TWENTY-EIGHTH

ANNUAL REPORT

OF THE

NATIONAL LABOR RELATIONS BOARD

FOR THE FISCAL YEAR

ENDED JUNE 30

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[1] Appointed Aug. 29, 1963, to succeed Philip Ray Rodgers.
[2] Appointed May 14, 1963, to succeed Stuart Rothman.

LETTER OF TRANSMITTAL

NATIONAL LABOR RELATIONS BOARD,
Washington, D.C., January 10, 1964.

SIR: As provided in section 3(c) of the Labor Management Relations Act, 1947, I submit herewith the Twenty-eighth Annual Report of the National Labor Relations Board for the fiscal year ended June 30, 1963, and, under separate cover, lists containing the cases heard and decided by the Board during this fiscal year, and the names, salaries, and duties of all employees and officers in the employ or under the supervision of the Board.

Respectfully submitted.

FRANK W. MCCULLOCH, *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 1963

1. Summary

Closing out another year of operations, the National Labor Relations Board in fiscal 1963 had a record intake of 25,371 cases which was significant in (1) its alltime high number of unfair labor practice charges, and (2) a rise in the number of charges found to have merit.

In tandem with the new intake level, the NLRB processed the greatest 1-year number of unfair labor practice cases, which in their complex nature present the Agency with its more difficult and expensive administrative problems.

The consistent growth of the NLRB's caseload is a natural development. The area of the Agency's operation is one of constant industrial, social, and economic change. Compounding this dynamism are the 1959 changes in the National Labor Relations Act, which the Agency administers. These revisions created new labor relations standards, calling for new approaches toward solutions. Thus, while the 1963 NLRB decisions for the most part fitted in with Agency and court precedent, the five-member Board in its orders, and the NLRB General Counsel in his issuance of formal complaints, were obliged to make significant new decisions in cases involving a variety of subject matters. These included questions on (a) the status of arbitration proceedings in both unfair labor practice and representation cases; (b) racially separate groupings in employee representation; (c) collective-bargaining obligations in terms of mandatory subjects for negotiation; (d) fair representation by labor organizations; (e) hot cargo issues; (f) restrictions on informational picketing; (g) contracts as bars to employee collective-bargaining elections; and (h) coercive employee representation election propaganda.

National economic growth, as in the past, has inexorably increased the volume and complexity of NLRB's case intake, as have also the geographic shifts of industry and growth of automation, among other developments.

In measures taken to keep pace with the case burden, the NLRB, and its General Counsel who is charged with supervision of regional offices, report a continued high degree of success in the handling of contested employee representation cases by regional directors. The delegation to them has halved the time of processing these decisions.

Results of this delegation of authority from the Board to the regional offices, sanctioned by Congress, should grow in importance if the Agency continues to receive, as it has almost routinely in recent years, new record caseloads.

The NLRB is in many respects unique in that the bulk of its work has to do with human relations in the critical area of labor-management relations. In handling unfair practices and elections, the Agency is concerned with the adjustment of actual or potential labor disputes either by way of investigation and informal settlement or through its quasi-judicial proceedings. Congress created the Agency in 1935 because labor disputes could and did threaten the health of the economy. In the 1947 and 1959 amendments of the Act Congress reaffirmed the need for the Agency and increased the scope of its regulatory powers.

a. NLRB and the NLRA

The National Labor Relations Board is an independent Federal agency created in 1935 by Congress to administer the National Labor Relations Act, which withstood the test of constitutionality in 1937, and was substantially amended by Congress in 1947 (Taft-Hartley Act), and again in 1959 (Landrum-Griffin Act).

Board Members are Chairman Frank W. McCulloch of Illinois, Boyd Leedom of South Dakota, John H. Fanning of Rhode Island, Gerald A. Brown of California, and Howard Jenkins, Jr., of Colorado. Arnold Ordman of Maryland is General Counsel.

While the statute administered by the NLRB has become complex, its basic purpose remains unchanged: to promote collective bargaining and to protect the freedom of employee organization as the best means of encouraging industrial peace. Under the Act the NLRB has two primary functions—(1) to prevent and remedy unfair labor practices, whether by labor organizations or employers, and (2) to determine by Agency-conducted secret-ballot elections whether workers wish to have unions represent them in collective bargaining.

To achieve the statute's purpose, its unfair labor practice provisions place certain restrictions on actions of both employers and unions in their relations with employees, as well as with each other, and it provides the mechanics for conducting and certifying results of representation elections to determine collective-bargaining wishes of employees.

Under the statute, NLRB has no self-contained power of enforce-

ment of its orders, but it may seek enforcement in the U.S. Courts of Appeals. Similarly, parties aggrieved by the orders may seek reversal.

Functionally, the NLRB is divided in authority by law. The Board Members function primarily as a quasi-judicial body in deciding cases upon formal records; the General Counsel, independently, is responsible for the issuance and prosecution of formal complaints, and has general supervision of the NLRB's 28 regional offices.

For the conduct of its formal hearings in unfair practice cases, the Board employs trial examiners who hear and decide the cases initially. Trial examiners are independent of NLRB supervision, being appointed from a roster compiled by the Civil Service Commission. Trial examiners' decisions may be appealed to the Board in the form of exceptions taken, otherwise the Board adopts the trial examiners' holdings.

Petitions for employee representation elections are filed with the NLRB regional offices, which have the authority to investigate the petitions, determine appropriate employee units for collective-bargaining purposes, conduct the elections, and to pass on objections to conduct of elections. Appeals from regional directors' decisions may be made in accordance with rules laid down by the Board.

All cases begin their processing in NLRB regional offices, through either the filing of unfair labor practice charges or employee representation petitions. The NLRB does not act on its own motion in either type of case. The cases, either charges or petitions, must be initiated at regional offices by employers, individuals, or unions.

b. Some Case Activity Highlights

Accelerated NLRB case activity of recent years, producing record workloads and production, was again repeated in fiscal 1963, resulting in new alltime high levels in a number of areas. Some of these new records were:

- A total intake of 25,371 cases of all kinds, including 14,166 unfair labor practice charges, also a new high.
- A total of 13,605 unfair labor practice cases closed at all levels, an increase of 286 over fiscal 1962's previous high.
- Issuance by the Office of the General Counsel of 1,588 formal complaints, involving 2,043 unfair labor practice cases, an increase of 119 complaints over the previous high of fiscal 1962.
- Reduction to 378 in the number of cases awaiting five-member Board decision, compared to the 488 of fiscal 1962.
- Significant increases in types of unfair labor practice charges filed, for example: charges of employer refusal to bargain

rose to 2,584, as against 2,294 in fiscal 1962; charges of union restraint and coercion of employees went up to 2,399, compared to 2,012 of the prior year.

- A total of $2,749,151 collected in backpay for 6,965 employees discriminated against by employers, unions, or both. Job reinstatement was offered to 3,478 employees.

2. Operational Highlights

The disposition pattern for unfair labor practice cases filed with the Agency in fiscal 1963 showed only slight changes in the percentages of dismissals and withdrawals, but there was movement upward in settlements, which may have some significant portent for the future of labor-management relations.

Case closings increased, but along with the greater inflow of cases during the year there also was a greater number of formal complaints issued, putting more cases into the litigation mill. Another development was in the meaningful numerical shifts in types of unfair labor practice charges. Employee representation cases during the year, fewer than in the prior year, produced new and complex issues.

a. Case Intake and Disposition

During fiscal 1963 the NLRB received 25,371 new cases of all types, the highest level in a continuation of a caseload rise since 1959, except for a pause in 1960. By way of comparison, in 1948, the year of first experience with the Act's 1947 amendments (Taft-Hartley), the Agency received a total of 10,636 unfair labor practice and representation cases. Ten years later, in fiscal 1958, the caseload had climbed to 16,748.

In fiscal 1963, a total of 14,166 new charges of unfair practices were filed. This was the greatest number received in 1 year, and was an increase of 687, or 5 percent, over last year's previously high intake of 13,479 charges. This numerical preponderance of unfair practice charges over election cases continued a trend started in 1958.

The 14,166 separate charges filed in NLRB regional offices represented 12,719 unfair labor practice situations. A situation comprises one or more related charges processed as a single unit of work. For example, a number of individual workers at the same plant may file separate but similar charges against the employer, or a union. The charges would be handled as one situation.

Charts 1 and 1A show that case intake by situations and petitions continued to rise but at a lower rate than in the prior 2 years.

Chart 1

CASE INTAKE BY UNFAIR LABOR PRACTICE SITUATIONS AND REPRESENTATION PETITIONS

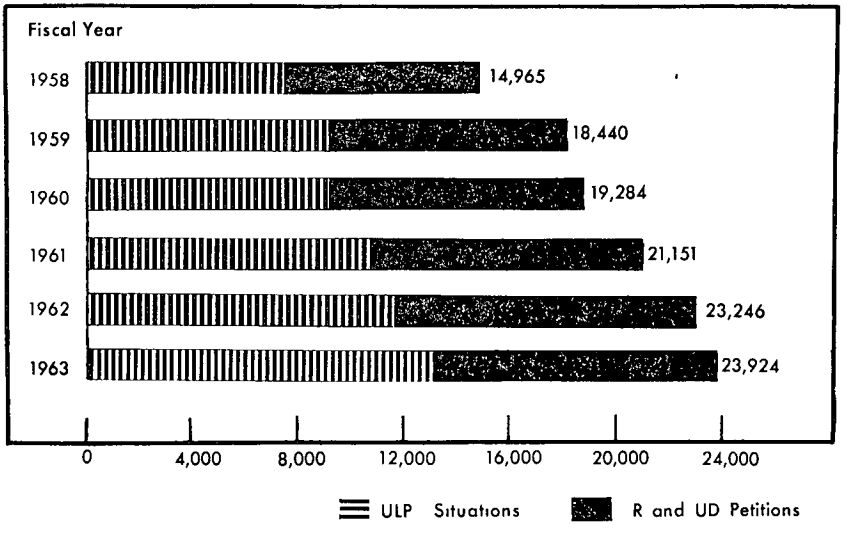
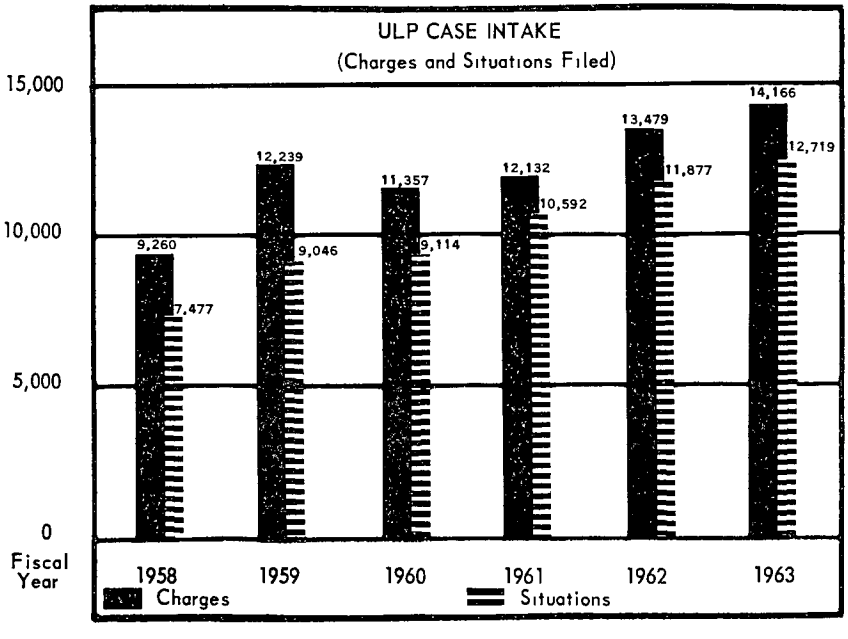


Chart 1A



712-345—64——2

A total of 11,205 petitions for employee representation elections and union-shop deauthorization polls also were filed, the second highest total in NLRB history. The number represents a decrease of 164, or only 1 percent, below last year's alltime high intake of 11,369 petitions.

During the year, the NLRB disposed of a total of 24,678 cases of all types, at all Agency levels. Of these 13,605 were unfair labor practice charges, a new record. There were 10,981 representation cases processed, a decrease of 653 cases from the fiscal 1962 previous high of 11,634 cases. The Agency also closed 92 cases in which petitions were filed requesting employee votes to rescind the authority of unions to make union-shop agreements.

The total case disposition by the NLRB was 349 below fiscal 1962's 25,027, accounted for by the fewer representation cases.

There were 7,397 cases pending at all Agency levels at the end of the fiscal year, 693 more than the 6,704 of the prior year. Of the fiscal 1963 total, 5,185 were unfair labor practice cases; 2,195 were representation cases; and 17 were union-shop deauthorization situations.

During the year 43 notices of hearing were issued in cases coming under the Act's section 10(k). These are proceedings where generally it is alleged that jurisdictional disputes between groups of employees have caused or threatened strikes, and the Board may be called upon to "award" work assignments. There were 30 hearings held during the year in such cases, and the Board issued a total of 40 decisions and determinations of dispute.

b. Unfair Labor Practice Charges

Unions, individuals, and employers are the sources of unfair labor practice charges, and take numerical precedence in that order.

Unions filed 6,346, or 45 percent, of the 14,166 charges in fiscal 1963. AFL–CIO affiliates submitted 4,667 of the charges; 1,679 came from unaffiliated unions.

Individuals filed 5,495, or 39 percent, of the charges. Employers were responsible for 2,325 charges, or 16 percent.

The percentage breakdown by charging parties remained relatively unchanged from fiscal 1962.

Two-thirds of all charges were filed against employers. Almost one-third were filed against unions. Less than 1 percent were directed against both employers and unions. Of the 9,550 charges against employers, 6,134, or 64 percent, came from unions; 3,393, or 36 percent, were tendered by individuals. Employers filed charges against employers in less than 1 percent of the total.

Of the 4,553 charges against unions, 2,261, or 50 percent, were filed by employers; 2,095, or 46 percent, were filed by individuals; and the remaining 197, or 4 percent, were filed by unions against unions. A

total of 63 charges were filed jointly against employers and unions. Of these, 41, or 65 percent, came from employers, 15, or 24 percent, from unions, and 7, or 11 percent, from individuals.

It may be noted that in charges against employers and against unions, individuals submitted a higher percentage of allegations against unions than against employers, and these were only 4 percent below the level of employer charges against unions.

Also, the 9,550 charges filed against employers in fiscal 1963 amounted to an increase of 319, or 3.5 percent above the number for fiscal 1962. The 4,553 charges against unions were an increase of 355, or 8.5 percent higher than the fiscal 1962 number.

In the pattern of charges against employers during fiscal 1963 there were some slight but notable shifts in numbers and percentages.

Charges of refusal to bargain, for instance, rose to 2,584, an increase of 290 over the 2,294 filed in fiscal 1962, and amounted to 27 percent of the total allegations against employers. In fiscal 1962 such charges amounted to 25 percent of the total. In 1959 refusal-to-bargain charges accounted for 16 percent of the total filings against employers, and have increased steadily year by year.

Illegal discharge, or other forms of discrimination against employees, continued in fiscal 1963 to be the dominant charge against employers, accounting for 6,840, or 72 percent of the total. However, this was a drop from the 75 percent of fiscal 1962's 9,231 charges against employers.

Charges against unions in fiscal 1963 also showed some pattern changes, but of a more pronounced nature than those against employers. Restraint or coercion of employees in exercising their rights to join, or refrain from, union activity accounted for 53 percent of the total charges against unions; 39 percent alleged illegal discrimination against employees; 32 percent charged secondary boycott violations or jurisdictional disputes; and 8 percent alleged illegal picketing. The percentages total more than 100 since more than one allegation may be contained in a single charge.

Significant increases were shown in the fiscal 1963 charges above. Restraint and coercion allegations against unions totaled 2,399, an increase of 387, or 19 percent over the number of fiscal 1962. Discrimination charges rose to 1,785, an increase of 112 charges or 7 percent over the number filed in the prior year.

However, charges of illegal picketing against unions declined to 354 in fiscal 1963, representing a drop of 50 charges, or 12 percent below the number of fiscal 1962.

The fiscal 1963 allegations of illegal secondary boycotts showed a slight increase—29 percent of total charges against unions as against the revised 28 percent of total in fiscal 1962.

Another sharp increase recorded in fiscal 1963 was in the 63 charges of hot cargo violations against unions and employers jointly, a 26-percent increase above the 50 charges of fiscal 1962.

Industrial distribution of unfair labor practice charges showed that almost half the total arose in the manufacturing industries, an increase of 515 cases, or 8 percent over charges in fiscal 1962 from the same area. Overall charges from all industries for fiscal 1963 gained by 687 cases, or 5 percent over the prior year.

The greater increase was in the service industries, registering in the 288 cases from that source a 42-percent boost over fiscal 1962 filings.

In the retail industry charge filings fell off by 135 cases, or 9 percent, below fiscal 1962, while charges in the construction, wholesale, transportation, and communication industries were relatively unchanged.[1]

c. Division of Trial Examiners

In cases where complaints have been issued, and there has been no intervening disposition of them, formal hearings are conducted by NLRB's trial examiners from either the Trial Examiner Division's Washington headquarters or its San Francisco office.

After hearing a case, the trial examiner issues a decision and recommended order, which then goes to the five-member Board for decision. Exceptions to the trial examiner's finding may be filed within 20 days. If no exceptions are filed, the trial examiner's recommended order becomes that of the Board. If exceptions are filed, the case goes to the Board for review and decision.

During fiscal 1963 trial examiners conducted 745 hearings in 1,111 cases. This was about the same number of hearings as in the prior year, but involved fewer cases. Trial examiners issued 675 decisions and recommended orders in 1,085 cases during fiscal 1963, an increase of 52, or 8 percent, over the prior year.

In 168 of the cases which went to formal hearing during the year, the trial examiners' findings and recommended orders were not contested. These amounted to 15 percent of the cases in which the trial examiners' decisions were issued.

d. Processing of Unfair Labor Practice Cases

Unfair labor practice cases originate when an allegedly aggrieved party, or someone in his behalf, files charges at a regional office of the NLRB. Charges then undergo thorough investigation to determine whether they have merit. In the conduct of the investigation by the regional staff the director of the regional office acts for the

[1] See table, pages 32 and 33 of this chapter, for explanation of NLRB alphabetical designations of cases, such as CA, CB, CC, etc.

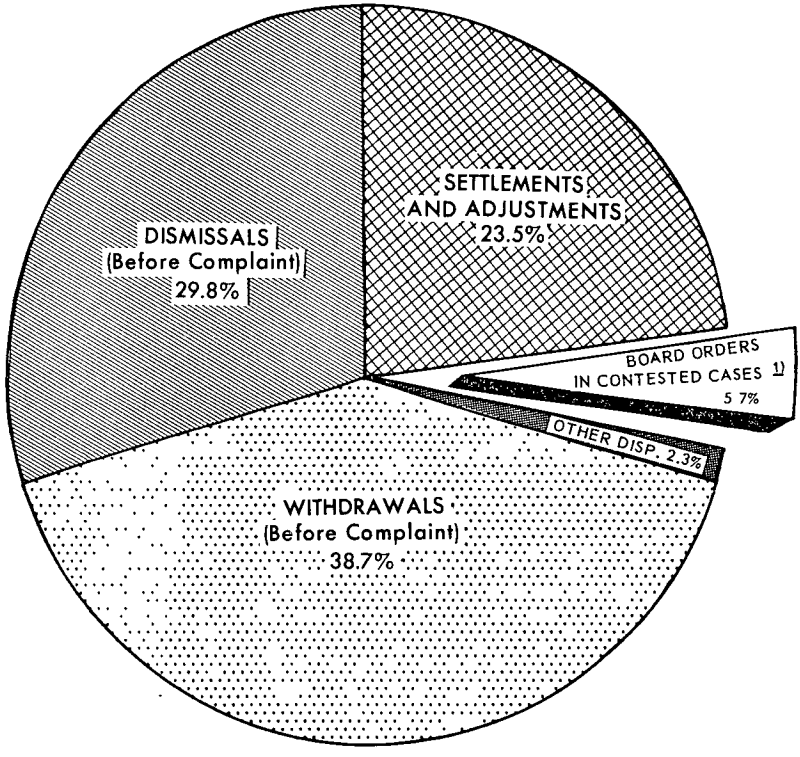
NLRB General Counsel who, under the statute, has sole responsibility for the investigation of charges, issuance of formal complaints, and further prosecution of unfair labor practices.

A charge may follow any one of a number of roads once it is filed. If it is found not to have merit, it is dismissed by the regional director, subject to appeal to the General Counsel. If it does have merit, it may go through the full litigation process, that is, to complaint is-

Chart 2

DISPOSITION PATTERN FOR UNFAIR LABOR PRACTICE CASES

(BASED ON CASES CLOSED)



1/ CONTESTED CASES REACHING BOARD MEMBERS FOR DECISIONS

suance, hearing and decision by a trial examiner, decision by the five-member Board, then possibly to a U.S. Court of Appeals for enforcement. Or, the charge may be withdrawn or it may be settled by the parties, halting further proceedings.

In practical effect, a high percentage of unfair labor practice cases are closed in various processing stages in the regional office of their origination, thus do not reach Board Members for decision. The remaining cases—905 in fiscal 1963—reaching the Board present a wide variety of complex problems.

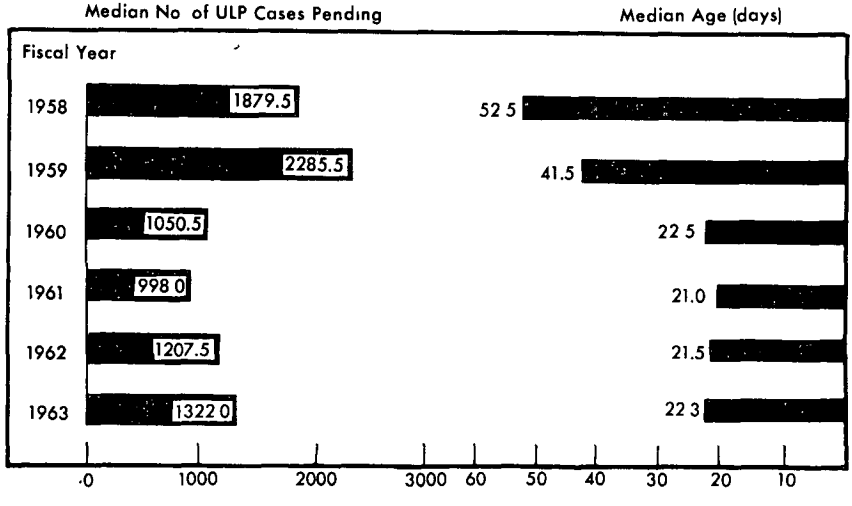
As chart 2 shows, 38.7 percent of all fiscal 1963 charges filed were withdrawn, 29.8 percent were dismissed, 23.5 percent were closed by settlements and adjustments of the unfair practices, and about 2 percent had other disposition. Approximately 6 percent of the cases went to the Board Members in Washington for decision, as against 8 percent in fiscal 1962.

Settlements in fiscal 1963 were 3 percent higher than in the prior year; dismissals and withdrawals were within 1 percentage point of fiscal 1962.

Although a large proportion of cases filed with regional offices may be withdrawn or settled by the parties, they have, prior to either action, placed a heavy workload on the Agency in the investigative and other processes invoked before either withdrawal or settlement. Likewise, cases dismissed require investigation before dismissal, and such cases then may be appealed to the General Counsel.

Chart 3

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



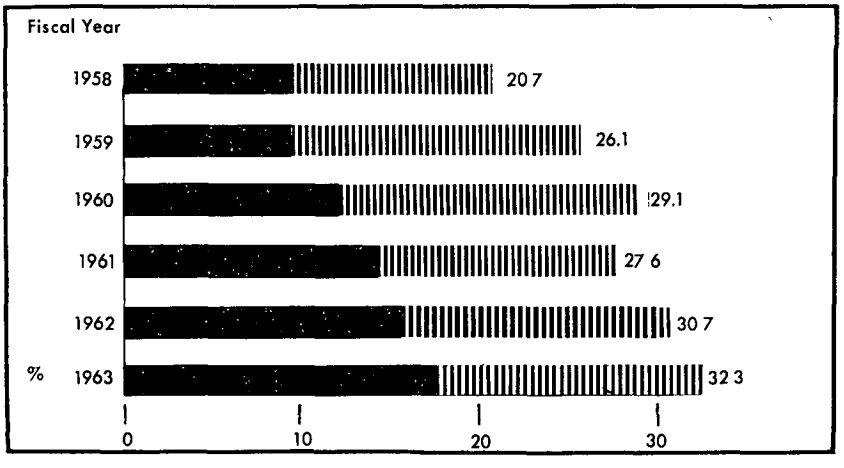
As an example of workload generated by cases not going through the full litigation process, in fiscal 1963 7 percent of unfair labor practice charges were closed following investigation and *after* complaints were issued, but did not reach the trial examiner hearing stage since they were adjusted, closed by compliance, were withdrawn or were dismissed for various reasons.

The NLRB's workload pressure in unfair labor practice cases is being intensified by the increasing number of meritorious charges, which prompt issuance of formal complaints.

