² *N. L. R. B. v. Solo Cup Co.*, 237 F. 2d 521 (114 NLRB 121)

“mutual aid or protection” within section 7 and, as such, was not valid grounds for the employer’s disciplinary action. In another case,³ although reversing a Board finding that the employer violated the act by suspending employees who staged a work stoppage in somewhat similar circumstances, the Seventh Circuit also recognized that “minority group activity in the presentation of a grievance is protected concerted activity within the meaning of section 7.”

(2) Discharge of Supervisors Viewed as Interference With the Statutory Rights of Nonsupervisory Employees

Affirming the Board’s decision in *Better Monkey Grip*,⁴ the Fifth Circuit agreed that the discharge of a supervisor, for activities specified in section 7, may amount to unlawful infringement of the statutory rights of “employees,” even though supervisors, being excluded from the definition of “employees” in section 2 (3), are not protected by section 7. In this case, a supervisor was discharged for giving testimony adverse to the employer’s interests in a Board proceeding. The court, following its earlier holding in *Talladega Cotton*,⁵ held that the employer’s action violated section 8 (a) (1) because it served as an object lesson tending to restrain the company’s *nonsupervisory* employees in the exercise of *their* statutory rights to engage in union activities and utilize Board procedures. The court rejected an argument that the discharge of a supervisor for testifying before the Board cannot be held to violate section 8 (a) (1) because the act, in section 8 (a) (4), specifically prohibits only discrimination “against an employee” for filing charges or giving testimony in Board proceedings. The court thus agreed with the Board’s view that Congress in enacting the specific prohibition in section 8 (a) (4) did not in any way intend to limit the general prohibition in section 8 (a) (1) against employer interference with the rights of rank-and-file employees through intimidation of any witness in a Board proceeding. As in *Talladega*, the court enforced the provision of the Board’s order requiring the employer to reinstate the discharged supervisor with back pay.

(3) Prohibitions Against Solicitation and Literature Distribution on the Employer’s Property

The Board, with court approval, has adhered to the view that an employer, in the absence of special circumstances or discriminatory motivation, may lawfully promulgate and enforce a rule prohibiting

³ *N. L. R. B. v. Kearney & Trecker Corp.*, 237 F. 2d 416 (113 NLRB 1145)

⁴ *N. L. R. B. v. Better Monkey Grip Co.*, 243 F. 2d 836, enforcing 115 NLRB 1170. The Board’s decision is discussed in the Twenty-first Annual Report, p. 79.

⁵ *N. L. R. B. v. Talladega Cotton Factory*, 213 F. 2d 208 (C. A. 5) (106 NLRB 295), discussed in Nineteenth Annual Report, p. 123.

his employees from distributing union literature on the plant premises at any time, and also deny employees the use of working time for the purpose of orally soliciting their fellow employees to join or support a union.⁶ Applying this doctrine, the Board held in one case⁷ that the employer was privileged to enforce against employees a rule banning the posting and distribution of union campaign material in the plant, notwithstanding the fact that the employer itself, during the same pre-election campaign, distributed a series of noncoercive antiunion leaflets or handbills. The Court of Appeals for the District of Columbia reversed the Board's decision in this respect. As the court viewed the issue, "the justification for a broad no-distribution rule by an employer is the need for keeping the plant clean and orderly or the need to maintain discipline." Reasoning from this premise, the court held that the justification disappears—and the employer's rule, accordingly, becomes invalid as an infringement of the employees' section 7 rights—where management personnel themselves, by distributing literature in the plant, "demonstrate that there is no valid reason (in cleanliness, order, production, discipline, etc.) for prohibiting distribution."

As for the impact of section 8 (c), the free speech provision of the act, which the Board had found to be an additional ground for holding the employer's conduct legal, the court stated that, while that section "undoubtedly wipes out the taint of discrimination which might [otherwise] attach to a speech by an employer favoring one union as against another, or against any and all unions . . . [and also] wipes out the obligation of an employer to afford affirmatively to his employees equal opportunity with himself to distribute or to solicit . . . it does not wipe out the basic rule that in order to enforce a no-distribution rule against employees the employer must have a valid reason."

In another case, the Board⁸ held that the employer violated the act by enforcing a rule banning union solicitation by employees during working hours while foremen used working time for antiunion campaigning characterized by threats of reprisal and therefore not within the "free speech" area protected by section 8 (c) of the act. Relying in part on this misconduct by management representatives, the Board held that enforcement of the ban on employee solicitation was discriminatorily motivated and thus was unlawful. The Fifth Circuit agreed that the employer's antiunion campaign exceeded lawful bounds, but nevertheless rejected the Board's finding that the ban on

⁶ Eighteenth Annual Report, pp 30-32; Nineteenth Annual Report, pp 75-77, Twentieth Annual Report, pp. 70-71 Compare (as to solicitation and distribution of literature by nonemployees) Twenty-first Annual Report, pp. 123-124

⁷ *Nutone Inc*, 112 NLRB 1153, reversed in part *sub nom. United Steelworkers of America v. N. L. R. B.*, 243 F. 2d 593 (C A , D C), certiorari granted, 353 U S 921

⁸ *N. L. R. B. v Avondale Mills*, 242 F 2d 669 (C A 5) (115 NLRB 840).

prounion solicitation by employees was discriminatory. The court stated:

The evidence fails to establish that any solicitation [by employees] in violation of the rule had even been permitted. Nor does the fact alone that the company was opposed to the union, as was its lawful right, furnish substantial evidence of an unlawful and discriminatory purpose in invoking and applying its no-solicitation rule.

Acting on the Board's petitions for certiorari, the Supreme Court has agreed to review both the *Nutone* and *Avondale* decisions.

b. Section 8 (a) (3)—Discrimination Against Employees

Two cases under section 8 (a) (3) presented questions of general importance, one dealing with an employer's right to shut down or curtail operations in anticipation of a strike, and the other with disparate treatment by an employer of his represented and unrepresented employees.

(1) The Lockout as a Permissible Defensive Tactic

In the *American Brake Shoe* case,⁹ the Seventh Circuit rejected the Board's conclusion that the employer had violated section 8 (a) (3) by temporarily curtailing operations and locking out the employees at one of its plants while contract negotiations with the employees' union representatives were in progress.¹⁰ As the court viewed the undisputed facts, the employer was "reasonably justified in fearing" that the union would call a strike to enforce its bargaining demands as soon as the 60-day negotiating period expired, for the union had staged long strikes in the past in support of similar demands, and on this occasion refused to give the employer any written assurance that it would not repeat the same tactics. The court also emphasized the fact that the plant produced specialized railroad equipment which was made to order with specific delivery dates, and observed that the anticipated strike, if it had materialized, would have caused the employer "irreparable loss directly attributable to the work then in process" as well as probable loss of future business to competitors.¹¹ In these circumstances, the court concluded, the employer was faced with the "imminent probability of a permanent loss of business," and therefore had "sufficient justification" for resorting to the lockout as a "defensive" measure, under the rule laid down by the Board itself in

⁹ *American Brake Shoe Co v N L R B*, 244 F 2d 489 (116 NLRB 820)

¹⁰ A synopsis of the Board's decision in this case appears at pp 72-73, *supra*

¹¹ These circumstances, in the court's view, served to distinguish the ordinary case where a so-called "defensive" lockout may not be justifiable because the threatened strike would confront the employer with no more serious hazards than "depreciating inventory or disappointment to customers"

Betts Cadillac and similar cases.¹² At the same time, the court pointed out that the case did not present, and there was no need for determining, the question "whether a shutdown by an employer for the [aggressive, rather than defensive] purpose of exerting bargaining pressure is a corollary of the employees' admittedly protected right to strike."¹³

(2) Disparity as to Wages and Conditions of Employment, Where Attributable to Bona Fide Collective Bargaining

One case in the Ninth Circuit¹⁴ was concerned with a Board majority's finding that an employer unlawfully discriminated against employees in a newly certified departmental bargaining unit in the matter of year-end bonuses and sick leave. In the past, all the employees alike had been given these benefits. In opening negotiations for its first collective-bargaining contract, the representative of the certified unit asked the employer to guarantee that the employees in the organized department would continue to receive these benefits. The employer rejected this request, but assured the union that it would not "discriminate" between the union and nonunion employees in regard to sick pay and bonuses. Thereafter, the parties concluded a contract providing for a union shop and granting a substantial wage increase to the employees in the departmental bargaining unit. The contract was silent on the subject of year-end bonuses and sick pay. Following its execution, however, the employer stopped giving those benefits to the employees in the bargaining unit while continuing its prior practice as to the employees in the unorganized departments. A majority of the Board held that this employer action constituted "discrimination" which necessarily tended to "discourage membership" in the union and thus fell under the ban of section 8 (a) (3), although it did not, in the circumstances, amount to a breach of the union contract or other violation of the good-faith bargaining requirements of section 8 (a) (5).

The Ninth Circuit rejected the Board's finding of unlawful discrimination. As the court viewed the undisputed facts, any inference of a purpose to "discourage" union membership which might otherwise have been drawn from the company's action with respect to bonuses and sick leave was rebutted by the fact that the contract contained a union-security provision and guaranteed the unionized employees various substantial benefits which the other employees did not receive. In these circumstances, and considering, too, the fact

¹² *Betts Cadillac Olds, Inc.*, 96 NLRB 268; *International Shoe Co.*, 93 NLRB 907, and *Duluth Bottling Association*, 48 NLRB 1335.

¹³ The court noted that the Supreme Court in *N. L. R. B. v. Truck Drivers Local Union No 449 (Buffalo Linen Supply Co)*, 353 U. S. 87 (109 NLRB 447), discussed at pp 116-117, *supra*, specifically reserved the identical question.

¹⁴ *Intermountain Equipment Co v N L R B*, 239 F. 2d 480 (114 NLRB 1371)

that the union had left the matter of bonuses and sick pay to the employer's discretion, the court concluded that the record did not warrant a finding of "discrimination having the purpose or effect of discouraging union membership."

c. Section 8 (a) (4)—Discrimination for Filing Charges or Giving Testimony

The validity of the finding in one case¹⁵ that the employer violated section 8 (a) (4) by denying employment to an individual who had testified against his former employer in a Board proceeding depended on the proper construction of the term "employee" in section 8 (a) (4). Sustaining the finding, the court agreed that an applicant for employment is an "employee" for the purpose of section 8 (a) (4), and that he is protected against discrimination for filing charges or testifying under the act, in the same sense that he is protected against discrimination for union activities under section 8 (a) (3).

d. Section 8 (a) (5)—Conditions on Bargaining

Two of the cases arising under section 8 (a) (5) presented the question whether an employer may insist upon clauses pertaining to recognition or providing for employee referenda as a condition to entering into a collective-bargaining contract with the statutory representative of his employees.

In one case,¹⁶ the Board held that the employer violated section 8 (a) (5) by insisting, as a condition precedent to the execution of a union contract, on the inclusion of (1) a clause recognizing as bargaining representative a local union rather than its parent international, which had been duly elected by the employees and certified by the Board; and (2) a "ballot clause" committing the union not to call a strike, not to reject the company's last offer, and not to seek or oppose modification or termination of the contract except after a secret-ballot election in which all employees in the bargaining unit, both union and nonunion, would be permitted to vote.

On review, the Sixth Circuit affirmed the Board's decision as to the first point, observing that the "status" of exclusive bargaining representative "is acquired by statute [referring to section 9 (a) of the act] and is not within the area of collective bargaining." From this it follows, the court reasoned, that, once the terms of a collective agreement are negotiated, "the designated bargaining agent is the party with whom the contract is to be made unless it voluntarily relinquishes such right in favor of another."

¹⁵ *N. L. R. B. v. Lamar Creamery Co.*, 246 F. 2d 8 (C. A. 5) (115 NLRB 1113).

¹⁶ *N. L. R. B. v. Wooster Division of Borg-Warner Corp.*, 236 F. 2d 898 (C. A. 6) (113 NLRB 1288).

As to the second point, however, the court overturned the Board's decision on the ground that the employee ballot clause demanded by the company was a matter within "the statutory subjects of bargaining [as defined in sections 9 (a) and 8 (d)] about which the employer had the right to bargain in good faith," even though the union had declined to treat this proposal as a basis for negotiation and an impasse had resulted. In rejecting the argument that an employee referendum clause of this type undercuts the authority of the statutory bargaining representative by permitting the employer, in effect, to "bargain with the employees themselves," the court said:

Any requirement that the employees approve the action of the Union would be the result of an agreement with the Union to that effect. We do not believe that the ballot proposal denied in any way the unqualified recognition of the certified bargaining agent within the meaning of the Act.

The court also observed that an unqualified no-strike clause is concededly a bargainable matter, and remarked that "the qualified no-strike proposal of the Company should not be classified differently."

A different approach to contract proposals for employee ratification of the bargaining positions taken by the statutory representative was adopted by the Fourth Circuit in *Darlington Veneer*.¹⁷ The employer there had insisted, to the point of deadlock, that the union accept a clause providing that the contract under negotiation should not become effective until after a secret ballot of the employees in the bargaining unit and ratification by a majority of the employees voting. Affirming the Board's finding of a section 8 (a) (5) violation, the court stated:

By insisting on the ratification clause, the company was attempting to bargain, not with respect to wages, hours or conditions of employment, but with respect to the authority of the duly certified representative of the employees to represent them, a matter fixed by statute.

In view of the importance of the issue involved and the apparent conflict between these two decisions, the Board petitioned for certiorari in *Borg-Warner*. The Supreme Court granted the writ.

2. Union Unfair Labor Practices

The more important issues decided by the courts of appeals in cases under section 8 (b) concerned the reach of subsection (2), which bans unions from causing or attempting to cause discrimination in employment, and subsection (4) insofar as it bans union attempts to "induce or encourage" strikes or boycotts for certain specified purposes.

¹⁷ *N L R. B. v Darlington Veneer Co*, 236 F. 2d 85 (113 NLRB 1101).

a. Discrimination Under Section 8 (b) (2)

In sustaining the Board's finding in one case¹⁸ that a union unlawfully caused an expelled member to be discriminated against, the Tenth Circuit reaffirmed the principle that a union agent's mere statements to an employer, although "veiled, oblique," and falling short of "direct threats or promises" or even requests, may amount to a violation of section 8 (b) (2) where such statements have the actual effect and "foreseeable intendment" of causing the employer to discriminate unlawfully against a nonunion employee. In another case, however,¹⁹ the same circuit held that a union was not responsible for an employer's purely "unilateral" action in hiring only union members or "permit men" referred by the union. The Board's finding of a section 8 (b) (2) violation in this case was set aside on the ground that the evidence disclosed, at most, only "passive acquiescence on the part of the union" in the employer's illegally restrictive hiring practices, without any "activity or understanding" from which it could be inferred that the union had actually done or said anything to "cause" such practices.

In the *Operating Engineers'* case,²⁰ the Ninth Circuit upheld the Board's finding that a union had violated section 8 (b) (2) by denying a nonmember employee "equal access to jobs" under the following circumstances: A contract between the union and an areawide association of employers provided that workmen seeking jobs with any of the contracting employers had to obtain "referrals" from the union before they could be hired. The union agreed to maintain an "open and nondiscriminatory" list of qualified applicants awaiting referral, giving relatively high places on the list to men who had previously been employed by any of the contracting employers; and the employers agreed, in turn, not to recruit labor from any other sources so long as the union was able to supply their requirements promptly. There was no allegation or finding that these contractual provisions for an exclusive referral system were unlawful. However, a majority of the court held, in agreement with the Board, that the union violated section 8 (b) (2) when it refused to accord one job applicant—a former member who had been expelled—the comparatively high position on the referral list to which he was entitled by virtue of his qualifications and past service with the contracting employers. One judge dissented on the ground that the requisite 8 (a) (3) violation was not made out in this case, since no *employer* was implicated, even on

¹⁸ *N. L. R. B. v. Oklahoma City General Drivers, etc., Local Union 886, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America*, 235 F. 2d 105 (111 NLRB 22).

¹⁹ *N. L. R. B. v. Brotherhood of Painters, Decorators & Paperhangers, etc. (Spoon Tile Co)*, 242 F. 2d 477 (114 NLRB 1171).

²⁰ *N. L. R. B. v. International Union of Operating Engineers, Local 12*, 237 F. 2d 670 (113 NLRB 655). See, as to other rulings in this case, Twenty-first Annual Report, p. 102, footnote 18.

the basis of constructive notice, in the union's "discrimination" against the employee. The majority of the court pointed out, however, that a union's mere "attempt to cause an employer to discriminate against an employee in violation of section 8 (a) (3) constitutes a violation of section 8 (b) (2) even though the employer did not as a matter of fact discriminate."

(1) **The Legality of Union-Security Provisions Designed To Insure Prompt Payment of Membership Dues**

One case before the Third Circuit²¹ turned on the statutory provision that union-security agreements permitted by the proviso to section 8 (a) (3) may be used only to compel payment of regular union dues and initiation fees, but not payment of other union charges. This case, *Bakery and Confectionery Workers, Local 12*, was a sequel to the *A & P* case, decided by the Board in 1954.²² In *A & P*, the Board held that the same union could not lawfully invoke a union-security agreement to compel its members to pay a \$1 "assessment" which was added to their monthly dues whenever such dues were not paid on or before the last day of the month. Following this decision, the union changed its bylaws so as to increase the dues by \$1. At the same time, the new bylaw provided that all members paying their dues on time would receive a discount of \$1, making the net amounts payable—both timely and late—the same as before. A majority of the Board held in *Bakery and Confectionery Workers* that the \$1 discount, like the prior \$1 assessment, was a method of penalizing the union's members for failure to pay their dues on time and, as such, was not sanctioned as "periodic dues . . . uniformly required" under the union-security provisions of section 8 (a) (3) and 8 (b) (2) of the act.²³ The court reversed this decision, noting that the change in the union's bylaws was concededly not "a subterfuge to evade the holding of the *A & P* case, but rather . . . a good faith endeavor to conform to the technical requirements of sections 8 (a) (3) and 8 (b) (2) as enunciated in that decision . . ."; and observing, too, that the amount of the discount for timely dues payment was not "so unreasonable as to be patently an assessment." The court was of the view that under the circumstances the discount plan could not be reasonably interpreted as imposing a fine or assessment, and that all the union did was to make the amount of uniformly required dues contingent upon the date of payment.

²¹ *N L R B v Bakery and Confectionery Workers' International Union of America, Local 12, AFL-CIO*, 245 F. 2d 211 (C A 3) (115 NLRB 1542).

²² 110 NLRB 918.

²³ 115 NLRB 1542.

b. Strikes and Picketing Outlawed by Section 8 (b) (4)

Section 8 (b) (4) makes it unlawful for a union to "induce or encourage" the "employees of any employer" to strike or refuse to handle or work on particular goods where "an object thereof" is any one of the objects described in clauses (A), (B), (C), or (D). The Board's construction of the terms "employee" and "employer," as used in this section, was contested in one case; and in another, the court had occasion to interpret the phrase "induce or encourage" as applied to picketing which was wholly ineffectual, so far as any employee reaction was concerned. Four other cases presented the question whether a so-called "hot cargo" contract immunizes union conduct which would otherwise be proscribed as a secondary boycott under the (A) or (B) clauses of section 8 (b) (4).

(1) The Meaning of "Employer" and "Employee" in Section 8 (b) (4)

Beginning with its 1949 decision in the *Rice Milling* case,²⁴ the Board has consistently held that section 8 (b) (4) does not reach a union's attempts to induce the "employees" of a railroad to cease handling shipments from a strike-bound employer's plant (even though such a secondary boycott would otherwise be unlawful under either or both the (A) or (B) clauses) because the definitions of "employer" and "employee" in section 2 of the act²⁵ specifically exclude "any person subject to the Railway Labor Act," as well as "any individual employed by an employer subject to the Railway Labor Act." In the *Rice Milling* case itself, the Fifth Circuit rejected this reading of the terms "employer" and "employee" in their section 8 (b) (4) (A) and (B) context;²⁶ and the same court reached the same result in *W. T. Smith*,²⁷ decided during fiscal 1957. The court's reasoning is summed up in the following passage of its opinion in the *Smith* case:

We note that in *Phelps Dodge Corp. v. N. L. R. B.*, 313 U. S. 177, at 191, the Supreme Court preferred to pursue "the central clue to the Board's powers—effectuation of the policies of the Act" instead of applying rigidly the restrictive definition of employees to section 10 (c) of the Wagner Act. . . . In the *Rice Milling* case we noted that the purpose of Congress in enacting section 8 (b) (4) (A) of the Act was to protect commerce from injury and interruption due to obstructions like the one alleged here, and that though Congress was careful to keep out of the purview of the Act the labor relations problems subject to the Railway Labor

²⁴ *International Rice Milling Co., et al.*, 84 NLRB 360.