In fiscal 1963 charges found administratively to have merit rose to approximately 32.3 percent of unfair labor practice cases filed, compared to 30.7 percent in fiscal 1962, and 27.6 percent in fiscal 1961. The factors to be noted here are that while the number of unfair labor practice filings increased, the proportion of meritorious charges also rose. (See chart 4.)

Chart 4

UNFAIR LABOR PRACTICE MERIT FACTOR



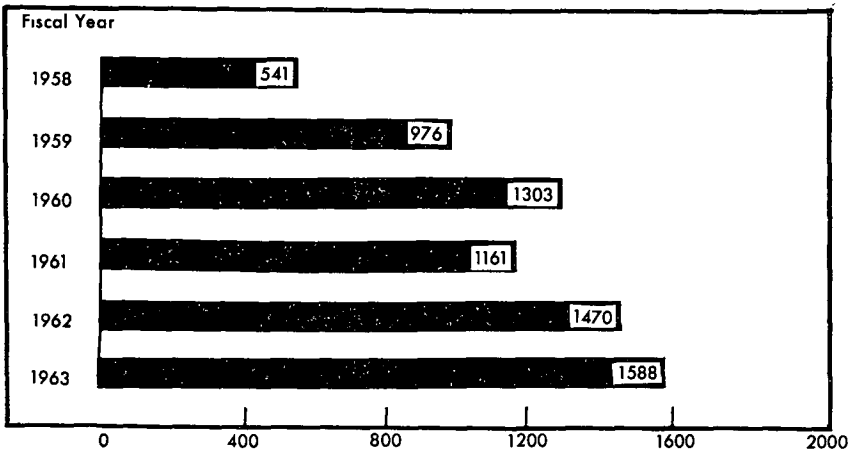
	1958	1959	1960	1961	1962	1963
Pre-Complaint Settlements and Adjustments (Percent)	9.7	9 7	11 9	14.1	15 3	17 5
Cases in Which Complaints Issued (Percent)	11 0	16.4	17 2	13 5	15.4	14.8
Total Merit Factor (Percent)	20 7	26 1	29.1	27.6	30 7	32.3

And, while more than half of the meritorious charges were remedied through settlement or informal agreement of parties prior to any initiation of the Agency's formal processes, 118 more complaints were issued in fiscal 1963 than in the prior year.

Complaint issuance by the Office of the General Counsel set a new record in fiscal 1963. There were 1,588 complaints issued, involving 2,043 separate unfair labor practice charges. This total was 8 percent above the prior year's. Frequently, two or more charges involving the same general set of circumstances are consolidated for hearing purposes. About 77 percent of the complaints were against employers, 19 percent against unions, and 4 percent against both unions and employers jointly.

Chart 5

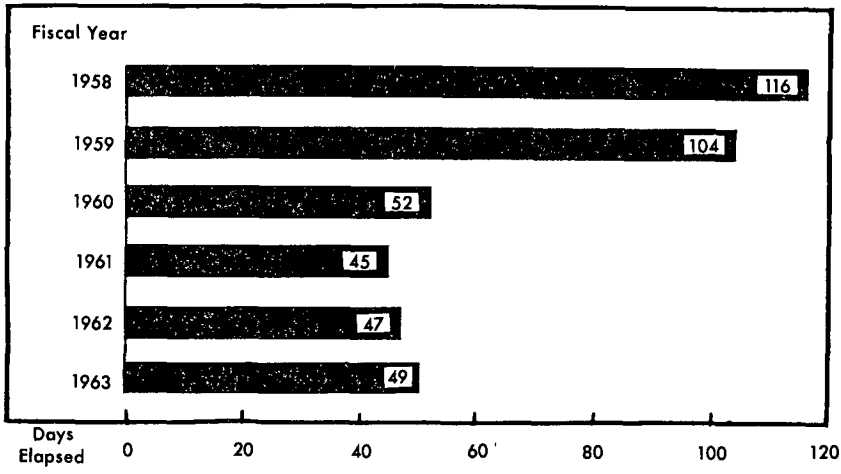
COMPLAINTS ISSUED IN UNFAIR LABOR PRACTICE PROCEEDINGS



With the increasing volume in complaints issued, median time from filing of charges to complaint required 49 days in fiscal 1963, an increase of 2 days over the 47-day median in fiscal 1962. The elapsed time from filing to complaint includes a 15-day period to give parties an opportunity to adjust the case voluntarily and to remedy the violation without requiring the formal process of trial and Board decision. Chart 6 shows that since fiscal 1960 the median days from filing of charges to issuance of complaint have been between 52 and 45 days, 50 percent or more below the fiscal 1959 median of 104 days.

Chart 6

MEDIAN DAYS FROM FILING OF CHARGE TO ISSUANCE OF COMPLAINT



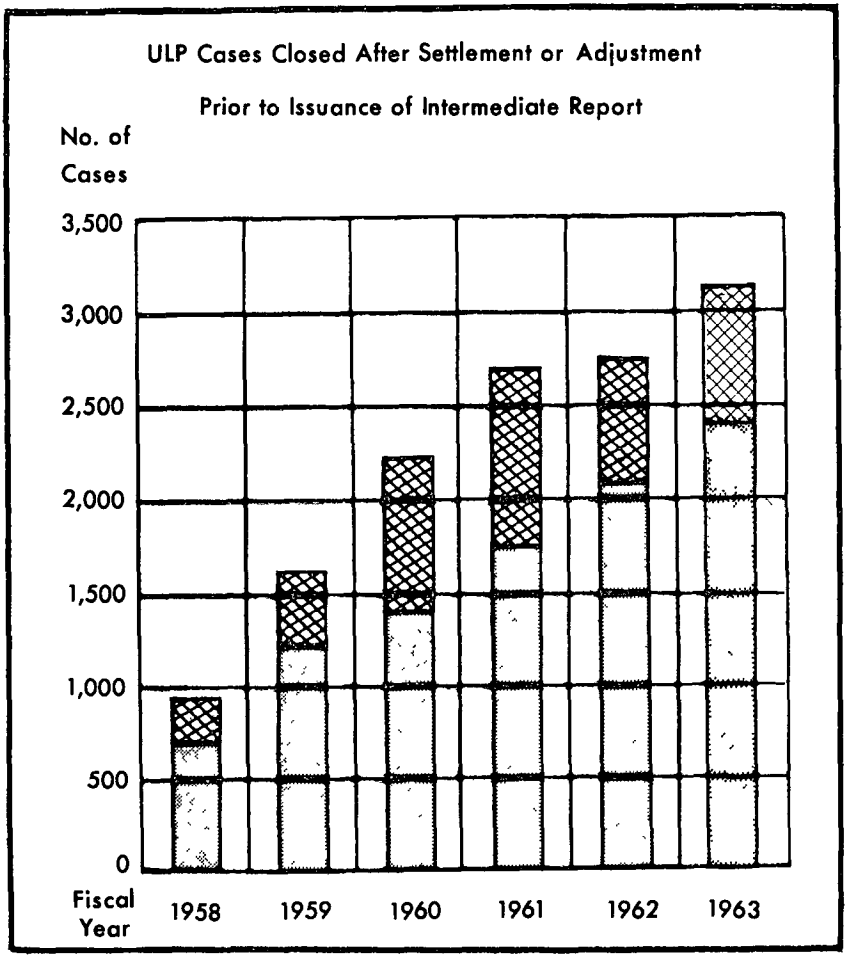
Work of the regional offices should be noted in this connection. While the tide of unfair labor practice charges continues to rise, and the regional offices also must contend with record levels in petitions requesting employee representation elections (many of which include difficult bargaining unit determinations), there has been in the regions a rise of only 115 cases in the pending caseload under investigation. This has been accomplished despite these offices receiving 27,645 new unfair labor practice charges during the past 2 fiscal years.

Settlements and adjustments of unfair labor practice charges accounted for 23.5 percent of all cases closed during the year, as shown by chart 2. The increased settlements, coupled with formal decisions, resulted in $2,749,151 being awarded to employees illegally discharged, or suffering similar discrimination. This was a new alltime high in backpay for a single year, an increase of 57 percent over the $1,751,910 which in fiscal 1962 went to employees to reimburse them for lost wages due to illegal discrimination.

In the fiscal year, 6,965 employees received backpay, and 3,478 were offered reinstatement, as compared with the 3,358 employees who re-

Chart 7

UNFAIR LABOR PRACTICE CASES SETTLED



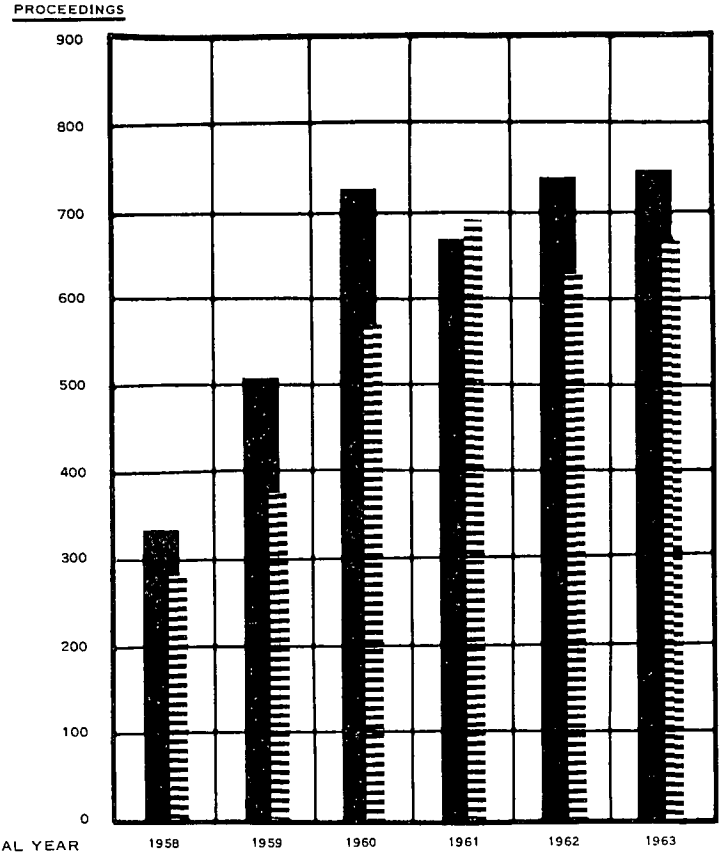
FY.	Pre-Complaint	Post-Complaint	Total
1958	725	262	987
1959	1,238	352	1,590
1960	1,480	748	2,228
1961	1,693	1,038	2,731
1962	2,008	744	2,752
1963	2,401	796	3,197

ceived such reimbursement in fiscal 1962, and 2,465 who were offered reinstatement.

Chart 8

TRIAL EXAMINER HEARINGS AND INTERMEDIATE REPORTS

(PROCEEDINGS)

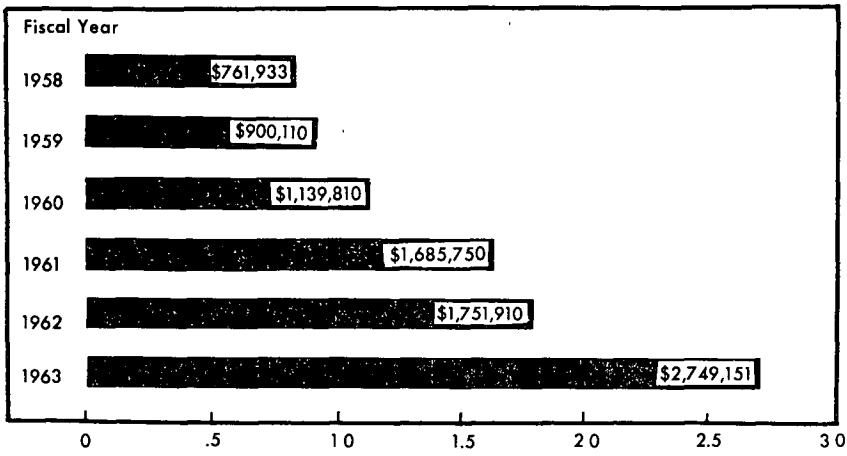


FISCAL YEAR	1958	1959	1960	1961	1962	1963
1/ HEARINGS HELD	333	503	728	667	740	745
IR'S ISSUED	289	382	572	692	623	675

1/ Hearings held does not include hearings presided over by Trial Examiners at the request of the Board, in determination of dispute cases, because no intermediate report is issued.

Chart 9

AMOUNT OF BACKPAY RECEIVED BY DISCRIMINATEES



e. Processing of Representation Cases

Processing of employee representation cases continued at a high rate during fiscal 1963, but not at quite the level of the prior year. In its second full year of experience with delegation by the five-member Board of authority in handling contested representation cases to the NLRB's regional directors, the Agency closed 10,981 cases. These representation cases of all kinds were 653 fewer than the alltime high of 11,634 closed in fiscal 1962.

Of the 10,981 cases closed in fiscal 1963, there were 10,333 petitions for collective-bargaining elections, and 648 were petitions for decertification of incumbent unions.

Elections resulted in closing of 7,240 cases during the year, equal to 66 percent of the total representation cases closed. Withdrawn cases amounted to 2,753 or 25 percent of the cases, and 9 percent or 988 cases were dismissed at various processing stages. In most of the withdrawals and dismissals no formal hearings were conducted.

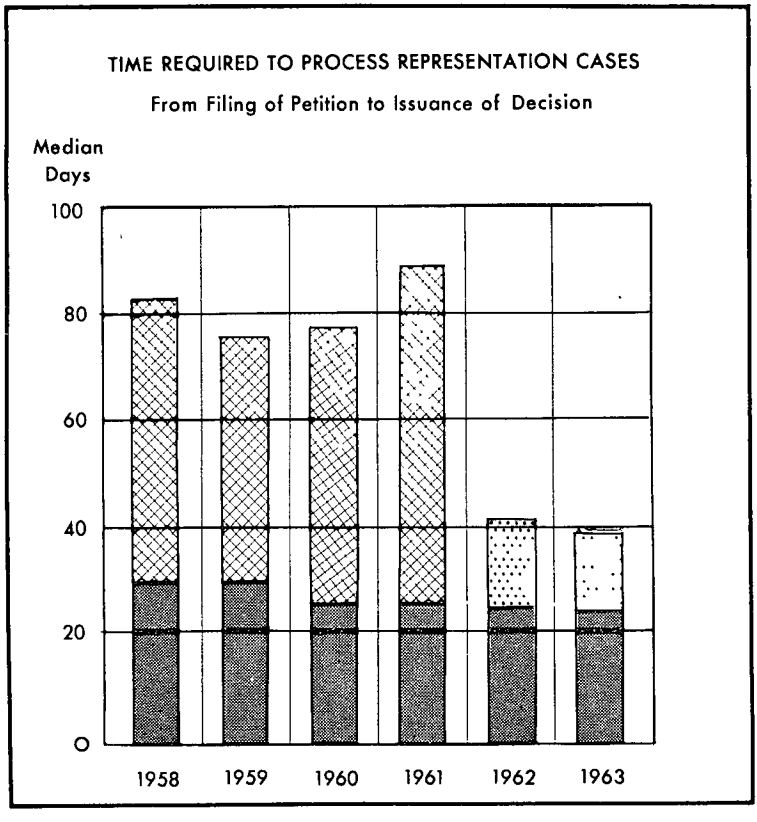
Among the 7,240 cases, 3,450 were closed without hearings by consent of the parties, or 31 percent of the total; 1,964, or 18 percent, were cases in which the parties stipulated to certain factual issues; 15 percent, or 1,644, were contested cases in which regional directors ordered elections following hearings; and 29 were expedited cases, less than 1 percent, held under the Act's section 8(b)(7)(C) provisions pertaining to picketing for recognitional or organizational purposes. The figure 7,240 includes all types of elections.

In 153 cases, about 1.5 percent of the 7,240 fiscal year total, the 5-member Board ordered elections, having received the cases either on appeal or by transfer from regional offices. (Charts 10 and 11.)

f. Elections

Voluntarism, as a principle of settlement of a large number of unfair labor practice cases, also prevails as a substantial factor in the holding of employee representation elections under the statute.

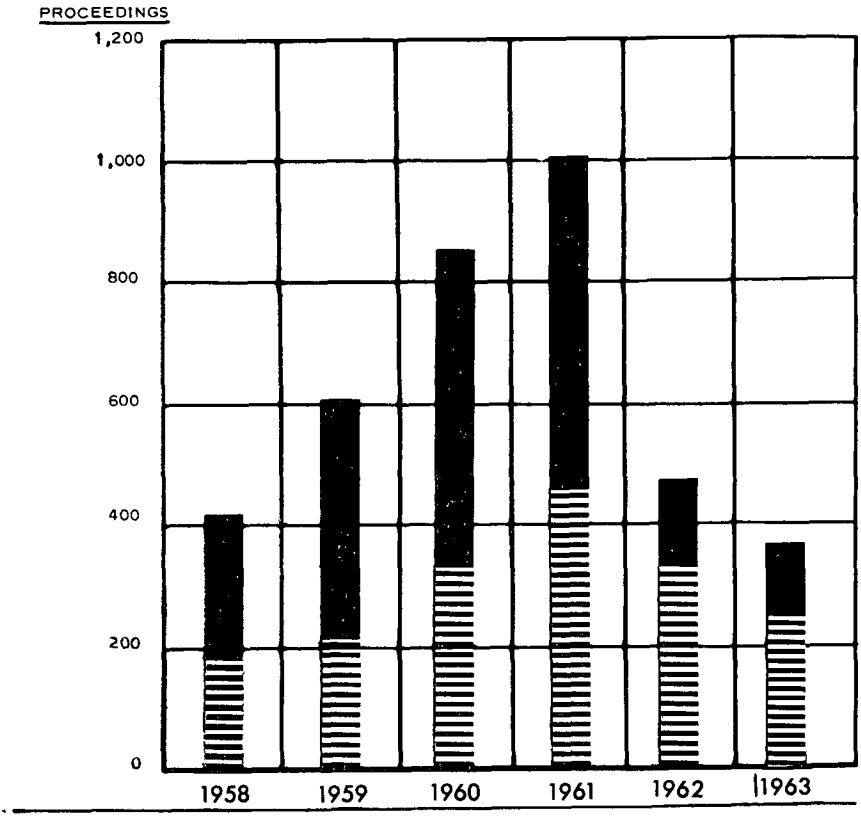
Chart 10



F Y	FILING TO CLOSE OF HEARING	CLOSE OF HEARING TO BOARD DECISION	CLOSE OF HEARING TO REGIONAL DIRECTOR DECISION
1958	28	54	-
1959	28	49	-
1960	24	54	-
1961	24	65	-
1962	23	-	18
1963	22	-	17

Chart 11

BOARD CASE BACKLOG



PROCEEDINGS	1958	1959	1960	1961	1962	1963
C	199	210	330	460	323	256
R	222	399	522	549	165	122
TOTALS	421	609	852	1,009	488	378

In fiscal 1963, out of a total of 6,871 collective-bargaining elections conducted by the NLRB, some 5,150, or nearly three-fourths, were held by voluntary agreement of the parties. The agreements were a gain over the 71 percent of settlements of the prior year. In collective-bargaining elections employees decide whether they wish to have a bargaining agent.

The number of elections conducted was below the record 7,355 of fiscal 1962; however, it was 8 percent above the number for fiscal 1961.

In fiscal 1963 employees selected bargaining agents in 4,052 elections, or 59 percent of the total, equal to the percentage of the preceding year. Of those 4,052 elections, AFL–CIO affiliated unions won 2,565, or 63 percent, while unaffiliated unions won 1,487, or 37 percent.

Small bargaining units were predominant in the elections. About 75 percent involved units of 59 or fewer employees. About 25 percent of the total elections were conducted in units of nine or fewer employees.

There were 489,365 employees eligible to vote in the total collective-bargaining elections, of whom 90 percent cast valid ballots. Of 441,969 employees balloting, 264,727, or 60 percent, voted for representation. Bargaining agents were chosen to represent units including 265,747, or 54 percent of those eligible to vote, compared with the 57 percent of fiscal 1962, and the 51 percent of fiscal 1961.

By industrial classification, 4,002 of the 6,871 elections, 58 percent, were held at manufacturing plants. Food manufacturing plants led in this category with 592 elections. Aside from manufacturing, retail trade establishments accounted for 935 elections, or 14 percent of the total. Others ranking in importance were transportation, communications, and other public utilities as 1 grouping, and wholesale trade as another, accounting for 655 elections each, or 10 percent each of total elections held.

The remaining elections were divided among a number of other industries and services.

There were 225 decertification elections held in which employees were to decide whether they wished to retain their bargaining agents. Petitions filed for such elections assert that the incumbent union no longer represents an employee majority. The 225 elections were a drop of 21 percent from the 285 held in fiscal 1962.

The right to represent 13,256 employees was at stake in the elections. About 88 percent of those eligible, or 11,648 employees, cast valid ballots. Results of the elections were: In 165 elections, involving 8,033 employees, the incumbent unions previously certified or currently recognized as bargaining agents lost their bargaining rights and were decertified. On the other hand, in 60 elections involving 5,223 employees, unions were retained as bargaining agents. In fiscal 1962 unions in 186 elections lost the right to represent a total of 6,930 employees, while in 99 the unions were redesignated as bargaining agents for 12,323 employees.

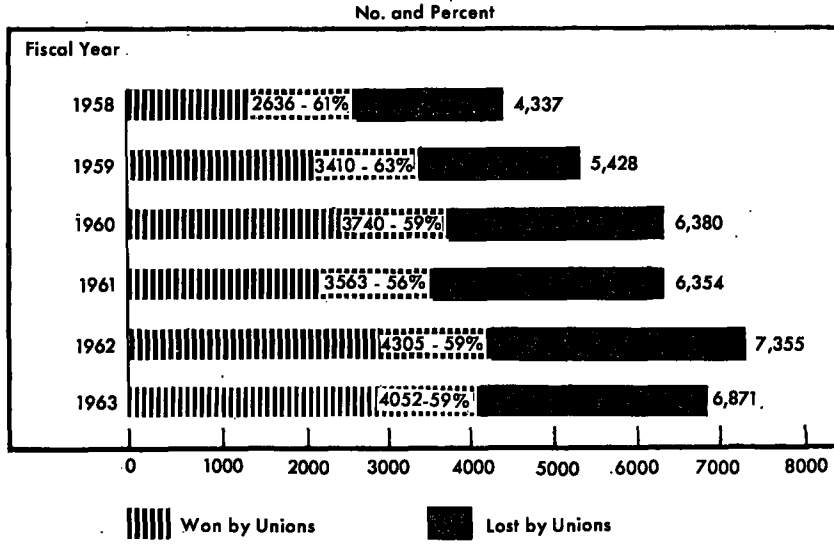
In fiscal 1963 there also were 45 situations in which employees voted to determine whether incumbent unions should retain the right to negotiate union-shop agreements, which require employees to join a union on or after 30 days of employment or the effective date of a union-shop agreement, whichever is later.

Results of the union-shop deauthorization elections, affecting a total of 3,886 employees, were that in 32, or 71 percent, the unions lost the right to make union-shop agreements. In 13, or 29 percent, the unions retained the right to seek such contracts. Those unions retaining the right represented 1,096 employees; those losing the right represented 2,790 employees.

Chart 12

COLLECTIVE BARGAINING ELECTIONS HELD

No. and Percent



NLRB processing of election cases also includes handling of objections to (1) the manner in which elections were conducted, or (2) conduct which may have affected results of the elections. Such objections are investigated to determine whether they have merit. If it is established that objections have merit, NLRB regional directors may set aside election results and order new elections, commonly known as rerun elections.

Of the 7,096 representation election cases closed during fiscal 1963, about 800, or 11.5 percent of the total, brought objections to conduct of the elections.

However, in only 196 cases were objections found to have merit calling for the setting aside of elections, and requiring them to be rerun. These cases amounted to only 3 percent of the total number of elections conducted by NLRB during the year.

The rerun elections showed these results: In 133, or two-thirds of the cases, there was no change from the outcome of the initial elections; in 63, or one-third of the elections, the outcome differed from the initial elections—in 58 of these cases unions won after having lost in the initial balloting, and in the remaining 5 cases the unions which had won in the initial elections then lost in the reruns.[2]

[2] The effectiveness of the Board's rerun elections as a means of overcoming the impact of proscribed electioneering practices, and ascertaining the free choice of the employees, was the subject of a private study published during the fiscal year. The study was based upon an examination of Board files. Daniel H. Pollitt, "N.L.R.B. Re-run Elections: A Study," 41 N.C.L. Rev. 209 (1963).

g. Decisions and Court Litigation

The NLRB during fiscal 1963 issued 3,340 decisions in 3,964 cases of all types, as shown in chart 13. Of this total Board Members issued 1,306 decisions involving 1,802 cases, and 2,034 decisions involving 2,162 representation cases came from NLRB regional directors. While issuance by Board Members was below the total of 1,676 decisions of fiscal 1962, the regional directors' output exceeded the 1,924 decisions of 1962.

The 1,306 decisions by the Board included 970 in which there was contest over either the facts or application of the law. These 970 included 587 decisions in 905 unfair practice cases, 227 on representation questions, 40 determinations in job-assignment jurisdictional disputes between unions under the Act's section 8(b)(4)(D), and 116 rulings on contested objections and challenges in employee elections. The remaining 336 decisions were in cases which were not contested before the Board.

Violations were found by the Board in 722 of the 905 contested unfair practice cases, or 80 percent as compared with the 79 percent found in fiscal 1962.

There was a percentage drop, however, in Board findings against employers. In 79 percent, or 551 of the 700 cases against employers, the Board found violations, whereas findings in fiscal 1962 amounted to 84 percent of 783 cases. In the fiscal 1963 cases the Board ordered job reinstatement for 1,661 employees and awarded backpay to 1,772 employees.

In 50 cases the Board ordered a halt to illegal assistance or domination of labor organizations by employers. In 165 cases employers were ordered to bargain collectively, an increase of 8 such orders over the fiscal 1962 total.

In cases against unions the percentage of violations found was the highest in the last 5 years. In 205 cases against unions the Board found violations in 171, or 83 percent, a 13-percent increase over the 70 percent of fiscal 1962. The highest previous figure in the past 5 fiscal years was the 82 percent of 201 cases against unions in fiscal 1959. In 66 cases Board orders were directed against illegal secondary boycotts. In six cases unions were ordered to cease requiring employers to extend illegal assistance. Illegal discharge of employees was found in 19 cases, and the Board ordered unions to give 52 employees backpay. In cases involving 38 of these employees, employers and unions were held jointly liable for the backpay.

At all levels of the Agency, at the Board, and at the regional offices with a continued high output of cases concluded without formal action, the total case processing was below that of fiscal 1962. However, the

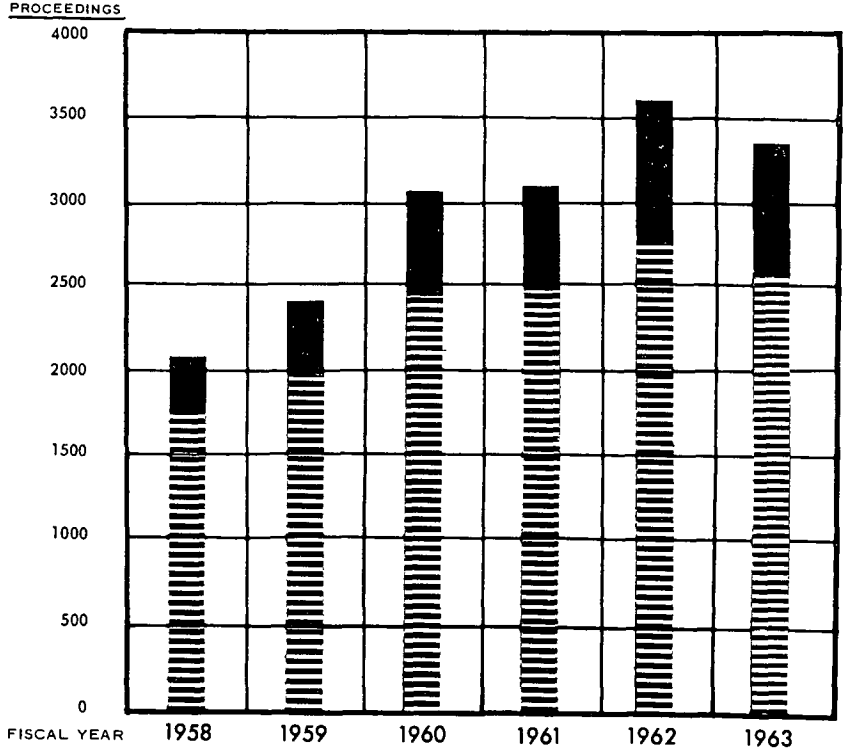
closing of unfair labor practice cases in 1963 was above that of 1962, while closings in representation cases were fewer. (See chart 14.)

In court activity, the number of NLRB-related cases increased in fiscal 1963 in one area, but declined in two others. However, in all areas the NLRB's success in litigation continued at a high level.

Since the NLRB's orders are not self-enforcing, the Agency's appearances in U.S. Courts of Appeals are frequent due to both its requests for enforcement and the requests for review of aggrieved parties. In fiscal 1963 the appeals courts decided 198 NLRB cases, 34 percent above the fiscal 1962 level, and the record of successful litigation increased to almost 78 percent in cases won in whole or in part, as against the 75 percent of the prior year.

Chart 13

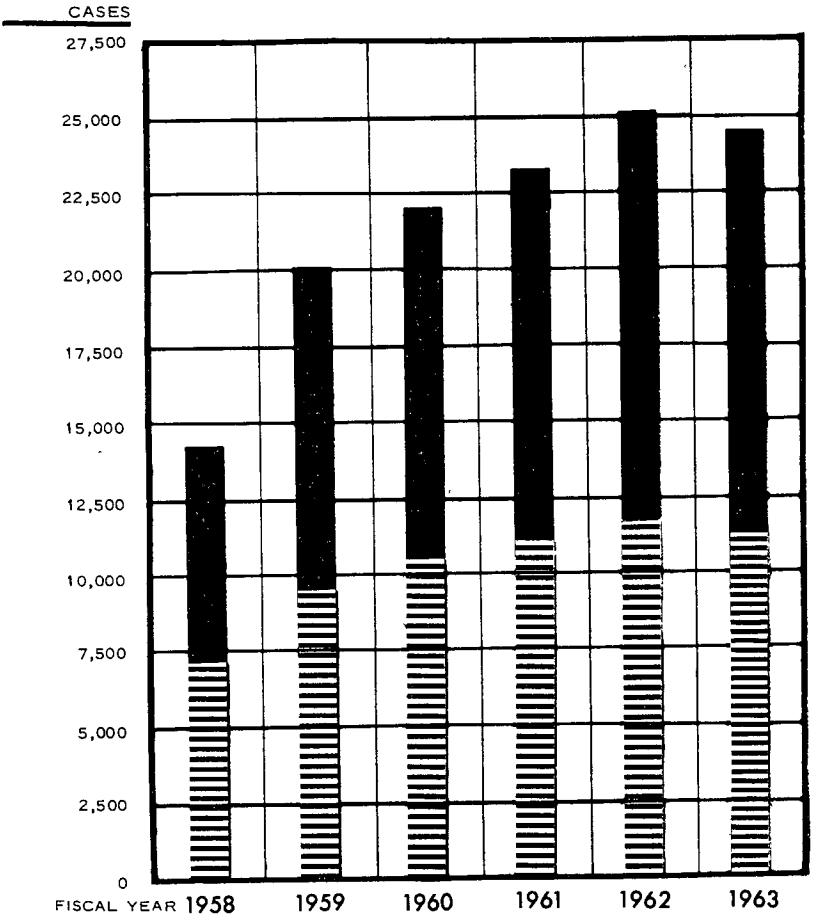
DECISIONS ISSUED



PROCEEDINGS	1958	1959	1960	1961	1962	1963
C	382	460	626	636	851	813
R	1,703	1,962	2,444	2,467	2,749	2,527
TOTALS	2,085	2,422	3,070	3,103	3,600	3,340

Chart 14

CASES CLOSED



	1958	1959	1960	1961	1962	1963
C CASES	7,289	11,465	11,924	12,526	13,319	13,605
R & UD CASES	7,490	8,890	10,259	10,289	11,708	11,073
TOTALS	14,779	20,355	22,183	22,815	25,027	24,678

The appeals courts enforced in full 113 cases; 34 were enforced with modification; 7 cases were remanded to the NLRB; 7 were partially enforced and partially remanded; and 37 orders were set aside.

In the Supreme Court, three out of four NLRB orders were enforced in full in the fiscal year; one order was set aside.

Injunction litigation in the U.S. District Courts tapered off in fiscal year 1963, as compared with 1962, in terms of cases instituted.

But the district courts granted NLRB-requested injunctions in 91 percent, as compared with the 85 percent of 1962, in the contested cases litigated to final order. Seventy-seven injunction petitions were granted, eight were denied. There were 143 petitions settled or placed on the courts' inactive dockets, and 10 petitions were awaiting action at the end of fiscal 1963.

h. Other Developments

During the fiscal year, the NLRB approved various formal rules changes to improve its procedures in the handling of unfair labor practice cases. The rules changes include new requirements related to complaints, new authority for trial examiners in the handling of hearings, rights to parties to file cross-exceptions and reply briefs, and more detailed rules for postdecision motions and proceedings. The changes adopted followed many months of study and discussion with practitioners before the NLRB.

The General Counsel met with regional directors in field conferences for overall review of case handling. Objectives stressed were: (1) maintenance of high-level productivity in view of the Agency's increasing caseload, and (2) improvement of quality of work in all areas of regional activity. The General Counsel also instituted review of current trial procedures, and study of the career development program to include a special interchange and extension of skills for attorneys both in Washington and the regions.

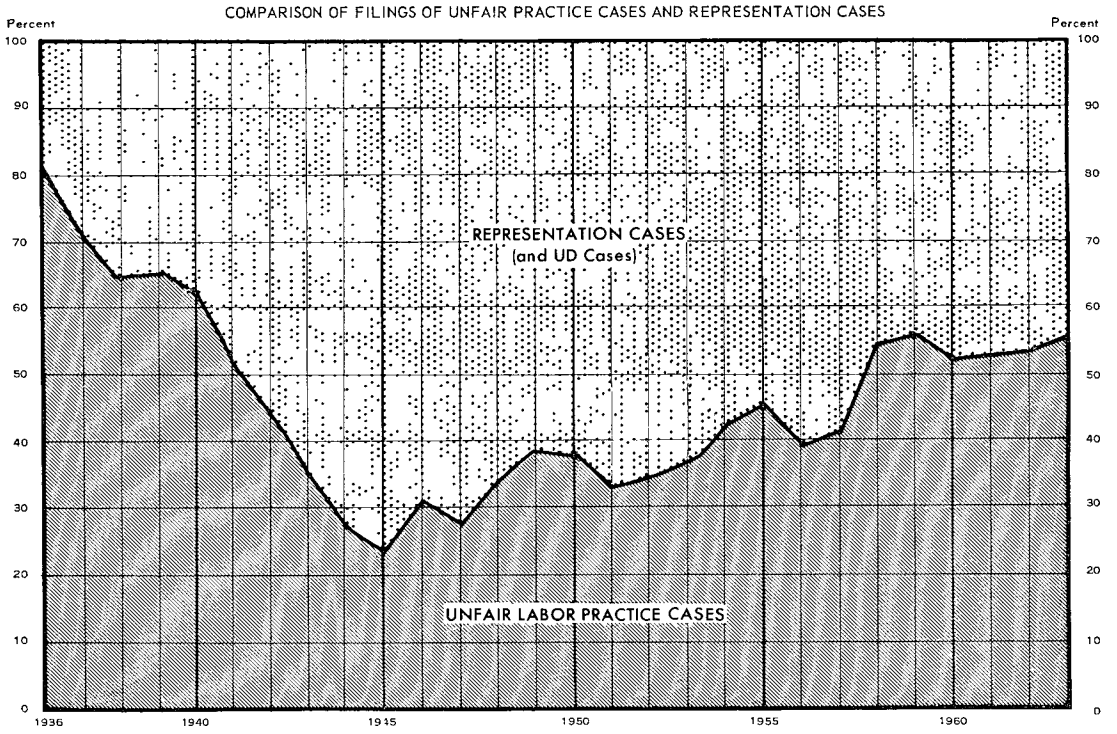
On December 17, 1962, John H. Fanning of Rhode Island began his second 5-year term as a member of the National Labor Relations Board. He originally was named to the Board in 1957.

Arnold Ordman, a native of Massachusetts and resident of Maryland, a career attorney for the Agency, on May 14, 1963, began his 4-year term of office as NLRB General Counsel. Mr. Ordman succeeded Stuart Rothman whose term had expired. The new General Counsel previously had served the NLRB in the Office of the General Counsel, as a trial examiner, and as chief counsel to the NLRB Chairman.

On August 29, 1963, following close of the fiscal year, Howard Jenkins, Jr., of Colorado took office as a member of the NLRB. Mr. Jenkins, former Assistant Commissioner of the Bureau of Labor-Management Reports, Department of Labor, succeeded Philip Ray Rodgers, whose term had expired.

The NLRB conducted "last offer" elections among longshore industry employees, under national emergency provisions of the National Labor Relations Act, as well as similar elections in the aerospace industry. Also, the NLRB, pursuant to a request by a Presidential Board of Inquiry, and in cooperation with the Federal Mediation and

Chart 15



This graph shows the percentage division of the NLRB caseload between unfair labor practice cases and representation cases during fiscal years 1936-1963

Conciliation Service, conducted several union-shop authorization elections among aerospace industry employees.

In April 1963 the NLRB Professional Association was granted exclusive recognition, under Executive Order 10988, as representative of attorneys, and other professional employees doing comparable legal work, in two units of the NLRB Washington offices: the Board and the General Counsel. Certification of the union followed an election conducted on April 3, 1963.

3. Decisional Highlights

In the course of the Board's administration of the Act during the report year, it was required to consider and determine many complex problems arising from the innumerable factual variations in the cases reaching it. In some cases new developments in industrial relations, as presented by the factual situations, required the Board's accommodation of established principles to those developments. In others, the Board was required to make an initial construction of statutory provisions.

Chapter III on the Effect of Concurrent Arbitration Proceedings, chapter IV on Representation Cases, and chapter V on Unfair Labor Practices discuss some of the more significant decisions of the Board during the fiscal year. The following summarizes briefly the most significant decisions in certain areas.

a. Concurrent Arbitration Proceedings

In two decisions, one in an unfair labor practice case and one in a representation proceeding, the Board made clear that it would give "hospitable acceptance to the arbitral process" [3] in furtherance of the national labor policy favoring the settlement of disputes by a method agreed upon by the parties. The Board noted that this policy is set forth in section 203(d) of the Act and has recently received impetus from Supreme Court decisions supporting the enforceability of agreements to arbitrate and of arbitration awards. This policy controlled the Board's disposition of the *International Harvester Company* [4] and *Raley's, Inc.*,[5] cases. In *International Harvester* the Board voluntarily withheld its undoubted jurisdiction to adjudicate unfair labor practices and dismissed the complaint because the union's right under the collective-bargaining agreement to obtain the discharge of an employee for nonpayment of dues, which discharge was the basis of the complaint, had been sustained by an arbitrator in a proceeding

[3] *International Harvester Co.*, 138 NLRB 923, 927.
[4] *Id.*
[5] 143 NLRB No. 40.

found by the Board to be fair and regular.[6] In the *Raley's* case, the Board accepted an arbitrator's construction of the unit description of a collective-bargaining agreement as encompassing certain employees not specifically described, and therefore held the contract barred an election among those employees.[7]

b. Representation Matters

Consonant with court decisions condemning Government sanction of racially separate groupings, the Board in one case announced that contracts which differentiate between groups of employees on racial lines will not operate as a bar to an election.[8] And in exercise of its responsibility to control election proceedings, the Board established criteria under which campaign propaganda calculated to overstress and exacerbate racial feelings by irrelevant, inflammatory appeals could be a basis for setting aside an election.[9]

"[H]eeding the appeals" of "the overwhelming majority of labor and management representatives," the Board adapted another of its contract bar rules to "the totality of the modern-day labor scene" when it announced that long-term labor agreements, otherwise qualified, would constitute a bar to a petition for an election for the first 3 years of the contract term.[10] The Board replaced the previously prevailing 2-year rule with the 3-year rule upon consideration of the trend of developments in modern labor relations which increasingly "stress the efficacy of collective agreements," and of the increased stability of labor relations which would result from appropriate accommodation of the Board's Rules to those developments.

In the *Dal-Tex Optical* case,[11] the Board announced that "implied threats couched in the guise of statements of legal position" would not be sanctioned as permissible preelection conduct, and that not only would any conduct which constitutes interference, restraint, or coercion violative of section 8(a)(1) be viewed, *a fortiori*, as conduct interfering with an election warranting setting it aside, but that an election would be set aside whenever, upon consideration of "all the surrounding circumstances," statements, regardless of form, have resulted in substantial interference with the election. The Board also established the date of the filing of the petition as the cutoff date for filing objections to elections held pursuant to voluntary agreements, thus conforming the procedure in consent elections to

[6] For a more complete statement see pp 38–39, *infra.*
[7] For a more complete statement see pp 40–41, *infra.*
[8] *Pioneer Bus Co.*, 140 NLRB 54. See p. 49, *infra.*
[9] *Sewell Mfg. Co.*, 138 NLRB 66, pp. 58–59, *infra.*
[10] *General Cable Corp.*, 139 NLRB 1123, p. 48, *infra.*
[11] 137 NLRB 1782, pp. 59–60, *infra.*

the previously announced cutoff date for objections to formally directed elections in contested cases.[12] A similar uniformity was established by the Board's holding that the unit placement of dual-function employees was to be determined by the same standard as that applied for part-time employees—namely, regular work in the unit for periods of time sufficient to establish a substantial interest in the working conditions of the unit.[13]

c. Bargaining Obligations

In recognition of what it considered the necessary implications of the Supreme Court's decision in the *Railroad Telegraphers*[14] case, the Board held that an employer's decision to subcontract work theretofore performed by its employees is a mandatory subject of bargaining,[15] concerning which the employer was required to confer and bargain with the representative of its employees. Relying upon the rationale set forth in its previously announced decision in *Town & Country Manufacturing Co.*,[16] the Board also noted the Supreme Court's reference in the *Telegraphers* case to the extensive treatment of contracting-out or subcontracting issues in today's collective bargaining. Although the *Fibreboard* case was the first finding of a violation of the Act where the change was not motivated by antiunion considerations, the Board expressed its conviction that "[t]he present decision does not innovate; it merely recognizes the facts of life created by the customs and practices of employers and unions."

The Board also recognized the broad impact of the *Telegraphers* decision in another case where it held that a proposed contract provision requiring that all hiring of construction workers should be done through a nondiscriminatory union-operated hiring hall is a mandatory subject of bargaining.[17] It found that the legality of such an agreement is now beyond question, and that the proposal met the criteria for mandatory subjects since it was related to terms and conditions of employment, which included the initial act of employing. The Board rejected the contention that the term "employees" as defined in the Act did not include prospective employees, particularly in the building and construction industry, which is characterized by the intermittent employment by different contractors of employees seeking continuous employment in their craft or skill.

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[12] *Goodyear Tire & Rubber Co.*, 138 NLRB 453, p. 62, *infra*.
[13] *Berea Publishing Co.*, 140 NLRB 416, p 53, *infra*.
[14] *Railroad Telegraphers* v. *Chicago and North Western R. Co.*, 362 U.S. 330.
[15] *Fibreboard Paper Products Corp.*, 138 NLRB 550, p 80, *infra*.
[16] 136 NLRB 1022.
[17] *Houston Chapter, AGC*, 143 NLRB No. 43, pp. 82–83, *infra*.

d. Obligation of a Union to Its Members

In the *Miranda Fuel* case,[18] reconsidered by the Board after remand from the Supreme Court, the Board reaffirmed its initial determination, which had been sustained by the Court of Appeals for the Second Circuit, that a union violated the Act in obtaining an employee's reduction in seniority for reasons "against and not under the agreement." It found that the union's action was not for a legitimate union purpose and, resulting as it did in the preference of the other union members over the one whose seniority was reduced, violated the duty of fair representation owed by the union to that member. This duty, in the Board's view, and as expressed in Supreme Court decisions, flows from the union's statutorily protected status as collective-bargaining agent for all the employees, and requires that any distinctions it makes among the employees it represents must be based upon "relevant" differences. Having found the union's actions here were not so based, the Board affirmed the finding of a violation of section 8(b)(1)(A). Also, in view of its finding that the disputed conduct was not motivated by a legitimate union purpose, but was rather tantamount to the union's enforcement of its own rules, the Board concluded that the encouragement of union membership to be expected from such a display of union authority was within the prohibition of section 8(b)(2) of the Act.

e. Hot Cargo Issues

In construing the Act's prohibitions in section 8(e) against agreements or attempts to obtain agreements under which an employer would cease handling the products of another employer or cease doing business with him, the Board passed upon the validity of several major contract provisions. It also for the first time construed the interrelation of the proviso exempting the construction industry from the restriction of section 8(e) against voluntary hot cargo agreements, and the prohibitions of section 8(b)(4)(A) against resort to strikes or coercion to obtain such an agreement. In two companion cases[19] the Board passed on contract provisions proposed by the Teamsters Union for inclusion in the Central States Area and Southeastern States Area contracts. The Board, *inter alia*, held invalid a picket line clause under which employees would be immune from discipline for refusing "to enter upon any property involved in a labor dispute," since it would not limit the protected refusals to places where a picket line had been established. Also held invalid was a "hazardous work" clause under which the employer would provide

[18] 140 NLRB 181, pp. 84–85, 87–88, *infra*.

[19] *Truck Drivers Union Local No. 413 IBT (Patton Warehouse)*, 140 NLRB 1474, and *Truck Drivers Local Union No. 728 (Brown Transport)*, 140 NLRB 1436, pp 102–104, *infra*

certain additional benefits and protection to its employees in the event "any tribunal of competent jurisdiction" should determine the employees were required to "enter upon the premises of any person involved in a labor dispute. . . ." The Board reasoned that the employer permitted by the "tribunal" to require his employees to perform services should be able to do so in his accustomed manner, and the union may not make it unfeasible for him to do so by requiring him to employ strange and uneconomic means. In the Board's view, the purpose of the imposition of such a requirement was to accomplish the prohibited object by indirection, and such means are to be prohibited, as well as those directly effective.

The Board also applied to the construction industry section 8(b)(4)(A)'s prohibition of coercion and strikes to obtain an agreement prohibited by section 8(e). Although the construction industry is exempted from the prohibition of section 8(e) by a proviso, the Board concluded that the proviso only permits hot cargo agreements voluntarily entered into, and does not exempt the union from the prohibitions of section 8(b)(4)(A) against resort to coercive pressures [20] to obtain such agreements. In the Board's view of the legislative history, Congress did not intend that strikes and coercion to obtain hot cargo contracts be permitted, even where voluntary agreement was allowed. The Board therefore found that a construction union violated section 8(b)(4)(A) by picketing to obtain a contract which by its terms would apply to all work subcontracted by the employer.

f. Limitations on Informational Picketing

During the year the Board also for the first time determined the limitations placed upon informational picketing, otherwise permitted under the second proviso to section 8(b)(7)(C), by the prohibition of the picketing when "an effect" of it is to induce a stoppage of deliveries and/or services.[21] The Board considered the congressional objectives in exempting informational picketing from the proscription of the section, noting that Congress thereby permitted potential economic pressure through appeal to prospective customers, although proscribing economic pressure resulting from the curtailment of deliveries and services to the employer, at least where organizational or recognitional picketing continues beyond a reasonable time or 30 days. It concluded that "neither the legislative history nor the explicit language of the effect clause justifies . . . an inflexible reading of the Statute" under which even a single delivery interruption would automatically convert protected informational picketing into an unfair labor practice. Rejecting a test based on the number of delivery

[20] *Construction, Production & Maintenance Laborers Local 383 (Colson & Stevens)*, 137 NLRB 1650, pp. 97–98, *infra*.

[21] *Retail Clerks Union Local 324 (Baker Bros. Corp and Golds, Inc.)*, 138 NLRB 478.

interruptions, the Board determined that "it would be more reasonable to frame the test in terms of the actual impact on the picketed employer's business," which presents a question of fact to be resolved in the light of all the circumstances of each case. This construction of the statute governed the Board's approach to other cases involving application of the "effect" proviso.[22]

g. Remedial Provisions

An important change in the remedial provisions of Board orders was also made during the year. The Board announced that the "enlightenment gained from experience" in fashioning remedies for violations of the Act had caused it to conclude that it would be more equitable if interest were included in its orders directing reimbursement for lost wages.[23] Its orders therefore now require the payment of 6 percent interest on all awards of backpay and reimbursement of moneys wrongfully exacted. The Board's conviction that this requirement was a reasonable exercise of its statutory authority to prescribe remedies to relieve the effects of unfair labor practices was subsequently affirmed by the courts.[24]

4. Fiscal Statement

The obligations and expenditures of the National Labor Relations Board for fiscal year ended June 30, 1963, are as follows:

Personnel compensation	[1] $16,428,913
Personnel benefits	[2] 1,197,127
Travel and transportation of persons	[3] 1,233,100
Transportation of things	40,560
Communication services	596,926
Rents and utility services	36,890
Printing and reproduction	404,436
Other services	610,007
Supplies and materials	215,429
Equipment	149,236
Insurance claims and indemnities	117
Subtotal, obligations and expenditures	20,912,741
Transferred to Operating Expenses, Public Buildings Service (Rent)	63,481
Total Agency	20,976,222

[1] Includes $6,987 for reimbursable personal service costs.
[2] Includes $525 for reimbursable personnel benefits.
[3] Includes $1,221 for reimbursable travel expenses.

These items have always been included in the totals for the annual report. As a matter of reconciliation, the budget document presents direct obligations and reimbursable obligations separately.