²⁵ Subsections (2) and (3), respectively.

²⁶ *International Rice Milling Co., Inc. v. N. L. R. B.*, 183 F. 2d 21 (1950), reversed on other grounds, 341 U. S. 665 (84 NLRB 360).

²⁷ *W. T. Smith Lumber Co. v. N. L. R. B.*, 246 F. 2d 129, reversing 116 NLRB 1756. The Board's decision is discussed at pp. 97-99, *supra*.

Act, the above purpose of Congress would be frustrated if "the industry most directly and extensively concerned with commerce," the railroads and their employees, could not be isolated from secondary boycotts resulting from labor-management conflicts "in which they have no interest and want no part," insofar as no dispute between the railroad and its employees is involved.

We feel strengthened in this view, by the approach of the Supreme Court in *Teamsters Union v. New York, New Haven & Hartford R. R.*, 350 U. S. 155, which dealt with a related though not directly relevant problem,²⁸

(2) The Meaning of "Induce or Encourage" in Section 8 (b) (4)

In the *Arnold Bakers* case,²⁹ the Board had found that the respondent union violated section 8 (b) (4) (C) by picketing a wholesale baking plant for the purpose of obtaining recognition as bargaining representative of the bakery's employees even though another union was newly certified as such representative. The validity of the Board's finding depended not only on whether an "object" of the picketing was, in fact, immediate recognition,³⁰ but also whether the picketing, in the first place, constituted inducement or encouragement of a work stoppage such as section 8 (b) (4) prohibits as a means of attaining any of the objectives enumerated in the several subsections of 8 (b) (4). No work stoppage occurred and the picket signs merely urged the baking employees to join the union in order to improve their wages and working conditions. The Board held that the picketing was unlawful. The finding that the picketing nevertheless had a strike-inducing tendency was predicated on the Board's view that, normally, "the traditional union picket line before employee entrances has the effect of inducing employees to refuse to work for the picketed employer." The Second Circuit reversed the Board on the ground that something more than "the fact of picketing alone" is required to support a finding of strike inducement for the purposes of section 8 (b) (4).³¹ According to the court, the question whether picketing is "likely" to induce a work stoppage depends on the particular context in which the picketing takes place, "and there must be some independent evidence supporting the inference of inducement." The court did not believe that the circumstances attending the picketing here indicated that a work stoppage was the "natural and probable

²⁸ Compare the Board's views as to the impact of the Supreme Court's decision in the *Teamsters* case, *supra*, pp. 98-100.

²⁹ *N. L. R. B. v. Local 50, Bakery & Confectionery Workers, etc.*, 245 F. 2d 542 (C. A. 2), denying enforcement of Board order in 115 NLRB 1333.

³⁰ The union had contended that the initial object of its picketing to obtain recognition was abandoned upon the certification of another union, and that the postcertification picketing was "organizational."

³¹ The court also rejected, for want of evidentiary support, the Board's finding that an "object" of the picketing in this case was to force the employer to recognize the union forthwith.

consequence" of the picketing. The court noted that the picket signs did not urge any employees to strike and further that no employee failed to cross the picket line or ceased work. The court stated, however, that "success or failure" is merely "some evidence of the tendency of a picket line to cause a work stoppage" and is not alone "determinative of its legality."

(3) "Hot Cargo" Agreements as a Defense in Secondary Boycott Cases

In four cases decided early in 1957, the courts were presented with the question whether the secondary boycott provisions of the act³² reach union appeals to employees not to handle a product where there is a so-called "hot cargo" agreement in effect between the union and the employer. The Ninth Circuit, in *Sand Door*,³³ adopted the Board's majority view³⁴ that such an agreement, even assuming that it is not unlawful, still affords the union no defense to the 8 (b) (4) (A) charge. The Sixth Circuit expressed the same opinion in *General Millwork*.³⁵ The District of Columbia Court of Appeals, however, took the opposite position in *American Iron*.³⁶ And the Second Circuit, in upsetting the Board's decision, in *Crowley's Milk* reaffirmed its previous view³⁷ that

there is no violation of Section 8 (b) (4) unless the union encourages the employees to *coerce* the secondary employer. Where the employees are encouraged only to exercise a valid contractual right [i. e., not to handle "hot cargo"] to which the employer has agreed there is no coercion.³⁸

The foregoing conflict between circuits will be presented to the Supreme Court for resolution during the 1957 term, as petitions for certiorari in *Sand Door* and *American Iron* were granted October 14, 1957. A subsidiary question which the Court has agreed to review in the *American Iron* case is whether a "hot cargo" agreement may be invoked as a defense, in proceedings under section 8 (b) (4) (A), by a union which is neither a party to the agreement nor a third-party beneficiary thereof.

3. Remedial Orders

Enforcement of the Board's remedial orders for the most part turned on the validity of their evidentiary basis, but three cases in-

³² Section 8 (b) (4) (A) and (B).

³³ *N. L. R. B. v. Local 1976, United Brotherhood of Carpenters, etc (Sand Door & Plywood Co.)*, 241 F. 2d 147 (113 NLRB 1210).

³⁴ See Twenty-first Annual Report, p. 110.

³⁵ *N. L. R. B. v. Local 11, United Brotherhood of Carpenters, etc. (General Millwork Corp.)*, 242 F. 2d 934 (113 NLRB 1084).

³⁶ *General Drivers, Chauffeurs, etc., Local 886 (American Iron & Machine Works) v. N. L. R. B.*, 247 F. 2d 71 (115 NLRB 800).

³⁷ See *Rabouin d/b/a Conway's Express v. N. L. R. B.*, 195 F. 2d 906 (C. A. 2) (87 NLRB 972).

³⁸ *Milk Drivers and Dairy Employees Local Union No. 338, etc. (Crowley's Milk Co.) v. N. L. R. B.*, 245 F. 2d 817 (116 NLRB 1408).

volved somewhat novel issues as to back-pay awards and allied remedies for violations of either or both sections 8 (a) (3) and 8 (b) (2). In addition, one case,³⁹ now pending before the Supreme Court, presented questions of general importance as to the scope of the Board's discretion in devising appropriate remedies where an employer has unlawfully supported and assisted a labor organization which, due to its refusal to comply with the filing requirements of section 9 (f), (g), and (h), is currently ineligible for certification.

a. Refund of Permit Fees Charged by a Union in Administering an Illegal Closed-Shop Agreement

In *Local 420, United Association*,⁴⁰ a union caused an employer with whom it had an illegal closed-shop agreement to discriminate against certain nonunion employees by requiring them to have weekly "permits," purchased from the union for \$10 per week, as a condition of obtaining and keeping their jobs. The Third Circuit enforced a Board order requiring the union to refund these permit fees as well as to make the employees whole for the wages they lost when the union, by refusing to renew the weekly permits, caused them to be discharged. The court pointed out that the requirement to refund the permit fees was comparable to judicially enforced Board orders requiring restitution of "excessive amounts coerced from employees in order to remain in good standing with the union; ⁴¹ dues and initiation fees paid by employees coerced into joining the union; ⁴² and pay lost because of a discharge caused by the union." ⁴³ Like those other remedial requirements, the court held, the refund order in this case was "within the Board's authority."

b. Liability of an Employer Association for Back Pay

In the *Shuck* case,⁴⁴ decided by the Ninth Circuit, an employer association negotiated and signed, in behalf of its members, a union contract containing an unlawful union-security provision. In remedying this discrimination, the Board imposed liability for back pay upon the association itself, as well as its member company,⁴⁵ although the association had not undertaken to police its members' performance

³⁹ *District 60, United Mine Workers v. N. L. R. B.; N. L. R. B. v. Bowman Transportation, Inc.*, 237 F. 2d 585 (C. A., D. C.), Board's petition for certiorari granted 353 U. S. 999 (112 NLRB 387).

⁴⁰ *N. L. R. B. v. Local 420, United Association of Journeymen and Apprentices of the Plumbing and Pipe-fitting Industry of the U. S. and Canada, AFL*, 239 F. 2d 327 (C. A. 3) (111 NLRB 1126).

⁴¹ Citing *N. L. R. B. v. Eclipse Lumber Company*, 199 F. 2d 684 (C. A. 9) (95 NLRB 464).

⁴² Citing *N. L. R. B. v. Local 404, International Brotherhood of Teamsters, et al.*, 205 F. 2d 99 (C. A. 1) (100 NLRB 801).

⁴³ Citing *N. L. R. B. v. Local 57, International Union of Operating Engineers*, 201 F. 2d 771 (C. A. 1) (97 NLRB 386).

⁴⁴ *N. L. R. B. v. E. F. Shuck Construction Co., Inc., et al.*, 243 F. 2d 519 (114 NLRB 727).

⁴⁵ Joint and several liability for back pay was also imposed upon the union, another corespondent in the case.

of the contract or actually participated in their employment practices in any way. The court enforced this provision of the Board's order, stating that "an employer's association which commits an unfair labor practice may be held financially responsible for the injury caused thereby." The association in this case had "in a very real sense . . . caused the discharge" of the employee, the court declared, as it had signed the illegal contract and permitted it to continue "as an operative agreement."

c. Computation of Back Pay as Affected by Discharged Employees' Failure To "Lower Their Sights" in Searching for Interim Employment

In the *Southern Silk* case,⁴⁶ in supplemental proceedings to fix the amount of back pay due certain discriminatorily discharged employees, a question arose as to whether two of the employees had "willfully incurred" losses of earnings which, under the Supreme Court's decision in *Phelps Dodge*,⁴⁷ were deductible from the back pay otherwise due them. The two employees, both married women and employed as semiskilled knitters in a textile mill at the time of their discharge, had been unable to find "substantially equivalent" factory jobs, despite diligent and persistent efforts. However, they had not canvassed the possibilities of obtaining other types of work which would have been "suitable" from the standpoint of their sex, experience, and physical capacity, albeit lower paid—e. g., unskilled positions in retail stores. In these circumstances, the trial examiner recommended that their back pay awards be reduced by an amount approximating the wages they might have earned if they had "lowered their sights" after a reasonable time, and made a successful search for such nonequivalent employment. The Board disallowed this recommended deduction, holding that the obligation to mitigate damages which rests on discriminatorily discharged employees does not require them to "lower their sights" in the manner suggested by the trial examiner. The Sixth Circuit, however, rejected the Board's view and adopted the trial examiner's. In remanding the case to the Board for further appropriate findings, the court referred to the Supreme Court's suggestion in the *Phelps Dodge* case⁴⁸ that in assessing back pay the Board take account of "a clearly unjustifiable refusal to take desirable new employment." The Sixth Circuit took the view that under the circumstances here, available, suitable employment at a somewhat lower rate of pay constituted "desirable

⁴⁶ *N. L. R. B. v. Southern Silk Mills, Inc.*, 242 F. 2d 697 (C. A. 6), certiorari denied 355 U. S. 821 (101 NLRB 1).

⁴⁷ *Phelps-Dodge Corp. v. N. L. R. B.*, 313 U. S. 177, 198-200 (1941) (19 NLRB 547, 35 NLRB 418).

⁴⁸ *Phelps-Dodge Corp. v. N. L. R. B.*, *supra*, at pp. 199-200.

new employment," and that the discriminatees' failure to seek or take such employment constituted, under existing conditions, "to some extent at least loss of earnings willfully incurred."

4. Determination of Jurisdictional Disputes

Section 10 (k) of the act provides that where a union is charged with having engaged in a jurisdictional strike within the meaning of section 8 (b) (4) (D), the Board shall "hear and determine the dispute out of which such unfair labor practice shall have arisen."⁴⁹

The nature of the Board's duty "to hear and determine" jurisdictional disputes in section 10 (k) proceedings received judicial consideration for the first time in the *Hake* case⁵⁰ which came before the Third Circuit during fiscal 1957. The question before the court was whether the Board, before proceeding with the adjudication of the section 8 (b) (4) (D) charges in the case, had "determined" the underlying jurisdictional dispute in the manner required by section 10 (k). The Board in the 10 (k) proceeding had found that the respondent union's work assignment claim was not supported by a controlling certification of representatives or valid contract, and that the union therefore was not "lawfully entitled" to "force or require" the employer to accede to its demands. This determination conformed to the Board's practice—adopted in 1949⁵¹ and adhered to since—not to make an affirmative award of jurisdiction in a section 10 (k) proceeding assigning particular work to a particular union. To make such an affirmative award and to allocate disputed work, in the Board's view, would be tantamount to establishing a closed shop in violation of section 8 (a) (3), and would deprive an employer of the right to assign work to his own employees, and also would interfere with the employer's freedom to hire subject only to the limitations of section 8 (a) (3).

The Third Circuit, denying enforcement in the *Hake* case, held that the Board's "determination of dispute" was not the type of determination contemplated by section 10 (k). In the court's view, such a "limited" determination which determines only "that the coercive activities of the [union named in the 8 (b) (4) (D) charge] were unlawful" does not satisfy section 10 (k) which "is concerned with an arbitration type settlement of the underlying jurisdictional dispute, so that a subsequent section 10 (c) unfair labor practice adjudication

⁴⁹ However, no determination is to be made if the parties to the dispute, within the time specified, submit evidence of adjustment or of their agreement on methods for voluntary adjustment.

The procedures provided in section 10 (k) are more fully discussed at pp. 108-109, *supra*.

⁵⁰ *N. L. R. B. v. Local 420, United Association of Journeymen and Apprentices of the Plumbing and Pipe-fitting Industry of the U. S. and Canada, AFL*, 239 F. 2d 327 (C. A. 3) (11 NLRB 1126).

⁵¹ *Moore Drydock Co.*, 81 NLRB 1108, *Juneau Spruce Corp.*, 82 NLRB 650; and *Los Angeles Building & Construction Trades Council*, 83 NLRB 477.

becomes necessary only if a union shall fail to respect the jurisdictional boundary which the Board has delineated."

Finally, referring to the argument that a section 10 (k) award of jurisdiction would result in a Board-sanctioned closed shop incompatible with section 8 (a) (3), the court remarked, ". . . we do not believe that the plain requirement of section 10 (k) should be disregarded even though another provision of the statute may make it seem anomalous."⁵²

5. Representation Questions

In a line of cases arising under section 8 (a) (5), enforcement of bargaining orders was resisted on the ground that the Board had exceeded its powers in issuing a section 9 (c) certification to the complaining union in an antecedent representation case, or had erred in holding that a validly issued certification remained effective following a change in the name, affiliation, or other attributes of either the employer or the union involved. In disposing of these issues, the courts generally reaffirmed the wide scope of the Board's discretion in administering the provisions of section 9 of the act.

a. Election Procedures

Enforcing a bargaining order issued by the Board in *National Truck Rental*,⁵³ the court held that two unions, acting jointly, may file a representation petition under section 9 (c) (1) (B) of the act and thereafter appear on the ballot in any election directed by the Board, and, if elected, obtain a certification as the employees' joint collective-bargaining agent. The fact that the term "labor organization" is used in the singular in section 9 (c) (1) (A) does not preclude this result, the court said, for "it is fair to say that when two unions act as a joint bargaining representative they constitute a 'labor organization' acting in the employees' behalf and we see no error in submitting to vote the question of a joint collective bargaining agent."

In the same case, the court declined to upset the Board's action in setting aside the results of one representation election and conducting another because four "working foremen," later found to be supervisors, had been erroneously included in the bargaining unit under the terms of the initial direction of election. As it happened, only 1 of the 4 "working foremen" had been permitted to cast an unchallenged ballot,⁵⁴ and this 1 vote would not have affected the outcome

⁵² The Board did not petition for Supreme Court review in the *Hake* case, but it has since stated that it does not agree with the Third Circuit's reading of section 10 (k) (*Local 18, International Longshoremen's and Warehousemen's Union*, 118 NLRB 109) and the question accordingly remains to be tested in other circuits.

⁵³ *N. L. R. B. v. National Truck Rental Co., Inc.*, 239 F. 2d 422 (C. A., D. C.), certiorari denied 352 U. S. 1016 (114 NLRB 106).

⁵⁴ The other three voted under challenge, and their sealed ballots were never tallied.

of the first election from an arithmetical standpoint.⁵⁵ The Board held, nevertheless, that possible "confusion" of the rank-and-file employees during the period of the preelection campaign might have resulted from the fact that the supervisors were erroneously treated as prospective voters. The court ruled that it was "within the administrative competence of the Board" to "call . . . a new election" in these circumstances, remarking that "the Board is far better able" than a court to "appraise the atmosphere surrounding an election. . . ."

In another case,⁵⁶ the Third Circuit affirmed the validity of a certification of representatives issued by a regional director in proceedings under the Board's standard form of consent-election agreement. The employer had objected to the regional director's action in ruling on a crucial number of challenged ballots without granting its request for a formal hearing on the disputed fact questions raised by the challenges. The court overruled this objection, noting that the employer in signing the consent-election agreement had agreed that "the question of whether a hearing should be held in connection [with challenges or objections to the election] shall be determined by the Regional Director, whose decision shall be final and binding." Under this form of agreement, the court stated, a regional director's denial of a hearing on disputed issues "must be sustained unless it is arbitrary or capricious, or not in conformity with the policies of the Board or the requirements of the Act." The court pointed out that the *Sidran* case⁵⁷ was not controlling since that case involved a consent-election agreement which did not state expressly that the regional director's decision on whether a hearing should be held was to be final.

b. The Contract-Bar Rule

The employer in a case decided by the Fourth Circuit⁵⁸ attempted to justify its refusal to bargain with a certified union on the ground that the Board had disregarded its own "contract-bar" rule in processing the union's petition for an election at a time when another union held a contract with the employer. In rejecting this contention, the court pointed out that the Board had, in fact, done no more than apply one of the uniform exceptions to its "contract-bar" rule. "Furthermore," the court added, quoting a 1950 opinion of the Eighth Circuit,⁵⁹ "the [contract-bar] rule is a mere procedural one 'which the Board in its discretion may apply or waive as the facts of

⁵⁵ The tally was 15 to 13 against the jointly designated unions.

⁵⁶ *N. L. R. B. v. J. W. Rex Co.*, 243 F. 2d 356 (115 NLRB 775).

⁵⁷ *N. L. R. B. v. Sidran*, 181 F. 2d 671 (C. A. 5) (81 NLRB 270).

⁵⁸ *N. L. R. B. v. Libbey-Owens-Ford Glass Co. et al.*, 241 F. 2d 831 (115 NLRB 1452).

⁵⁹ *N. L. R. B. v. Grace Co.*, 184 F. 2d 126, 129 (84 NLRB 435).

a given case may demand in the interest of stability and fairness in collective bargaining agreements.’”

c. Unit Determinations

In three cases, employers challenged the validity of the Board's determination of the unit with which they had been ordered to bargain. In each case, the court held that it was within the Board's broad discretion under section 9 to find that the challenged unit was appropriate for bargaining.

(1) The "Extent of Organization" Factor—Section 9 (c) (5)

In *Morganton Full Fashioned Hosiery*,⁶⁰ the employer contended that the Board (1) acted arbitrarily by establishing a unit coextensive with the mill's knitting department and comprising both skilled and unskilled employees; and (2) exceeded its statutory authority by determining the scope of the union on the basis of the limited "extent of organization" of the mill, in contravention of section 9 (c) (5).⁶¹ Rejecting both contentions, the Fourth Circuit held that the unit determination here was neither arbitrary nor based solely on extent of organization as the one in the *Glen Raven* case⁶² on which the employer relied. There, the same court had held that the Board improperly approved a similar unit limited to hosiery knitters for which the union petitioned only after it had failed to organize all production workers in the mill. Here, the court pointed out, the representative certified for the knitting department unit had not previously attempted to organize the entire plant, and there was no evidence that "the union and the Board chose the smaller bargaining unit only because organization of all the production workers had failed."

In *Westinghouse Electric*,⁶³ the Third Circuit also rejected a contention that the Board improperly relied on the extent of organization factor in establishing a unit of some, though not all, of the company's professional employees (see below).

That the "extent of organization" was not the controlling factor in the Board's determination was indicated, according to the court, by the community or identity of interest of the professional employees in the unit which the Board manifestly considered, as well as by the fact that the union would have agreed to the inclusion of any other professional employees the Board might direct. The court pointed

⁶⁰ *N. L. R. B. v. Morganton Full Fashioned Hosiery Co., et al.*, 241 F. 2d 913 (C. A. 4) (115 NLRB 1267).

⁶¹ This subsection provides that "In determining whether a unit is appropriate . . . the extent to which the employees have organized shall not be controlling."

⁶² *N. L. R. B. v. Glen Raven Knitting Mills, Inc.*, 235 F. 2d 413 (C. A. 4) (115 NLRB 422).