[22] See pp. 116–117, *infra*.
[23] *Isis Plumbing & Heating Co.*, 138 NLRB 716, pp. 77–78, *infra*.
[24] See cases, pp 141–142, *infra*

TYPES

For filing and processing purposes, NLRB applies to cases

1. CHARGES OF UNFAIR

CHARGE AGAINST EMPLOYER		CHARGE AGAINST	
Section of the Act	CA	Section of the Act	CB
8(a)(1)	Interfere with, restrain, or coerce employees in exercise of their rights under Section 7 (to join or assist a labor organization or to refrain).	8(b)(1)(A)	Restrain or coerce employees in exercise of their rights under Section 7 (to join or assist a labor organization or to refrain).
8(a)(2)	Dominate or interfere with the formation or administration of a labor organization or contribute financial or other support to it.	8(b)(1)(B)	Restrain or coerce an employer in the selection of his representatives for collective bargaining or adjustment of grievances.
8(a)(3)	Encourage or discourage membership in a labor organization (discrimination in regard to hire or tenure).	8(b)(2)	Cause or attempt to cause an employer to discriminate against an employee.
8(a)(4)	Discourage or otherwise discriminate against an employee because he has given testimony under the Act.	8(b)(3)	Refuse to bargain collectively with employer.
8(a)(5)	Refuse to bargain collectively with representatives of his employees.	8(b)(5)	Require of employees the payment of excessive or discriminatory fees for membership.
		8(b)(6)	Cause or attempt to cause an employer to pay or agree to pay money or other thing of value for services which are not performed or not to be performed.

Section of the Act 8(b)(4)	CC
(i) TO ENGAGE IN, OR INDIVIDUAL EMPLOYED BY COMMERCE OR IN AN COMMERCE TO ENGAGE IN, A THE COURSE OF HIS MANUFACTURE, PROCESS, HANDLE OR WORK ON ANY SERVICES; OR (ii) TO RESTRAIN ANY PERSON EN- AN INDUSTRY AFFECTING EITHER CASE AN OBJECT	
	(A) To force or require any employer or self-employed person to join any labor or employer organization or to enter into any agreement prohibited by Sec. 8(e).
	(B) To force or require any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or cease to doing business with any other person, or force or require any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been so certified.
	(C) To force or require any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative.

2. PETITIONS FOR CERTIFICATION OR

9(c)(1)(A)(i)	RC	9(c)(1)(B)	RM
Asserting the designation of filing party as bargaining agent.*		Alleging that one or more claims for recognition as exclusive bargaining agent have been received by the employer.*	

* This statement is not applicable if an 8(b)(7) charge is on designation applies.

OF CASES

the various "C" and "R" designations indicated below.

LABOR PRACTICES (C CASES)

LABOR ORGANIZATION		CHARGE AGAINST LABOR ORGANIZATION & EMPLOYER
Section of the Act 8(b)(4) CD	Section of the Act CP	Section of the Act CE
INDUCE OR ENCOURAGE ANY ANY PERSON ENGAGED IN INDUSTRY AFFECTING STRIKE OR A REFUSAL IN EMPLOYMENT TO USE, TRANSPORT, OR OTHERWISE GOODS OR TO PERFORM ANY THREATEN, COERCE OR GAGED IN COMMERCE OR IN COMMERCE, WHERE IN THEREOF IS: (D) To force or require any employer to assign particular work to employees in a particular labor organization, or in a particular trade, craft, or class rather than to employees in another trade, craft, or class, unless such employer is failing to conform to an appropriate Board order or certification.	8(b)(7) To picket, cause, or threaten the picketing of any employer where an object is to force or require an employer to recognize or bargain with a labor organization as the representative of his employees, or to force or require the employees of an employer to select such labor organization as their collective bargaining representative, unless such labor organization is currently certified as the representative of such employees: (A) where the employer has lawfully recognized any other labor organization and a question concerning representation may not appropriately be raised under Section 9(c), (B) where within the preceding 12 months a valid election under 9(c) has been conducted, or (C) where picketing has been conducted without a petition under 9(c) being filed within a reasonable period of time not to exceed 30 days from the commencement of such picketing.	8(e) To enter into any contract or agreement (any labor organization and any employer) whereby such employer ceases or refrains or agrees to cease or refrain from handling or dealing in any product of any other employer, or to cease doing business with any other person.

DECERTIFICATION OF REPRESENTATIVES (R CASES)

9(c)(1)(A)(ii) RD	9(e)(1) UD
Asserting that the certified or recognized bargaining agent is no longer the representative.*	Employees wish to rescind a union security clause.

file involving the same employer, however, the "R"

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II

Jurisdiction of the Board

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

Upon appropriate petition,[6] the Board will render an advisory opinion as to its jurisdiction in cases not otherwise before it for adjudication. Under its Rules,[7] where a proceeding is pending before

[1] See secs 9(c) and 10(a) of the Act, and also the definitions of "commerce" and "affecting commerce" set forth in secs 2(6) and 2(7), respectively Under sec 2(2), the term "employer" does not include the United States or any wholly owned Government corporation, any Federal Reserve Bank, any State or political subdivision, any nonprofit hospital, any person subject to the Railway Labor Act, or any labor organization other than when acting as an employer

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

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

[4] These self-imposed standards are primarily expressed in terms of the gross dollar volume of the business in question Those prevailing on Aug. 1, 1959, were those announced on Oct. 2, 1958. Press Release (R-576) Oct. 2, 1958; Twenty-third Annual Report (1958), p. 8 'See also Press Release (R-586) Jan. 11, 1959, and *Floridan Hotel of Tampa, Inc*, 124 NLRB 261 (July 30, 1959), for hotel and motel standards

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

[6] See *H. W. Woody, Jr., et al.*, 125 NLRB 1172 (1959), Twenty-fifth Annual Report (1960), p. 19, as to what constitutes an appropriate petition.

[7] Secs 102 98–102.104, Rules and Regulations, Series 8, as amended, effective Nov. 13, 1959.

a State or Territorial tribunal, and a party to the proceeding, or the tribunal itself, is in doubt whether the Board would assert jurisdiction under current jurisdictional standards, the party or tribunal may seek an advisory opinion as to whether the Board would assert or decline jurisdiction on the facts of the particular case.[8] During the past fiscal year, the Board had occasion to state,[9] by way of clarification, that the issuance of an advisory opinion does not constitute a declaratory order within the meaning of section 5(d) of the Administrative Procedure Act. Section 5(d) envisages final adjudications binding upon the parties. On the other hand, the Board's advisory opinions do not contemplate such binding adjudications, but are merely advisory in nature, limited to the jurisdictional issue presented by the facts as stated.

1. Enterprises Subject to Board Jurisdiction

During fiscal 1963, the Board had occasion to further delineate its legal jurisdiction and jurisdictional standards by determining the applicability of the Act to such enterprises as an amusement park and a nonprofit research and educational institution.

a. Amusement Enterprise

In *Coney Island, Inc.*,[10] a Board majority asserted jurisdiction over an employer who operated an amusement park during the summer months. The majority found that the employer's operation for the benefit of the consuming public was retail in character, and that its annual volume of business in excess of $500,000 satisfied the Board's jurisdictional standard for retail enterprises.[11] It rejected the contention that the park was a local, seasonal operation whose impact on commerce was minimal. It pointed out that the employer's annual out-of-State purchases in excess of $100,000 clearly demonstrated that the operation had a substantial impact on interstate commerce.

b. Nonprofit Research and Educational Institution

In *Woods Hole Oceanographic Institution*,[12] a Board majority asserted jurisdiction over a private, nonprofit corporation which provided facilities for marine research and instruction in oceanography,

[8] In this connection, it is pertinent to note that sec. 14(c)(2) of the Act empowers State and Territorial agencies and courts to assert jurisdiction in labor relations matters over which the Board has declined jurisdiction

[9] *City Line Open Hearth, Inc*, 141 NLRB No 74.

[10] 140 NLRB 77, Chairman McCulloch and Members Fanning and Brown for the majority, Members Rodgers and Leedom dissenting

[11] *Ray, Davidson & Ray*, 131 NLRB 433, was cited See Twenty-sixth Annual Report (1961), pp. 27–28

[12] 143 NLRB No 60, Chairman McCulloch and Members Leedom, Fanning, and Brown for the majority, Member Rodgers dissenting.

whose research studies and investigations were directed toward obtaining potentially significant information about oceanography. The Institution's main source of income for research activities—97 percent—was derived from contracts with agencies of the Federal Government. The majority rejected the contentions that the employer's activities had neither a sufficient effect on commerce nor such an impact on national defense as to warrant exercise of the Board's jurisdiction. It found that the activities satisfied the requirements of statutory jurisdiction and were also within the Board's self-imposed standards both for nonretail enterprises and for enterprises whose activities exert a substantial impact on the national defense. It found no logical basis nor congressional intent requiring differentiation between nonprofit research corporations doing business with the Government and those whose incomes are derived from private industry.[13]

2. Application of Jurisdictional Standards

During the past year, a number of cases presented questions as to the manner or method of applying the Board's discretionary standards. Significant among them are two such cases which dealt primarily with the application of the Board's current standards to a nonprofit insurance organization, and to an enterprise rendering services to public utilities.

a. Nonprofit Insurance Organization

In *Massachusetts Hospital Service*,[14] upon petition for an advisory opinion, the Board advised that it would assert jurisdiction over a nonprofit insurance enterprise which rendered services in excess of $50,000 annually to steel companies each of which was itself engaged in commerce and over whom the Board had previously asserted jurisdiction.[15] Although a nonprofit organization, the employer was engaged in commercial activities as a part of the insurance business and steel industry.[16] It is immaterial that a nonprofit corporation is motivated by considerations not strictly commercial where the activities themselves are commercial in nature.[17]

b. Enterprise Rendering Services to Public Utilities

In *New England Forestry Service*,[18] upon petition for an advisory opinion, the Board advised that it would assert jurisdiction over an

[13] The majority reaffirmed the principle of *Massachusetts Institute of Technology (Lincoln Laboratory)*, 110 NLRB 1611 (1954), that the Board will assert jurisdiction over a nonprofit, educational institution engaged exclusively in a Government-sponsored project relating to the national defense.

[14] *Labor Relations Commission of the Commonwealth of Massachusetts (Massachusetts Hospital Service, Inc.)*, 138 NLRB 1329

[15] See *Chain Service Restaurant, etc., Employees, Local 11*, 132 NLRB 960 (1961).

[16] See *Middle Department Association of Fire Underwriters*, 122 NLRB 1115, 1117 (1959).

[17] *Ibid.*

[18] *Labor Relations Commission, Commonwealth of Massachusetts (New England Forestry Service, Inc.)*, 138 NLRB 381.

employer engaged in the nonretail business of tree surgery and landscaping who rendered services in excess of $50,000 annually to public utilities each of whose annual gross volume of business amounted to more than $250,000.[19] The Board found that the employer's services to the public utilities constituted indirect outflow,[20] and that the employer's operations met the current standard for the assertion of jurisdiction over nonretail enterprises.[21]

3. Combining Revenues of Individual Employers for Jurisdictional Purposes

During the past year, the Board had occasion to determine whether jurisdiction should be asserted over a group of employers who associate for mutual benefit and appear to be a single entity, where no one employer individually meets the Board's self-imposed jurisdictional standards. In *Checker Cab*,[22] a Board majority asserted jurisdiction over a nonprofit membership corporation and each of its members who own and operate taxicabs, where their combined total revenues exceeded $500,000, even though none of the owner-operators individually met the $500,000 retail standard which the Board applies to taxicab companies. The majority found that the corporation and each of its members were joint employers in a common enterprise,[23] on the basis that the operation of the taxicabs was represented to the public as a single integrated enterprise,[24] and that the corporation was authorized by its members to exercise a substantial degree of control over the drivers of each member. The majority therefore deemed it was justified in combining the gross revenues of all members for jurisdictional purposes.[25]

[19] Each of the public utilities therefore met the Board's standard established in *Sioux Valley Empire Electric Assn.*, 122 NLRB 92 See Twenty-third Annual Report (1958), p. 8.

[20] See *Siemons Mailing Service*, 122 NLRB 81, 85 (1958); Twenty-third Annual Report (1958), p. 8.

[21] *Ibid.*

[22] *Checker Cab Company and Its Members*, 141 NLRB No. 64, Chairman McCulloch and Members Fanning and Brown for the majority, Members Rodgers and Leedom dissenting.

[23] See also *Frostco Super Save Stores, Inc.*, 138 NLRB 125; *United Stores of America*, 138 NLRB 383; *Spartan Department Stores*, 140 NLRB 608

[24] Among other factors, all cabs bore the same markings and were subject to a single dispatching system

[25] See also *City Cab Company and Its Members*, 141 NLRB No. 107, Chairman McCulloch and Members Fanning and Brown for the majority, Members Rodgers and Leedom dissenting.

III

Effect of Concurrent Arbitration Proceedings

In a number of cases during fiscal 1963, the Board had occasion to consider whether it should honor arbitration or grievance proceedings which involved representation and unfair labor practice issues, rather than determine such issues *ab initio.* The statute specifies that the Board is not precluded from adjudicating unfair labor practice charges even though they might have been the subject of an arbitration proceeding and award.[1] In addition, the Board has considerable acknowledged discretion to respect an arbitration award and to decline to exercise its authority over alleged unfair labor practices if to do so will serve the fundamental aims of the Act. Generally, the Board as a matter of policy will accord recognition to the arbitral process if the proceedings have been fair and regular, all parties have agreed to be bound, the decision of the arbitration panel is not clearly repugnant to the purposes and policies of the Act, and recognition of the arbitrator's award would achieve the desirable objective of encouraging the voluntary settlement of labor disputes.[2]

A. Arbitration as an Alternative to Board Action

1. Unfair Labor Practice Issues

While an arbitrator's award cannot oust the Board of its jurisdiction to adjudicate unfair labor practice charges, the Board has found that under certain circumstances it will effectuate the policies of the Act to respect such an award. In the *International Harvester* case,[3] a

[1] Sec. 10(a) provides that the Board's power to prevent any unfair labor practice "shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise . . "

[2] *Spielberg Mfg. Co.,* 112 NLRB 1080 (1955).

[3] *International Harvester Company (Indianapolis Works),* 138 NLRB 923. Chairman McCulloch and Members Leedom and Brown for the majority Member Rodgers, dissenting, would have found that the arbitrator's award was at odds with the statute and that the Board should not honor it Member Fanning, also dissenting, would have affirmed the trial examiner's findings of unfair labor practices.

majority of the Board held that the trial examiner erred in not honoring an arbitration award. The trial examiner had found the employer and the union guilty of unfair labor practices because the union pursued to arbitration its contractual remedy for enforcement of an employee's dues obligation, and the employer complied with the award rendered by the arbitrator, resulting in the employee's layoff. The Board pointed out that it has often looked to section 203(d)[4] of the Act for approval of the arbitral process which has become widely recognized as an effective and expeditious means of resolving labor disputes. Also, the Supreme Court has specifically recognized arbitration as an instrument of national labor policy for composing contractual differences.[5] In the view of the Board, the effectuation of the Federal policy can best be achieved if it gives "hospitable acceptance to the arbitral process" as part of the collective-bargaining machinery, by voluntarily withholding its undoubted authority to adjudicate alleged unfair labor practice charges involving the same subject matter, unless it clearly appears that such arbitration proceedings were tainted by fraud, collusion, unfairness, or serious procedural irregularities, or that the award was clearly repugnant to the purposes and policies of the Act. The Board concluded that the arbitrator's award was not palpably wrong, and that there were no serious procedural infirmities in the proceedings to warrant its disregarding the arbitration award. Moreover, it noted that the Board need not decide the issues in the arbitration proceeding in determining its acceptance of the award, since that would only be substituting its judgment for that of the arbitrator, thereby defeating the purposes of the Act and the common goal of national labor policy of encouraging the final adjustment of disputes.

However, in another case,[6] the Board reaffirmed its well-established rule that the mere existence of a grievance machinery does not relieve an employer of its obligation to furnish a union with information

[4] Sec. 203(d) provides that: "Final adjustment by a method agreed upon by the parties is hereby declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective-bargaining agreement."

[5] See *Textile Workers Union of America* v. *Lincoln Mills of Alabama*, 353 U S 448, where the Court held that in suits under sec. 301 of the Act courts were empowered to compel parties to observe their arbitral commitments and that the expiration of the contract did not relieve the parties of their obligation to arbitrate grievances arising during the contract term

[6] *The Timken Roller Bearing Co*, 138 NLRB 15. Chairman McCulloch and Member Brown were of the opinion that the decision in *Hercules Motor Corp.*, 136 NLRB 1648, and this decision were not in conflict. Member Fanning relied on his dissenting opinion in *Hercules* because of the similarity of the facts and issues in this case See also *Square D Co.*, 142 NLRB No. 43, where the Board adopted the trial examiner's finding that the employer's refusal to furnish data relating to the group incentive plan, on the ground that the incentive plan was not a subject covered by the contract's grievance procedure, was an unlawful refusal to bargain The employer's offer to arbitrate whether the grievances were arbitrable did not satisfy its statutory obligation to supply incentive plan information relevant to the grievances.

needed to perform its statutory functions. The Board rejected the employer's contention that, in view of the negotiations between the employer and the union, and under the resulting bargaining agreement containing a comprehensive grievance-arbitration article, the union had waived its right to acquire wage data directly, and that it should channel its claims for such information into the grievance procedure of the agreement. The language of the agreement in question stated that it provided an adequate means "for the adjustment and disposition of any complaints or grievances." The Board found that the union's request for wage data was not a "complaint" which had to be processed through the grievance procedure, since the language of the agreement did not include disputes concerned with the exercise of statutory rights. The Board concluded that the arbitrator's jurisdiction was limited to disputes involving the interpretation of contractual rights, rather than statutory rights, and that there was no indication that the union could file a grievance to assert its rights to acquire wage data which it needed to carry out its statutory responsibilities as the representative of the employees.

While the Board may choose to exercise its discretion in recognizing an arbitration award which has been made pursuant to fair and regular proceedings with all the parties agreeing to be bound, a majority of the Board held in the *Lummus* case [7] that the failure of the grievants to exhaust the appeals procedure set forth in the collective-bargaining agreement between the employer and the union did not divest the Board of its primary jurisdiction over the unfair labor practices. The agreement contained a provision which allowed a job applicant who believed he had not received fair treatment at the hiring hall to file a written appeal to a joint hiring committee that was composed of equal members of employer and union representatives. In the event of a committee deadlock, the grievant could then take his appeal to an impartial umpire whose decisions would be final. The majority found that the grievants in the instant case did not have actual knowledge of the availability of the appeal procedure. Members Rodgers and Leedom also pointed out that the contract provision would, in effect, require the aggrieved parties to submit to the jurisdiction of a private tribunal composed of the alleged perpetrators of the unfair labor practices in question.

2. Representation Issues

The Board also had occasion in a representation case to determine whether it should recognize an arbitration award which held that cer-

[7] *Lummus Co.*, 142 NLRB No. 56. Members Rodgers, Leedom, and Fanning for the majority, Chairman McCulloch concurring in part. Member Brown, dissenting, would have dismissed the complaint because the complainants failed to avail themselves of the contractual grievance machinery.

tain employees were covered by a multiemployer contract between the employer and a union.[8] A second union, which had not been a party to the arbitration proceeding, sought to represent those employees, asserting that they were not covered by the contract since not specifically mentioned by it. The Board accepted the contract interpretation of the arbitration award that the contract covered the employees and held that the petition was therefore untimely filed with respect to the contract. Relying on the *International Harvester* decision,[9] where the Board emphasized that it would give "hospitable acceptance to the arbitral process" in an unfair labor practice proceeding, the Board held, in the instant case, that the same considerations motivating that policy are equally persuasive to a similar acceptance of the arbitral process in a representation proceeding. The Board stated that:

> Thus, where, as here, a question of contract interpretation is in issue, and the parties thereto have set up in their agreement arbitration machinery for the settlement of disputes arising under the contract, and an award has already been rendered which meets Board requirements applicable to arbitration awards, we think that it would further the underlying objectives of the Act to promote industrial peace and stability to give effect thereto.

It was pointed out that, although section 9 of the Act gives the Board power to decide questions concerning representation, this authority does not preclude the Board in a proper case from considering an arbitration award in determining whether such a question exists. The Board concluded that the arbitration award met its standards for acceptance of such proceedings, and that the arbitrator had decided essentially the same issue as to the scope of the contract that confronted the Board in its representation proceeding. It therefore dismissed the petition.

In another representation case [10] a majority of the Board held that it would defer its ruling on challenges to the voting eligibility of two individuals whose terminations were the subject of pending grievances, because their status on the eligibility and election dates [11] depended upon the outcome of the grievance procedure. A determination favorable to the union's position would result in a holding that the individuals in question were employees on the critical dates, while a contrary determination would result in a finding that they were not employees. And any such award would have an impact on the election

[8] *Raley's Inc. d/b/a Raley's Supermarkets*, 143 NLRB No. 40.

[9] *International Harvester Co. (Indianapolis Works)*, *supra*.

[10] *Pacific Tile & Porcelain Co.*, 137 NLRB 1358. Chairman McCulloch and Members Fanning and Brown for the majority. Members Rodgers and Leedom, dissenting, were of the view that the "pending grievances" rule, as applied to the determination of voter eligibility, would prolong and confuse the resolution of questions concerning representation, and involve the processes of the Board in matters which are not its proper concern.

[11] The majority overruled *Dura Steel Products Co*, 111 NLRB 590 (1955), and similar cases, to the extent that they were inconsistent with this holding.

only in the event the votes were determinative. The majority pointed out that, in rejecting the pendency of a grievance or arbitration proceeding as a ground for permitting discharged persons to vote by challenged ballots, the Board has relied on the *Times Square* decision,[12] where the Board held that it could not in a representation proceeding make an independent determination whether an unfair labor practice had occurred, because such finding could be made only in an unfair labor practice proceeding where the General Counsel has final authority under the Act to determine whether to proceed on a charge. However, the majority concluded in the instant case that the rationale upon which the *Times Square* case is based is not applicable to pending grievances which have not been made the subject of charges and which do not depend upon the General Counsel for disposition.

B. Prerequisites to Recognition

1. Identity of Issues Presented

In order for the Board to honor an arbitration award, the issue presented at the arbitration proceeding must conform in scope to that which is presented to the Board for its determination. In one case,[13] a majority of the Board declined to honor an arbitrator's award because it was limited solely to the contractual issue litigated before him and therefore the arbitrator did not pass upon the unfair labor practice issue which was before the Board. The majority pointed out that the arbitrator did not consider or pass upon either the possibility that the discharges in question were for protected activities, or upon the pretextual or spurious nature of the asserted reasons for the discharges. It was noted that these are the issues which the Board must decide if it is to afford to the employees the protection accorded by the Act.

In another case,[14] the Board held that the arbitration proceeding dealt with an issue which was different from that which was involved in the representation proceeding before the Board and therefore should not be permitted to foreclose a determination by the Board. The Board pointed out that the arbitration proceeding related solely to the issue whether certain employees were covered by the contract between the parties, and whether the employer violated the contract by eliminating the jobs of these employees. However, the issue before the Board was whether the employees in question were guards within the meaning of the Act.

[12] *Times Square Stores Corp*, 79 NLRB 361 (1948).

[13] *Raytheon Co*, 140 NLRB 883 Chairman McCulloch and Members Rodgers and Fanning for the majority. Members Leedom and Brown, dissenting, would adopt the arbitrator's award.

[14] *West Virginia Pulp & Paper Co. (Hinde & Dauch Div., Detroit Plant)*, 140 NLRB 1160.

In *Dubo Manufacturing*,[15] the Board deferred action on discriminatory discharge allegations in a complaint pending completion of arbitration directed by the U.S. District Court of grievances filed concerning the discharges. The Board noted that in certain circumstances it has required parties, before resorting to Board processes, to utilize the grievance and arbitration procedure in agreements to which they are signatory. It was pointed out that statutory intent and policy would be thwarted if the Board were to permit the use of its processes to enable parties to avoid their contractual obligations as interpreted by the court. However, the Board did not hold in abeyance its action on the other allegations of the complaint, not involving the arbitration issues.

2. Regularity of Proceeding

Before the Board will honor an arbitration award, it must be satisfied that the proceedings meet the *Spielberg* [16] standards of fairness and regularity. In the *Gateway Transportation* case,[17] the Board held that it would not accord with Board policy to give effect to the aribitration award in question because the grievant did not have sufficient time to prepare for the hearing. The Board noted that the grievant was forced to a hearing with only 48 hours' notice on the basis of an appeal he did not initiate, the union counsel refused to represent the grievant at the hearing, and the grievant's request for a continuance to enable him to prepare his case and call necessary witnesses was rejected.[18]

The question of whether the established contract grievance procedure could provide for impartial arbitration arose in another case.[19] The Board rejected the employer's contention that it was precluded from considering the discharges of certain employees because the issues were disposed of under the grievance procedure of the employer's contract with the union. It was pointed out that, under the contract's grievance procedure, the general manager had the discre-

[15] 142 NLRB No. 47.

[16] *Spielberg Mfg., supra.* See also *Denver-Chicago Trucking Co*, 132 NLRB 1416, where the Board held that it would accept the machinery created by the parties to resolve their disputes, "absent evidence of irregularity, collusion, or inadequate provisions for the taking of testimony."

[17] *Gateway Transportation Co.*, 137 NLRB 1763 But see *International Harvester Co, supra,* where a majority of the Board honored the arbitration award, although the grievant was never given notice of the arbitration hearing. The majority pointed out that the interests of the grievant were vigorously defended by the employer at the hearing.

[18] See also *Raytheon Co., supra,* where a Board majority held that the 1-day continuance granted the grievants was inadequate Members Leedom and Brown dissenting.

[19] *Valley Transit Co., Inc*, 142 NLRB No 74 See also *Lummus Co., supra,* where Members Rodgers and Leedom were of the view that the contract grievance procedure would require the grievants to submit to a private tribunal composed of the employer and the union, the perpetrators of the unfair labor practices involved Moreover, the common interest of the employer and the union representatives could preclude access to an impartial tribunal since only if they disagreed would recourse be had to an impartial arbitrator.

tion to make all final decisions with respect to grievances. Thus, the Board concluded, the contract's grievance procedure did not meet the Board's requirement of impartiality.

In another case [20] the Board adopted the trial examiner's finding that, although the ultimate issue of fact, as tried and determined by the arbitrator, was the same as the one presented in the Board proceeding, the testimony of a former official of the employer at the Board proceeding, not presented to the arbitrator, required separate and different consideration by the Board. The trial examiner found that, although the arbitration of a grievance over a discharge had the surface appearance of compliance with the *Spielberg* [21] standards, a former official of the employer revealed at the Board proceeding that the issue for arbitration was prearranged by himself and another official of the employer. It was pointed out that the disclosure by the company official impugned the fairness and regularity of the arbitration proceeding, since the employer withheld from the arbitrator the one fact, known peculiarly to itself, which would have shown that what appeared to be a disputed issue was not such at all. The trial examiner rejected the employer's contention that the grievant's recourse was properly limited within the framework of the arbitration proceeding. The trial examiner noted that once the award is shown to have been achieved under circumstances not fulfilling the purpose for which the Board sometimes defers its exclusive jurisdiction, then there is no valid basis for limiting the aggrieved person to processes outside the Board. The Board agreed.

3. Arbitration as a "Method for the Voluntary Adjustment" of Jurisdictional Disputes

Section 10(k) requires that parties to a jurisdictional dispute be given 10 days, after notice of the filing of charges with the Board, to adjust their dispute. The Board will honor an arbitration proceeding as a voluntary adjustment of a jurisdictional dispute only if it binds both groups claiming the work as well as the employer.[22] And arbitration awards cannot be given significant weight unless all parties to a dispute have participated in the arbitration.[23] In one case,[24]

[20] *Precision Fittings, Inc.*, 141 NLRB No. 92.

[21] *Spielberg Mfg*, *supra*.

[22] *Newspaper & Mail Deliverers' Union of New York & Vicinity, Ind. (News Syndicate Co.)*, 141 NLRB No. 50. The Board held that two inconsistent arbitration awards did not come within the meaning of voluntary settlement as set out in sec 10(k) But see *New York Mailers' Union No. 6, ITU, AFL–CIO (News Syndicate Co.)*, 141 NLRB No. 49, where in a companion case involving the same employer and unions, the Board assigned the work in question to one of the disputing unions after the other union accepted the arbitrator's decision which denied them the disputed work.

[23] *International Longshoremen's & Warehousemen's Union, Local 10 (Matson Navigation Co.; Matson Terminals, Inc.)*, 140 NLRB 449.

[24] *United Brotherhood of Carpenters & Joiners of America, AFL–CIO, Local 1622 (O. R. Karst)*, 139 NLRB 591.

the Board held that it was not precluded from making a determination of the jurisdictional dispute because of an award by the AFL–CIO National Joint Board for the Settlement of Jurisdictional Disputes. The Board pointed out that, although the two unions were bound by the Joint Board determination, the employer had never agreed to be bound by decisions of that body. Thus, the Board concluded, there can be no satisfactory evidence that the parties have adjusted, or agreed upon methods for the voluntary adjustment of, a dispute, where one party has not agreed to be bound by the decision.

IV

Representation Cases

The Act requires that an employer bargain with the representative designated by a majority of his employees in a unit appropriate for collective bargaining.[1] But it does not require that the representative be designated by any particular procedure as long as the representative is clearly the choice of a majority of the employees. As one method for employees to select a majority representative, the Act authorizes the Board to conduct representation elections.[2] The Board may conduct such an election after a petition has been filed by the employees, or by any individual or labor organization acting in their behalf, or by an employer who has been confronted with a claim for recognition from an individual or a labor organization. As incidents of its authority to conduct elections, the Board has the power to determine the unit of employees appropriate for collective bargaining,[3] and to formally certify a collective-bargaining representative upon the basis of the results of the election. Once certified by the Board, the bargaining agent is the exclusive representative of all employees in the appropriate unit for collective bargaining 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.

This chapter concerns some of the Board's decisions [4] during the past fiscal year in which the general rules governing the determination of

[1] Secs 8(a)(5) and 9(a).
[2] Sec. 9(c)(1).
[3] Sec 9(b)
[4] Effective May 15 1961, the Board delegated its decision-making authority in representation cases to the regional directors, subject to review by the Board on one or more of the following grounds: (1) A substantial question of law or policy is raised because of the absence of, or a departure from, officially reported Board precedent; (2) the regional director's decision on a substantial factual issue is clearly erroneous on the record and such

bargaining representatives were adapted to novel situations or re-examined in the light of changed circumstances.

1. Qualification of Representative

Section 9(c)(1) provides that employees may be represented "by an employee or group of employees or any individual or labor organization." It is the Board's policy to direct an election and to issue a certification unless the proposed bargaining agent fails to qualify as a bona fide representative of the employees. In this connection, the Board is not concerned with internal union matters which do not affect its capacity to act as a bargaining representative.[5] During this fiscal year, the Board refused to deny its machinery to a union seeking an election, which was qualified as a labor organization under section 2(5), even though the Board disapproved the petitioner's use of confusing initials, insignia, and name as organizing tactics.[6]

In the Board's view, a union which has allegiances conflicting with the purpose of protecting and advancing the interest of the employees it represents cannot be a proper representative of such employees.[7] In one case, the Board therefore held that a local union which sought to represent the employees of another local union was not competent to do so because both the petitioning union and the employer union were members of the same international union and joint council.[8] The Board noted that the employer and petitioner were both subject to the international's constitution and bylaws which provided for control and participation by the international and the joint council in various functions and activities of the locals, and that the international and joint council contributed to the petitioner's organizational expenses.

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error prejudicially affects the rights of a party; (3) the conduct of the hearing or any ruling made in connection with the proceeding has resulted in prejudicial error, and (4) there are compelling reasons for reconsideration of an important Board rule or policy For the significance of this delegation, and the results of the first year of operations under the delegation, see Twenty-sixth Annual Report (1961), pp 1–2, and Twenty-seventh Annual Report (1962), pp 44–45. See also the Board's Rules and Regulations and Statements of Procedure, Series 8, as amended, secs 102 67, 102 69(c), and 101 21(a), (c), and (d). However, challenges or objections in "stipulated" consent-election cases under sec. 102 62(b) of the Rules and Regulations, wherein agreements provide for a determination by the Board, are not decided by the regional director Rules and Regulations, Series 8, as amended, sec 102 69 (c) and (e).

[5] *Edward Fields, Inc*, 141 NLRB No 106 The Board cited *Alto Plastic Mfg. Corp*, 136 NLRB 850 (1962), where it declined to withhold its processes from a union, notwithstanding evidence of corrupt practices in the administration of the union's affairs. See Twenty-seventh Annual Report (1962), p 49

[6] *The William J. Burns International Detective Agency, Inc*, 138 NLRB 447 and 449, citing *Alto Plastic Mfg. Corp, supra.*

[7] See *Oregon Teamsters' Security Plan Office,* 119 NLRB 207, 211–212 (1957).

[8] *General Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local 249, etc*, 139 NLRB 605.

2. Contract as Bar to Election

The Board has adhered to a policy of not directing an election among employees currently covered by a valid collective-bargaining agreement, except under certain circumstances. The question whether a present election is barred by an outstanding contract is determined according to the Board's contract-bar rules. Generally, these rules require that a contract asserted as a bar be in writing, properly executed, and binding on the parties; that the contract be in effect for no more than a "reasonable" period; and that the contract contain substantive terms and conditions of employment which are consistent with the policies of the Act.[9] The more important applications of these rules, including several revisions and enunciations of new policy made during fiscal 1963, are discussed below.

a. Duration of Contract

In *General Cable Corp.*,[10] the Board, heeding the appeals of management and labor and considering changed circumstances, revised its policy enunciated in the *Pacific Coast* case[11] that a valid contract with a fixed term constitutes a bar for as much of its term as does not exceed 2 years, and that a contract with a fixed term in excess of 2 years will be treated as for a fixed term of 2 years. The policy was modified to provide that contracts of definite duration for terms up to 3 years will bar an election for their entire period, and that contracts for longer fixed terms will bar an election for the first 3 years of their term.[12] The Board emphasized that all other contract-bar rules remain unaltered, to be read in harmony with the new 3-year rule which became effective immediately.[13]

b. Terms of Contract

To bar a petition, an asserted contract must contain substantial terms and conditions of employment sufficient to stabilize the bargaining relationship of the parties.[14] In the Board's view, "real stability in industrial relations can only be achieved where the contract undertakes to chart with adequate precision the course of the bargaining re-

[9] See Twenty-fourth Annual Report (1959), pp. 19–35; Twenty-seventh Annual Report (1962), pp. 50–60.

[10] 139 NLRB 1123.

[11] *Pacific Coast Assn. of Pulp & Paper Mfrs.*, 121 NLRB 990 (1958); Twenty-fourth Annual Report (1959), p. 23

[12] Agreements of longer duration will, however, bar for their entire term an election sought by a contracting employer or a contracting certified union. See *Montgomery Ward & Co., Inc*, 137 NLRB 346; *The Absorbent Cotton Co.*, 137 NLRB 908; Twenty-seventh Annual Report (1962), p. 53.

[13] Nov. 19, 1962. See *Auburn Rubber Co., Inc.*, 140 NLRB 919.

[14] See *Appalachian Shale Products Co.*, 121 NLRB 1160 (1958); Twenty-fourth Annual Report (1959), p. 24.

lationship, and the parties can look to the actual terms and conditions of their contract for guidance in their day-to-day problems." [15]

(1) Racially Discriminatory Contracts

In the *Pioneer Bus* case,[16] the Board announced that contracts which discriminate between groups of employees on racial lines will not operate as a bar to an election.[17] The Board held that consistent with court decisions in other contexts which condemn governmental sanctioning of racially separate groupings as inherently discriminatory,[18] it would not permit its contract-bar rules to be utilized to shield such contracts from otherwise appropriate election petitions. Thus, where the bargaining representative of employees in an appropriate unit executes separate contracts, or even a single contract, discriminating between groups of employees on the basis of race, such contracts will not bar an election.

(2) Union-Security Provisions

Contracts containing a union-security provision which is clearly unlawful on its face, or which has been held unlawful in an unfair labor practice proceeding, will not be recognized as a bar to a representation petition.[19] A clearly unlawful union-security provision for this purpose is one which by its express terms clearly and unequivocally goes beyond the limited form of union security permitted by section 8(a)(3), and is therefore incapable of a lawful interpretation.[20]

Section 8(a)(3) permits only union-security agreements requiring union membership as a condition of employment "on or after the thirtieth day following the beginning of such employment or the effective date [not retroactive] of such agreement, whichever is the later." When a contract is retroactive, the 30-day grace period is computed from its execution date.[21] Thus, in one case, the Board held that where a contract, because of its retroactivity, failed to accord nonmember incumbent employees the required 30-day grace period following the date of its execution, the contract was incapable of a lawful interpretation and therefore no bar to a petition.[22] Here, the retroactive period covered was one in which no contract had been in effect. Conversely, the Board held in another case where a union-

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[15] *Ibid.*

[16] *Pioneer Bus Co., Inc.*, 140 NLRB 54.

[17] For the effect race issues in campaign propaganda have on setting aside an election, see *infra*, p. 58; *Sewell Mfg. Co.*, 138 NLRB 66.

[18] *Brown, et al.* v. *Board of Education of Topeka, et al.*, 349 U.S. 294; *Boynton* v. *Virginia*, 364 U.S. 454; *Bailey, et al.* v. *Patterson, et al.*, 369 U.S. 31; *Burton* v. *Wilmington Parking Authority, et al.*, 365 U.S 715.

[19] *Paragon Products Corp.*, 134 NLRB 662 (1961); Twenty-seventh Annual Report (1962), p. 54.

[20] *Ibid.*

[21] See *Keystone Coat, Apron & Towel Supply Co., et al*, 121 NLRB 880, 885, footnote 6 (1958); Twenty-fourth Annual Report (1959), p. 26, footnote 73.

[22] *Standard Molding Corp.*, 137 NLRB 1515.

security contract was renegotiated during its term with a retroactive effective date, that the new contract could be legally interpreted and therefore operate as a bar to a petition, because the terms of the contracts overlapped and coverage under legal union-security clauses was continuous.[23]

(3) Excessive Payments Provisions

Another unlawful contractual provision which will preclude a contract as a bar is one that expressly requires as a condition of continued employment the payment of sums of money other than "periodic dues and initiation fees uniformly required." [24] Assessments are not included within the meaning of the term "periodic dues" as used in the proviso to section 8(a)(3). In the *Santa Fe Trail Transportation Co.* case, the Board held that a union-security clause requiring all employees to pay, in addition to initiation fees and dues, "assessments (not including fines and penalties)," was clearly unlawful and therefore invalidated the contract as a bar. Nor did an accompanying savings clause which referred to invalidity under *State* law cure the illegal provision for contract-bar purposes.[25] On the other hand, a panel majority held that where a union-security clause required employees to become and remain union members in accordance with the union's constitution and bylaws, the contract language did not on its face compel the conclusion that it was unlawful.[26] According to the majority, the clause may be interpreted lawfully to require no more than the tender of periodic dues and initiation fees. It would not assume that the parties intended to interpret the clause so as to violate the law.[27]

3. 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." [28] The following sections dis-

[23] *Weyerhaeuser Co*, 142 NLRB No. 82

[24] *The Santa Fe Trail Transportation Co*, 139 NLRB 1513, citing *Paragon Products Corp*, 134 NLRB 662.

[25] *Ibid* The contract would not be preserved as a bar by this savings clause even assuming that a contract containing a clause illegal on its face under Federal law may be preserved as a bar by a savings clause of sufficient scope

[26] *Stackhouse Oldsmobile, Inc*, 140 NLRB 1239, Chairman McCulloch and Member Brown for the majority, Member Leedom dissenting.

[27] The issue of the legality of the clause was not actually litigated because the respondent did not advert to its alleged illegality during any time prior to the trial examiner's report, and the union's constitution and bylaws were not of record

[28] Unit determinations also have to be made in refusal-to-bargain cases, as no violation of the relevant paragraph of sec 8 (a) or (b) can be found unless the bargaining representative involved had a majority status in an appropriate bargaining unit at the time of the alleged refusal to bargain.

cuss the more important cases decided during fiscal 1963 involving unit issues.

a. General Considerations

The appropriateness of a bargaining unit is primarily determined on the basis of the common employment interests of the group involved. In making unit determinations, the Board also has continued to give particular weight to any substantial bargaining history of the group.[29] A union is not required to seek representation in the most comprehensive grouping, or in any larger unit, unless an appropriate unit compatible with the requested unit does not exist. The crucial question in each case is whether the unit sought is appropriate.[30] Although extent of organization may be a factor evaluated, under section 9(c)(5) it cannot be given controlling weight.[31]

b. Hotel Units

The Board's general policy with respect to the hotel industry is that since all operating personnel have such a high degree of functional integration and mutuality of interests, they should be grouped together for bargaining purposes.[32] During the past year, the Board held that the general rule does not apply where the area practice has for years been that of bargaining in less than hotelwide units, despite the functional integration and mutuality of interests of operating personnel.[33] To find otherwise would, in the view of the Board, undermine the stability inherent in such an area bargaining pattern and have an unsettling effect on labor relations.

c. Single-Location Units in Multi-Location Enterprises

(1) Retail Chain Outlets

In *Sav-On Drugs, Inc.*,[34] a Board majority applied to retail drugstore operations the same unit policy applied to multiplant enterprises in general. The majority held that whether a proposed unit which is confined to one of two or more retail establishments making up an employer's retail chain is appropriate will be determined in the

[29] See, e.g., *Knoxville News-Sentinel Co., Inc.*, 138 NLRB 782; *Moore-McCormack Lines, Inc.*, 139 NLRB 796, where sufficiently compelling reasons were not shown to override 5-year bargaining history; *T. O. Metcalf Co.*, 139 NLRB 838.

[30] See *Liebmann Breweries, Inc. of New Jersey*, 142 NLRB No. 9; *P. Ballantine & Sons*, 141 NLRB No. 98; *Dixie Belle Mills, Inc.*, 139 NLRB 629; *Sav-On Drugs, Inc.*, 138 NLRB 1032.

[31] See *Overnite Transportation Co.*, 141 NLRB No. 33, footnote 2; *Liebmann Breweries Inc. of New Jersey, supra*, footnote 9; *P. Ballantine & Sons, supra*, footnote 21; *Dixie Belle Mills, Inc., supra*, footnote 7, *Sav-On Drugs, Inc., supra*, footnote 4.

[32] *Arlington Hotel Co., Inc.*, 126 NLRB 400 (1960); Twenty-fifth Annual Report (1960), p. 42.

[33] *Water Tower Inn*, 139 NLRB 842.

[34] 138 NLRB 1032, Chairman McCulloch and Members Leedom, Fanning, and Brown for the majority, Member Rodgers dissenting.

light of all the circumstances of the case. Applying this policy the Board found that, although a number of factors militated in favor of a divisionwide unit, other factors supported a single-store unit.[35] It concluded that the requested unit confined in scope to one store was appropriate.[36]

On the other hand, in another case the Board held a chainwide unit of employees at all of the employer's retail chain stores and its warehouse appropriate, including employees at one store for whom the petitioner sought separate representation, notwithstanding a number of factors militating in favor of a separate single-store unit.[37] The chainwide unit was held appropriate in view of the chainwide bargaining history, community of employment interests throughout the chain, high level of centralized management and control, minimal store autonomy, geographic integration, employee interchange, and the absence of any indication that the organizational interests of employees would be impaired if a chainwide unit were found appropriate.[38]

(2) Manufacturing

Even though a plant may be part of an integrated enterprise which constitutes a single employer, a Board majority held in *Dixie Belle Mills*[39] that this fact does not establish an employerwide or multiplant unit as the only appropriate one.[40] The majority held that unless a single-plant unit has been so effectively merged into a more comprehensive unit by bargaining history or is so integrated with another as to negate its separate identity, it is an appropriate unit even though another unit, if requested, might also be appropriate.[41] Here, a single-plant unit requested by the petitioner was held appropriate because of the degree of autonomy in the plant's operations and the absence of any bargaining history, among other factors.[42] In

[35] The factors supporting a single-store unit were no bargaining history, limited interchange, geographic separation, management autonomy in the individual store, and no claim for representation on a broader basis

[36] Cf. *Spartan Department Stores,* 140 NLRB 608.

[37] *Meijer Supermarkets, Inc.,* 142 NLRB No. 69.

[38] Cf. *Great Atlantic & Pacific Tea Co.,* 140 NLRB 1011. See also *Frostco Super Save Stores, Inc.,* 138 NLRB 125, where a self-determination election was permitted as to a single licensed department on evidence showing separate ownership and physical separation of the licensed department involved.

[39] *Dixie Belle Mills, Inc.,* 139 NLRB 629, Chairman McCulloch and Members Fanning and Brown for the majority, Member Rodgers dissenting, Member Leedom not participating.

[40] The question presented is always whether the unit requested is appropriate. See *supra,* p. 51 and footnote 30.

[41] A single-plant unit is presumptively appropriate, since it is one of the unit types listed under sec 9(b) as appropriate for bargaining purposes. See *supra,* p. 50

[42] Geographical separation of the plants, lack of substantial employee interchange between the plants, and the fact that no labor organization sought to represent a multiplant unit are other factors to warrant the majority's finding which will "assure to employees the fullest freedom in exercising the rights guaranteed by [the] Act." Accord: *Quaker City Life Insurance Co.,* 134 NLRB 960 (1961), Twenty-seventh Annual Report (1962), p. 68; *Sav-On Drugs, Inc.,* 138 NLRB 1032.

the view of the Board, the facts did not establish such a degree of integration or merger of operations as would require rejection of such a unit.

(3) Distribution

Upon reasoning similar to that in the *Sav-On Drugs* and *Dixie Belle Mills* cases, *supra*, a Board majority in *P. Ballantine and Sons* [43] found appropriate a unit of salesmen at a single distribution branch of a brewing company. In doing so the Board departed from a 1958 decision [44] involving the same employer in which it had held that the only appropriate distribution salesman unit would be a companywide one encompassing all 12 branches.[45] In the view of the Board, to continue to insist upon a companywide unit would "unnecessarily impede the exercise by employees" of their "rights to self-organization and to collective bargaining." [46]

d. Unit Placement of Dual Function Employees

In *Berea Publishing Co.*,[47] a Board majority reestablished the principle of *Ocala Star Banner*, [48] which had been overruled in *Denver-Colorado;* [49] this principle relates to the unit placement of an employee who performs dual functions for an employer. The criteria for unit inclusion of such employee will henceforth be the same as the criteria for unit placement of part-time employees. Thus, an employee who performs dual functions for an employer will be included in the requested unit if he regularly devotes sufficient periods of time to the unit work to demonstrate that he, along with the full-time employees in the unit, has a substantial interest in the unit's wages, hours, and conditions of employment. This rule applies even though the employee spends less than a major portion of his time in performing such unit work.

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[43] 141 NLRB No. 98. Chairman McCulloch and Members Fanning and Brown for the majority, Member Leedom concurring in the result, and Member Rodgers dissenting.

[44] *P. Ballantine & Sons*, 120 NLRB 86.

[45] The 12 branches were scattered along the eastern seaboard from Rhode Island to the District of Columbia.

[46] See also *Liebmann Breweries, Inc. of New Jersey*, 142 NLRB No 9.

[47] 140 NLRB 516, Chairman McCulloch and Members Fanning and Brown for the majority, Members Rodgers and Leedom dissenting.

[48] *The Ocala Star Banner*, 97 NLRB 384 (1951), where the rule for regular part-time employees was applied to employees performing more than one function for the same employer.

[49] *Denver-Colorado Springs-Pueblo Motor Way*, 129 NLRB 1184 (1961), where a Board majority, Member Fanning dissenting, revised the *Ocala Star Banner* principle, and held that only employees engaged more than 50 percent of their time in performing tasks or duties similar to the one performed by the other employees in the requested unit would be included in the unit. See Twenty-sixth Annual Report (1961), p. 60.

4. Conduct of Representation Elections

Section 9(c)(1) of the Act 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. Such matters as 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.

In fiscal 1963, the Board had occasion to develop and clarify its election standards. It established presumptions with respect to the voting eligibility of economic strikers and their replacements; modified the rule concerning voting eligibility of dischargees where a grievance proceeding is pending; established criteria for setting aside elections because of propaganda involving race issues; restated the criteria for setting aside elections because of threats; and redefined the rule concerning the cutoff date for objections in consent and stipulated election cases. The cases involving these matters, and other cases of the more important ones decided during the year which dealt with matters relating to the conduct of representation elections, are discussed in the following sections.

a. Voting Eligibility

An employee's voting eligibility depends usually on his status as an employee on the voter eligibility date and on the date of the election. To be entitled to vote, an employee must have worked in the voting unit during the eligibility period and on the date of the election. However, these requirements do not apply in the case of employees who are ill, on vacation, temporarily laid off, or employees in the military service who appear in person at the polls. Other exceptions pertain to striker replacements and irregular and intermittent employees. Laid-off employees are permitted to vote only if they have reasonable expectancy of reemployment at the time of the election.[50]

(1) Economic Strikers and Their Replacements

The Board has adopted the rule [51] that the voting eligibility status of an economic striker may be forfeited by action [52] which evinces an intention to abandon interest in his struck job regardless of the outcome of the strike.[53] In *Pacific Tile and Porcelain Co.*,[54] the Board gave further consideration to the criteria for determination of a striker's eligibility to vote, and held that an economic striker will be

[50] See *Tampa Sand & Material Co.*, 137 NLRB 1549.
[51] *W. Wilton Wood, Inc.*, 127 NLRB 1675 (1960).
[52] Such as accepting other permanent employment. See Twenty-fifth Annual Report (1960), p. 47.
[53] *Pacific Tile & Porcelain Co.*, 137 NLRB 1358.
[54] *Ibid.*

presumed to retain his voting eligibility, notwithstanding his acceptance of new employment, unless the party challenging his vote affirmatively establishes that the striker has abandoned his struck job.[55] However, acceptance of other employment, even without informing the new employer that only temporary employment is sought, will not of itself be sufficient to establish abandonment of the struck job so as to render the economic striker ineligible to vote.[56]

Similarly, the Board will presume that replacements for economic strikers are permanent employees and eligible to vote.[57] To rebut this presumption, the party challenging the eligibility of a replacement must affirmatively establish that the replacement was not employed on the struck job on a permanent basis.[58]

Generally, permanent replacements for economic strikers are eligible to vote only if employed on the eligibility and election dates.[59] During the past year, in two cases involving the application of the rule announced in *Tampa Sand*,[60] a Board majority held that the Board's usual eligibility rules will be adhered to with respect to the eligibility of replacements for economic strikers in all situations other than where the strike occurs *after* the issuance of the direction of election.[61] Thus, in the *Greenspan Engraving* and *Pacific Tile* cases,[62] where there existed the ordinary situation of a strike arising before the election was directed, the majority found that striker replacements who were not employed on the eligibility date were ineligible to vote.