⁶³ *Westinghouse Electric Corp. v. N. L. R. B.*, 236 F. 2d 939 (115 NLRB 181).

out that the "extent of organization may be a contributing factor in the determination of the unit so long as it is not the controlling factor."

(2) Professional Units—Section 9 (b) (1)

In the *Westinghouse* case⁶⁴ the Board, acting on the representation petition of a newly formed union, approved a unit consisting of a group of engineers who qualified as "professional employees" within the meaning of section 2 (12) of the act. Certain categories of professional engineers employed in the plant were excluded because they were already represented by another union, and covered by a collective-bargaining contract, as part of a long-established unit of salaried employees.⁶⁵ One other professional employee, a registered nurse, was also excluded, on the ground that her interests were dissimilar to those of the engineers. The employer contended that these exclusions invalidated the unit under the provision relating to professional employees, section 9 (b) (1).⁶⁶ The court overruled the contention, observing that the limitation in section 9 (b) (1) "is merely a limitation on the Board's power to create a mixed unit" and does not require "all the professionals in a plant to be squeezed into one bargaining unit," regardless of differences in their fields of specialization. Referring to the exclusion of certain engineers in the plant, the court remarked that their "long association . . . with the salaried unit, their existing contract . . . and the fact that they may at a proper time in the future determine whether they will be included in the [engineers'] unit, leads us to accept their present exclusion as justified."⁶⁷

(3) Severance of Craft Units

The Board's *American Potash* policy as to the "severability" of craft units⁶⁸ was attacked by the employer and an intervening union in a Fourth Circuit case where the unit approved by the Board, in certifying a local of the IBEW, consisted of a small group of skilled electricians.⁶⁹ In finding that these employees constituted an appropriate craft unit, notwithstanding their historical inclusion in a plantwide "industrial" unit represented by the intervening union, the Board had taken occasion to reaffirm its *American Potash* doctrine

⁶⁴ *Supra*.

⁶⁵ In addition to these professionals, the salaried unit included clerical and (nonprofessional) technical employees.

⁶⁶ This section states that "the Board shall not (1) decide that any unit is appropriate for such purposes if such unit includes both professional employees and employees who are not professional employees unless a majority of such professional employees vote for inclusion in such unit."

⁶⁷ For other litigation in connection with the Board's administration of section 9 (b) (1), see *infra*, pp. 156-158.

⁶⁸ See *American Potash and Chemical Corp*, 107 NLRB 1418, discussed in Nineteenth Annual Report, pp. 38-41.

⁶⁹ *N. L. R. B. v. Libbey-Owens-Ford Glass Co. et al.*, 241 F. 2d 831 (115 NLRB 1452).

that severance from an existing unit is proper if the group involved belongs to a recognized craft and the union which seeks to represent them has historically and traditionally represented employees in the craft. But the Board also had pointed out that "well established precedent, both before and after *American Potash*" supports "severance on a craft basis [of] a unit of electricians . . ." of the type involved in this case. Quoting this passage of the Board's opinion, the court held that the unit was valid, and went on to say:

As application of the rule of the *American Potash* case was not necessary to the decision of the case here, . . . it is not appropriate for this court to enter into a discussion of the rule. Furthermore, the rule is essentially one of policy for the guidance of Board action; and, where its application does not involve an abuse of discretion as applied to the facts of a particular case, there is no basis upon which the courts may interfere with what the Board has done.

d. Survival of Certification Where Either the Union or the Employer Is Reorganized

A group of four cases presented the question whether a certification of representatives continues to be effective following a change in the name, proprietorship, or affiliations of either the employer or the union designated in the certification.

In *Carpinteria Lemon Association*,⁷⁰ the union originally named in the certification was a so-called "local industrial union" holding its charter directly from the CIO. After it was certified, this union surrendered its original charter and became a local constituent of one of the international unions affiliated with the CIO, receiving a new charter and changing its name in the process. This reorganization was duly approved by a vote of the membership, and the local officers as well as the roster of members remained the same after the change of charters as before, although the new parent organization sent in a new "financial administrator" to replace the one previously assigned by the CIO itself. In these circumstances, the Board held that the "new" union was entitled to have its name substituted for that of the "old" union in the certification, and, accordingly, to stand in the shoes of its predecessor for the purposes of collective bargaining with the employer. The Ninth Circuit agreed, stating that "the right of a successor union to assume the status of certified bargaining agent held by its predecessor depends on a factual issue—[whether] the new union [is] a continuation of the old union under a new name or affiliation or

⁷⁰ *Carpinteria Lemon Association v. N. L. R. B.*, et al., 240 F. 2d 554 (C. A. 9), certiorari denied 354 U. S. 909 (112 NLRB 121).

. . . a substantially different organization.” There were no grounds for upsetting the Board’s resolution of this “factual issue” in this case, the court observed, since the record provided adequate support for the Board’s conclusion that nothing more had happened than “merely a change of name and affiliation.”

In a similar case,⁷¹ the Sixth Circuit likewise affirmed the Board’s holding that a merger between 2 international unions affiliated with the CIO did not, in the particular circumstances, extinguish a certification issued to 1 of the original unions prior to the merger. Distinguishing its prior holding in the *Dickey* case,⁷² the court pointed out that here the certified union was “comparable” in size to the international union with which it merged, and it also retained “an equal voice in deliberations and in the division of officers” following the merger. The court noted, too, that at the local level there were “no changes in the membership or officers . . . or in [the] day-to-day relationships with the company.”

In two comparable cases,⁷³ the courts agreed with the Board in holding that a union’s bargaining rights, based on a certification, were not extinguished by a change in the proprietorship or corporate structure of the employer where the same business operations, with the same or substantially the same unit of employees, were taken over by the successor employer.⁷⁴

⁷¹ *Union Carbide and Carbon Corp. v. N. L. R. B.*, 244 F. 2d 672 (110 NLRB 2184 and 116 NLRB 488).

⁷² *Dickey v. N. L. R. B.*, 217 F. 2d 652, modifying order in 108 NLRB 561

⁷³ *N L R B. v. J. W. Rex Co.*, 243 F. 2d 356 (C. A. 3) (115 NLRB 775); *N. L. R. B. v. Thomas Parran, Jr., et al. Silver Spring Transit Co. and/or Suburban Transit*, 237 F. 2d 373 (C. A. 4) (114 NLRB 808)

⁷⁴ In each of these cases the “new” employer also was, in effect, the *alter ego* of the “old” employer and, as such, required to bargain with the union as a matter of remedying the “old” employer’s unlawful refusal to bargain. See *N L R. B. v. Birdsall-Stockdale Motor Co.*, 208 F. 2d 234, 236-238 (C. A. 10) (94 NLRB 580, 101 NLRB 305) and cases there cited, also *Symms Grocer Co. et al.*, 109 NLRB 346.

VII

Injunction Litigation

Section 10 (j) and (l) of the act provides for injunctive relief in the United States district courts on petition of the Board, or on its behalf, to halt conduct alleged to constitute an unfair labor practice until final adjudication of the case by the Board.

Under subsection (j), the Board has discretion to petition for an injunction against any type of conduct, of 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. During fiscal 1957, the Board sought 2 injunctions under subsection (j), 1 against an employer,¹ and 1 against a union.² Both were granted.

Subsection (l) of section 10 makes it mandatory upon the Board to seek an injunction against a labor organization charged with violating section 8 (b) (4) (A), (B), or (C) of the act,³ 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 union 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, subsection (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 1957, the Board filed a record number of 98 mandatory petitions for injunctions under section 10 (l), a great majority of which were based on charges alleging violations of the secondary boycott prohibitions of section 8 (b) (4) (A) or (B) or both.

¹ *Douls v. American Coal Shipping, Inc*, 39 LRRM 2767 (D. C., S. N. Y.).

² *Douls v. International Longshoremen's Association, Ind (New York Shipping Association)*, 147 F. Supp. 103 (D. C., S. N. Y.), affirmed 241 F. 2d 278 (C. A. 2)

³ These subsections 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.

A. Injunctions Under Section 10 (j)

The *American Coal Shipping* case⁴ arose when the company, a shipping corporation newly organized to transport coal, signed a contract with National Maritime Union, granting it exclusive recognition for the unlicensed ship personnel to be employed. This contract provided for the staffing of the company's ships through the union's hiring hall and granted hiring preference to seamen employed in 1953 by maritime employers under their contract with the union. Before execution of the contract, the company purchased 1 ship from another shipping company; thereafter it arranged for lease of 30 ships from the Maritime Administration's "mothball fleet," with the possibility that it would eventually lease a total of 80 Maritime Administration ships. Before receiving delivery of any of the ships, the company referred all applicants for employment to the union's hiring hall. Charges were filed by the Seafarers' International Union, and complaint was issued alleging that the company had violated section 8 (a) (1), (2), and (3) of the act by illegally assisting NMU and granting preferential treatment to its members to the exclusion of other job applicants. Since the company contemplated the hiring of 900 to 2,400 employees, depending on the number of ships it ultimately leased from the Maritime Administration, it was the General Counsel's view that the staffing procedures under the contract would have the effect of predetermining the bargaining agent of the yet-to-be-hired employees and solidifying the contracting union in its unlawfully gained position. Accordingly, because of the irreparable injury that would result should the company be permitted to continue its allegedly illegal conduct during protracted unfair labor practice proceedings, an injunction under section 10 (j) was sought and the court granted it.

In fashioning its remedy, however, the court was faced with the problem that the company by this time had put 4 ships in operation—3 Maritime Administration ships, and the 1 purchased ship—all manned by NMU members. Rejecting a contention that the crews of these 4 vessels should be granted hiring preference for subsequent voyages, the court stated that such preference would perpetuate the effect of the illegal agreement, and ordered the 3 Maritime Administration ships demanned and nondiscriminatorily restaffed at the conclusion of their current voyages. But the court permitted the company to retain the crew of the purchased vessel since they had been members of the union under the previous owners.

The *New York Shipping Association* case⁵ arose out of a charge filed by the shipping association alleging that a longshoremen's union

⁴ *Doufs v. American Coal Shipping, Inc.*, 39 LRRM 2767 (D. C., S. N. Y.).

⁵ *Doufs v. International Longshoremen's Association, Ind. (New York Shipping Association)*, 147 F. Supp. 103 (D. C., S. N. Y.), affirmed 241 F. 2d 278 (C. A. 2).

violated section 8 (b) (3) of the act by refusing to bargain with the association representing waterfront employers, in a unit certified by the Board. Here, although the Board had certified the Port of Greater New York and vicinity as the appropriate unit, the union insisted on bargaining for all ports from Portland, Maine, to Brownsville, Texas, and struck to enforce this demand until enjoined first by a temporary restraining order requested by the Board under section 10 (1) and later under the national emergency provisions of the act.

The district court, affirmed by the Court of Appeals for the Second Circuit, found that there were reasonable grounds for believing that the union was violating section 8 (b) (3) of the act and enjoined the union from continuing to demand that the association bargain with it for employees outside the unit certified by the Board. In these proceedings the union contended that the courts were powerless to act because (1) the charge failed to allege an unfair labor practice, and (2) the complaint issued by the Board was defective in that it was based on conduct occurring after the filing of the charge. Both the district court and the court of appeals rejected these contentions, holding that (1) the unilateral insistence on enlarging the scope of a certified unit constitutes a refusal to bargain within the meaning of section 8 (b) (3) and 8 (a) (5) of the act, and (2) a complaint may contain matters not specified in the charge as long as it deals with the same subject matter and sequence of events as the charge.

B. Injunctions Under Section 10 (1)

During fiscal 1957, the courts acted on 51 petitions under section 10 (1) of the act, granting injunctions in 47 cases, and denying 4 petitions. Thirty-seven cases involved secondary activity proscribed by section 8 (b) (4) (A) and/or (B); 2 involved section 8 (b) (4) (C) charges, and 3 more involved subsection (A) and/or (B) charges in addition to subsection (C) charges; 4 involved jurisdictional disputes under section 8 (b) (4) (D), and 5 more involved secondary action under subsections (A) and/or (B) in addition to primary jurisdictional strikes.

Of the petitions denied, 3 alleged violations of section 8 (b) (4) (A) and (B), and 1 a violation of section 8 (b) (4) (C).

1. Secondary Boycott Situations

Four cases involving secondary boycott charges arose out of the *American Coal Shipping* dispute discussed above.⁶ The Seafarers' International Union, which had filed charges based on American Coal's hiring arrangement with National Maritime Union, and two other

⁶ *Supra*, p. 143

labor organizations also disputing the company's hiring practices, picketed ships used or to be used by the company at secondary locations.

One injunction⁷ was directed against picketing which had resulted in shutting down a shipyard where a Maritime Administration ship was being refitted for delivery to American Coal. The ship was the property of the Maritime Administration at the time of the picketing. The respondent unions' picketing of the shipyard was held to be proscribed secondary activity in that it was for the purpose of forcing the shipyard to cease doing business with the Maritime Administration and/or forcing the Maritime Administration to cease doing business with American Coal. The court rejected the respondents' contention that their activities were not violative of section 8 (b) (4) because the Maritime Administration, being an agency of the Government, was not an "employer" as defined in section 2 (2) of the act and therefore was not within the contemplation of the act's secondary boycott provisions. Citing the Supreme Court's decision in the *Teamsters Union* ("piggy-back") case,⁸ the court held that the terms "any employer" and "other person" in section 8 (b) (4) and 8 (b) (4) (A) included Government agencies such as the Maritime Administration and that the prohibitions of section 8 (b) (4) were therefore applicable.⁹ The court likewise rejected the defense of two of the respondents that they were not "labor organizations" as defined in section 2 (5) of the act and therefore not subject to its prohibitions. Noting that in earlier proceedings under the act¹⁰ the particular respondents had admitted their labor organization status, the court held that the admissions constituted evidence for the purpose of the present proceeding and supported a reasonable belief that the respondents were labor organizations.

Similar secondary action of the same respondents at another shipyard where ships were readied for use by *American Coal* was likewise enjoined by another district court.¹¹

Two cases arising out of the *American Coal* dispute involved the picketing of docks where vessels already delivered to the shipping

⁷ *Douds v Seafarers' International Union of North America, et al. (Monti Marine Co, Inc)*, 148 F Supp 953 (D. C., E. N. Y.).

⁸ *Local Union No 25, International Brotherhood of Teamsters v. N. Y., N. H. & H. R. R. Co.*, 350 U. S. 155; see also *LeBus v. International Woodworkers of America, et al (W. T. Smith Lumber)*, 142 F. Supp. 875 (D. C., Ala.), where the court enjoined secondary activity directed at railroad employees. For the Board's views see discussion at pp 97-99, *supra*.

⁹ See also pp. 97-100 and 130-131 for Board and court decisions construing the terms "employer" and "person" in section 8 (b) (4)

¹⁰ See, e. g., *J. W. Banta Towing Co, Inc*, 116 NLRB 1787, *Wilson Transit Co.*, 80 NLRB 1476; *N. L. R. B. v. Wyandotte Transportation Co*, 162 F 2d 101 (C. A. 6), *MEBA v. N. L. R. B.*, 202 F 2d 546 (C. A. 3).

¹¹ *Getreu v International Organization of Masters, Mates & Pilots of America, AFL-CIO (American Coal Shipping, Inc)*, 40 LRRM 2064 (D. C., S. Ga.).

company were to be, or were being, loaded. In one case,¹² the respondent unions picketed loading docks at a time when American's ship was "on registry," waiting in the channel for dock space. The court held that section 10 (l) relief was proper since there was reasonable cause to believe that the "premature" picketing before the vessel was brought to the loading dock constituted unlawful secondary action under the Board's judicially approved *Moore Dry Dock* rule.¹³ The respondents' legal defenses which paralleled those in *Monti Marine*¹⁴ were overruled. The court rejected the contention that there was no secondary boycott within section 8 (b) (4) (A) because the owner of the picketed loading dock was a railroad and therefore not an "employer" for the purposes of the act. Under the Supreme Court's decision in the *Teamsters Union* ("piggy-back") case, the court pointed out, railroads are "persons" within the meaning of section 8 (b) (4) (A) and entitled to the section's protection.¹⁵ As in *Monti Marine*, the court here further held that there was sufficient evidence for a reasonable belief that the two respondents which denied their labor organization status were in fact "labor organizations" in the statutory sense and therefore subject to be enjoined under section 10 (l).¹⁶

In other cases involving picketing at locations where both the primary employer involved in a dispute with the respondent union and neutral employers carried on business, section 10 (l) relief was granted where the evidence showed that the picketing was accompanied by direct inducement of neutral employees not to cross the picket line or to stop work.¹⁷ In *A. C. E. Transportation*, the court pointed out that under those circumstances the respondents could not rely on the *Otis Massey* and *Campbell Coal* cases,¹⁸ because there the respondents' pickets "did not communicate with any [secondary] employees," or there was no showing that the respondents resorted to any means that "induced and encouraged employees of neutral employers to strike."¹⁹

¹² *Penello v. Seafarers' International Union of North America, et al.* (*American Coal Shipping Co.*), 40 LRRM 2180 (D. C., E. Va.).

¹³ *Moore Dry Dock Co.*, 92 NLRB 547.

¹⁴ *Supra*, footnote 7.

¹⁵ The court noted, however, that there was evidence that the alleged unlawful picketing not only affected the railroad's employees but resulted also in cessation of work by employees of an independent electrical contractor.

¹⁶ The fourth case, *Penello v. Seafarers' International Union, et al.* (*B & O R. R.*), June 10, 1957 (D. C., Md.), involving the picketing of loading operations at a railroad dock in Baltimore, Maryland, resulted in a consent injunction under section 10 (l).

¹⁷ *Hull v. Local No. 24, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO* (*A. C. E. Transportation Co., Inc.*), 148 F. Supp. 145 (D. C., N. Ohio). *Getreu v. Truck Drivers and Helpers Local Union No. 728, et al.* (*Harper Motor Lines*), 38 LRRM 2545 (D. C., N. Ga.); *LeBus v. Locals 496, etc., International Union of Operating Engineers, AFL-CIO* (*Jahncke Service, Inc.*), 145 F. Supp. 316 (D. C., E. La.). *Sperry v. Building Material and Construction, Ice and Coal Drivers, Warehousemen and Yardmen Local Union No. 659* (*Ready-Mixed Concrete Co.*), 39 LRRM 2266 (D. C., Nebr.).

¹⁸ *N. L. R. B. v. General Drivers, Warehousemen and Helpers Local 968* (*Otis Massey*), 225 F. 2d 205 (C. A. 5); *Sales Drivers, Helpers & Building Construction Drivers Local Union 859, etc.* (*Campbell Coal Co.*) *v. N. L. R. B.*, 229 F. 2d 514 (C. A., D. C.), discussed at pp. 144-147, Twenty-first Annual Report (1956).

¹⁹ For Board decisions in "common situs picketing" cases, see pp. 102-104, *supra*.

a. "Ally" Defense

Issuance of injunctions against alleged secondary activities in some cases was resisted on the ground that the operations of the primary and secondary employers were interrelated to such an extent that the secondary employer was not a neutral in the respondents' dispute but was an "ally" of the primary employer.

In *A. C. E. Transportation*,²⁰ the court rejected the contention that the tractor lease arrangement between the respective employers made them allies and that the respondent's action against them was therefore primary throughout. In the court's view, there was reason to believe that an independent-contractor relationship existed between the tractor lessee and the lessor, with whom the union had a dispute over recognition, and that their operations were not so intertwined as to make them allies.

In *Roy Lumber*,²¹ the court held that injunctive relief was proper because there was reasonable cause to believe that no ally relationship existed between the primary employer, a lumber supplier, and the secondary employer, a general contractor, even though there was common ownership and control. While conceding that an ally relationship may exist between 2 commonly controlled employers who are engaged in a "single-line operation,"²² the court was of the view that the situation is different where the 2 employers, as here, "are regularly engaged in entirely separate enterprises" and only deal with each other on occasion, and where the union's dispute is with the nonstruck employer. Contrary to the district court, a majority of the Board subsequently held in *Roy Lumber*²³ that the two companies were allies and that there was no basis on which unlawful secondary action could be found.²⁴

b. "Mootness" Defense

In one secondary boycott situation²⁵ the respondent union claimed that the primary employer, a trucking firm, had discontinued doing business by entering into an agreement for the sale of its business, equipment, and carriage permits to another trucking firm, conditioned on the approval of the appropriate regulatory bodies. According to the union, this made the proceedings moot with respect to the employer. The court, however, disagreed, pointing out, first, that the Board was still retaining jurisdiction of the case in the unfair labor

²⁰ *Supra*, footnote 17.

²¹ *Alpert v. United Brotherhood of Carpenters & Joiners of America, AFL-CIO (J. G. Roy & Sons Co.)*, 143 F. Supp. 371 (D. C., Mass.).

²² The court here referred to the Board's decision in *Irwin-Lyons Lumber Co.*, 87 NLRB 54.

²³ 118 NLRB 286.

²⁴ After the close of the fiscal year, on January 27, 1958, the Board's decision was reversed by the First Circuit Court of Appeals (41 LRRM 2445).

²⁵ *Sperry v. General Drivers and Helpers Local No. 554 (Clark Bros. Transfer, et al.)*, 38 LRRM 2630 (D. C., Nebr.).

practice proceedings before it, and second, that the sale of the business was still incomplete, and might never actually be consummated.²⁶

c. "Hot Cargo" Defense

Secondary boycott activities were defended in several cases on the ground that "hot cargo" agreements with the secondary employers legalized the respondent unions' conduct. The contention was rejected by the court in each case.

In *Roy Lumber*,²⁷ involving picketing of a construction site where products supplied by the primary disputing employer were used, the court held that the picketing union's "hot cargo" agreement with the secondary employer could not bar the issuance of an injunction. While noting the contrary holding of the Second Circuit in *Conway's Express*,²⁸ the court held, in harmony with the Board's conclusion in *Sand Door*,²⁹ that section 8 (b) (4) (A) was intended to protect the public at large rather than any individual employer, and that its protection cannot be privately bargained away by means of "hot cargo" agreements.

In another case,³⁰ the district court similarly rejected the respondent union's "hot cargo" defense, citing the decision of the Sixth Circuit Court of Appeals in *General Millwork*,³¹ and the Ninth Circuit's affirmance of the Board's conclusion in *Sand Door*.³² A section 10 (1) injunction was issued on these facts: A local utility contracted for the manufacture of a new turbine generating unit, including the necessary piping. The utility also contracted with an engineering firm for the installation of the new turbine. When the turbine arrived for installation, the respondent union, under its "hot cargo" agreement with the engineering firm, induced its members to strike because the piping was manufactured in a "non-member union shop." The injunction was issued on the basis of the contention that the object of the strike was to force the utility company to cease doing business with the manufacturer.

²⁶ For jurisdictional strike situations where mootness was asserted, see *infra*, p. 151.

²⁷ *Supra*, footnote 21

²⁸ *Rabouin v. N. L. R. B.*, 195 F. 2d 906. See also *Milk Drivers & Dairy Employees Local Union No 838 (Crowley's Milk) v. N. L. R. B.*, 245 F. 2d 817 (C. A. 2), discussed *supra*, p. 132.

²⁹ 113 NLRB 1210, enforced 241 F. 2d 147 (C. A. 9), certiorari granted 355 U. S. 808.

³⁰ *Roumell v. United Association of Journeymen & Apprentices of the Plumbing and Pipefitting Industry (Detroit Edison Co.)*, 40 LRRM 2104 (D. C., E. Mich.).

³¹ *N. L. R. B. v. Local 11, United Brotherhood of Carpenters & Joiners of America, et al.*, 242 F. 2d 932

³² *N. L. R. B. v. Local 1976, United Brotherhood of Carpenters and Joiners of America, AFL, et al.*, 241 F. 2d 147.

In a third case,³³ the respondent's "hot cargo" defense was rejected on the ground that the asserted agreement did not apply to the conduct involved. The respondent union was the collective-bargaining representative for the employees of class A and class B milk dealers in New York City. Its contracts with these employers include "hot cargo" clauses. Class A dealers receive and bottle raw milk and sell it to class B dealers and to wholesale and retail customers; class B dealers receive their milk from class A dealers and resell it to class C dealers and retail customers; class C dealers, who are restricted to operating a single truck and servicing a single retail route, receive their milk from class B dealers. Shortly after launching an organizing drive among the class C dealers' employees, the union demanded that the class C dealers sign collective-bargaining contracts. To achieve its objective, the union notified class B dealers not to supply milk to their class C dealer customers. When some of the class B dealers failed to accede to the union's demands, it struck and began picketing at their premises. The union also instructed employees of class A dealers not to bottle milk for the noncooperating class B dealers. As a consequence, milk was shut off from class C dealers who refused to sign a contract with the union, and from class B dealers who refused to withhold milk from these recalcitrant class C dealers.

In enjoining the alleged conduct, the court agreed with the Board that the union's agreements were not applicable to the conduct here because (a) there was no "labor dispute" with class B employers excusing the inducement of the class A employees to strike, and (b) there are no "deliveries" and "pick-ups" between the class B and class C employers within the meaning of the agreement.³⁴

2. Injunctions Against Strikes in Disregard of Board Certifications

Strikes against certifications were involved in five cases during fiscal 1957. In three of the cases³⁵ where injunctions issued, the respondent unions were charged with having violated section 8 (b) (4) (C), as well as section 8 (b) (4) (A) and (B), by engaging in both primary and secondary picketing in support of demands for recognition by an employer whose employees were presently represented by

³³ *Douds v. Milk Drivers and Dairy Employees Union Local 584 (Chesterfield Farms, Inc.)*, 154 F. Supp. 222 (D. C., S. N. Y.). Initially, the court held that an injunction was proper because a "hot cargo" agreement is not a valid defense to otherwise unlawful secondary activities. However, prior to issuance of the court's injunction, the Court of Appeals for the Second Circuit issued its decision in *Crowley's Milk* (245 F. 2d 817), discussed on p. 132, *supra*, reaffirming its view that a "hot cargo" agreement may immunize conduct within the purview of section 8 (b) (4) (A). The district court thereupon reversed its opinion so as to predicate the injunction on the inapplicability of the union's "hot cargo" agreement on grounds the Board had alternatively urged as a basis for injunctive relief.

³⁴ The district court's injunction was affirmed by the Second Circuit Court of Appeals on October 2, 1957, 248 F. 2d 534.

³⁵ *Schaffner v. Highway Truck Drivers & Helpers, Local 107 (Coastal Tank Lines, Inc.)*, February 5, 1957 (D. C., E. Pa.); *Cosentino v. Union de Trabajadores de Muelles y Ramas Anejas de Puerto Rico, etc. (Puerto Rican American Sugar Co.)*, November 2, 1956 (D. C., P. R.); *Getreu v. Nashville Building and Construction Trades Council, AFL-CIO (T. L. Herbert & Sons)*, July 12, 1956 (D. C., M. Tenn.).

another certified union. The other two cases³⁶ were based on charges alleging separate violations of section 8 (b) (4) (C) by the same union.

In the *James* case, the respondent union requested recognition after the incumbent bargaining representative notified the employer that it was "giving up" representing its employees. When the employer refused recognition, the respondent union began to picket James' premises with signs reading:

This is organizational picketing. Appeal to the production employees of James Knitting Mills. Your present collective agreement expires on August 31, 1945. Don't permit strange unions who know nothing about knitgoods to represent you. Join the Knitgoods Workers Union Local 155, the recognized representative in the knitgoods industry. . . .

Later, when an independent union which had organized the employees was certified by the Board as their collective-bargaining representative, the picketing continued with signs reading:

The production employees of James Knitting Mills are not members of the Knitgoods Workers Union, Local 155 (ILGWU). We appeal to them to join our union. . . .

In addition, the respondent union on one occasion prevented the delivery of goods to James, and on two other occasions attempted to persuade employees to join the picket line by offering them money and better jobs.

The court considered the latter tactics as beyond the bounds of permissible conduct under section 8 (b) (4) (C). With respect to the picketing and the signs, however, it was the court's view that the act "does not prohibit post-certification picketing," and that the wording of the picket signs was protected by the "free speech" guarantee of section 8 (c). Accordingly, the court enjoined the union from engaging in conduct prohibited by section 8 (b) (4) (C), making it clear, however, that the injunction "shall not be construed to prohibit peaceful picketing by representatives of the respondent, including the carrying of signs or banners containing statements such as those used after the certification of [the independent union]."³⁷

In the *Packard* case the union, upon being denied recognition, began picketing the employer's premises, at a time when his employees were unrepresented, with signs reading, "Workers of Packard Knitwear, Inc., join Knitgoods Workers Union, better working conditions. . . ." About 6 months later, an independent union was certi-

³⁶ *Douds v. Knit Goods Workers' Union, Local No. 155, ILGWU, AFL-CIO (James Knitting Mills, Inc.)*, 147 F. Supp. 345 (D. C., E. N. Y.); *Douds v. Knit Goods Workers' Union, Local No. 155, ILGWU, AFL-CIO (Packard Knitwear, Inc.)*, 39 LRRM 2438 (D. C., E. N. Y.)

³⁷ The Board's decision in the *James Knitting Mills* case (117 NLRB 1468) is discussed at pp. 106-107, *supra*. As noted there, it is the Board's position that postcertification picketing such as was involved of itself constitutes inducement to strike and is prohibited by section 8 (b) (4) (C).

fied by the Board, but the respondent union continued its picketing with the same signs. No other postcertification activities on the part of the respondent were involved. The same court which had enjoined the union in the *James* case on the ground indicated above, denied section 10 (l) relief here, stating again that "picketing in and of itself, does not constitute unlawful inducement or encouragement of employees to engage in a strike or other concerted refusal to work. The right to engage in such picketing is supported by Section 8 (c) of the Act."

3. Jurisdictional Dispute Situations

Injunctions were granted in nine cases involving jurisdictional disputes. In one of the cases, the district court's denial of an injunction³⁸ was reversed by the court of appeals.³⁹ The district court had denied the injunction because, in its view, "there is nothing to indicate . . . that the public interest at the moment is vitally at stake." In reversing, the court of appeals held that the district court's sole function is to determine whether there is "reasonable cause to believe" that the unfair labor practice allegations are true, and that "It was not for the District Court to pass upon the 'public interest or necessity.' These matters had already been decided by the Congress when it passed the Act." In addition, the court of appeals rejected respondent union's contention that the case had become moot in view of a new collective-bargaining agreement assigning the disputed work to the union. The court, noting that the charging parties had not withdrawn their charges, stated that to hold the case moot under these circumstances would deprive the Board of all power to vindicate the charging parties' rights and "would indeed be drawing the teeth of the statute."

In another case,⁴⁰ involving a jurisdictional dispute between two unions over the installation of acoustical tile,⁴¹ the district court similarly rejected a contention that the case was moot because the work in question had been completed. The court pointed out that there were reasonable grounds for believing that the dispute would again flare up on future jobs. Insofar as the respondent asserted that the parties had agreed upon voluntary methods of adjustment of their dispute, the court stated that this was a question ultimately to be decided by the Board. On appeal, the Third Circuit Court of Appeals affirmed the district court's ruling.⁴²

³⁸ *Douds v. International Longshoremen's Association, Ind. (Abraham Kaplan)*, 38 LRRM 2562 (D. C., E. N. Y.).

³⁹ 242 F. 2d 808 (C. A. 2).

⁴⁰ *Douds v. Wood, Wire and Metal Lathers International Association, AFL-CIO, et al. (Newark & Essex Plastering Co.)*, August 24, 1956 (D. C., N. J.).

⁴¹ The same dispute also resulted in a section 10 (l) Injunction in *Douds v. Local Union No. 46, Wood Wire and Metal Lathers' International Association, AFL-CIO (Jacobson & Co., Inc)*, May 1, 1957 (D. C., E. N. Y.).

⁴² 245 F. 2d 223 (June 4, 1957).

VIII

Contempt Proceedings

During fiscal 1957, petitions for adjudication of parties in contempt for failure to comply with decrees enforcing Board orders were acted upon in three cases. In one case, a Special Master appointed by the court recommended that the employer be held in contempt of the reinstatement provisions of a decree. In two cases, the respective courts held that the respondents were not guilty of contempt. In another case, the court agreed with the Board that, contrary to an employer's contention, a union previously held to have violated a decree had purged itself of its contempt.

In *N. L. R. B. v. School-Timer Frocks, Inc.*, the Special Master appointed by the court to hear the evidence and make recommended findings, conclusions, and a recommended order recommended that the court hold that the unexplained discharge of the discriminatee a month after she was reemployed, ostensibly pursuant to the decree, did not constitute compliance.¹

In the *Retail Clerks* case,² the respondent union had been found in contempt of a decree enjoining it from illegally demanding that the employer bargain for supervisors.³ Thereafter, the union withdrew the illegal demands and then requested that the court declare it had purged itself of its contempt. The employer opposed the request alleging that, following the withdrawal, the union had made a new demand similar to the illegal demand, but the Board took the position that the union had not done so. The employer coupled its opposition to the union's motion for discharge from the contempt adjudication with a petition for a temporary injunction restraining the union from continuing the alleged contumacious conduct. The court, in agreement with the Board, found that the union had purged itself of contempt. The employer's request for injunctive relief was denied by the court on the ground that only the Board "has standing to prosecute proceedings in aid of its orders."

¹ Affirmed October 17, 1957, 248 F. 2d 831 (C. A. 4).

² *N. L. R. B. v. Retail Clerks International Association, AFL, et al*, 243 F. 2d 777, 211 F. 2d 759; 203 F. 2d 165 (C. A. 9).

³ See Nineteenth Annual Report, pp. 139-140.

In *Teamsters Local 627*,⁴ the Board petitioned for a contempt adjudication on the ground that the respondent union, in sending and posting a notice to its members and certain employers as required by the decree, had also sent and posted an "explanatory" letter which vitiated the intended effect of the notice and letter referred to in the decree. The explanatory letter stated, in substance, that the union had executed the settlement stipulation on the basis of which the decree was entered in order to avoid the costs of further litigation; that, as stated in the settlement agreement, it was the union's position that it had not violated the secondary boycott provisions of the act, as charged; and that the settlement agreement reserved to the union all its rights under the act, including the right to strike and picket in connection with labor disputes. The court took the view that the contents of the explanatory letter did not contradict or infringe upon the terms of the decree and constituted a permissible expression of "views, argument or opinion."

In *Taormina Company*,⁵ the Board petitioned for an adjudication of an employer in civil contempt because of the employer's failure to bargain in good faith as required by the decree. After a pretrial conference, the matter was held in abeyance by the court pending further bargaining between the employer and the union and a report thereon to the court. In a subsequent hearing, the Board took the position that in the renewed bargaining the employer, although withdrawing to a large extent from the bargaining positions which had prompted the filing of the contempt petition, had continued in at least one respect to engage in conduct inconsistent with its good-faith bargaining obligation. However, the court was of the view that upon the basis of the pretrial hearing and the subsequent events the case, although "a close one on the facts," did not warrant a finding of contempt.

⁴ *N. L. R. B. v. Teamsters and Chauffeurs Union, Local 627, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO*, 241 F. 2d 428 (C. A. 7)

⁵ *N. L. R. B. v. Taormina Co.*, 244 F. 2d 197 (C. A. 5).

IX

Miscellaneous Litigation

Litigation for the purpose of aiding or protecting the Board's statutory processes during fiscal 1957 included proceedings instituted by the Board for the enforcement of subpoenas and defense of various actions in which private parties attacked the exercise of the Board's discretion in applying jurisdictional standards or in administering the representation procedures of section 9 of the act. One case involved a motion to stay representation proceedings during the pendency of reorganization proceedings under the Bankruptcy Act.

1. Subpoena Enforcement

The *Duval Jewelry* case¹ in the Fifth Circuit was concerned with the refusal of a United States District Court to enforce subpoenas *ad testificandum* and *duces tecum* issued in a representation proceeding. The district court held that not only were the subpoenas *duces tecum* unreasonable and oppressive, but that all subpoenas were invalid having been issued at the request of the Board's regional director and therefore not at the request of a "party" to the proceeding before the Board.² The court of appeals, however, concluded that the regional director could be deemed a "party" and held that the Board was entitled to enforcement of its subpoena *ad testificandum*.

The court of appeals went on to sustain the district court's denial of the Board's application for enforcement of the subpoenas *duces tecum* upon the ground—not considered by the district court—that petitions for revocation of the subpoenas, while denied by the hearing officer, had not been ruled on by the Board itself. Under the Board's Rules,³ a petition to revoke a subpoena returnable at a hearing must first be ruled on by the hearing officer, and his ruling may be considered by the Board upon review of the record in the case, or upon direct appeal by special permission of the Board. The court of appeals held that the hearing officer's action, which it viewed as an exercise of delegated authority, was a nullity because the Board could not dele-

¹ *N. L. R. B. v. Duval Jewelry Co. of Miami, Inc.*, 243 F. 2d 427.

² See Twenty-first Annual Report, p. 160.

³ Rules and Regulations, section 102.67, (c).

gate its statutory power to revoke subpoenas *duces tecum* to hearing officers. Nor was it material, in the court's view, that the Board had merely empowered the hearing officer to make an initial ruling subject to later review by the Board. The Board's power to revoke, the court observed, is original rather than appellate, and the respondents were thus not required to request special permission to appeal to the Board. The court accordingly concluded that there could be no "contumacy or refusal to obey a subpoena" within section 11 (2) until the Board acted on the petitions, and the time for considering enforcement of the subpoenas therefore had not arrived. The question of the validity of the Board's subpoena revocation procedure is now pending before the Supreme Court.⁴

2. Petitions To Review Application of Jurisdictional Standards

In one case,⁵ a hotel employees' union sought declaratory and injunctive relief against application by the Board of its policy not to assert jurisdiction over hotels. The court denied the requested relief, pointing out that the Board had discretion to determine "what employer-employee relationships so affect interstate commerce" as to require the exercise of its statutory powers, and that the Board's determination not to exercise its jurisdiction with respect to the hotel industry, being based on valid considerations, was not arbitrary and therefore not subject to judicial reversal.⁶

In another case,⁷ an employer instituted an action against the Board for declaratory relief from the refusal of the Board's General Counsel to issue a complaint on unfair labor practice charges. The basis of the General Counsel's action was that the employer's operations did not satisfy applicable jurisdictional standards. The court dismissed the action on the ground, among others, that the exercise by the Board's General Counsel of his power over the issuance of complaints is not subject to judicial review.

3. Petitions for Judicial Intervention in Representation Proceedings

In three cases in the district courts, the respective parties requested that the court either review or compel Board action in representation proceedings under section 9 of the act.

⁴ The Supreme Court granted certiorari not only in *Dupal*, but also in *N. L. R. B. v. Lewis*, 246 F. 2d 886 (C.A. 9) (114 NLRB 765), sustaining the Board's procedure with respect to a trial examiner in an unfair labor practice case.

⁵ *Hotel Employees Local No. 255, Hotel Restaurant Employees and Bartenders International Union, and Hotel & Restaurant Employees and Bartenders International Union, AFL-CIO v. Boyd Leedom*, 147 F. Supp. 306 (D. C., D. C.).

⁶ After the close of the fiscal year, on October 24, 1957, the district court's decision was affirmed by the Court of Appeals for the District of Columbia.

⁷ *Eusebius J. Biggs v. N. L. R. B.*, 56 ALC 1418, 31 Labor Cases ¶¶ 70, 259, 38 LRRM 2728 (D. C., N. Ill.)

In one case,⁸ the complaining union sought review of the Board's action in dismissing the union's petition for a section 9 election because it was not presently in compliance with section 9 (g) of the act. This section prohibits the Board from certifying a labor organization which has not complied with the requirement for the annual filing of certain information with the Secretary of Labor and the furnishing of financial reports to the Secretary and to the union's members. The Board had dismissed the petition here because of the union's failure to renew compliance within the 90-day grace period accorded it, this action reflecting a change in the Board's former view that the only sanction for such noncompliance would be the withholding of certification until compliance with section 9 (g) had been renewed. Dismissal, in the instant case and in future similar cases, was deemed necessary by the Board because mere withholding of certification had proved inadequate as a means of enforcing compliance with section 9 (g).⁹ In the court's view, application of the new rule in this case, while harsh, was within the Board's discretion, and did not result in irreparable damage, since the union could file a new petition without substantial delay, and the record in the former proceeding could be used in the new one. The court, therefore, denied the relief sought.

District court relief in one case¹⁰ was requested by a group of professional employees whose petition for the decertification of a portion of an existing bargaining unit had been dismissed by the Board. The union sought to be decertified had been certified for a bargaining unit including the complaining professionals as well as nonprofessionals, such as clerical, office, and technical employees. The dismissal of the petition was predicated (1) on the Board's policy not to entertain a decertification petition unless the unit for which the incumbent representative is to be decertified is coextensive with the unit for which it was certified;¹¹ and (2) on the Board's view that section 9 (b) (1), in providing a self-determination election for professionals, applies only where representation of that group in another separate unit is contemplated. Following submission of the case to the court, a certification election was held among all the employees in the certified unit in which the complaining professionals voted against further representation in the larger unit. Being so advised, the court dismissed the present action as moot. The court also denied the plaintiffs' request for permission to convert their petition for

⁸ *Local No. 562, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO v. Leedom et al.*, 57 ALC 260, 31 Labor Cases 11 70, 433, 39 LRRM 2356 (D. C., D. C.).