(2) Effect of Pending Grievance Proceedings

In fiscal 1963, a Board majority determined not to follow the *Dura Steel* policy [63] of rejecting the pendency of a grievance or arbitration proceeding concerning discharged employees as a ground for permit-

[55] See *Pacific Tile & Porcelain Co., supra, Tampa Sand & Material Co.*, 137 NLRB 1549, and *T. E. Mercer Trucking Co.*, 138 NLRB 192, where no such affirmative showing was made.

[56] *Pacific Tile & Porcelain Co., supra.*

[57] Under sec. 9(c)(3) of the Act, the Board is empowered to establish regulations under which both an economic striker and his permanent replacement may vote in an election held within 1 year of the commencement of the strike.

[58] *Pacific Tile & Porcelain Co., supra.* As in the case of replaced economic strikers, the nature of the evidence which may rebut the presumption will be determined on a case-by-case basis.

[59] *W. Wilton Wood, Inc.*, 127 NLRB 1675. But see *Tampa Sand & Material Co.*, 129 NLRB 1273 (1961), discussed in Twenty-sixth Annual Report (1961), p. 68, where the Board held that when a strike arises after issuance of a direction of election, replacements are permitted to vote irrespective of the eligibility period established for other employees if such replacements are employed on the date of the election, provided the number of replacements does not exceed the number of strikers.

[60] 137 NLRB 1549.

[61] *Greenspan Engraving Corp.*, 137 NLRB 1308, and *Pacific Tile & Porcelain Co.*, 137 NLRB 1358, Chairman McCulloch and Members Fanning and Brown for the majority, Members Rodgers and Leedom dissenting, in both cases.

[62] *Ibid.*

[63] *Dura Steel Products Co.*, 111 NLRB 590 (1955), discussed in Twentieth Annual Report (1955), p. 54.

ting the dischargees to vote by challenged ballot.[64] The Board announced that dischargees will be permitted to vote by challenged ballot when a grievance or arbitration proceeding concerning the discharges is pending, even though the discharges giving rise to the pending proceeding have not been made the subject of an unfair labor practice charge.

b. Standards of Election Conduct

Board elections are conducted in accordance with strict standards designed to assure that the participating employees have an opportunity to determine and to register a free and untrammeled choice in the selection of a bargaining representative. Any party to an election who believes that the standards have not been met may file objections to the election with the regional director under whose supervision it was held. The regional director may then either make a report on the objections, or he may issue a decision disposing of the issues raised by the objections, which is subject to a limited review by the Board.[65] In the event the regional director issues a report, any party may file exceptions to this report with the Board. The issues raised by the exceptions to the report are then finally determined by the Board.[66]

(1) Interference With Election

An election will be set aside and a new election directed if it was accompanied by conduct which, in the Board's view, created an atmosphere of confusion or fear of reprisals which interfered with the employees' freedom of choice of a representative as guaranteed by the Act. In evaluating the interference resulting from specific conduct, the Board does not attempt to assess its actual effect on the employees but rather concerns itself with whether it is reasonable to conclude that the conduct tended to prevent a free formation and expression of the employees' choice.

(a) Election propaganda

In determining whether elections should be set aside because a party has misrepresented pertinent facts, the Board balances the right of the employees to an untrammeled choice of a bargaining representative and the right of the parties to wage a free and vigorous campaign with all the normal legitimate tools of electioneering. During

[64] *Pacific Tile & Porcelain Co.*, 137 NLRB 1358, Chairman McCulloch and Members Fanning and Brown for the majority, Members Rodgers and Leedom dissenting.

[65] This procedure applies only to directed elections, not consent or stipulated elections. For the latter procedures, see the Board's Rules and Regulations, Series 8, as amended, secs. 102 62 and 102 69(c).

[66] This procedure for filing objections and exceptions and for their disposition are set out in sec. 102.69 of the Board's Rules and Regulations, Series 8, as amended.

the past year, in the *Hollywood Ceramics* case, the Board restated the formula to be used in striking this balance. The Board stated:[67]

> We believe that an election should be set aside only where there has been a misrepresentation or other similar campaign trickery, which involves a substantial departure from the truth, at a time which prevents the other party or parties from making an effective reply, so that the misrepresentation, whether deliberate or not, may reasonably be expected to have a significant impact on the election. However, the mere fact that a message is inartistically or vaguely worded and subject to different interpretations will not suffice to establish such misrepresentation as would lead us to set the election aside. Such ambiguities, like extravagant promises, derogatory statements about the other party, and minor distortions of some facts, frequently occur in communication between persons. But even where a misrepresentation is shown to have been substantial, the Board may still refuse to set aside the election if it finds upon consideration of all the circumstances that the statement would not be likely to have had a real impact on the election. For example, the misrepresentation might have occurred in connection with an unimportant matter so that is could only have had a *de minimis* effect. Or, it could have been so extreme as to put the employees on notice of its lack of truth under the particular circumstances so that they could not reasonably have relied on the assertion. Or, the Board may find that the employees possessed independent knowledge with which to evaluate the statements. [Footnotes omitted.]

Applying that standard to the facts of the case, the Board concluded that the election should be set aside because a union handbill distributed so late that no timely reply could be made had grossly understated the employer's wage scale in purported comparison with that at another plant where the union had a contract. Other statements were found to be similarly misleading.

In applying this standard to another case, a Board majority set an election aside where a union's election-eve handbill on its face purported to indicate composite wage and vacation benefits obtained for all its members, when in fact some union members received no such wage increase or vacation benefits.[68] The majority noted that the information was distributed too late for the employer to verify and communicate the correct facts to the employees, and the employees themselves had no independent means of knowing whether the information was true. It concluded that the handbill could not be intelligently evaluated by the employees and was reasonably calculated to deceive the employees as to material matters.[69]

The Board also set an election aside where the employer displayed a dramatized antiunion motion picture to employees the day before

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[67] *Hollywood Ceramics Co., Inc.*, 140 NLRB 221, Chairman McCulloch and Members Fanning and Brown joining in the principal opinion, Members Rodgers and Leedom concurring in the result.

[68] *Walgreen Co.*, 140 NLRB 1141, Members Rodgers, Leedom, and Fanning for the majority, Member Brown dissenting, Chairman McCulloch not participating.

[69] See also *Steel Equipment Co.*, 140 NLRB 1158; *Hollywood Ceramics Co., Inc.*, 140 NLRB 221.

the election.[70] A majority found that the impact of the film, which purported to be a true portrayal of union violence during an unjustified strike involving another employer,[71] was actually in the nature of misrepresentation which exceeded the bounds of permissible campaign propaganda.[72] The majority pointed out that the motion picture is a more powerful instrument for arousing emotions and influencing attitudes than either the printed or spoken word.

In another case, a Board majority held that an employer's conduct created an atmosphere which made a free choice impossible where the employer distributed letters to its employees stating that it had a unilaterally established wage and employee benefit policy which would not be changed even if a union were selected, and that representation was an unnecessary expense and futile.[73] The majority noted that there is no more effective way to dissuade employees from voting for a bargaining representative than to tell them that their votes for such a representative will avail them nothing.

(i) Appeals to racial prejudices

During the year the Board also enunciated criteria to be applied in determining whether elections should be set aside because racial issues were improperly used in campaign propaganda.[74] In *Sewell Manufacturing Co.*,[75] the Board announced that an election would not be set aside if a party limits itself to truthfully setting forth another party's racial attitudes and policies and does not deliberately seek to overstress and exacerbate racial feelings by irrelevant, inflammatory appeals. However, the burden will rest on the party making use of racial arguments to establish that they are truthful and germane.

[70] *Plochman and Harrison-Cherry Lane Foods, Inc.*, 140 NLRB 130, Chairman McCulloch and Members Fanning and Brown for the majority, Members Rodgers and Leedom dissenting.

[71] The title of the motion picture is "And Women Must Weep."

[72] See *Carl T. Mason Co., Inc.*, 142 NLRB No. 56, Members Fanning and Brown joining in the principal opinion setting aside an election, Chairman McCulloch concurring, Members Rodgers and Leedom dissenting, where the film "And Women Must Weep" was shown to employees 12 days before the election; *Industrial Steel Products Co., Inc.*, 143 NLRB No. 19, Chairman McCulloch and Member Fanning comprising a panel majority setting aside an election where the film was shown on election eve to employees who voluntarily attended a company-sponsored barbecue after working hours, Member Rodgers dissenting in this respect; *Storkline Corp.*, 142 NLRB No. 99, where a panel majority comprised of Chairman McCulloch and Member Brown, Member Rodgers dissenting, set aside an election because, among other factors, the film "And Women Must Weep," together with another film entitled "A Question of Law and Order" wherein a narrator makes editorial comments while showing scenes of violence in labor disputes, was shown to employees a week before the election; *Ideal Baking Co. of Tennessee, Inc.*, 143 NLRB No 14, Chairman McCulloch and Members Fanning and Brown for the majority, Members Rodgers and Leedom dissenting, where an election was set aside because, among other factors, the film "A Question of Law and Order" was shown at a company-sponsored dinner the night before the election.

[73] *The Trane Co.*, 137 NLRB 1506, Chairman McCulloch and Members Fanning and Brown for the majority, Members Rodgers and Leedom dissenting.

[74] For the effect that a contract which discriminates on the basis of race has as a bar to an election, see above, p. 49; *Pioneer Bus Co., Inc.*, 140 NLRB 54.

[75] 138 NLRB 66.

Where there is doubt as to whether the total conduct of such party is within the permissible limits, such doubt will be resolved against him.

Applying this policy, the Board set aside an election where an employer circulated news articles and photographs of such kind and extent that it left no doubt of a calculated campaign by the employer to so inflame the racial prejudices of the employees that they would reject the union on racial grounds alone.[76] Here, the photographs and articles were not germane to any legitimate issue involved in the election, but were used to exacerbate racial prejudice and to create an emotional atmosphere of hostility to the union.[77] In another case, a Board majority declined to set an election aside where an employer circulated to its employees a preelection letter which advised them as to union expenditures to help eliminate segregation, and a newspaper excerpt concerning the union's position on racial issues.[78] The majority found that the employer's letter was temperate in tone and dealt primarily with matters indisputably germane to the election, and that the newspaper excerpt concerned action taken by the union in a nearby city. The majority concluded that it could not be found that the employer resorted to inflammatory propaganda or injected issues in no way related to the choice before the voters.

(ii) Threats and promises

Prior to fiscal 1963 the Board held, although not uniformly, that preelection statements by an employer to the effect that he would not bargain with the union were merely an expression of the employer's "legal position," which did not warrant setting aside an election.[79] On the other hand, the Board consistently held that such statements constituted interference, restraint, and coercion of employees within the meaning of section 8(a)(1).[80] In *Dal-Tex Optical*,[81] however, the Board, finding that there was no sound reason for this disparity of treatment depending on the nature of the proceeding in which the issue was raised before the Board, announced a rule designed to achieve uniformity of treatment. It viewed conduct violative of section 8(a)(1) as conduct which *a fortiori* interferes with the exercise of the

[76] *Sewell Mfg. Co.*, 138 NLRB 66.

[77] See *Sewell Mfg. Co.*, 140 NLRB 220, where the second election directed in 138 NLRB 66 was set aside because the propaganda complained of was essentially the same type of appeal and argument upon which the Board set aside the first election. Documents distributed to employees immediately prior to the second election were intended to, and did, inflame the racial feelings and other prejudices of the voters on matters unrelated to election issues.

[78] *Allen-Morrison Sign Co., Inc.*, 138 NLRB 73, Chairman McCulloch and Members Rodgers, Leedom, and Fanning for the majority, Member Brown dissenting.

[79] See, e.g., *National Furniture Mfg. Co., Inc.*, 106 NLRB 1300 (1953).

[80] For discussion of sec. 8(a)(1) violations, *see infra*, pp. 63–68.

[81] *Dal-Tex Optical Co., Inc.*, 137 NLRB 1782, Chairman McCulloch and Members Fanning and Brown joining in the principal opinion, Member Leedom concurring, Member Rodgers not participating

employee's free and untrammeled choice in an election,[82] because the test of conduct which may interfere with the "laboratory conditions" for an election is considerably more restrictive than the test of conduct which may amount to interference, restraint, or coercion violative of section 8(a)(1).[83] The Board announced that it will henceforth look to the economic realities of the employer-employee relationship and will set aside an election where "the employer's conduct has resulted in substantial interference with the election, regardless of the form in which the statement was made."

In its reexamination during the past year of the permissible scope of preelection material, the Board has rejected a narrow legalistic approach and indicated that it will not only consider the entire situation of both employer and employees, but also the entire context of what has been said.[84] It will not consider words in isolation.[85]

In applying this standard, a panel majority set an election aside where threats, which constituted section 8(a)(1) violations, were not "isolated" or "insubstantial" in their impact on the election.[86] In another case, a Board majority held that an employer's entire preelection campaign, which consisted of speeches, slogans, letters, and a motion picture, when considered as a whole, was intimidatory and violative of section 8(a)(1), and, consequently, constituted interfer-

[82] See also *Playskool Mfg. Co.*, 140 NLRB 1417, and *Industrial Steel Products Co., Inc.*, 143 NLRB No. 19, where a panel majority comprised of Chairman McCulloch and Member Fanning, Member Rodgers dissenting in this respect, set aside an election because conduct violative of sec. 8(a)(1) is, *a fortiori*, conduct which interferes with the exercise of a free and untrammeled choice.

[83] *National Furniture Mfg. Co., Inc., supra*, and similar cases holding statements to the effect that an employer would not bargain to be privileged under sec. 8(c), were overruled to the extent that they are inconsistent with *Dal-Tex Optical*. And cases such as *National Furniture Co., Inc.*, 119 NLRB 1 (1957); *Lux Clock Mfg Co., Inc.*, 113 NLRB 1194 (1955); *Esquire, Inc.*, 107 NLRB 1238 (1954); and *American Laundry Machinery Co.*, 107 NLRB 511 (1953), were overruled to the extent they suggest that sec. 8(c) is applicable to preelection statements. See *Oak Mfg. Co.*, 141 NLRB No. 121, where a Board majority comprised of Chairman McCulloch and Members Fanning and Brown, Member Rodgers dissenting, Member Leedom not participating, in setting an election aside, stated it recognizes that the employer involved has a constitutionally protected right of free speech but that its rights are not derived from sec. 8(c)—which is applicable to unfair labor practice cases but not to representation cases.

[84] *The Lord Baltimore Press*, 142 NLRB No. 40; *Oak Mfg. Co.*, 141 NLRB No. 121; *Sewell Mfg. Co.*, 138 NLRB 66; *Dal-Tex Optical Co., Inc.*, 137 NLRB 1782.

[85] The effect of campaign material cannot be properly assessed by plucking out statements which, in isolation, might be considered innocuous. *The Lord Baltimore Press, supra; Oak Mfg. Co., supra.* See *Arch Beverage Corp.*, 140 NLRB 1385, and *Decorated Products, Inc.*, 140 NLRB 1383, where the same principle was applied in a converse situation. See also *Seven-Up Bottling Co., Inc.*, 140 NLRB 611, where an employer's preelection speech was of such tone and content as to be insufficient by itself to warrant setting aside an election.

[86] *Playskool Mfg. Co.*, 140 NLRB 1417, Chairman McCulloch and Member Fanning for the majority, Member Rodgers dissenting in this respect. See *Dal-Tex Optical Co., Inc., supra.* But compare *West Texas Equipment Co.*, 142 NLRB No. 140, where a Board majority comprised of Chairman McCulloch and Members Rodgers, Leedom, and Fanning, Member Brown dissenting in this respect, held that an employer's conduct occurring 4 months before the election was isolated, unsubstantial, and insufficient to warrant setting aside an election.

ence with the employees' choice in the election.[87] The majority found that the employer's unremitting effort to impress upon the employees the dangers inherent in their selection of the union was an appeal to fear rather than an attempt to influence the employees by reason. Since the employer's campaign generated an atmosphere of fear of physical violence, trouble, and economic loss, the majority found that it would set the election aside even if no section 8(a)(1) violation were found.

In the *Oak Manufacturing* case, a Board majority held that an employer's preelection letters, stating that a union could not improve the employees' wages or other benefits and that "You have everything to gain and nothing to lose by voting 'No,'" constituted substantial interference with an election.[88] The letters, taken as a whole, were found to constitute a threat to the economic welfare of the employees by demonstrating that the union's selection might result in reduced wages, job security, and employment opportunities, whereas its rejection would result in retention of present benefits and the receipt of additional ones. The majority pointed out that the Board's rules do not restrict the right of any party to inform the employees of "the advantages and disadvantages of unions and of joining them,"[89] provided the information is imparted in a noncoercive manner. But here, according to the majority, the letters went beyond this and tended to engender so much fear of reprisal as would render impossible a reasoned, uncoerced decision by the employees.

Further, an employer's preelection speeches containing clear threats and an implied anticipatory refusal to bargain if the union should win the election were found to generate an atmosphere of fear of economic loss and complete hostility to the union which destroyed the laboratory conditions in which the Board must hold its elections, and consequently prevented the employees' expression of a free choice.[90] And a panel majority set aside an election where a preelection letter to employees stated that, as possible consequences of choosing the union as their representative, the employer might be forced out of business with the consequent elimination of their jobs, the union's demands would be so unreasonable that the employer

[87] *Ideal Baking Co of Tennessee, Inc*, 143 NLRB No. 14, Chairman McCulloch and Members Fanning and Brown for the majority, Members Rodgers and Leedom dissenting. See also *Dal-Tex Optical Co., Inc.*, 137 NLRB 1782.

[88] *Oak Mfg. Co.*, 141 NLRB No. 121, Chairman McCulloch and Members Fanning and Brown for the majority, Member Rodgers dissenting, Member Leedom not participating.

[89] See footnote 83, *supra*.

[90] *Dal-Tex Optical Co., Inc., supra; Marsh Supermarkets, Inc.*, 140 NLRB 899; *Steel Equipment Co.*, 140 NLRB 1158, where an employer's statement that the employees could expect a strike if the union won—implying that in such event it would subcontract its work, thus threatening the employees with loss of employment—constituted a ground for setting aside an election; *E-Town Sportswear Corp.*, 141 NLRB No. 38 Cf. *Middletown Mfg. Co., Inc.*, 141 NLRB No. 25.

would have to resist and the union would have to call a strike, and the employer would in no event bargain with the union because it deemed the unit inappropriate.[91] This purported statement of legal position, whether plausible or not, was, according to the majority, a threat to use the delaying processes of the law to the fullest extent possible in order to thwart the policies of the Act. Combined with the fear of economic loss that must flow from the employer's predictions of its reaction to the union's unknown demands, it destroyed the requisite laboratory conditions and prevented the employees' free choice.

c. Cutoff Date for Objections

In *Goodyear Tire and Rubber Company*,[92] the Board announced that in considering objections to elections in consent or stipulated election proceedings, no objection would be considered which was based upon conduct or events occurring before the date of the filing of the petition. It thereby established the same cutoff date for all types of elections, whether held pursuant to voluntary agreement or by direction of the Board in contested cases. The date of the petition as the cutoff date for Board-directed elections had been established last year in the *Ideal Electric* case,[93] which set forth the rationale relied upon by the Board in *Goodyear*. The Board limited the applicability of the modified rule to cases in which the petition would be filed on or after September 17, 1962.[94]

[91] *The Lord Baltimore Press*, 142 NLRB No. 40, Chairman McCulloch and Member Fanning for the majority, Member Rodgers dissenting.

[92] 138 NLRB 453, Chairman McCulloch and Members Fanning and Brown for the majority, Members Rodgers and Leedom dissenting.

[93] *The Ideal Electric & Mfg. Co.*, 134 NLRB 1275 (1961); Twenty-seventh Annual Report (1962), p. 87.

[94] The *Goodyear* decision was docketed on Sept. 5, 1962. See *Rockwell Mfg. Co.*, 142 NLRB No. 86, where the Board declined to change the effective date of this modification.

V

Unfair Labor Practices

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

This chapter deals with decisions of the Board during the 1963 fiscal year which involved novel questions or set precedents which may be of substantial importance in the future administration of the Act.

A. Unfair Labor Practices of Employers

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

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

a. Effectiveness of Contract Waiver of Statutory Rights

The Board in one case this past year had occasion to consider whether a collective-bargaining contract which contained a broad provision prohibiting distribution and solicitation activities by its employees infringed upon rights guaranteed them by section 7 of the Act. In the *Gale Products* case,[2] the employer and the union had negotiated a contract containing a broad prohibition against solicitation or distribution. Shortly thereafter, a number of the employees formed an independent union and unsuccessfully sought recognition from the employer. Several of the employees who had formed the independent union attempted to distribute membership application cards on its behalf. The employer issued termination notices to these same employees, on the ground that such distribution was unprotected because it occurred on company property in violation of the contract provision. The Board held that the contract clause was invalid insofar as it prohibited any distribution of literature during nonwork times in nonwork areas and any solicitation of membership on nonwork time on behalf of a labor organization other than the contracting union. In the view of the majority, the unlimited contractual prohibition against union solicitation and distribution would unduly hamper the employees in exercising their basic rights under the Act.[3] The majority distinguished the *May Department Stores* case,[4] in which the Board had considered the effect of contractual waivers upon solicitation engaged in by employees on behalf of the contracting union, by noting that in the instant case, the solicitation and distribution of cards was an expression of dissatisfaction with the incumbent union, rather than activity engaged in on its behalf. The Board expressed its reluctance to disturb concessions yielded by either party through the bargaining process, even where such a concession may infringe upon rights guaranteed employees under section 7 of the Act. However, the majority was of the view that the validity of a contractual waiver of employee rights must depend upon whether the interference with the employees' statutory rights is so great as to override any legitimate reasons for upholding the waiver, and concluded that in this case a finding of contractual waiver was unwarranted, because the employer's only basis for the prohibition was the elimination of interference with production. Moreover, it was pointed out that neither an employer nor an incumbent union is entitled, absent special circumstances not here present, to freeze out another union by en-

[2] *Gale Products, Div. of Outboard Marine Corp.*, 142 NLRB No. 136.

[3] Members Rodgers, Fanning, and Brown for the majority. Chairman McCulloch and Member Leedom, dissenting, were of the opinion that the employees through their bargaining representative validly waived their right to distribute union literature on company premises.

[4] *May Department Stores*, 59 NLRB 976.

croaching on the statutory right of employees to engage in protected activities.

b. Interrogation

During the past year, the Board further explicated the principles enunciated in *Blue Flash Express, Inc.*,[5] that the interrogation of employees as to their union activities is not unlawful *per se*, and that the test is whether, under all the circumstances, such interrogation tends to restrain or interfere with the employees in the exercise of rights guaranteed by the Act. In one case,[6] the Board held unlawful the employer's systematic interrogation of employees which he engaged in when several of them voluntarily informed him of their doubts as to the adequacy of the showing of interest in a union submitted by that union in support of a petition to the Board for a representation election. The *Blue Flash* case was held inapposite, for there the matter investigated by the employer through systematic interrogation of employees as to their union allegiance, was the question of the union's claimed majority status asserted in support of its bargaining demand. Here, on the other hand, the union filed a petition and submitted sufficient authorization cards to satisfy the Board's showing of interest requirements, so as to obtain a Board-conducted representation election. The Board noted that its administratively established requirement that petitions be supported by a 30 percent showing of interest gives rise to no special privilege or right on the part of employers to interrogate employees as to their participation or interest in the union's organizational campaign. The Board concluded that interrogation conducted for such purpose serves no permissible function, is not conducted for a purpose "legitimate in nature," and interferes with the employees' right to privacy in their union affairs.

c. Solicitation of Withdrawal From Union

Generally, the Board has continued to find that an employer violates section 8(a)(1) when he solicits employees to withdraw from union membership, especially when such soliciting is accompanied by threats of reprisal or promises of benefit. However, in the *Perkins Machine* case,[7] the Board dismissed the complaint in a case where the employer only brought to the attention of its employees their contractual right to resign from the union and to revoke their dues deduction authorizations. The employer and the union had executed a contract which provided for a 15-day "escape" period immediately preceding the anniversary date of the contract, allowing the employees to withdraw

[5] 109 NLRB 591, 593 (1954).

[6] *S. H. Kress & Co.*, 137 NLRB 1244 The court of appeals denied enforcement of the Board's order, see p. 127, *infra*.