⁹ See *Monsanto Chemical Co.*, 115 NLRB 702.

¹⁰ *Arthur L. Herman, et al. v. Leedom, et al.*, 57 ALC 261, 31 Labor Cases 70, 473, 39 LRRM 2378 (D. C., D. C.).

¹¹ See p. 47 of this report. See also Twentieth Annual Report, pp. 21-52.

injunctive relief into a request for a declaratory judgment on the question of the circumstances under which a professional group may revoke a prior vote to be included in a bargaining unit comprising other employees as well. The court pointed out that, an actual controversy being no longer in existence, it was without power to grant declaratory relief.

One action against a regional director of the Board, instituted by certain unions which had participated in a representation election, challenged the regional director's dismissal of objections to the election and of unfair labor practice charges, both based on the employer's preelection conduct.¹² The court denied the union's request for a mandatory injunction compelling the regional director to investigate the objections and charges further, on the ground that the Board and its General Counsel were indispensable parties to the action and were not before the court. The court noted that the regional director had acted pursuant to delegated powers, and that his decisions were subject to review, and had been reviewed, by the Board or its General Counsel. Where as here, the court stated, a party seeks to compel an official to perform affirmative acts in the exercise of powers delegated to him by his absent superiors, precedent requires that the superiors be made parties to the action.

In *William Kyne*,¹³ the plaintiff sought reversal of the Board's determination and certification of a bargaining unit comprising 233 professional engineers and 9 nonprofessionals who, the Board found, had a "close community of employment interests" with the engineers. The plaintiff asserted that the certification was invalid because the Board determined the appropriateness of the unit without observance of section 9 (b) (1) which provides that a mixed unit of professionals and nonprofessionals shall not be established "unless a majority of such professional employees vote for inclusion in such unit."

The Board asked that the action be dismissed because the district court was without jurisdiction to review a Board certification of bargaining representatives under section 9 of the National Labor Relations Act. The court denied the Board's request, holding that it had jurisdiction because the question presented was whether the Board exceeded its statutory authority under the terms of section 9 (b) (1) of the act. Regarding the import of that section, the district court held that its provisions are mandatory and require that professional employees be accorded a self-determination election whenever their inclusion in a unit with nonprofessionals is proposed. The court thus rejected the Board's view that a section 9 (b) (1) election is not necessary where the proposed mixed unit is to be predominantly

¹² *United Steel Workers of America, et al. v. Brown, et al.*, 143 F. Supp. 159 (D. C., N. Calif.).

¹³ *William Kyne, individually and as President of Buffalo Section, Westinghouse Engineers Association, Engineers and Scientists of America v. Boyd S. Leedom*, 148 F. Supp. 597 (D. C., D. C.).

professional as section 9 (b) (1) was intended only to afford professionals who constitute a *minority* in a proposed unit an effective voice in selecting the bargaining representative. The district court ordered that the Board's action in the representation proceeding be set aside, and that the Board redetermine the appropriate bargaining unit in accordance with section 9 (b) (1) as construed by the court.

The district court's decision was affirmed by the Court of Appeals for the District of Columbia,¹⁴ and the Supreme Court has granted the Board's petition for certiorari to review the question of whether the district court possessed jurisdiction to review the Board's section 9 (c) certification.

4. Stay of Representation Proceedings During Reorganization Under Bankruptcy Act

One case was concerned with the motion of a debtor's trustee, in a proceeding for corporate reorganization under chapter X of the Bankruptcy Act, that a representation proceeding before the Board involving the debtor's employees be stayed.¹⁵ The district court where the reorganization proceeding was pending temporarily restrained the representation petitioner from continuing prosecution of the proceeding before the Board pending consideration of the question whether the representation proceeding should be stayed throughout the reorganization proceeding. Two questions were presented: (1) whether the representation proceeding was within the purview of the order issued by the court at the outset of the reorganization proceeding, generally restraining the "doing [of] any act or things" which might interfere with the possession or management of the assets of the debtor's property, or might interfere with the discharge of the trustee's duties or the exclusive jurisdiction of the court over the debtor and the trustee or their properties; and (2) whether the bankruptcy court had power to stay a representation proceeding during debtor reorganization. Answering both questions in the negative, the court terminated the stay it had granted and directed the trustee "not to resist the position" of the representation petitioner or otherwise preclude its participation as a party in the proceeding before the Board, "unless, upon due application and showing, the court shall hereinafter otherwise direct."

Regarding its initial order in the reorganization proceeding, the court held that the Board proceeding was not one which was intended to be restrained because it does not tend to interfere with the property, the trustee, or the court's jurisdiction in the reorganization proceeding. For, the court pointed out, all the Board proceeding is concerned with

¹⁴ 57 ALC 1359, 40 LRRM 2600, September 16, 1957.

¹⁵ *In the matter of American Business, Inc.*, 151 F. Supp. 877 (D. C., Nebr.).

is the determination of a bargaining unit of the debtor's employees and the latter's selection of a bargaining representative, a matter of immediate concern only to the employees. The court also considered itself without power to stay the representation proceeding, be it in the exercise of its general jurisdiction or its jurisdiction under the Bankruptcy Act. Under the terms of the National Labor Relations Act, the court noted, the reorganization debtor's trustee was an "employer" whose employees were entitled to have their bargaining representative determined by the Board. The court went on to say that the Board's jurisdiction in the matter is exclusive and not subject to judicial intervention, and that there is nothing in the Bankruptcy Act that would permit the court to "intercept" a representation proceeding before the Board. Moreover, the court observed, even if it had power to stay the proceeding before the Board there was no occasion to exercise it because the proceeding could not reasonably be held to involve any threat of injury to the reorganization debtor or the trustee, or the trust itself.

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APPENDIX A

Statistical Tables for Fiscal Year 1957

Table 1.—Total Cases Received, Closed, and Pending (Complainant or Petitioner Identified), Fiscal Year 1957

	Number of cases				
	Total	Identification of complainant or petitioner			
		AFL-CIO affiliates	Unaffiliated unions	Individuals	Employers
All cases ¹					
Pending July 1, 1956.....	3,768	2,130	186	998	454
Received fiscal 1957.....	13,356	8,401	769	2,727	1,459
On docket fiscal 1957.....	17,124	10,531	955	3,725	1,913
Closed fiscal 1957.....	12,708	8,153	707	2,483	1,365
Pending June 30, 1957.....	4,416	2,378	248	1,242	548
Unfair labor practice cases					
Pending July 1, 1956.....	2,318	964	72	927	355
Received fiscal 1957.....	5,506	2,233	170	2,299	804
On docket fiscal 1957.....	7,824	3,197	242	3,226	1,159
Closed fiscal 1957.....	5,144	2,160	156	2,071	757
Pending June 30, 1957.....	2,680	1,037	80	1,155	402
Representation cases					
Pending July 1, 1956.....	1,444	1,166	114	65	99
Received fiscal 1957.....	7,797	6,168	598	376	655
On docket fiscal 1957.....	9,241	7,334	712	441	754
Closed fiscal 1957.....	7,514	5,993	551	362	608
Pending June 30, 1957.....	1,727	1,341	161	79	146
Union-shop deauthorization cases					
Pending July 1, 1956.....	6			6	
Received fiscal 1957.....	53		1	52	
On docket fiscal 1957.....	59		1	58	
Closed fiscal 1957.....	50		0	50	
Pending June 30, 1957.....	9		1	8	

¹ **Definitions of Types of Cases Used in Tables.** The following designations, used by the Board in numbering cases, are used in the tables in this appendix to designate the various types of cases

- CA: A charge of unfair labor practices against an employer under 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 (c) (1) asking for a referendum to rescind a bargaining agent's authority to make a union-shop contract under sec. 8 (a) (3).

Table 1A.—Unfair Labor Practice and Representation Cases Received, Closed, and Pending (Complainant or Petitioner Identified), Fiscal Year 1957

	Number of unfair labor practice cases					Number of representation cases				
	Total	Identification of complainant				Total	Identification of petitioner			
		AFL-CIO affiliates	Unaffiliated unions	Individuals	Employers		AFL-CIO affiliates	Unaffiliated unions	Individuals	Employers
	CA cases ¹					RC cases ¹				
Pending July 1, 1956.....	1,485	907	67	510	1	1,280	1,166	113	1	-----
Received fiscal 1957.....	3,655	2,156	146	1,352	1	6,774	6,168	596	10	-----
On docket fiscal 1957.....	5,140	3,063	213	1,862	2	8,054	7,334	709	11	-----
Closed fiscal 1957.....	3,446	2,065	142	1,238	1	6,551	5,993	549	9	-----
Pending June 30, 1957....	1,694	998	71	624	1	1,503	1,341	160	2	-----
	CB cases ¹					RM cases ¹				
Pending July 1, 1956.....	609	35	4	416	154	99	-----	-----	-----	99
Received fiscal 1957.....	1,271	54	22	939	256	654	-----	-----	-----	654
On docket fiscal 1957.....	1,880	89	26	1,355	410	753	-----	-----	-----	753
Closed fiscal 1957.....	1,163	55	13	826	269	607	-----	-----	-----	607
Pending June 30, 1957....	717	34	13	529	141	146	-----	-----	-----	146
	CC cases ¹					RD cases ¹				
Pending July 1, 1956.....	188	18	1	1	168	65	-----	1	64	-----
Received fiscal 1957.....	462	13	2	5	442	369	-----	2	366	1
On docket fiscal 1957.....	650	31	3	6	610	434	-----	3	430	1
Closed fiscal 1957.....	435	28	1	5	401	356	-----	2	353	1
Pending June 30, 1957....	215	3	2	1	209	78	-----	1	77	0
	CD cases ¹									
Pending July 1, 1956.....	36	4	0	0	32					
Received fiscal 1957.....	118	10	0	3	105					
On docket fiscal 1957.....	154	14	0	3	137					
Closed fiscal 1957.....	100	12	0	2	86					
Pending June 30, 1957....	54	2	0	1	51					

¹ See table 1, footnote 1, for definitions of types of cases.

Table 2.—Types of Unfair Labor Practices Alleged, Fiscal Year 1957

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, 655	1 100. 0			
8 (a) (1).....	2 3, 655	2 100. 0	8 (a) (3).....	2, 789	76. 3
8 (a) (2).....	367	10. 0	8 (a) (4).....	77	2. 1
			8 (a) (5).....	827	22. 6

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, 851	1 100. 0	8 (b) (3).....	123	6. 6
8 (b) (1).....	1, 107	59. 8	8 (b) (4).....	580	31. 3
8 (b) (2).....	1, 003	54. 2	8 (b) (5).....	7	. 4
			8 (b) (6).....	9	. 5

C. ANALYSES OF 8 (b) (1) AND 8 (b) (4)

Total cases 8 (b) (1)	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, 107	1 100. 0	Total cases 8 (b) (4).....	1 580	1 100. 0
8 (b) (1) (A).....	1, 095	98. 9	8 (b) (4) (A).....	414	71. 4
8 (b) (1) (B).....	15	1. 4	8 (b) (4) (B).....	203	35. 0
			8 (b) (4) (C).....	49	8. 4
			8 (b) (4) (D).....	118	20. 3

¹ A single case may include allegations of violations of more than one section of the act. Therefore, the total of the various allegations is more than the figure for total cases.

² An 8 (a) (1) is a general provision forbidding any type of employer interference with the rights of 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 1957

Formal action taken	All cases	Unfair labor practice cases			Representation cases
		All C cases	CA cases ¹	Other C cases ¹	
Complaints issued.....	689	689	394	295	-----
Notices of hearing issued.....	3, 516	37	-----	37	3, 479
Cases heard.....	2, 452	550	262	288	1, 902
Intermediate reports issued.....	370	370	206	164	-----
Decisions issued, total.....	2, 199	458	178	280	1, 741
Decisions and orders.....	265	265	2 147	3 118	-----
Decisions and consent orders.....	193	193	31	162	-----
Elections directed.....	1, 387	-----	-----	-----	1, 387
Rulings on objections and/or challenges in stipulated election cases.....	145	-----	-----	-----	145
Dismissals on record.....	209	-----	-----	-----	209

¹ See table 1, footnote 1, for definitions of types of cases.

² Includes 11 cases decided by adoption of intermediate report in absence of exceptions.

³ Includes 6 cases decided by adoption of intermediate report in absence of exceptions.

Table 4.—Remedial Action Taken in Unfair Labor Practice Cases Closed, Fiscal Year 1957

A. BY EMPLOYERS¹

	Total	By agreement of all parties	By Board or court order
Notice posted.....	606	447	159
Recognition or other assistance withheld from employer-assisted union.....	89	57	32
Employer-dominated union disestablished.....	20	13	7
Workers placed on preferential hiring list.....	16	15	1
Collective bargaining begun.....	91	55	36
	Workers		
Workers offered reinstatement to job.....	922	499	423
Workers receiving back pay.....	1,457	² 755	³ 702
Back-pay awards.....	\$515,910	\$205,660	\$310,250

B. BY UNIONS⁴

	Cases		
	Total	By agreement of all parties	By Board or court order
Notice posted.....	458	353	105
Union to cease requiring employer to give it assistance.....	40	21	19
Notice of no objection to reinstatement of discharged employees.....	69	39	30
Collective bargaining begun.....	6	5	1
	Workers		
Workers receiving back pay.....	222	93	129
Back-pay awards.....	\$85,149	\$37,009	\$48,140

¹ In addition to the remedial action shown, other forms of remedy were taken in 25 cases² Includes 52 workers who received back pay from both employer and union.³ Includes 57 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 37 cases

Table 5.—Industrial Distribution of Unfair Labor Practice and Representation Cases Received, Fiscal Year 1957

Industrial group ¹	All cases	Unfair labor practice cases					Representation cases			
		All C cases	CA ²	CB ²	CC ²	CD ²	All R cases	RC ²	RM ²	RD ²
Total	13,303	5,506	3,655	1,271	462	118	7,797	6,774	654	369
Manufacturing.....	8,038	2,886	2,230	477	153	26	5,152	4,544	344	264
Ordnance and accessories.....	26	7	6	1	0	0	19	16	0	3
Food and kindred products.....	1,115	347	255	66	24	2	768	682	50	36
Tobacco manufacturers.....	19	3	1	2	0	0	16	15	0	1
Textile mill products.....	241	114	88	10	11	5	127	115	6	6
Apparel and other finished products made from fabrics and similar materials.....	288	173	133	34	6	0	115	73	38	4
Lumber and wood products (except furniture).....	386	143	117	12	13	1	243	213	19	11
Furniture and fixtures.....	368	160	125	24	9	2	208	177	24	7
Paper and allied products.....	312	87	69	11	6	1	225	208	8	9
Printing, publishing, and allied industries.....	418	145	99	39	4	3	273	246	14	13
Chemicals and allied products.....	429	111	87	14	10	0	318	287	12	19
Products of petroleum and coal.....	145	31	25	4	2	0	114	97	7	10
Rubber products.....	118	29	25	2	2	0	89	75	7	7
Leather and leather products.....	146	59	52	6	1	0	87	81	3	3
Stone, clay, and glass products.....	349	128	97	23	7	1	221	188	23	10
Primary metal industries.....	424	136	111	21	4	0	288	263	15	10
Fabricated metal products (except machinery and transportation equipment).....	858	284	224	44	12	4	574	516	28	30
Machinery (except electrical).....	830	266	212	36	15	3	564	504	32	28
Electrical machinery, equipment, and supplies.....	498	199	151	41	6	1	299	262	19	18
Aircraft and parts.....	176	85	61	17	5	2	91	79	7	5
Ship and boat building and repairing.....	77	36	23	7	6	0	41	39	1	1
Automotive and other transportation equipment.....	295	140	103	33	3	1	155	140	7	8
Professional, scientific, and controlling instruments.....	111	47	34	12	1	0	64	60	3	1
Miscellaneous manufacturing.....	409	156	132	18	6	0	253	208	21	24
Agriculture, forestry, and fisheries.....	9	6	3	2	1	0	3	2	1	0
Mining.....	197	88	72	14	1	1	109	95	11	3
Metal mining.....	53	18	16	2	0	0	35	34	0	1
Coal mining.....	31	25	18	5	1	1	6	5	1	0
Crude petroleum and natural gas production.....	37	21	19	2	0	0	16	13	3	0
Nonmetallic mining and quarrying.....	76	24	19	5	0	0	52	43	7	2
Construction.....	963	830	309	327	119	75	133	120	12	1
Wholesale trade.....	1,107	365	242	61	58	4	742	601	107	34
Retail trade.....	1,094	337	253	57	23	4	757	666	69	22
Finance, insurance, and real estate.....	70	34	27	6	1	0	36	32	1	3
Transportation, communication, and other public utilities.....	1,476	815	426	287	95	7	661	540	91	30
Highway passenger transportation.....	64	33	25	6	2	0	31	29	2	0
Highway freight transportation.....	587	339	185	101	49	4	248	179	62	7
Water transportation.....	361	286	108	154	23	1	75	68	6	1
Warehousing and storage.....	181	61	39	10	12	0	120	105	8	7
Other transportation.....	41	14	8	3	3	0	27	21	3	3
Communication.....	145	53	39	9	3	2	92	80	7	5
Heat, light, power, water, and sanitary services.....	97	29	22	4	3	0	68	58	3	7
Services.....	349	145	93	40	11	1	204	174	18	12

¹ Source: Standard Industrial Classification, Division of Statistical Standards, U. S. Bureau of the Budget, Washington, 1945

² See table 1, footnote 1, for definitions of types of cases

Table 6.—Geographic Distribution of Unfair Labor Practice and Representation Cases Received, Fiscal Year 1957

Division and State ¹	All cases	Unfair labor practice cases					Representation cases			
		All C cases	CA ²	CB ²	CC ²	CD ²	All R cases	RC ²	RM ²	RD ²
Total.....	13,303	5,506	3,655	1,271	462	118	7,797	6,774	654	369
New England.....	735	265	205	42	17	1	470	418	27	25
Maine.....	59	23	20	2	0	1	36	33	2	1
New Hampshire.....	44	13	12	1	0	0	31	29	0	2
Vermont.....	32	10	8	0	2	0	22	19	1	2
Massachusetts.....	406	150	110	29	11	0	256	226	18	12
Rhode Island.....	58	24	17	5	2	0	34	29	4	1
Connecticut.....	136	45	38	5	2	0	91	82	2	7
Middle Atlantic.....	2,662	1,254	788	335	94	37	1,408	1,227	120	61
New York.....	1,460	764	488	211	45	20	696	607	55	34
New Jersey.....	458	171	104	48	13	6	287	258	22	7
Pennsylvania.....	744	319	196	76	36	11	425	362	43	20
East North Central.....	2,918	1,160	803	248	85	24	1,758	1,523	157	78
Ohio.....	785	278	190	55	29	4	507	448	40	19
Indiana.....	412	167	108	36	19	4	245	208	25	12
Illinois.....	852	369	246	89	23	11	483	409	45	29
Michigan.....	671	285	208	62	12	3	386	339	36	11
Wisconsin.....	198	61	51	6	2	2	137	119	11	7
West North Central.....	1,163	319	228	51	34	6	844	733	77	34
Iowa.....	157	25	20	2	3	0	132	126	5	1
Minnesota.....	209	31	24	3	3	1	178	131	34	13
Missouri.....	453	184	123	40	16	5	269	232	29	8
North Dakota.....	76	13	13	0	0	0	63	60	3	0
South Dakota.....	29	5	5	0	0	0	24	22	2	0
Nebraska.....	102	21	14	2	5	0	81	78	1	2
Kansas.....	137	40	29	4	7	0	97	84	3	10
South Atlantic.....	1,509	684	456	137	78	13	825	731	57	37
Delaware.....	34	16	9	5	2	0	18	16	1	1
Maryland.....	211	93	38	39	12	4	118	103	13	2
District of Columbia.....	67	23	9	5	4	5	44	39	4	1
Virginia.....	151	54	40	5	7	2	97	80	10	7
West Virginia.....	144	60	39	14	6	1	84	70	6	8
North Carolina.....	209	104	88	15	1	0	105	97	1	7
South Carolina.....	34	15	12	1	2	0	19	15	3	1
Georgia.....	268	139	104	17	17	1	129	116	8	5
Florida.....	391	180	117	36	27	0	211	195	11	5
East South Central.....	793	373	255	69	35	14	420	380	26	14
Kentucky.....	172	47	32	8	6	1	125	119	2	4
Tennessee.....	360	180	118	31	20	11	180	160	13	7
Alabama.....	196	111	74	26	9	2	85	77	6	2
Mississippi.....	65	35	31	4	0	0	30	24	5	1
West South Central.....	1,080	438	310	87	32	9	642	562	53	27
Arkansas.....	105	27	23	3	1	0	78	72	5	1
Louisiana.....	270	135	83	37	15	0	135	122	10	3
Oklahoma.....	145	45	35	4	6	0	100	72	19	9
Texas.....	560	231	169	43	10	9	329	296	19	14
Mountain.....	527	183	133	35	12	3	344	301	25	18
Montana.....	60	26	15	7	4	0	34	29	5	0
Idaho.....	46	25	18	7	0	0	21	19	0	2
Wyoming.....	30	12	11	1	0	0	18	16	0	2
Colorado.....	212	57	41	12	2	2	155	132	13	10
New Mexico.....	70	35	31	2	2	0	35	29	4	2
Arizona.....	69	12	8	1	2	1	57	53	3	1
Utah.....	22	9	6	2	1	0	13	12	0	1
Nevada.....	18	7	3	3	1	0	11	11	0	0

See footnotes at end of table.