[7] *Perkins Machine Co.*, 141 NLRB No. 65.

from the union and to revoke their checkoff authorizations. Shortly before the commencement of the 15-day escape period, the employer sent to each employee who was a member of the union, a letter notifying the employee of his contractual right to resign from the union during the escape period. Enclosed in each letter were envelopes addressed to the employer and the union, and the necessary forms for the employees to sign if they desired to resign. The Board noted that the employer's letter was devoid of any threat of reprisal or promise of benefit which would influence the employees' decision. It contained a recitation of the employees' rights under the contract, and statements, noncoercive in nature, which emphasized that the decision rested with the employees, and that they would be treated the same whether or not they resigned. In addition, the letter contained a clear statement of the employer's neutral position. The Board concluded that, under these circumstances, and absent any evidence of coercion, the employer's letters, standing alone, did not interfere with the employees in the exercise of their rights guaranteed by section 7 of the Act.

d. Prohibitions Against Union Activities

Questions involving company prohibitions against organizational activities including union solicitation, distribution of union literature, and wearing of union buttons were again before the Board this past year.

(1) No-Solicitation or No-Distribution Rules

The Board has held with court approval that an employer may make and enforce a rule forbidding his employees to engage in union solicitation during working time, but that a broad rule banning such activity during nonworking time is presumptively invalid.[8] Further defining the limits of permissible prohibitions, in the *Stoddard-Quirk* case[9] a Board majority found that a real distinction exists in law and in fact between oral solicitation and distribution of literature which distinction affects the respective rights of the employees and the employers. It noted that solicitation and distribution of literature are different organizational techniques and their implementation poses different problems both for the employer and the employees. Being oral in nature, solicitation impinges upon the employer's interests only to the extent that it occurs on working time, whereas the distribution of literature, because it carries the potential of littering the employer's

[8] See *Peyton Packing Co.*, 49 NLRB 828, cited with approval in *Republic Aviation Corp.* v. *N.L.R.B.*, 324 U.S. 793. However, where special circumstances exist, employee solicitation can be forbidden even during nonworking time when the nature of the employer's business requires such a broad limitation, e.g., the selling floors of a department store. See *May Department Stores Co.*, 59 NLRB 976, enforced 154 F. 2d 533 (C.A. 8), certiorari denied 329 U.S. 725.

[9] *Stoddard-Quirk Mfg. Company*, 138 NLRB 615.

premises, raises a hazard to production whether it occurs on working or nonworking time. The majority concluded that the right of employees to solicit on plant premises must be afforded subject only to the restriction that it be on nonworking time. However, protection of the distribution of literature as an organizational right requires only that the employees have access to nonworking areas of the plant premises—e.g., company parking lots.[10] Consistently, in a later case the same majority of the Board held that, for the reasons discussed in *Stoddard-Quirk*, an employer's no-distribution rule would be valid insofar as its application was limited to the plant areas where the employees have their work stations.[11]

In another case, an employer who prohibited the distribution of literature by nonemployee union organizers on a company-owned road, usually open to the public, while simultaneously permitting such distribution by the union representing its employees, was held, by a majority of the Board, not to have violated section 8(a)(1).[12] The majority did not agree with the trial examiner's finding that the employees were beyond the reach of reasonable union efforts to communicate with them through other adequate means. It was pointed out that the nonemployee organizers of the union reached a substantial number of the employees at the entrance gates and at the homes of the employees without interference from the employer, and that the situation here was not comparable to a company town or lumber camp where the employees are isolated from normal contacts so that the customary channels of communication are closed. According to the majority, no violation could be predicated on the fact that the employer, on the one hand, did what he was legally required to do in permitting employee distribution, and, on the other hand, exercised his legal rights to withhold the use of his property by nonemployees for purposes of literature distribution.

(2) Wearing of Union Insignia

The right of employees to wear union insignia at work is protected by the Act. The promulgation of a rule prohibiting the wearing of

[10] Chairman McCulloch and Members Rodgers and Leedom for the majority. Members Fanning and Brown, dissenting, were of the view that the working and nonworking time tests are the sole tests to be applied in determining whether either no-solicitation or no-distribution rules applicable to employees are presumptively valid or invalid.

[11] *Minneapolis-Honeywell Regulator Co.*, 139 NLRB 849. Chairman McCulloch and Members Rodgers and Leedom for the majority, Members Fanning and Brown dissenting. See also *Willow Maintenance Corp.*, 143 NLRB No. 18, where the Board adopted the trial examiner's finding that a waiting room for drivers at a taxicab company was a nonworking area, although the cashier and dispatcher were at work on one side of the room.

[12] *General Dynamics/Telecommunications, A Division of General Dynamics Corp.*, 137 NLRB 1725. Chairman McCulloch and Members Rodgers and Leedom for the majority, Member Brown dissenting. Compare *Joseph Bancroft & Sons Co.*, 140 NLRB 1288, where the Board set aside an election because prior to the election the employer denied the union's representatives access, for organizational purposes, to company-owned property where employees lived in company-owned homes.

union buttons constitutes a violation of section 8(a)(1) in the absence of "special circumstances" making such a rule necessary to maintain production and discipline. In one case,[13] the Board found that a hotel rule which prohibited the wearing of union buttons by only those employees who came in contact with the guests nevertheless violated section 8(a)(1). At the time the employer applied the rule there was no strike and no union animosity or friction between groups of employees. The legends on the buttons were not provocative, and the buttons were worn only as part of the certified union's campaign to increase membership. The buttons, which were small, neat, and inconspicuous, did not detract from the dignity of the hotel, and there was no evidence that they caused any diminution of the hotel's business. The Board concluded that the rule was not required for the maintenance of discipline or hotel services, and the fact that the employees involved came in contact with hotel customers did not constitute such "special circumstances" as to deprive them of their right, under the Act, to wear buttons at work.

2. Employer Support of Labor Organization

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."[14] The section provides, however, that an employer may permit employees to confer with him during working hours without loss of pay. During the report year the Board decided several cases requiring interpretation of that section.

a. Forms of Support

In the *Dancker & Sellew* case,[15] the Board found that the employer unlawfully assisted the contracting union when he executed an agreement including his employees as part of a multiemployer contract unit, at a time when they were opposed to union representation. The employer was a member of a multiemployer association which had negotiated a contract with the union covering the warehouse employees of all association members as a single unit. The association negotiated a similar contract covering its members' office clerical and sales employees, after the union established by membership cards that it represented a majority of the clerical and sales employees in the multiemployer unit. The employer signed the contract and sought to apply it to his office clerical and sales employees although none of

[13] *Floridan Hotel of Tampa, Inc.*, 137 NLRB 1484, reconsidering original decision, 130 NLRB 1105, upon remand from court of appeals. The supplemental order was enforced by the court. See p. 128, *infra*.

[14] Sec. 8(a)(2) contemplates a "labor organization" as defined in sec 2(5).

[15] *Dancker & Sellew, Inc.*, 140 NLRB 824.

them had designated the union as his representative, and the employer was at the time aware of their unanimous opposition to union representation, which had previously been expressed vocally and in writing both to the employer and to the union.

Citing its earlier decision in the *Mohawk Business Machines* case,[16] where an employer joined an association and unlawfully included his employees in the associationwide union contract without their consent, the Board held that the conduct in the instant case was *a fortiori* unlawful, since the employer foisted representation on the employees with full knowledge that they did not desire representation.

b. Assistance Through Contract

Under the Board's *Midwest Piping* doctrine,[17] an employer who is faced with conflicting rival union claims violates section 8(a) (2) and (1) if he recognizes and enters into a contract with one of the contending unions. During the past year the Board again reaffirmed the rule in several contexts. In the *Twin County Transit Mix* case,[18] the employer recognized a rival union after some of his employees engaged in a strike in support of recognition demands by the complaining union. The Board found that the strike was economic and that the employer had replaced all the strikers before executing the contract with the rival union. However, the Board held that the complaining union did not thereby lose its showing of interest, since the economic strikers who had been replaced remained employees under the Act.[19] It noted that the claim of the complaining union was clearly established when four of the seven employees in the unit struck in support of it, and that this was a sufficient showing of interest to create a real question concerning representation, precluding the employer from recognizing any other union unless the Board determined the representation question. The Board rejected the trial examiner's finding that the employees abandoned the strike and their jobs, and that the complaining union thereby relinquished its claim. Among other things the Board pointed out that when the employer informed the strikers that it had signed a contract with another union and did not contemplate reinstating the strikers, they immediately threw a picket line around the employer's plant to protest this action. The Board concluded that, under all the circumstances, the strike

[16] *Mohawk Business Machines Corp.*, 116 NLRB 248 (1956).

[17] *Midwest Piping & Supply Co., Inc.*, 63 NLRB 1060 (1945).

[18] *Twin County Transit Mix, Inc.*, 137 NLRB 1708.

[19] Sec. 2(3) of the Act states; "The term 'employee' shall include . . . any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute . . . and who has not obtained any other regular and substantially equivalent employment . . . ." The Board noted that there was no contention that the strikers in question had obtained other employment within the meaning of this provision.

continued at all relevant times, and that neither the strikers nor the complaining union abandoned their claims against the employer.

In another case,[20] the Board found that an employer unlawfully assisted a rival union by recognizing and signing a contract with it on the basis of its status as representative of a majority of its employees who had suddenly defected from the union previously recognized. During bargaining negotiations after expiration of the contract, the business agents of the incumbent union announced that a substantial majority of the employees had "disaffiliated" from the incumbent union and had signed cards authorizing a rival union to represent them, as was then demonstrated to the employer's satisfaction. In addition, the employer was informed that the business agents had become staff members of the rival union. Upon learning of these events, officers of the incumbent union made several unsuccessful attempts to confer with the employer, but did not contact him before he negotiated and executed a new contract with the rival union. The Board held that the employer's recognition of the incumbent union's rival and the execution of a contract violated section 8(a)(2) within the *Midwest Piping* rule,[21] since the action was taken at a time when a real question concerning representation existed. It was pointed out that the incumbent union was not "defunct," that it had made unsuccessful attempts to meet with the employer to discuss a new contract prior to the employer's execution of a contract with the rival union, and that, although there was no petition for certification on file at the time the employer recognized the rival union, the filing of a petition is no longer the test of the substantiality of a union's claim in a rival-union situation. The Board concluded that the incumbent union, as such, had a substantial claim to representation, and that its failure to make a showing as to the current desires of the employees was excusable since its paid staff members, well aware of what was happening, failed to notify superior officials, thus preventing them from taking steps that might have shed more light on the desires of the employees.

3. Discrimination Against Employees

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

[20] *Air Master Corp., et al.*, 142 NLRB No 23.
[21] *Midwest Piping & Supply Co., supra.*

a condition of employment, subject to certain limitations. Some of the more significant cases decided by the Board during the report year involving special problems arising in connection with particular forms of discrimination, or pertaining to the type of order best suited to afford an appropriate remedy for particular discriminatory situations, are discussed below. They involve questions concerning, among other things, the validity of employer lockouts, protections accorded strike activity, and an employer's termination of operations.

a. Lockouts

The question of the legality of a lockout in anticipation of a strike during contract negotiations, and of a lockout because of a work stoppage, arose in several cases during the past year. In two cases involving lockouts because of temporary work stoppages, the Board found certain stoppages to be unauthorized, thereby warranting the lockout under the circumstances, and that in another instance the stoppage was protected activity, rendering the lockout unwarranted. Two other cases turned on whether an employer was justified in effecting a lockout during bargaining negotiations because it was without the assurance of continued, uninterrupted work derived from a contract.

(1) Work Stoppages

Publishers' Association of New York [22] concerned the validity of an informal agreement among members of a newspaper publishers association that all would suspend operations in the event of a craft work stoppage at any individual newspaper in breach of an associationwide contract. Finding that the agreement was, in essence, a defensive measure utilized to combat unauthorized work stoppages, whether in one of the plants involved or in the entire unit, rather than an offensive weapon utilized to punish or lessen the legitimate effectiveness of the union, the Board rejected the theory that the agreement was unlawful because the lockouts interrupted the work opportunities of *non*striking employees. The nonstrikers did not themselves participate in the work stoppages or engage in any activity which was protected or related to union activities. "In the last analysis," the Board observed, "it is on the point of 'reasonableness' that we rest our final conclusion." Noting that the publishers were repeatedly faced with contract violations by various of the crafts, that they were particularly vulnerable to sudden unannounced stoppages because of the perishability of their commodity and the strict time schedules of their business, that due to the integrated nature of the plant operation a stoppage by one craft would immobilize most of the plant, and that the suspension agreement was limited to contract violations and was

[22] *Publishers' Assn. of New York City, et al.*, 139 NLRB 1092.

selectively and carefully applied, the Board held that "on balance" it could not say that the agreement provided for action which exceeded permissible bounds of defensive conduct. It accordingly found that the maintenance and use of the agreement during the period in question did not violate section 8(a)(3).

On the other hand, in *Philadelphia Marine Trade Association*,[23] the Board held that an association of port employers violated section 8(a)(3) by locking out all longshoremen in the port when some longshoremen refused to unload a certain ship because of abnormally dangerous working conditions resulting from the use of pallets instead of slings for unloading cargo. An arbitrator who observed the unloading operation found the pallet method to be unsafe. The Board found that the longshoremen's work stoppage was because of the abnormally dangerous working conditions, and that under section 502 of the Act such a work stoppage was not a strike even assuming the existence of a no-strike contract. Therefore the stoppage could not justify the employers' action in locking out all longshoremen.

(2) During Contract Negotiations

In *Building Contractors Association of Rockford*,[24] a Board majority held that the suspension of construction operations by contractors associations and their members, with the resulting lockout of operating engineers, was not discriminatorily motivated where the union refused to give any assurance that a work stoppage would not occur pending negotiation of a renewal of their expired contract. The majority found that the lockout was warranted under the special economic considerations criteria enunciated in *Betts Cadillac*,[25] as the union had previously called strikes in similar situations causing the employers to suffer financial losses through construction delays and their inability to give the assurances of timely completion essential to obtain contract awards. A "quickie" strike could also occasion substantial inconvenience and danger to the health and safety of the public through the extended use of detours and disruption of public services necessitated by the construction. Under these circumstances the demand for some assurance that the union would not call a quickie strike was not, in the view of the majority, unreasonable.[26]

In contrast, in *American Ship Building*,[27] a Board majority held that an employer could not justify a lockout by claiming that he had

[23] 138 NLRB 737.

[24] 138 NLRB 1405, Chairman McCulloch and Members Rodgers, Leedom, and Fanning for the majority, Member Brown dissenting.

[25] *Betts Cadillac Olds, Inc.*, 96 NLRB 268 (1951).

[26] See also *Associated General Contractors Georgia Branch, and Each of Its Members*, 138 NLRB 1432.

[27] *The American Ship Building Co.*, 142 NLRB No. 133, Members Leedom, Fanning, and Brown for the majority, Chairman McCulloch and Member Rodgers dissenting.

reasonable ground to fear that unions would engage in a strike at some indeterminate date, where the employer refused to accept the unions' assurances that there would be no strike, and rejected the unions' offer to continue their existing contract, with a no-strike clause therein to remain in effect during contract negotiations. The majority accordingly found that the employer had no reasonable ground to fear a strike and rejected his contention that he would risk substantial economic loss by entering his approaching busy season without a firm contract, since a strike at that time would greatly impair his opportunity to obtain and complete ship repair commitments. The Board found the employer had violated section 8(a)(3) by curtailing its operations with the consequent layoff of employees.

b. Discrimination for Strike Activity

In fiscal 1963, the Board had occasion in two cases to decide whether economic strikers are given protection by the Act not available to employees whose absences from work are caused by other reasons. In one case, an employer changed its profit-sharing-plan eligibility computation formula to impose forfeiture of all benefits therefrom upon those strikers who did not return to work before termination of the economic strike. In the other, an employer discharged probationary employees because their probationary period was interrupted by their participation in an economic strike.

In *Quality Castings*,[28] a Board majority held that, regardless of an employer's motivation in changing its profit-sharing-plan eligibility formula, which provided for loss of entitlement for a certain number of days' absence within the period, thereby causing economic strikers to forfeit their share of the benefits for time they had worked, it thereby violated section 8(a)(3) since the forfeiture of benefits then resulted from the employees' participation in the strike. Although an employer may not be required to make distribution of profits to strikers for the period they were absent on strike, the employer may not equate strike time with other forms of absence from work which it discourages, and then impose a total and nonproportionate forfeiture on employees because they engaged in such protected activities.

Similarly, in *National Seal*,[29] a Board majority held that an employer who had a long-established rule requiring probationary employees to complete their probationary period without interruption, violated section 8(a)(3) by discharging unreplaced probationary employees who participated in an economic strike prior to the completion

[28] *Quality Castings Co.*, 139 NLRB 928, Members Leedom, Fanning, and Brown for the majority, Chairman McCulloch and Member Rodgers dissenting.

[29] *National Seal, Division of Federal-Mogul-Bower Bearings, Inc.*, 141 NLRB No. 27, Members Leedom, Fanning, and Brown for the majority, Member Rodgers dissenting, Chairman McCulloch not participating.

of their probationary period. Although the employer might have lawfully discharged them if their probationary period had been interrupted by excused absences, such as illness, the employer may not equate strike time to normal absence for the purpose of depriving employees of their jobs. The majority thus concluded that the employer's application of its uninterrupted probationary period rule necessarily interfered with the employees' right to engage in protected concerted activity and therefore discriminated against them.

c. Discharge of Strikers

(1) Employee Status Lost Under Section 8(d)

During the past year the Board had occasion to determine whether certain employees lost their status as employees under the Act because of their failure to comply with the notice provisions of section 8(d).

Section 8(d) provides that, as part of the statutory bargaining obligation, a party to an existing bargaining agreement may not terminate or modify it without first giving 60 days' notice and offering to confer with the other party, and notifying Federal and State mediation agencies of the dispute within 30 days thereafter. The existing contract must be kept in effect without resort to lockouts or strikes for a period of at least 60 days after notice is given. The section further provides that any employee who engages in a strike within the 60-day period specified shall lose his status as an employee of the employer.[30]

In *Fort Smith Chair Co.*,[31] the legality of the union's strike without full observance of the notice requirements of section 8(d) became an issue in the context of 8(a) (1), (3), and (5) allegations against an employer who had discharged its striking employees, and thereafter refused to bargain with their designated representative. The union, consistent with the notice provision of the contract and with the statutory 60-day notice requirement of section 8(d)(1), had given notice to terminate the agreement and to negotiate a new one. When

[30] Thus, section 8(d) provides, in part, that no party to a bargaining agreement shall modify or terminate such agreement unless the party desiring such termination or modification—

"(1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, . . .;

* * * * * * *

"(3) notifies the Federal Mediation and Conciliation Service within thirty days after such notice of the existence of a dispute, and simultaneously therewith notifies any State or Territorial agency established to mediate and conciliate disputes . . .;

"(4) continues in full force and effect, without resorting to strike or lockout, all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, which ever occurs later:

* * * * * * *

"Any employee who engages in a strike within the sixty-day period specified in this subsection shall lose his status as an employee of the employer engaged in the particular labor dispute, for the purposes of sections 8, 9, and 10 of this Act, as amended . . . ."

[31] 143 NLRB No. 28.

no agreement was reached, substantially all the employees went out on strike shortly after the expiration of the 60-day period. However, as of the date of the strike, notices had not been given to the Federal Mediation and Conciliation Service and to the State mediation agency as required by section 8(d)(3). While the strike was in progress, the employer notified the striking employees that they were terminated because they had engaged in an unlawful work stoppage, and also notified the union that it would not continue negotiations. The employer thereafter hired replacements for all his employees, with the consequent loss of the union's majority status, and dealt directly with those new employees without notice to the union.

A Board majority [32] ruled that, by serving notice of its desire to terminate the existing agreement and negotiate a new one, the union took upon itself the responsibility for complying with the requirements of section 8(d) before engaging in a strike, and that its failure to file the notices required by section 8(d)(3) caused the strike to be unlawful from its inception. As the union failed to fulfill its statutory bargaining obligation in this respect, the strike brought into play the "loss of status" provision of section 8(d) under which employees who strike when the required notices have not been served lose their status as employees of the employer. The Board viewed that provision as applicable not only to strikes within the initial 60-day period but also to strikes beginning less than 30 days after service of the 8(d)(3) notice or, as in this case, to those occurring absent the filing of such notices.[33] As a result, the complaint was dismissed on the ground that the employees were lawfully terminated and, consequently, the employer's breaking off of negotiations with the union and its unilateral changes in working conditions did not violate section 8(a)(5) and (1), as alleged.[34]

[32] Members Rodgers, Leedom, and Brown for the majority, Chairman McCulloch concurring in the result, and Member Fanning dissenting.

[33] Contrary to the majority, Member Fanning concluded that the loss-of-status provision applies exclusively to strike action taken by employees during the 60-day period specified in sec. 8(d)(1) and (4) and that there was no warrant for finding the provision applicable to sec. 8(d)(3). Hence, he would find that the strikers retained their status as "employees" and that the employer violated sec. 8(a)(3) by discharging them. Consequently, he would order the employer to bargain with the union provided the union came into compliance with the sec. 8(d)(3) notice requirement. Chairman McCulloch concurred with the majority that the strike was unlawful under sec. 8(d)(3), but he found it unnecessary to pass on the question of whether the loss-of-status penalty provision is applicable in the case of a strike preceded by compliance with the 8(d)(1) 60-day notice requirement but not by compliance with the notice requirement of 8(d)(3).

[34] The majority found no evidence of unlawful motivation for the discharges and ruled that the real reason therefor was the employees' participation in the unlawful strike. Moreover, Members Rodgers and Leedom would find that the employer's motive in discharging the strikers was not a relevant consideration since the strike was an unlawful, and not merely an unprotected, activity, and, by engaging in such a strike, the employees forfeited their statutory rights. Chairman McCulloch and Member Brown found it unnecessary to determine what the situation might have been if discriminatory motivation had been established.

d. Termination of Operations

An employer who causes his employees to be discharged or laid off as a result of the discontinuance of the operation in which they are employed violates section 8(a)(3) if the action is motivated by discriminatory reasons.

Thus, in *Darlington*,[35] a Board majority held that an employer violated section 8(a)(3) by closing down its textile mill, with a concomitant discharge of employees, after the union won an election, because the shutdown was motivated in part by opposition to the employees' union activities. According to the majority, an employer's conduct is no less unlawful even if genuine economic factors as well as employees' union activities contribute motivation for the shutdown. The employer's contention that it had an absolute right to go out of business even if its reason for doing so was its employees' union activities, was rejected. The majority pointed out that not only does the literal language of section 8(a)(3) proscribe an employer closing its business in retaliation for the employees' selection of a union as their representative, but that both the Board and the courts have found violations in factually similar cases, since the employer's conduct is directly contrary to the fundamental spirit and purpose of the Act.[36]

In *Star Baby Co.*[37] a Board majority found a similar violation where the shutdown was found to have been based upon the employer's determination to avoid bargaining with the majority union rather than because of his alleged financial inability to pay the union wage scale. The majority noted that the employer's business had been good during the previous season and that it had clearly demonstrated its hostility toward the union by its unlawful refusal to bargain.[38]

e. Discriminatory Hiring Practices

The Board also had occasion during the past year to determine whether an employer should be held responsible for the discriminatory refusal of a union to refer applicants through its exclusive hiring hall for employment at the employer's jobsite. In *Lummus Company*,[39] a Board majority not only held that a union violated section 8(b)(2) and (1)(A) by discriminatorily refusing to refer two applications for employment, but that the employer thereby violated section 8(a)(3)

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[35] *Darlington Mfg. Co., et al.*, 139 NLRB 241, Chairman McCulloch and Members Fanning and Brown for the majority, Member Leedom concurring in this respect, Member Rodgers dissenting.

[36] For discussion of the remedial aspect of this case, see *infra*, p. 78.

[37] 140 NLRB 678, Chairman McCulloch and Members Leedom, Fanning, and Brown for the majority, Member Rodgers dissenting in this respect.

[38] For discussion of the sec 8(a)(5) aspect of this case, see *infra* p. 82. For discussion of the remedial aspect of this case, see *infra*, p. 79.

[39] 142 NLRB No. 59, Members Rodgers, Leedom, and Fanning for the majority, Chairman McCulloch concurring with respect to the finding of union violations and dissenting with respect to the issue of employer responsibility, Member Brown dissenting.

and (1) because the union was acting pursuant to hiring authority delegated to it by the employer under an exclusive hiring arrangement. The employer, although not a signatory, considered itself bound by the hiring provisions of that agreement and acted accordingly. In the majority's view, the employer's adoption of the agreement resulted in the union becoming and acting as the employer's agent in selecting men to be hired, and made the union's discriminatory acts of refusing to refer the applicants properly chargeable to the employer as the principal, notwithstanding that the employer may not have had specific knowledge of them. As an additional basis for liability, the majority held that the employer ratified the union's action when the employer's manager, upon being informed that one of the discriminatees was unable to obtain a referral from the union, took no action to ascertain the reason therefor.[40]

f. Remedial Provisions

In fiscal 1963, the Board reexamined the remedial adequacy of some aspects of its order provisions. The question of whether interest should be added to backpay awards was reconsidered in the light of general legal principles and the policy of the Act. The case involving this reevaluation, as well as two leading cases pertaining to remedies provided for the unlawful discontinuance of business operations, is discussed below.