Table 6.—Geographic Distribution of Unfair Labor Practice and Representation Cases Received, Fiscal Year 1957—Continued

Division and State ¹	All cases	Unfair labor practice cases					Representation cases			
		All C cases	CA ²	CB ²	CC ²	CD ²	All R cases	RC ²	RM ²	RD ²
Pacific.....	1,565	654	370	222	53	9	911	735	104	72
Washington.....	204	102	63	34	3	2	102	86	9	7
Oregon.....	149	63	37	23	1	2	86	69	11	6
California.....	1,212	489	270	165	49	5	723	580	84	59
Outlying areas.....	351	176	107	45	22	2	175	164	8	3
Alaska.....	53	28	19	3	5	1	25	25	0	0
Hawaii.....	56	10	8	0	1	1	46	45	1	0
Puerto Rico.....	242	138	80	42	16	0	104	94	7	3
Canada.....	0	0	0	0	0	0	0	0	0	0
Virgin Islands.....	0	0	0	0	0	0	0	0	0	0

¹ The States are grouped according to the method used by the Bureau of the Census, U. S. Department of Commerce.

² See table 1, footnote 1, for definitions of types of cases.

Table 7.—Disposition of Unfair Labor Practice Cases Closed, Fiscal Year 1957

Stage of disposition	All C cases		CA cases ¹		CB cases ¹		CC cases ¹		CD cases ¹	
	Number of cases	Per-cent of cases closed	Number of cases	Per-cent of cases closed	Number of cases	Per-cent of cases closed	Number of cases	Per-cent of cases closed	Number of cases	Per-cent of cases closed
Total number of cases closed.....	5,144	100.0	3,446	100.0	1,163	100.0	435	100.0	100	100.0
Before issuance of complaint.....	4,444	86.4	3,114	90.4	925	79.5	311	71.5	94	94.0
After issuance of complaint, before opening of hearing ²	238	4.6	96	2.8	62	5.3	78	18.0	2	2.0
After hearing opened before issuance of intermediate report ²	114	2.2	23	.7	77	6.6	14	3.2	0	.0
After intermediate report, before issuance of Board decision.....	44	.8	25	.7	13	1.1	6	1.4	0	.0
After Board order adopting intermediate report in absence of exceptions.....	19	.4	12	.3	7	.6	0	.0	0	.0
After Board decision, before court decree.....	143	2.8	80	2.3	44	3.8	18	4.1	1	1.0
After Board order adopting intermediate report followed by circuit court decree.....	8	.2	5	.1	3	.3	0	.0	0	.0
After circuit court decree, before Supreme Court action.....	102	2.0	68	2.0	25	2.2	6	1.4	3	3.0
After Supreme Court action ⁴	⁵ 32	.6	⁵ 23	.7	7	.6	2	.4	0	0

¹ See table 1, footnote 1, 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 23 cases in which a notice of hearing issued pursuant to sec 10 (k) of the act of these 23 cases, 14 were closed after notice, 2 were closed after hearing, and 7 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 1957

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.....	7,514	100.0	6,551	100.0	607	100.0	356	100.0
Before issuance of notice of hearing.....	4,157	55.3	3,594	54.9	374	61.6	189	53.1
After issuance of notice of hearing, before opening of hearing.....	1,522	20.3	1,332	20.3	123	20.3	67	18.8
After hearing opened, before issuance of Board decision.....	346	4.6	300	4.6	29	4.8	17	4.8
After issuance of Board decision.....	1,489	19.8	1,325	20.2	81	13.3	83	23.3

¹ See table 1, footnote 1, for definitions of types of cases.

Table 9.—Analysis of Stages of Disposition of Unfair Labor Practice Cases Closed, Fiscal Year 1957

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.....	25,144	100.0	3,446	100.0	1,163	100.0	435	100.0	100	100.0
Before issuance of complaint.....	4,444	86.4	3,114	90.4	925	79.5	311	71.5	94	94.0
Adjusted.....	631	12.3	431	12.5	100	8.6	78	17.9	² 22	22.0
Withdrawn.....	2,135	41.5	1,443	41.9	470	40.4	162	37.3	⁴ 60	60.0
Dismissed.....	1,678	32.6	1,240	36.0	355	30.5	71	16.3	¹ 12	12.0
After issuance of complaint, before opening of hearing.....	238	4.6	96	2.8	62	5.3	78	18.0	2	2.0
Adjusted.....	77	1.5	60	1.7	11	.9	6	1.4	0	.0
Compliance with stipulated decision.....	5	.1	3	.1	2	.2	0	.0	0	0
Compliance with consent decree.....	128	2.5	20	.6	38	3.3	68	15.7	2	2.0
Withdrawn.....	22	.4	9	.3	9	.7	4	.9	0	0
Dismissed.....	6	.1	4	.1	2	.2	0	0	0	0
After hearing opened, before issuance of intermediate report.....	114	2.2	23	.7	77	6.6	14	3.2	0	0
Adjusted.....	63	1.2	12	.4	48	4.1	3	.7	0	.0
Compliance with stipulated decision.....	28	.5	1	(⁶)	27	2.3	0	0	0	.0
Compliance with consent decree.....	18	.4	7	.2	2	.2	9	2.1	0	.0
Withdrawn.....	4	.1	2	.1	0	0	2	.4	0	.0
Dismissed.....	1	(⁶)	1	(⁶)	0	0	0	.0	0	.0

See footnotes at end of table.

Table 9.—Analysis of Stages of Disposition of Unfair Labor Practice Cases Closed, Fiscal Year 1957—Continued

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
After intermediate report, before issuance of Board decision.....	44	.8	25	7	13	1.1	6	1.4	0	0
Compliance.....	41	.8	23	.6	13	1.1	5	1.2	0	0
Withdrawn.....	3	(⁶)	2	.1	0	0	1	2	0	0
After Board order adopting intermediate report in absence of exceptions.....	19	4	12	3	7	6	0	0	0	0
Compliance.....	8	2	5	1	3	3	0	.0	0	0
Dismissed.....	11	2	7	2	4	3	0	.0	0	0
After Board decision, before court decree.....	143	2.8	80	2.3	44	3.8	18	4.1	1	1.0
Compliance.....	107	2.1	56	1.6	35	3.0	16	3.7	0	.0
Dismissed.....	34	.7	22	.6	9	.8	2	.4	1	1.0
Otherwise.....	2	(⁶)	2	1	0	0	0	0	0	.0
After Board order adopting intermediate report followed by circuit court decree compliance.....	8	.2	5	1	3	3	0	0	0	0
After circuit court decree, before Supreme Court action.....	102	2.0	68	2.0	25	2.2	6	1.4	3	3.0
Compliance.....	86	1.7	57	1.7	23	2.0	6	1.4	0	0
Dismissed.....	14	.3	10	.3	1	1	0	.0	3	3.0
Otherwise.....	2	(⁶)	1	(⁶)	1	1	0	0	0	0
After Supreme Court denied writ of certiorari.....	27	.5	19	.6	7	.6	1	.2	0	0
Compliance.....	² 25	.5	² 18	.6	7	.6	0	0	0	0
Dismissed.....	2	(⁶)	1	(⁶)	0	.0	1	.2	0	0
After Supreme Court opinion.....	5	.1	4	.1	0	.0	1	.2	0	0
Compliance.....	2	(⁶)	2	(⁶)	0	0	0	.0	0	0
Dismissed.....	3	.1	2	.1	0	0	1	.2	0	0

¹ See table 1, footnote 1, for definitions of types of cases.

² Includes 1 N. L. R. A. case.

³ Includes 6 cases closed by compliance with Board decision after 10 (k) notice, and 3 cases adjusted after 10 (k) notice.

⁴ Includes 10 cases withdrawn after 10 (k) notice of hearing; and 2 cases withdrawn after hearing.

⁵ Includes 1 case dismissed by Board decision after 10 (k) notice, and 1 case dismissed after 10 (k) notice.

⁶ Less than one-tenth of 1 percent.

Table 10.—Analysis of Methods of Disposition of Representation Cases Closed, Fiscal Year 1957

Method and 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.....	7,514	100 0	6,551	100 0	607	100.0	356	100.0
Consent election.....	2,080	27.7	1,915	29 2	112	18 5	53	14 9
Before notice of hearing.....	1,534	20.4	1,420	21.7	79	13 0	35	9 8
After notice of hearing, before hearing opened.....	456	6.1	413	6.3	30	5.0	13	3.7
After hearing opened, before Board decision.....	90	1.2	82	1.2	3	.5	5	1.4
Stipulated election.....	1,700	22.6	1,569	24 0	96	15 8	35	9.8
Before notice of hearing.....	975	13.0	910	13 9	54	8 9	11	3 1
After notice of hearing, before hearing opened.....	498	6 6	458	7 0	22	3 6	18	5.1
After hearing opened, before Board decision.....	94	1 2	87	1 3	3	.5	4	1.1
After postelection decision.....	133	1.8	114	1.8	17	2 8	2	.5
Withdrawn.....	1,761	23.4	1,441	22 0	205	33 8	115	32 3
Before notice of hearing.....	1,089	14.5	886	13 5	129	21 3	74	20.8
After notice of hearing, before hearing opened.....	454	6.0	372	5 7	54	8 9	28	7.9
After hearing opened, before Board decision.....	119	1 6	93	1 4	20	3 3	6	1 6
After Board decision and direction of election.....	99	1 3	90	1 4	2	3	7	2 0
Dismissed.....	818	10 9	583	8 8	139	22.9	96	27.0
Before notice of hearing.....	495	6 6	323	4 9	104	17.1	68	19.1
After notice of hearing, before hearing opened.....	62	.8	45	.7	10	1 6	7	2 0
After hearing opened, before Board decision.....	26	.4	23	.3	1	.2	2	.6
By Board decision.....	² 235	3 1	192	2 9	24	4 0	19	5.3
Board-ordered election.....	1,155	15.4	1,043	16 0	55	9 0	57	16 0

¹ See table 1, footnote 1, for definitions of types of cases.

² Includes 11 RC, 10 RM, and 7 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 1957

Type of case	Total elections	Type of election			
		Consent ¹	Stipulated ²	Board ordered ³	Regional director directed ⁴
All elections, total.....	4,888	2,059	1,687	1,130	12
Eligible voters, total.....	470,926	111,245	175,552	183,341	788
Valid votes, total.....	421,544	101,221	159,248	160,506	569
RC cases, ⁵ total.....	4,499	1,905	1,567	1,027	-----
Eligible voters.....	441,542	104,257	161,898	175,387	-----
Valid votes.....	394,773	94,796	146,634	153,343	-----
RM cases, ⁵ total.....	230	100	84	46	-----
Eligible voters.....	17,362	4,112	8,877	4,373	-----
Valid votes.....	15,846	3,809	8,057	3,980	-----
RD cases, ⁵ total.....	145	53	36	56	-----
Eligible voters.....	11,018	2,735	4,777	3,506	-----
Valid votes.....	10,156	2,487	4,557	3,112	-----
UD cases, ⁵ total.....	14	1	0	1	12
Eligible voters.....	1,004	141	0	75	788
Valid votes.....	769	129	0	71	569

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. Post-election rulings on objections and/or challenges are made by the Board.

⁴ These elections are held pursuant to direction by the regional director. Postelection rulings on objections and/or challenges are made by the Board.

⁵ See table 1, footnote 1, for definitions of types of cases.

Table 12.—Results of Union-Shop Deauthorization Polls, Fiscal Year 1957

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.....	14	9	64.3	5	35.7	1,004	695	69.2	309	30.8	769	76.6	521	51.9
AFL-CIO.....	11	7	63.6	4	36.4	960	684	71.3	276	28.7	741	77.2	497	51.8
Unaffiliated.....	3	2	66.7	1	33.3	44	11	25.0	33	75.0	28	63.6	24	54.5

¹ Sec. 8 (a) (3) of the act requires that, to revoke a union-shop provision, a majority of the employees eligible to vote must vote in favor of deauthorization.

Table 13.—Collective-Bargaining Elections ¹ by Affiliation of Participating Unions, Fiscal Year 1957

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.....	4,729	2,942	62.2	2,458,904	264,920	57.7	2,410,619	89.5	261,762	63.7
AFL-CIO.....	4,464	2,619	58.7	444,960	176,497	39.7	398,612	89.6	199,441	50.0
Unaffiliated.....	510	323	63.3	125,030	88,423	70.7	107,695	86.1	62,321	57.9

¹ The term "collective-bargaining election" is used to cover representation elections requested by a union or other candidate for employee representative or by the employer. This term is used to distinguish this type of election from a decertification election, which is one requested by employees seeking to revoke the representation rights of a union which is already certified or which is recognized by the employer without a Board certification.

² Elections involving 2 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 2 groupings by affiliation.

Table 13A.—Outcome of Collective-Bargaining Elections ¹ by Affiliation of Participating Unions, and Number of Employees in Units, Fiscal Year 1957

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—		In which no representative was chosen	Total	In units in which representation rights were won by—		In units where no representative was chosen	
		AFL-CIO affiliates	Unaffiliated unions			AFL-CIO affiliates	Unaffiliated unions		
Total.....	4,729	2,619	323	1,787	458,904	176,497	88,423	193,984	410,619
1-union elections:									
AFL-CIO.....	3,879	2,236		1,643	282,748	112,816		169,932	257,960
Unaffiliated.....	256		190	66	12,639		8,882	3,757	10,792
2-union elections:									
AFL-CIO v. AFL-CIO.....	321	260		61	48,936	30,591		18,345	43,025
AFL-CIO v. unaffiliated.....	223	98	113	12	100,923	20,206	69,495	1,222	86,359
Unaffiliated v. unaffiliated.....	9		9	0	1,305		1,305	0	1,215
3-union elections:									
AFL-CIO v. AFL-CIO v. AFL-CIO.....	17	15		2	1,780	1,620		160	1,547
AFL-CIO v. AFL-CIO v. unaffiliated.....	20	9	9	2	10,095	1,244	8,673	178	9,265
AFL-CIO v. unaffiliated v. unaffiliated.....	2	0	2	0	68	0	68	0	64
4-union elections:									
AFL-CIO v. AFL-CIO v. AFL-CIO v. AFL-CIO.....	2	1		1	410	20		390	392

¹ For definition of this term, see table 13, footnote 1.

Table 14.—Decertification Elections by Affiliation of Participating Unions, Fiscal Year 1957

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.....	145	46	31.7	99	68.3	11,018	4,130	37.5	6,888	62.5	10,156	92.2	4,640	45.7
AFL-CIO...	139	44	31.7	95	68.3	10,587	4,018	38.0	6,569	62.0	9,750	92.1	4,452	45.7
Unaffiliated..	6	2	33.3	4	66.7	431	112	26.0	319	74.0	406	94.2	188	46.3

Table 14A.—Voting in Decertification Elections, Fiscal Year 1957

Union affiliation	Elections in which a representative was redesignated					Elections resulting in decertification				
	Employees eligible to vote	Total valid votes cast	Percent casting valid votes	Votes cast for winning union	Votes cast for no union	Employees eligible to vote	Total valid votes cast	Percent casting valid votes	Votes cast for losing union	Votes cast for no union
Total.....	4,130	3,678	89.1	2,528	1,150	6,888	6,478	94.0	2,112	4,366
AFL-CIO.....	4,018	3,572	88.9	2,457	1,115	6,569	6,178	94.0	1,995	4,183
Unaffiliated.....	112	106	94.6	71	35	319	300	94.0	117	183

Table 15.—Size of Units in Collective-Bargaining and Decertification Elections, Fiscal Year 1957

A. COLLECTIVE-BARGAINING ELECTIONS

Size of unit (number of employees)	Number of elections	Per- cent of total	Elections in which representa- tion rights were won by—				Elections in which no repre- sentative was chosen	
			AFL-CIO affiliates		Unaffiliated unions		Number	Per- cent
			Number	Per- cent	Number	Per- cent		
Total.....	4, 729	100.0	2, 619	100.0	323	100.0	1, 787	100.0
1-9.....	801	16.9	519	19.8	50	15.5	232	13.0
10-19.....	907	19.2	566	21.6	54	16.7	287	16.1
20-29.....	604	12.8	339	12.9	40	12.4	225	12.6
30-39.....	444	9.4	245	9.4	33	10.2	166	9.3
40-49.....	307	6.5	174	6.6	25	7.7	108	6.0
50-59.....	231	4.9	132	5.0	9	2.8	90	5.0
60-69.....	165	3.5	86	3.3	7	2.2	72	4.0
70-79.....	147	3.1	75	2.9	6	1.9	66	3.7
80-89.....	119	2.5	60	2.3	7	2.2	52	2.9
90-99.....	93	2.0	47	1.8	5	1.5	41	2.3
100-149.....	302	6.4	150	5.7	23	7.1	129	7.2
150-199.....	155	3.3	67	2.6	7	2.2	81	4.5
200-299.....	181	3.8	71	2.7	19	5.9	91	5.1
300-399.....	83	1.8	25	1.0	10	3.1	48	2.7
400-499.....	63	1.3	16	.6	6	1.9	41	2.3
500-599.....	25	.5	12	.5	2	.6	11	.6
600-799.....	30	.7	14	.5	1	.3	15	.8
800-999.....	20	.4	6	.2	3	.9	11	.6
1,000-1,999.....	33	.7	9	.3	7	2.2	17	1.0
2,000-2,999.....	11	.2	4	.2	4	1.2	3	.2
3,000-3,999.....	2	(¹)	0	.0	2	.6	0	.0
4,000-4,999.....	2	(¹)	2	.1	0	.0	0	.0
5,000-9,999.....	3	.1	0	.0	2	.6	1	.1
10,000 and over.....	1	(¹)	0	.0	1	.3	0	.0

B. DECERTIFICATION ELECTIONS

Total.....	145	100.0	44	100.0	2	100.0	99	100.0
1-9.....	30	20.7	2	4.5	0	.0	28	28.3
10-19.....	21	14.5	2	4.5	0	.0	19	19.2
20-29.....	17	11.7	3	6.8	0	.0	14	14.2
30-39.....	19	13.1	6	13.7	1	50.0	12	12.2
40-49.....	9	6.2	5	11.4	0	.0	4	4.0
50-59.....	7	4.8	3	6.8	0	.0	4	4.0
60-69.....	5	3.5	1	2.3	0	.0	4	4.0
70-79.....	5	3.5	4	9.1	1	50.0	0	.0
80-89.....	1	.7	0	.0	0	.0	1	1.0
90-99.....	4	2.7	4	9.1	0	.0	0	.0
100-149.....	8	5.5	7	16.0	0	.0	1	1.0
150-199.....	6	4.1	2	4.5	0	.0	4	4.0
200-299.....	7	4.8	3	6.8	0	.0	4	4.0
300-399.....	3	2.1	2	4.5	0	.0	1	1.0
400 and over.....	3	2.1	0	.0	0	.0	3	3.1

¹ Less than one-tenth of 1 percent.

Table 16.—Geographic Distribution of Collective-Bargaining Elections, Fiscal Year 1957

Division and State	Total	Number of elections in which representation rights were won by—		In which no representative was chosen	Em-ployees eligible to vote	Total valid votes cast	Valid votes cast for—			Em- ployees in units choosing rep- resentation
		AFL-CIO affiliates	Unaf- filiated unions				AFL-CIO affiliates	Unaf- filiated unions	No union	
Total.....	4, 729	2, 619	323	1, 787	458, 904	410, 619	199, 441	62, 321	148, 857	264, 920
New England.....	316	166	18	132	41, 453	37, 513	17, 941	3, 753	15, 819	21, 857
Maine.....	28	14	0	14	5, 795	5, 258	2, 752	0	2, 506	3, 461
New Hampshire.....	23	10	0	13	2, 155	1, 944	771	0	1, 173	471
Vermont.....	20	9	3	8	1, 818	1, 702	697	66	939	609
Massachusetts.....	154	83	11	60	18, 018	15, 939	8, 016	2, 607	5, 316	11, 916
Rhode Island.....	25	10	2	13	3, 151	2, 937	1, 273	311	1, 353	1, 392
Connecticut.....	66	40	2	24	10, 516	9, 733	4, 432	769	4, 532	4, 008
Middle Atlantic.....	750	436	77	237	88, 349	80, 008	39, 110	19, 420	21, 478	61, 843
New York.....	318	205	37	76	47, 666	42, 691	18, 330	16, 082	8, 279	37, 690
New Jersey.....	179	101	17	61	16, 834	14, 885	9, 710	2, 233	2, 942	12, 982
Pennsylvania.....	253	130	23	100	23, 849	22, 432	11, 070	1, 105	10, 257	11, 171
East North Central.....	1, 167	647	89	431	116, 605	102, 809	53, 423	12, 492	36, 894	65, 019
Ohio.....	336	186	37	113	37, 363	32, 048	17, 135	5, 198	9, 715	25, 215
Indiana.....	157	76	9	72	21, 335	19, 736	11, 119	3, 274	5, 343	14, 069
Illinois.....	298	164	18	116	33, 387	28, 887	13, 728	2, 439	12, 720	11, 777
Michigan.....	267	151	23	93	18, 891	17, 174	8, 452	1, 344	7, 378	10, 375
Wisconsin.....	109	70	2	37	5, 629	4, 964	2, 989	237	1, 738	3, 583
West North Central.....	556	316	27	213	28, 078	25, 373	12, 069	3, 456	9, 848	15, 625
Iowa.....	96	53	4	39	4, 544	4, 086	2, 164	677	1, 245	3, 241
Minnesota.....	118	75	3	40	3, 588	3, 304	1, 924	155	1, 245	2, 190
Missouri.....	158	89	17	52	9, 399	8, 394	3, 149	1, 643	3, 602	4, 844
North Dakota.....	52	34	0	18	1, 051	964	611	0	353	757
South Dakota.....	15	9	0	6	2, 167	1, 998	916	0	1, 082	435
Nebraska.....	58	30	0	28	2, 481	2, 188	1, 159	0	1, 029	947
Kansas.....	59	26	3	30	4, 868	4, 439	2, 146	1, 001	1, 292	3, 211
South Atlantic.....	463	229	17	217	58, 185	52, 995	22, 190	8, 093	22, 712	27, 220
Delaware.....	11	7	0	4	413	392	162	0	230	261
Maryland.....	63	35	1	27	4, 907	4, 669	2, 268	21	2, 280	1, 255
District of Colum- bia.....	21	14	0	7	1, 666	1, 441	746	29	666	1, 441
Virginia.....	62	32	3	27	13, 699	12, 465	3, 183	7, 474	1, 808	11, 372
West Virginia.....	46	21	9	16	2, 586	2, 345	999	298	1, 048	1, 587
North Carolina.....	71	25	0	46	13, 417	12, 386	5, 059	0	7, 327	1, 980
South Carolina.....	10	5	1	4	1, 453	1, 357	604	7	746	797
Georgia.....	85	39	2	44	11, 596	10, 569	5, 117	180	5, 272	4, 268
Florida.....	94	51	1	42	8, 448	7, 471	4, 052	84	3, 385	4, 259

See footnote at end of table

Table 16.—Geographic Distribution of Collective-Bargaining Elections, Fiscal Year 1957—Continued

Division and State	Total	Number of elections in which representation rights were won by—		In which no representative was chosen	Em- ployees eligible to vote	Total valid votes cast	Valid votes cast for—			Em- ployees in units choos- ing represen- tation
		AFL- CIO affili- ates	Unaf- filiated unions				AFL- CIO affili- ates	Unaf- filiated unions	No union	
East South Central..	266	135	12	119	32,315	29,816	14,604	895	14,317	13,096
Kentucky.....	84	43	6	35	8,359	7,617	4,613	332	2,672	5,152
Tennessee.....	115	63	4	48	14,466	13,522	6,130	438	6,954	5,201
Alabama.....	45	18	1	26	6,686	6,060	2,782	67	3,211	1,784
Mississippi.....	22	11	1	10	2,804	2,617	1,079	58	1,480	959
West South Central..	409	222	20	167	35,278	31,542	15,592	3,539	12,411	21,389
Arkansas.....	58	32	0	26	5,406	4,991	2,541	0	2,450	2,609
Louisiana.....	77	46	6	25	5,986	5,530	3,063	536	1,931	4,068
Oklahoma.....	52	29	0	23	2,547	2,383	1,208	35	1,140	1,222
Texas.....	222	115	14	93	21,339	18,638	8,780	2,968	6,890	13,490
Mountain.....	220	138	17	65	20,081	17,065	7,828	5,576	3,661	15,771
Montana.....	18	11	3	4	9,433	7,234	2,837	4,226	171	9,402
Idaho.....	17	11	0	6	527	494	257	0	237	257
Wyoming.....	9	4	0	5	253	234	126	0	108	79
Colorado.....	92	58	2	32	3,835	3,619	1,832	28	1,759	1,483
New Mexico.....	23	16	2	5	1,491	1,371	718	434	219	1,275
Arizona.....	47	29	9	9	4,279	3,882	1,923	849	1,110	3,087
Utah.....	8	4	0	4	162	144	91	7	46	87
Nevada.....	6	5	1	0	101	87	44	32	11	101
Pacific.....	482	268	32	182	32,276	28,210	14,075	3,764	10,371	18,419
Washington.....	68	49	1	18	2,292	2,069	1,135	456	478	1,749
Oregon.....	45	20	3	22	2,497	2,231	1,351	295	585	1,700
California.....	369	199	28	142	27,487	23,910	11,589	3,013	9,308	14,970
Outlying areas.....	100	62	14	24	6,284	5,288	2,609	1,333	1,346	4,681
Alaska.....	11	10	1	0	335	278	233	33	12	335
Hawaii.....	32	20	3	9	1,561	1,452	642	303	507	1,093
Puerto Rico.....	56	31	10	15	4,360	3,539	1,720	997	822	3,225
Virgin Islands.....	1	1	0	0	28	19	14	0	5	28

¹ The States are grouped according to the method used by the Bureau of the Census, U. S. Department of Commerce

Table 17.—Industrial Distribution of Collective-Bargaining Elections, Fiscal Year 1957

Industrial group ¹	Number of elections			Eligible voters	Valid votes cast	
	Total	In which representation rights were won by—				
		AFL-CIO affiliates	Unaffiliated unions			In which no representative was chosen
Total.....	4,729	2,619	323	1,787	458,904	410,619
Manufacturing.....	3,282	1,781	234	1,267	357,471	322,794
Ordnance and accessories.....	13	7	2	4	1,746	1,604
Food and kindred products.....	443	250	30	163	28,454	25,409
Tobacco manufacturers.....	13	8		5	2,074	1,884
Textile mill products.....	73	27	7	39	20,042	18,477
Apparel and other finished products made from fabrics and similar material.....	57	30	2	25	7,572	6,967
Lumber and wood products.....	140	71	6	63	9,584	8,792
Furniture and fixtures.....	125	57	5	63	12,807	12,016
Paper and allied products.....	138	80	9	49	16,848	15,530
Printing, publishing, and allied industries.....	161	106	9	46	5,770	5,312
Chemicals and allied products.....	233	145	16	72	18,749	17,194
Products of petroleum and coal.....	80	42	14	24	11,338	9,591
Rubber products.....	61	30	3	28	7,496	6,992
Leather and leather products.....	56	24	2	30	9,414	8,717
Stone, clay, and glass products.....	136	83	5	48	12,148	10,969
Primary metal industries.....	213	105	29	79	27,927	25,225
Fabricated metal products (except machinery and transportation equipment).....	387	222	20	145	27,750	25,161
Machinery (except electrical).....	365	188	35	142	39,459	36,496
Electrical machinery, equipment, and supplies.....	186	91	14	81	37,629	31,730
Aircraft and parts.....	62	30	5	27	13,277	11,672
Ship and boat building and repairing.....	25	9	2	14	11,256	10,138
Automotive and other transportation equipment.....	118	72	6	40	13,941	12,563
Professional, scientific, and controlling instruments.....	44	21	1	22	7,142	6,668
Miscellaneous manufacturing.....	153	83	12	58	15,048	13,687
Fisheries.....	0	0	0	0	0	0
Mining.....	65	39	7	19	11,623	9,518
Metal mining.....	28	17	5	6	8,763	6,864
Coal mining.....	3	1	2	0	116	108
Crude petroleum and natural gas production.....	6	3	0	3	601	590
Nonmetallic mining and quarrying.....	28	18	0	10	2,143	1,956
Construction.....	55	33	3	19	2,822	2,369
Wholesale trade.....	446	253	26	167	13,779	12,181
Retail trade.....	412	246	9	157	24,401	20,460
Finance, insurance, and real estate.....	23	11	1	11	1,776	1,614
Transportation, communication, and other public utilities.....	361	203	33	125	43,796	38,830
Highway passenger transportation.....	17	10	2	5	3,538	3,255
Highway freight transportation.....	118	69	8	41	2,883	2,525
Water transportation.....	31	12	12	7	25,184	22,130
Warehousing and storage.....	75	50	5	20	2,209	2,055
Other transportation.....	16	7	1	8	1,931	1,791
Communication.....	60	31	4	25	4,335	3,640
Heat, light, power, water, and sanitary services.....	44	24	1	19	3,716	3,434
Services.....	85	53	10	22	3,236	2,853

¹ Source: Standard Industrial Classification, Division of Statistical Standards, U. S. Bureau of the Budget, Washington, 1945

Table 18.—Injunction Litigation Under Sec. 10 (j) and (l), Fiscal Year 1957

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	1	0	0.
(b) Against employers.....	1	1	0	0.
Under sec. 10 (l).....	98	147	24	29 settled, ³ 2 withdrawn, 17 alleged illegal activity suspended, ⁴ 8 pending.
Total.....	⁴ 100	49	4	56.

¹ 7 injunctions granted in cases 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, 1956–June 30, 1957; and July 5, 1935–June 30, 1957

Results	July 1, 1956–June 30, 1957		July 5, 1935–June 30, 1957	
	Number	Percent	Number	Percent
Cases decided by United States courts of appeals.....	84	100.0	1,717	100.0
Board orders enforced in full.....	47	55.9	1,024	59.6
Board orders enforced with modification.....	19	22.6	346	20.2
Remanded to Board.....	4	4.8	38	2.2
Board orders partially enforced and partially remanded.....	1	1.2	12	.7
Board orders set aside.....	13	15.5	297	17.3
Cases decided by United States Supreme Court.....	7	100.0	104	100.0
Board orders enforced in full.....	3	43.0	70	67.3
Board orders enforced with modification.....			11	10.5
Board orders set aside.....	3	43.0	13	12.5
Remanded to Board.....			1	1.0
Remanded to court of appeals.....	1	14.0	7	6.7
Board's request for remand or modification of enforcement order denied.....			1	1.0
Contempt case enforced.....			1	1.0

Table 20.—Record of Injunctions Petitioned for, or Acted Upon, Fiscal Year 1957

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				
4-CC-59....	AFL-Teamsters, Local 107 (Horn & Hardart Baking Co.).	July 13, 1955	10 (I)	-----	-----	July 27, 1955	-----	July 20, 1956	Apr. 30, 1956.
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 (I)	-----	-----	(1)	-----	Sept. 21, 1956	July 24, 1956, as to State empls. Aug. 30, 1955.
8-CC-37....	AFL-Teamsters, Local 20 (National Cement Products Co.).	Sept. 7, 1955	10 (I)	-----	-----	(1)	-----	July 16, 1956	May 10, 1956.
2-CC-355..	AFL-Teamsters, Local 338 (Crowley's Milk Co.).	Sept. 15, 1955	10 (I)	-----	-----	-----	Nov. 15, 1955	-----	Oct 25, 1956.
2-CC-350..	AFL-Teamsters, Local 810 (Fireproof Products Co., Inc.).	Sept. 20, 1955	10 (3)	-----	-----	(1)	-----	Sept. 20, 1956	Settled.
2-CC-362, 363.	AFL-Teamsters, Locals 976, 277 and Joint Council No. 67 (Cache Valley Dairy Association & Dairy Distributors, Inc.).	Oct. 13, 1955	10 (I)	-----	-----	Jan. 17, 1956 (in part)	-----	Nov 9, 1956	Dec 16, 1955 (Local 277 only); July 1956 as to Locals 967 and Joint Council 67.
2-CC-358, 2-CD-114.	AFL-Teamsters, Local 282 and John Cody, AFL-Engineers, Operating, Local 138 et al. (Long Island Lighting Co.).	Oct. 18, 1955	10 (I)	-----	-----	(1)	-----	Aug. 31, 1956	Apr. 17, 1956 as to Cody and Local 282, Apr. 17, 1956 as to Local 138 and operating engineers.
17-CC-38..	AFL-Teamsters, Local 659 and AFL-Hod Carriers, Local 1140 (Associated General Contractors of Omaha.)	Oct. 20, 1955	10 (I)	-----	-----	(1)	-----	Sept 21, 1956	Aug. 8, 1956.
10-CC-131..	AFL-Teamsters, Truck Drivers and Helpers, Local 728 (Empire State Express, Inc.).	Oct. 24, 1955	10 (I)	-----	-----	Nov. 3, 1955	-----	Oct. 11, 1956	Aug. 16, 1956.
14-CC-86..	AFL-Teamsters, Automotive, Petroleum and Allied Industries Employees Union, Local 618 (Incorporated Oil Co.).	Oct. 31, 1955	10 (I)	-----	-----	Nov. 22, 1955	-----	Jan. 8, 1957	Dec 20, 1956.
10-CC-130..	AFL-Teamsters, Local 327 (B & S Motor Lines, Inc.).	Nov. 1, 1955	10 (I)	-----	-----	Nov. 14, 1955	-----	Dec. 19, 1956	Aug 24, 1956.
2-CC-366..	AFL-Auto Workers, Local 224 (Queen Ribbon & Carbon Co.).	Nov. 22, 1955	10 (I)	-----	-----	(1)	-----	Nov. 29, 1956	Aug. 24, 1956.
14-CC-88..	AFL-Teamsters, Local 688 (Coca-Cola Bottling Co. of St. Louis).	Dec. 6, 1955	10 (I)	-----	-----	-----	Jan. 27, 1956	-----	Aug 24, 1956.

See footnotes at end of table.

Table 20.—Record of Injunctions Petitioned for, or Acted Upon, Fiscal Year 1957—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-91, 92, 14- CD-59.	AFL-Plumbers, Building and Construction and Metal Trades Division, Local 562 (St. Louis County Water Co.).	Dec. 27, 1955	10 (I)	-----	-----	(I)	-----	Sept. 25, 1956	Sept 14, 1956, as to CD case only.
17-CC-43, 44	AFL-Teamsters, and Local 554 (Clark Bros. Transfer Co.).	Feb. 3, 1956	10 (I)	-----	-----	July 30, 1956	-----	-----	Dec 26, 1956.
14-CC-93.	AFL-Teamsters, Local 688 (Coca-Cola Bottling Co. of St. Louis).	Feb. 13, 1956	10 (I)	-----	-----	Feb. 28, 1956	-----	Aug. 31, 1956	June 8, 1956.
36-CC-44.	AFL-Teamsters, Local 501 and Joint Council No. 37 (A. F. Lowes Lumber Co.).	Mar. 26, 1956	10 (I) (W D. Wash.)	-----	-----	(I)	-----	July 9, 1956	June 7, 1956.
36-CC-44.	AFL-Teamsters, Local 162 and Joint Council No. 37 (A. F. Lowes Lumber Co.).	Mar. 29, 1956	10 (I) (Oreg.)	-----	-----	(I)	-----	July 26, 1956	June 7, 1956.
36-CC-48, 49.	AFL-Teamsters, Western Conference et al. (Central Dcck Co. & Pacific Lumber Transport).	Mar 29, 1956	10 (I)	-----	-----	(I)	-----	July 26, 1956	June 7, 1956
2-CC-387.	AFL-Teamsters, Local 469 (Ford Motor Co.).	Apr. 25, 1956	10 (I)	Apr. 25, 1956	May 3, 1956	May 3, 1956	-----	July 19, 1956	July 9, 1956.
30-CC-28.	AFL-Cheyenne Building and Construction Trades Council et al. (Atlantis Investment Co.).	May 7, 1956	10 (I)	-----	-----	(I)	-----	Feb. 8, 1957	Dec. 11, 1956 (con- sent) Board order.
2-CC-373.	AFL-Teamsters, Local 1522 (Fedders-Gulgan Corp.).	Mar. 29, 1956	10 (I)	-----	-----	(I)	-----	Aug. 23, 1956	July 19, 1956.
8-CC-42.	AFL-Teamsters, Local 92 (Canton Hardware Co.).	May 8, 1956	10 (I)	-----	-----	(I)	-----	Sept. 20, 1956	Withdrawn.
15-CC-48.	AFL-Teamsters, Local 270 (Genuine Parts Co.).	May 16, 1956	10 (I)	-----	-----	June 11, 1956	-----	Jan 10, 1957	(Compliance with provisions of I. R.)
10-CC-173- 176, 178- 185, 187, 189, 191, 193, 200, 201, 202, 207-210	AFL-Engineers, Operating, Local 926 (Campbell Coal Co. & Associated General Contractors of America, Inc., Georgia Branch).	June 6, 1956	10 (I)	-----	-----	July 3, 1956	-----	Jan. 11, 1957	Dec 6, 1956 (con- sent).
2-CD-122, 123, 124.	AFL-Lathers, et al (Newark & Essex Plastering Co. and Alexander Ziemba)	June 7, 1956	10 (I)	-----	-----	Aug 24, 1956 (all except Int'l)	-----	-----	-----
2-CC-388.	AFL-Hotel and Restaurant Employees, Local 11 (Hot Shoppes, Inc.).	June 12, 1956	10 (I)	-----	-----	(I)	-----	Dec 12, 1956	Settled

10-CC-213- 215, 218- 240, 243- 250.	AFL-Hod Carriers, Local 386, et al. (T. L. Herbert & Sons).	June 19, 1956	10 (1)			July 12, 1956 (consent)		May 3, 1957	Oct 26, 1956
2-CD-125	Longshoremen's Association, Locals 976-4, 1277, 1804 (Abraham Kaplan, Associated Painting Employers of Brooklyn, Inc.).	June 25, 1956	10 (1)			Apr 25, 1957	Aug 29, 1956 Oct 9, 1956 (appeal from district court denial of injunction) Aug 28, 1956		
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)			(1)		Oct. 9, 1956	Settled
15-CC-49	CIO-Woodworkers and Locals S-426 and S-429 (W. T. Smith Lumber Co.).	June 27, 1956	10 (1)			July 16, 1956		Apr 11, 1957	
1-CC-155	AFL-Carpenters, et al. (J. G. Roy & Sons Co).	June 28, 1956	10 (1)			July 12, 1956			June 24, 1957.
20-CC-106	AFL-Retail Clerks, Retail Fruit and Vegetable Workers, Local 1017 and Grocery Clerks, Local 648 (Retail Fruit Dealers Association of San Francisco).	Apr 22, 1955	10 (1)			(1)		Aug 28, 1956	Aug. 24, 1956.
2-CC-339	Newspaper and Mail Deliverers, Vi- cinity of New York (New York Sunday Graphic, Inc).	May 27, 1955	10 (1)	May 27, 1955	June 9, 1955	June 9, 1955		Mar 18, 1956	Mar. 13, 1956.
2-CC-333	AFL-Teamsters, Local 680 (Crowley's Milk Co., Inc.).	May 31, 1955	10 (1)				July 11, 1955		Oct. 25, 1956
10-CC-99	AFL-Bakery Workers, Local 25 (King's Bakery, Inc.).	June 21, 1955	10 (1)			June 28, 1955		Oct. 3, 1956	July 25, 1956
21-CC-231	AFL-Van Amalgamated Local No. 999 (Lido Pipe & Supply Co.).	July 3, 1956	10 (1)			(1)		Jan 14, 1957	Settled.
1-CC-161, 163.	AFL-Hod Carriers, Local 668 and AFL-Teamsters, Local 633 (David- son Construction Co).	July 6, 1956	10 (1)			(1)		Nov. 20, 1956	Settled
1-CC-136- 145.	AFL-Rhode Island Allied Building Trades Council et al. (Rhode Is- land Chapter, Associated General Contractors of America).	July 9, 1956	10 (1)			(1)		Oct 18, 1956	Settled.
1-CC-159, 160.	AFL-Bridge Structural Iron Workers, Local 474 and AFL-Engineers, Oper- ating, Local 98 (R. S Noonan, Inc.).	July 17, 1956	10 (1)			July 25, 1956 (consent)		Nov 27, 1956	Settled.
10-CC-253	AFL-Teamsters, Local 728 (Harper Motor Lines).	July 19, 1956	10 (1)			Aug 3, 1956		Oct 10, 1956	Sept. 27, 1956.
19-CC-89	AFL-Painters, Local 720 (Pittsburgh Plate Glass Co).	July 20, 1956	10 (1)			(1)		Aug 24, 1956	Aug 20, 1956.
3-CC-57	AFL-Teamsters, Local 294 (E. G. DeLia & Sons).	July 26, 1956	10 (1)			(1)			Apr 29, 1957.
3-CC-53	AFL-Carpenters, Local 1016 (Booher Lumber Co., Inc.)	July 26, 1956	10 (1)			(1)			May 24, 1957.

See footnotes at end of table.

Table 20.—Record of Injunctions Petitioned for, or Acted Upon, Fiscal Year 1957—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				
18-CC-37...	CIO-Steel Workers et al. (Foley Constructors).	July 27, 1956	10 (I)	-----	-----	(I)	-----	Aug. 31, 1956	Withdrawn.
24-CC-35...	Union de Trabajadores de Muelles y Ramas Anexas, Dist. Council 15, AFL-CIO (ILA District Council).	July 27, 1956	10 (I)	-----	-----	(I)	-----	Oct. 16, 1956	Oct. 3, 1956.
2-CD-126...	AFL-Lathers, Local 46 (Jacobson & Co., Inc.).	Aug. 1, 1956	10 (I)	-----	-----	May 1, 1957*	-----	-----	-----
19-CC-90...	Inlandboatmen's Union of the Pacific, Alaska Division, et al. (Ketchikan Pulp Co.).	Aug. 3, 1956	10 (I)	-----	-----	(I)	-----	-----	-----
10-CC-255, 256,* 12- CC-1, 2.	AFL-Teamsters, Local 390 (U & Me Transfer).	Aug. 6, 1956	10 (I)	-----	-----	Aug. 15, 1956	-----	-----	-----
33-CC-13...	AFL-Barbers and Local 501 (Southwestern Greyhound Lines).	Aug. 7, 1956	10 (I)	-----	-----	(I)	-----	Nov. 28, 1956	Nov. 20, 1956.
17-CC-51, 62.	AFL-Teamsters, Local 659 (Ready-Mixed Concrete Co.).	Aug. 8, 1956	10 (I)	-----	-----	Dec. 20, 1956	-----	May 8, 1957	Apr. 18, 1957.
2-CC-390...	AFL-Meatcutters, Locals 640, 627 (Howard Johnson's Inc.).	Aug. 9, 1956	10 (I)	-----	-----	(I)	-----	Feb. 28, 1957	Withdrawn.
15-CC-50...	AFL-Teamsters, Local 270 (Diaz Drayage Co.).	Aug. 17, 1956	10 (I)	Aug. 17, 1956	May 23, 1957	Aug. 21, 1956	-----	May 23, 1957	Mar. 29, 1957.
2-CC-391- 393.	AFL-Garment Workers, Ladies, Local 155 (James Knitting Mills Inc. et al.).	Aug. 20, 1956	10 (I)	-----	-----	Jan. 3, 1957	-----	-----	May 7, 1957.
10-CC-257- 262, 264- 266* 12- CC-4-12.	AFL-Bricklayers, Local 1 and AFL-Carpenters, Local 1685, et al. (J. Hilbert Sapp, Inc. & A. C. West).	Aug. 21, 1956	10 (I)	-----	-----	(I)	-----	-----	-----
5-CC-66....	AFL-Norfolk Building and Construction Trades Council, et al. (Doyle & Russell).	Aug. 30, 1956	10 (I)	-----	-----	(I)	-----	Dec. 13, 1956	Settled.
19-CC-91...	AFL-Teamsters, Local 190 (Babcock & Lee Petroleum Transporters, Inc.).	Sept. 4, 1956	10 (I)	-----	-----	(I)	-----	May 28, 1957	Apr. 26, 1957.
2-CD-133...	AFL-Engineers, Operating, Local 133 (Building Contractors Association of New Jersey).	Sept. 4, 1956	10 (I)	-----	-----	-----	-----	-----	-----
14-CB-400, 14-CC-95, 14-OD-64.	AFL-Electrical Workers, Local 1 (Dependable Appliance Service).	Sept. 4, 1956	10 (I)	-----	-----	(I)	-----	Dec. 3, 1956	Settled.

9-CB-321, 9-CC-90, 91, 9-CD- 26.	AFL-Southwestern West Virginia Building Trades Council et al. (Allen & Garcia Co., et al.).	Sept. 5, 1956	10 (1)			Sept. 14, 1956 (consent)		Jan. 25, 1957	Nov. 26, 1956.
35-CC-36...	CIO-Broadcast Technicians, Local 1225 (Rollins Broadcasting Inc.).	Sept. 13, 1956	10 (1)			(1)		May 28, 1957	May 9, 1957.
15-CC-52...	AFL-Engineers, Operating, Locals 406, 406A, 406B, and 406C (Jahncke Service Inc.).	Sept. 18, 1956	10 (1)			Oct. 5, 1956			
14-CC-97...	AFL-Carpenters, Local 169 (W. H. Condo Brick Contractor).	Sept. 19, 1956	10 (1)			Oct. 1, 1956			
8-CD-8.....	AFL-Lathers and Local 2 (Acoustical Contractors Association of Cleveland).	Sept. 20, 1956	10 (1)			(1)			
7-CC-49....	AFL-Grand Rapids Building and Construction Trades Council, et al. (Mooi Roofing Co.).	Sept 21, 1956	10 (1)			Nov. 3, 1956			Nov. 19, 1956 (I. R. Compliance).
32-CC-14, 15, 32- CD-1, 2.	AFL-Carpenters, and Local 345 (Associated General Contractors, Memphis Chapter, and Harmon Construction, et al.).	Sept. 24, 1956	10 (1)	Sept 24, 1956	Oct. 4, 1956	Oct. 4, 1956		Apr. 23, 1957	Withdrawn.
2-CC-394...	CIO-Retail, Wholesale Employees District 65 (Class-Knit Co.).	Sept. 26, 1956	10 (1)			Oct. 8, 1956			Jan. 2, 1957.
19-CC-95, 19-CD-26.	Longshoremen and Warehousemen, Local 16 (Denali-McCray).	Oct. 12, 1956	10 (1)			Oct. 19, 1956			
3-CC-58....	AFL-Garment Workers, Ladies (Chief Textiles, Inc.).	Oct. 16, 1956	10 (1)			(1)		Apr. 20, 1957	Withdrawn.
24-CC-42...	Union de Trabajadores de Muelles y Ramas Anexas de Puerto Rico (of Juan Diaz Andujar), et al. (Puerto Rico American Sugar Refinery Co.).	Oct. 24, 1956	10 (1)			Nov. 2, 1956			Jan. 17, 1957.
15-CC-53...	AFL-Seafarers, Atlantic and Gulf District (Jahncke Service, Inc.).	Nov. 1, 1956	10 (1)			(1)			
21-CC-238..	AFL-(Teamsters) Laundry, Linen Supply and Dry Cleaning Drivers, Local No. 928 (Southern Service Co., Ltd.).	Nov. 2, 1956	10 (1)				Dec. 3, 1956		
3-CC-59, 3-CD-22.	AFL-Lathers, Local 32 (Davis-Fetch & Co.).	Nov. 8, 1956	10 (1)			(1)		Apr. 15, 1957	Settled.
16-CC-71....	AFL-Teamsters, Dallas General Drivers, Warehousemen and Helpers, Local No. 745 (Associated Wholesale Grocery of Dallas, Inc.).	Nov. 14, 1956	10 (1)			Nov. 23, 1956			
2-CC-400, 405.	AFL-Garment Workers, Ladies, and AFL-Teamsters, Local 641 (Arthur Imerman Undergarment Corp. and Matawan Undergarment Co.).	Nov. 15, 1956	10 (1)					Jan. 21, 1957	Withdrawn.
35-CC-38...	CIO-Electrical Workers, Local 808 (Sears, Roebuck & Co.).	Nov. 20, 1956	10 (1)			(1)		Mar. 28, 1957	Feb. 1, 1957.

See footnotes at end of table.

Table 20.—Record of Injunctions Petitioned for, or Acted Upon, Fiscal Year 1957—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				
2-CB-1841..	Longshoremen's Association (New York Shipping Association)	Nov. 21, 1956	10 (j)	Nov. 21, 1956	-----	Dec. 12, 1956	-----	-----	-----
10-CC-283..	AFL-Teamsters, Local 728 (D. B. Thornton, Inc.).	Nov. 21, 1956	10 (l)	-----	-----	Dec. 13, 1956	-----	Apr. 12, 1957	Feb 20, 1957.
10-CC-286..	AFL-Chemical Workers, Local 35 (Mine & Mill Supply Co.).	Dec. 4, 1956	10 (l)	-----	-----	Dec. 17, 1956 (consent)	-----	Apr. 30, 1957	Settled.
6-CC-125, 6-CD-53.	AFL-Electrical Workers, Local 5 (West Penn Power Co.).	Dec. 4, 1956	10 (l)	-----	-----	(1)	-----	-----	Settled 6-CC-125, withdrawn 6-CD-53.
2-CD-134, 138, 139.	Longshoremen, International and its Locals 856, 791, 920 (Revoli Trucking Corp.)	Dec. 11, 1956	10 (l)	-----	-----	(1)	-----	-----	-----
15-CC-59, 61	AFL-Seafarers, Atlantic and Gulf District (Salt Dome Production Co.).	Dec. 15, 1956	10 (l)	Dec. 15, 1956	-----	-----	-----	-----	-----
11-CC-11, 12.	Longshoremen, International Association, Local 1422 (Charleston Stevedoring Co., et al).	Jan. 3, 1957	10 (l)	-----	-----	(1)	-----	-----	-----
13-CC-134..	AFL-Longshoremen, Local 19 (Somerville Iron Works).	Jan. 4, 1957	10 (l)	-----	-----	(1)	-----	Jan. 30, 1957	Withdrawn.
21-CC-249..	(AFL-Teamsters) Gardeners, Exterminators and Florists Division of Service and Maintenance Employees, Local 399 (Roberts & Associates).	Jan. 8, 1957	10 (l)	-----	-----	Feb. 13, 1957	-----	-----	-----
4-CC-81-83.	AFL-Teamsters, Highway Truck Drivers and Helpers, Local 107 (Coastal Tank Lines et al).	Jan. 15, 1957	10 (l)	-----	-----	Feb 2, 1957	-----	-----	-----
2-CC-407..	AFL-Garment Workers, Ladies, Local 155 (Packard Knitwear, Inc.).	Jan. 15, 1957	10 (l)	-----	-----	-----	Feb. 19, 1957	-----	-----
8-CC-51-61..	AFL-Teamsters, Locals 24, 407 et al. (A. C. E. Transportation Co.).	Jan. 21, 1957	10 (l)	Feb. 21, 1957	-----	Jan. 31, 1957	-----	-----	-----
12-CC-3....	AFL-Electrical Workers, Local 349 (Biscayne Television Corp.).	Jan. 22, 1957	10 (l)	-----	-----	Jan. 28, 1957	-----	-----	-----
5-CC-70....	AFL-Hod Carriers, Local 980 (The Kroger Co.).	Jan. 23, 1957	10 (l)	-----	-----	(1)	-----	-----	-----
10-CC-287, 288, 10- CD-76, 77	AFL-Sheet Metal Workers and Local 48 et al. (Gadsden Heating & Sheet Metal).	Jan. 31, 1957	10 (l)	-----	-----	Feb. 19, 1957	-----	-----	-----
10-CC-289, 292, 293, 296-300	AFL-Masters, Mates and Pilots of America (American Coal Shipping).	Feb. 2, 1957	10 (l)	-----	-----	Mar. 4, 1957	-----	-----	-----
10-CC-294, 295	AFL-Teamsters, Local 612 (Avery Freight Lines, Inc.).	Feb. 5, 1957	10 (l)	Feb. 5, 1957	-----	-----	-----	-----	-----

2-CC-410	AFL-Masters, Mates and Pilots (Monti Marine Co., Inc).	Feb 5, 1957	10 (1)			Feb. 26, 1957		
5-CC-71	AFL-Seafarers, Local 9, MEBA Local 11 (American Coal Shipping)	Feb 7, 1957	10 (1)			Apr. 2, 1957		
2-CA-5169	(AFL) Seafarers (American Coal Shipping).	Feb 11, 1957	10 (1)	Feb. 21, 1957	Mar. 13, 1957	Mar. 13, 1957		
10-CC-290, 301, 302	AFL-Chattanooga Building and Construction Trades Council, AFL-Teamsters Local 515, AFL-Hod Carriers, Local 846 (E. I. du Pont de Nemours Co.).	Feb 13, 1957	10 (1)			(1)	June 19, 1957	May 3, 1957.
2-CC-409	AFL-Garment Workers, Ladies, Local 602 (United Parcel Service of New York, Inc.).	Feb. 13, 1957	10 (1)					
37-CC-7, 37-CD-1	AFL-Teamsters, Hawaii Teamsters and Allied Workers, Local 996 (Honolulu Construction & Draying Co.).	Feb. 21, 1957	10 (1)			(1)	Feb. 27, 1957	Settled
24-CC-44, 46	AFL-Longshoremen, District Council of Puerto Rico, et al. (Editorial "El Imparcial Inc." and Puerto Rico Steamship Association).	Mar. 6, 1957	10 (1)	Mar 6, 1957	Mar 6, 1957	Mar. 11, 1957 (consent)		
10-CC-308	AFL-Engineers, Operating, Local 926 (Armco Drainage & Metal Products).	Mar. 11, 1957	10 (1)			(1)		
9-CC-93	AFL-Teamsters, Local 175 (McJunkin Corp).	Mar. 11, 1957	10 (1)			(1)		
17-CC-57	AFL-Teamsters, Building Materials and Construction, Ice and Coal Drivers, Local 859 (Associated General Contractors, Employers Association of Omaha and Wilson Concrete Co.).	Mar. 12, 1957	10 (1)			(1)		
21-CC-257	CIO-Clothing Workers, Los Angeles Joint Board (Encino Shirt Co.).	Mar. 13, 1957	10 (1)			(1)		
14-CC-101	AFL-Machinists, District 9 (Concrete Transport Mixer).	Mar. 25, 1957	10 (1)			(1)		Settled.
13-CC-135- 137.	AFL-Teamsters, Journeymen Barbers, Hairdressers, Cosmetologists and Proprietors (Chicago & Illinois Hairdressers).	Mar. 27, 1957	10 (1)					Settled.
5-CC-75, 5-CD-24	AFL-Plumbers, Local 5 (Construction Contractors Council).	Mar. 28, 1957	10 (1)			(1)		
5-CC-74.....	AFL-Engineers, Operating, Engineers Local 137 and AFL-Hod Carriers Local 194 (Harry T. Campbell Sons Corp.).	April 1, 1957	10 (1)			(1)		May 21, 1957

See footnotes at end of table.

Table 20.—Record of Injunctions Petitioned for, or Acted Upon, Fiscal Year 1957—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				
9-CC-94, 9-CD-29.	AFL-Carpenters, Falls Cities Carpenters' District Council, Local 64 (General Electric Co.)	April 2, 1957	10 (I)			(1)			Settled.
13-CC-131	AFL-Teamsters, General Chauffeurs, Sales Drivers and Helpers Union, Local 423 (Gas Dealers Forum of Aurora)	April 11, 1957	10 (I)			(1)			Settled.
7-CC-55, 7-CD-20.	AFL-Plumbers, Local 636 (Detroit Edison Co. and Westinghouse Electric Corp.)	April 12, 1957	10 (I)			May 9, 1957			
39-CC-34, 35, 39-CD- 24, 25, 30.	AFL-Engineers, Operating, Local 450 (The Austin Co., et al)	April 16, 1957	10 (I)			May 9, 1957			
3-CC-64, 3-OD-26.	AFL-Bricklayers, Local 11 (Building Trades Employers' Division of the Builders Exchange)	April 16, 1957	10 (I)			(1)			Withdrawn.
5-CC-77	AFL-Teamsters, Local 639 (Dist. Distributors Inc.)	April 16, 1957	10 (I)				Apr. 29 1957 (no appeal)		
24-CC-48	AFL-Seafarers, Atlantic and Gulf District (Valencia Service Co.)	April 17, 1957	10 (I)			April 24, 1957			
21-CC-258	AFL-Teamsters, New Furniture and Appliance Drivers Warehousemen and Helpers, Local Union 196 (Biltmore Furniture Mfg. Co.)	April 18, 1957	10 (I)						
2-CD-126 (amended to include 2-CD-140, 141)	AFL-Lathers, Local 46 (Jacobson & Co., Inc.)	April 25, 1957	10 (I)			May 1, 1957			
24-CC-49	AFL-Longshoremen, Local 1901 (Puerto Rico Steamship Co.)	May 2, 1957	10 (I)			May 8, 1957 (consent)			
9-CC-96	AFL-Bricklayers, Local 5 (Clark Construction Co.)	May 7, 1957	10 (I)			(1)			Settled.
7-CC-58	Congress of Industrial Organizations, Jackson City Council (Sink Co.)	May 13, 1957	10 (I)			(1)			
2-CC-411, 412.	AFL-Sheet Metal Workers, Local 28 (Flexible Tubing Corp. & Wiremold Co.)	May 21, 1957	10 (I)			(1)			
2-CD-146	AFL-Electrical Workers, Local 1212 (Columbia Broadcasting Corp.)	May 24, 1957	10 (I)						
9-CC-100	AFL-Meatcutters, Local 227 (Gordon Foods, Inc.)	May 24, 1957	10 (I)			May 29, 1957 (consent)			
5-CC-76	AFL-Masters, Mates and Pilots, Local 14 (Baltimore & Ohio RR.)	May 27, 1957	10 (I)			June 10, 1957 (consent)			

5-CC-82....	AFL-Hod Carriers, Local 789 et al. (Doyle & Russell)	May 29, 1957	10 (l)			June 4, 1957		
6-CC-143...	AFL-Teamsters, Locals 249 and 250 (Polar Water Co.)	May 31, 1957	10 (l)			(1)		
2-CC-430, 431.	AFL-Teamsters, Milk Drivers and Dairy Employees Union, Local 584 (Chesterfield Farms, et al., Home Milk Delivery Association).	June 5, 1957	10 (l)	June 5, 1957	June 14, 1957	June 14, 1957		
14-CC-103...	CIO-Maritime Union; CIO-Marine Engineers; AFL-Masters, Mates and Pilots and Rivers Joint Organizing Committee (Standard Oil Co.).	June 10, 1957	10 (l)			(1)		
6-CC-132...	AFL-Carpenters, District Council (Wendnagel & Co.).	June 10, 1957	10 (l)			(1)		Settled.
14-CC-104, 105.	AFL-Teamsters, Locals 688 and 600 (Acme Paper Co., et al.).	June 17, 1957	10 (l)					
20-CC-135...	AFL-Teamsters, Local 386 and General Teamsters, Local 431 (California Association of Employers).	June 18, 1957	10 (l)					
17-CC-59...	AFL-Plumbers, Local 8 (United Contractors and Kruse Plumbing Co.).	June 18, 1957	10 (l)					
3-CC-68....	AFL-Teamsters, Local 118 (Scobel Chemical Co.).	June 19, 1957	10 (l)			(1)		
2-CC-420, 2-CD-148.	AFL-Electrical Workers, Local 3 (Brewery Dry Dock Co.).	June 20, 1957	10 (l)					
2-CC-424...	CIO-Electrical Workers, Local 463 (Telechrome Mfg. Corp.).	June 20, 1957	10 (l)					
30-CC-30...	CIO-Brewery Workers, Local 366 (Adolph Coors Co.).	June 25, 1957	10 (l)					

¹ Because of suspension of unfair labor practice, case retained on court docket for further proceedings if appropriate.

² Former case numbers; transferred to 12th Region.

³ Amendment to 2-CD-126 counted as a new 10 (l) petition because of the reactivation of 10 (k) hearing; 2-CD-126 petition originally filed August 1, 1956.

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