(1) Interest on Backpay

In *Isis Plumbing*,[41] a Board majority announced that, under accepted legal and equitable principles generally applicable, interest would be added to backpay awards made to employees who have been discriminatorily separated from their employment. The majority concluded that the Board has the obligation to draw on "enlightenment gained from experience" in fashioning remedies to undo the effects of violations of the Act, and that the inclusion of interest would achieve a more equitable remedy than that now provided, as well as encourage compliance with Board orders. Although the remedial authority of the statute [42] is silent about the question of interest on backpay awards, the Board had previously refrained from adding interest to such awards. But the fact that the remedial section of the Act does not mention interest is not, in the Board's view, an obstacle to the requirement of such interest by the Board. The Board noted other Federal statutes under which interest has been allowed on

[40] For discussion of the hiring hall grievance procedure aspect of this case, see *supra*, p. 40.

[41] *Isis Plumbing & Heating Co.*, 138 NLRB 716, Chairman McCulloch and Members Fanning, and Brown for the majority. Members Rodgers and Leedom dissenting. The inclusion of interest was subsequently sustained by the courts See pp 141–142, *infra*

[42] Sec. 10(c).

awards although not specifically provided for, and the fact that Congress deliberately left broad discretion to the Board in fashioning remedies. It pointed out that backpay granted to an employee under the Act is not a fine or penalty imposed on the respondent by the Board, but, rather, is considered as restitution of wages lost by the employee as the result of the respondent's wrong.[43]

The Board held that interest should be computed at the rate of 6 percent per annum, to accrue commencing with the last day of each calendar quarter of the backpay period on the amount due for each quarterly period and continuing until the Board's order is complied with.[44]

(2) Unlawful Termination of Operations

In remedying the impact of discrimination resulting from the discontinuance of business operations for purposes prohibited by section 8(a)(3), it is the Board's policy to assess the rights of the affected employees in the light of the particular situation, and to restore, insofar as is possible, the status quo existing prior to the commission of the unfair labor practice.

Thus, in *Darlington*,[45] where a Board majority held that a textile manufacturer violated section 8(a)(3) by closing down its mill and discharging its employees to avoid dealing with a union selected by them in a Board election, the Board ordered the company to reimburse the dischargees for backpay from the date of discharge to the time they obtain substantially equivalent employment. But the Board further found that the company and its parent corporation, together with the latter's affiliated textile corporations, constituted a single employer. As such, it found the parent and all its affiliated corporations equally liable for backpay.[46]

The Board further directed that, in the event the company did not resume operations, the parent corporation offer employment to the dischargees, if they desire, in the parent company's other mills within

[43] An allowance for interest was included in subsequent Board orders with respect to moneys due for permit fees (*J. J. Hagerty, Inc.*, 139 NLRB 633); welfare fund benefits (*J. J. Hagerty, Inc., supra*); Christmas bonus (*Exchange Parts Co.*, 139 NLRB 710); unilateral changes in wage rates and hours of employment (*Continental Bus System, Inc., d/b/a Continental Rocky Mountain Lines, Inc.*, 138 NLRB 894); unilateral termination of heating gas discount (*Central Illinois Public Service Co.*, 139 NLRB 1407).

[44] The majority utilized the quarterly computation of backpay formula of *F. W. Woolworth Co.*, 90 NLRB 289 (1950). See *Seafarers International Union of North America, Great Lakes District*, 138 NLRB 1142, where, although interest would ordinarily begin running on the date moneys were illegally exacted, the Board ordered that for reasons of administrative feasibility interest on dues and other moneys illegally exacted be computed, as in the case of backpay, on the basis of separate calendar quarters.

[45] *Darlington Mfg. Co., et al.*, 139 NLRB 241, Chairman McCulloch and Members Fanning and Brown for the majority, Member Leedom concurring in part and dissenting in part. Member Rodgers dissenting. For discussion of the sec. 8(a)(3) aspect of this case, see *supra*, p. 76.

[46] Member Leedom would find no single-employer relationship and would award backpay only from the date of the discrimination to the date the company shut down its plant.

the State or adjacent States to the extent that positions were available. Available positions should be distributed among the dischargees according to the usual method of company operation under curtailed production and according to the company's seniority practices, but without prejudice to the discriminatees' seniority and other employee rights. The Board did not require that employees presently working in other mills be dismissed or otherwise prejudiced in order to carry out the reinstatement orders. After distribution of available employment at the other plants, any remaining dischargees were to be placed on a preferential hiring list and offered employment in their former or substantially equivalent positions as such employment becomes available, with backpay liability terminating when they were placed on the list. Finally, the parent corporation was directed to offer to pay travel and moving expenses in the event the dischargees accept offers of reinstatement at the other mills.[47]

A similar problem was presented in *Star Baby Co.*,[48] where a partnership discontinued its business operations to avoid bargaining with the majority union and thereby terminated its employees. A Board majority, in fashioning an appropriate remedy, did not order the employer to offer immediate reinstatement to the discriminatees, in view of the dissolution of the partnership, termination of operations, and disposal of the business assets. And as in *Darlington*, the Board did not order the partners to resume their business operations. However, it ordered the discriminatees placed on a preferential hiring list, notified of the list, and, in the event either partner should resume operations, she was to offer the discriminatees immediate reinstatement to their former or substantially equivalent positions without prejudice to their seniority and other employee rights.

The majority also awarded the discriminatees backpay from the date of the discrimination—the date upon which the employer completed the disposal of the business assets—until such time as the dischargees obtain substantially equivalent employment elsewhere.[49]

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 terms and conditions of employment with the representative selected by a majority of the employees in an appropriate unit. Generally, the

[47] In the order the Board reserved to itself the right to modify the backpay and reinstatement provisions if made necessary by circumstances not presently apparent.

[48] 140 NLRB 678, Chairman McCulloch and Members Leedom, Fanning, and Brown for the majority, Member Rodgers dissenting in this respect. For discussion of the sec. 8(a)(3) aspect of this case, see *supra*, p. 76; and for the sec. 8(a)(5) aspect, see *infra*, p. 82.

[49] Member Leedom would have found that backpay should be cut off on the date the business was terminated, and therefore would not order backpay since it would have commenced and ended on the same day.

duty to bargain arises when the employees' representative requests the employer to negotiate about matters which are bargainable under the Act.

a. Subjects for Bargaining

(1) Decision To Subcontract or Terminate Operations

The duty of an employer to bargain with the statutory representative of his employees includes the duty to refrain from taking unilateral action with respect to matters as to which he is required to bargain, and from making changes in terms and conditions of employment without consulting the employees' representative.

In the *Fibreboard* case,[50] the employer had unilaterally subcontracted its maintenance work for economic reasons without first negotiating with the duly designated bargaining agent over its decision to do so. A majority of the Board [51] held that the employer's failure to negotiate with the union concerning its decision to subcontract constituted a violation of section 8(a)(5) of the Act. The majority relied on the reasons and considerations expressed in *Town & Country*,[52] where the Board held that a management decision to subcontract work out of an existing bargaining unit was a mandatory bargaining subject, notwithstanding the employer's valid economic reasons for subcontracting and the absence of discriminatory motivation. In addition, the majority expressed its view that the Supreme Court's decision in *Railroad Telegraphers* [53] foreclosed the Board's exercise of discretion in finding that an employer's decision to subcontract work previously performed by its employees is, or is not, a mandatory subject of bargaining. It was pointed out that in *Telegraphers*, the Supreme Court held that the union's proposed contract change, which would require the employer to bargain over the discontinuance of any job, was related to the statutory "rates of pay, rules and working conditions" provision and therefore subject to the bargaining obligations under the Railway Labor Act. Rejecting the dissenting member's attempt to distinguish the *Telegraphers* decision on the basis that railroads are "impressed with a public interest," the majority observed that there is no evidence that the obligation to bargain with respect to "wages, hours and other terms and conditions of employment" imposed by section 8(d) of the National Labor Relations Act was

[50] *Fibreboard Paper Products Corp*, 138 NLRB 550. For other cases involving unlawful subcontracting of work and termination of operations, see *Brown Transport Corp*, 140 NLRB 954; *American Mfg. Co of Texas*, 139 NLRB 815.

[51] Chairman McCulloch and Member Fanning for the majority. Member Rodgers, dissenting, was of the view that it is not within the province of the Board to compel management to bargain over one of its prerogatives.

[52] *Town & Country Mfg. Co., Inc.*, 136 NLRB 1022. Twenty-seventh Annual Report (1962), pp. 134–135, subsequently enforced by the court of appeals, p. 142, *infra*.

[53] *Order of Railroad Telegraphers* v. *Chicago N.W.R. Co*, 362 U.S. 330.

intended to be more restrictive than the same obligation with respect to "rates of pay, rules and working conditions" under the Railway Labor Act. In addition, the majority pointed out that the courts have specifically held that the bargaining obligation under the National Labor Relations Act is broader in scope than under the Railway Labor Act.[54]

The similar question of an employer's right to subcontract out work, without consulting with the union, in order to continue the operations of his plant when confronted with an economic strike, was before the Board in the *Hawaii Meat* case.[55] The Board found that the employer violated section 8(a)(5) by subcontracting its delivery service under those circumstances. Chairman McCulloch and Member Fanning were of the view that the employer was obligated to advise and consult with the union about its decision to replace certain strikers through a subcontract. Member Leedom, concurring in part and dissenting in part, found an unlawful refusal to bargain on the ground that, in subcontracting the delivery operations on a permanent basis, the employer discharged its drivers in retaliation against their striking, and in this context, the subcontracting without consulting the union violated section 8(a)(5). According to the majority, the decision to subcontract was a mandatory subject of bargaining, because it related to the terms and conditions of employment of employees in the unit for which the union had been certified. Rejecting the employer's contention that its right to replace economic strikers permanently included the right to replace through the utilization of a subcontractor and his employees, the majority noted that, in this case, individual strikers are not being replaced by other employees but, instead, the positions they held before the strike were being permanently eliminated. The majority overruled the *Celanese* decision [56] to the extent it held that, as the employer had the privilege of permanently replacing its economic strikers in order to resume production, it also was privileged to effect such replacements by means of the hiring of an independent contractor without prior consultation with the union.

In a later case [57] the Board held that an employer who acted unilaterally in permanently contracting out the work of his mechanical department, during an unfair labor practice strike by his employees, violated section 8(a)(5). The Board noted that the employer took that action without notifying the union and without affording it an opportunity to bargain about the decision or about its effect upon the

[54] See *Inland Steel Co.* v. *N.L.R.B.*, 170 F. 2d 247 (C.A. 7), cert denied 336 U.S. 960; *Elgin, Joliet & Eastern Ry. Co.* v. *Brotherhood of Railroad Trainmen, et al.*, 302 F 2d 540 (C.A. 7).

[55] *Hawaii Meat Co., Ltd.*, 139 NLRB 966.

[56] *Celanese Corp. of America*, 95 NLRB 664.

[57] *Robert S. Abbott Publishing Co.*, 139 NLRB 1328

strikers concerned. Relying on its holding in *Hawaii Meat* [58] that an employer violated section 8(a)(5) by permanently subcontracting that part of its operations affected by an economic strike without notification to, or bargaining with, the union, the Board held that *a fortiori*, the employer's permanently contracting out the mechanical department work while an unfair labor practice strike was in progress also violated section 8(a)(5) of the Act.

In yet another case,[59] the employer was held to have violated section 8(a)(5) by unilaterally terminating his business operations without consulting with the union. It was pointed out by the majority that at the time the operations were terminated, the union represented a majority of the employer's employees, the employer did not question the union's majority status, and the employer's decision to go out of business was never discussed with the union.

(a) Remedial requirements

In the *Fibreboard* case,[60] to remedy the employer's violation of section 8(a)(5) by unilaterally subcontracting its maintenance work without bargaining with the union over its decision to do so, the Board ordered the employer to cease and desist from unilaterally subcontracting unit work or otherwise making unilateral changes in its employees' terms and conditions of employment without consulting their designated bargaining representative. In addition, the employer was directed to restore the *status quo ante* by reinstituting its maintenance operation, and fulfilling its statutory obligation to bargain. It was pointed out that, after the preceding obligation to bargain had been satisfied following the resumption of bargaining, the employer would be free to lawfully subcontract its maintenance work if it desired to do so.[61]

(2) Nondiscriminatory Hiring Hall

In *Houston Chapter, AGC*,[62] a Board majority[63] held that a union proposal for the establishment of a nondiscriminatory hiring hall is a mandatory subject of collective bargaining, and that the employer violated section 8(a)(5) by refusing to bargain with the union con-

[58] *Hawaii Meat Co., Ltd., supra.*

[59] *Star Baby Co.*, 140 NLRB 678. Chairman McCulloch and Members Fanning and Brown for the majority, Member Leedom concurring in part, and Member Rodgers dissenting.

[60] *Fibreboard Paper Products Corp., supra.*

[61] For other cases involving similar Board remedies for unlawful subcontracting, and termination of operations, see *Brown Transport Corp., supra; American Mfg. Co. of Texas, supra; Hawaii Meat Co. Ltd , supra.*

[62] *Houston Chapter, Associated General Contractors of America, Inc*, 143 NLRB No. 43.

[63] Chairman McCulloch and Members Fanning and Brown for the majority. Members Rodgers and Leedom, dissenting, were of the view that a hiring hall does not meet the Supreme Court's *Borg-Warner* test to qualify as a subject matter of mandatory bargaining. Further, the dissent would find that an exclusive bargaining representative may not compel bargaining as to whether it shall be the hiring agent for the employer.

cerning it. The employer, an association of general contractors, contended that the proposal was not a mandatory subject for collective bargaining, since it concerned the obtaining of employment which was not a term or condition of employment. It further contended that the hiring hall was a form of union security prohibited by the State right-to-work law and therefore not authorized because of section 14(b) of the Act. Rejecting the employer's contentions, a majority of the Board found that a nondiscriminatory hiring hall is legal, and does not impose union-oriented conditions of employment which a State may prohibit under section 14(b). They held it to be a mandatory subject of bargaining and that therefore the union is entitled to conduct a strike to obtain it.[64] The majority rejected a further contention of the employer that under the new section 8(f) of the Act [65] unions are no longer permitted to strike construction employers to enforce their demands for exclusive referral arrangements. It was pointed out that the purpose of section 8(f) was to save certain otherwise unlawful agreements in the construction industry and, in effect, permit a hiring hall agreement to be made prior to hiring and therefore before the union's majority status was established. Here, it was noted, the union was already the exclusive bargaining agent under section 9 of the Act. Therefore the agreement was not unlawful to begin with, and did not need to be saved by the application of section 8(f). Citing the Supreme Court's decision in *Borg-Warner*,[66] the majority held that the hiring hall meets the tests laid down in that decision for determining mandatory subjects of bargaining, namely, that the hiring hall relates to the conditions of employment, and that the matter of what standards are to be applied in determining priorities for employment must of necessity regulate relations between the employer and the employees. The majority was of the view that the Supreme Court in the *Phelps Dodge* decision [67] contemplated prospective employees as also within the Act's definition of "employees." The Board has consistently stated that the definition of "employee" in section 2(3) of the Act covers applicants for employment and members of the working class generally and, although the concept of "hire" is not specifically mentioned in section 8(d), it is clearly a "term or condition of employment."

[64] The majority cited *National Union of Marine Cooks & Stewards (Pacific American Shipowners Assn.)*, 90 NLRB 1099, where the Board dismissed a sec. 8(b)(3) charge against a majority union which insisted on, and struck for, a nondiscriminatory hiring hall clause in its contract. The majority inferred that this decision also included the proposition that the union had the right, and the employer the obligation, to bargain about a nondiscriminatory hiring hall.

[65] Sec. 8(f) was added by the Labor-Management Reporting and Disclosure Act of 1959.

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

[67] *Phelps Dodge Corp.* v. *N.L.R.B.*, 313 U.S. 177.

This renders bargaining with respect to the hiring of prospective employees mandatory.

B. Union Unfair Labor Practices

The several subsections of section 8(b) of the Act specifically proscribe as unfair labor practices seven separate types of conduct by labor organizations or their agents. In addition, section 8(e), added by the 1959 amendments, prohibits employers and labor organizations alike from entering into hot cargo type contracts. Some of the more important issues involved in the cases arising under these provisions are discussed below.

1. Restraint and Coercion of Employees

Section 8(b)(1)(A) makes it an unfair labor practice for a labor organization or its agents "to restrain or coerce" employees in the exercise of their right to engage in or refrain from concerted activities directed toward self-organization and collective bargaining. During the past fiscal year a number of cases dealt with significant issues arising under this provision.

a. Obligation of Bargaining Representative

The scope of the obligation of representation which a labor organization owes to the employees whom it represents was examined by the Board in a case [68] remanded to the Board by the Supreme Court in the light of that Court's intervening decision in *Local 357, Teamsters*.[69] In a supplemental decision [70] a Board majority, relying upon the rationale of *Steele* v. *Louisville & Nashville Railroad Co.*, 323 U.S. 192, described that obligation in the following words:

> . . . Section 7 . . . gives employees the right to be free from unfair or irrelevant or invidious treatment by their exclusive bargaining agent in matters affecting their employment. This right of employees is a statutory limitation on statutory bargaining representatives, and . . . . Section 8(b)(1)(A) of the Act accordingly prohibits labor organizations, when acting in a statutory representative capacity, from taking action against any employee upon considerations or classifications which are irrelevant, invidious, or unfair. [Footnote omitted.] Thus . . . a labor organization as a statutory bargaining representative is *not* the same entity under the statute as an employer; for labor organizations, because they do represent employees, have statutory obligations to employees which employers do not. To the extent, however, that an employer participates in such union's arbitrary action against an employee, the employer himself violates Section 8(a)(1) of the Act.

[68] *Miranda Fuel Co., Inc.*, 125 NLRB 454.
[69] *Local 357, Teamsters* v. *N.L.R.B.*, 365 U.S. 667.
[70] 140 NLRB 181.

The majority thereupon held that the respondent union violated section 8(b)(1)(A) by causing the employer to discriminate against a union member by reducing his seniority status because he took an early leave of absence.[71] No such penalty was prescribed by the existing contract. By causing that forfeiture of the employee's seniority status in relation to other employees in the unit, the union was held to have exceeded any legitimate union purpose, thereby failing to accord the discriminatee his right to fair and impartial treatment by his statutory representative.[72]

b. Enforcement of Union Rules

Section 8(b)(1)(A) contains a proviso which states that it "shall not impair the rights of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein."

This proviso had controlling effect in regard to one aspect of a case involving allegedly unlawful withholding by the respondent local of work permits from job applicants who were subsequently refused employment.[73] Although the local, by requesting the employer not to hire the applicants because they were denied work permits, was held to have *attempted* to cause the employer to refuse to hire them, and to have thereby violated section 8(b)(1)(A) and (2), a panel majority [74] ruled that the local did not *cause the employer* to discriminate against them. The majority considered the fact that the applicants, who were members of another local, knew of the requirement in their international union's constitution prohibiting members of one local from going to work in the jurisdiction of another local without obtaining a work permit from the latter. And since the applicants had every intention of adhering to such requirement, the decisive causative factor, the majority stated, was that the applicants would not accept employment unless the respondent local first granted them work permits. The majority then pointed out that the granting or withholding of work permits in the absence of an agreement or understanding with an employer requiring such permits as a condition of obtaining employment is an internal union matter which is protected by the union rules proviso of section 8(b)(1)(A). Finding no such understanding or agreement imposing any obligation to

[71] The union thereby also violated sec. 8(b)(2), and the employer sec 2(a)(1) and 8(a)(3). See pp. 87–88, *infra*.

[72] Members Rodgers, Leedom, and Brown for the majority Chairman McCulloch and Member Fanning, dissenting, urged that sec. 8(b)(1)(A) was limited in scope and, however laudable the purpose, could not, consistent with the statutory scheme, be construed to have so broad a reach as here accorded it.

[73] *Carpenters Local #40, United Brotherhood of Carpenters, etc. (Stop & Shop, Inc.)*, 143 NLRB No. 25.

[74] Chairman McCulloch and Member Brown for the majority, Member Leedom dissenting.

grant permits, nor any hiring or union-security provisions in the contract, the majority concluded that the union's refusal to issue permits to the job applicants did not restrain or coerce them in the statutory sense.[75]

Another case [76] involved the suspension of an employee from union membership for failure to pay a percentage levy on his gross earnings. This levy was in addition to a fixed sum paid by all members and was required, as a condition of employment under a union-security contract, only from members "working at the trade." Since the Board has consistently held that a union may demand as a condition of employment only periodic dues and initiation fees permitted by the proviso to section 8(a)(3),[77] the resolution of the issues in the case, including the question of whether the union had restrained and coerced the employee in violation of section 8(b)(1)(A), turned on the determination of whether the levy was "dues" permitted by the proviso or an "assessment" proscribed by it.

The trial examiner found that the levy was regular, periodic, and uniform and provided the principal income enabling the union to function. In addition, he found no evidence that the union's membership did not consider the levy to be dues or that it intended the levy to be an assessment for a specific purpose. He therefore concluded that the levy was "periodic dues" rather than an "assessment" and the Board, adopting his recommendations, dismissed the complaint.

2. Restraint and Coercion of Employers

Section 8(b)(1)(B) prohibits labor organizations from restraining or coercing employers in the selection of their bargaining representatives. This past fiscal year one of the cases [78] presented a situation in which the union's efforts to obtain inclusion of an industry advancement program in its agreement with the employer was at issue as a violation of section 8(b)(1)(B) as well as a breach of its bargaining duty in violation of section 8(b)(3).

The program contained provisions requiring the employer to designate an employer association, to which the employer did not belong, as bargaining representative with regard to matters included in the program. The employer's acceptance of the program, in effect, would

[75] Dissenting Member Leedom would have found that the local not only attempted to cause, but in fact did cause, the employer unlawfully to discriminate against the applicants. In his view, an agreement had been reached pursuant to which employment had been denied to the applicants whose "reluctance" to accept employment was, under the circumstances, essentially of an involuntary nature.

[76] *Local 409, International Alliance of Theatrical Stage Employees etc. (RCA Service Co.)*, 140 NLRB 759.

[77] *United Packinghouse, Food & Allied Workers, Local 673, AFL–CIO (J-M Poultry Co.)*, 142 NLRB No. 84.

[78] *Metropolitan District Council of Philadelphia etc. (McCloskey and Co.)*, 137 NLRB 1583.

have amounted to designation of the employer association as the employer's representative with respect to subjects covered by the program. Therefore, by picketing the employer in an effort to obtain the employer's agreement to inclusion of the program in the contract, the union was held to have restrained and coerced the employer in the selection of its bargaining representative in violation of section 8(b)(1)(B).

3. Causing or Attempting To Cause Discrimination

Section 8(b)(2) prohibits labor organizations from causing, or attempting to cause, employers to discriminate against employees in violation of section 8(a)(3), or to discriminate against one to whom union membership has been denied or terminated for reasons other than failure to tender dues and initiation fees. Section 8(a)(3) outlaws discrimination in employment which encourages or discourages union membership, except insofar as it permits the making of union-security agreements under certain specified conditions. By virtue of section 8(f), union-security agreements covering employees "in the building and construction industry" are permitted under less restrictive conditions.

a. Union Purpose

In the past fiscal year, the Board had occasion to further consider the legality, under the nondiscrimination provisions of section 8(b)(2) and 8(a)(3), of reasons motivating a labor organization's request for a detrimental change in the employment status of an employee.[79]

In reconsidering the *Miranda Fuel Co.* decision,[80] which the Supreme Court had remanded to the Board for consideration in the light of that Court's decision in *Local 357*,[81] a Board majority [82] partly reversed its original decision and held that mere delegation to a union of authority to determine the seniority status of employees is not in itself sufficient to support a finding of discrimination. However, the majority reaffirmed its original finding that reduction of an employee's seniority status at the request of the union under the circumstances present was unlawful. Specifically, it was held that the union violated section 8(b)(2) and the employer violated section 8(a)(3) and (1) because the union caused the employer to reduce the seniority status of the employee, a union member, for a reason not authorized under, and in violation of, the contract. It was found that such discrimination had a foreseeable effect of encouraging union membership, and was otherwise arbitrary and without legitimate purpose.

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[79] See also the section on employer discrimination against employees, pp. 70–77, *supra*.

[80] 125 NLRB 454. See Twenty-fifth Annual Report (1960), pp. 73 and 93.

[81] *Local 357, Teamsters, et al.* v. *N.L.R.B.*, 365 U.S. 667.

[82] *Miranda Fuel Co.*, 140 NLRB 181. Members Rodgers, Leedom, and Brown for the majority; Chairman McCulloch and Member Fanning dissenting.

The majority reasoned that a statutory bargaining representative and an employer respectively violate section 8(b)(2) and 8(a)(3) "when, for arbitrary or irrelevant reasons or upon the basis of an unfair classification, the union attempts to cause or does cause an employer to derogate the employment status of an employee."[83] Interpreting the Supreme Court's opinion in *Local 357* in the light of that Court's prior decision in *Radio Officers*,[84] the majority concluded that the Court did not overrule its previous holding in *Radio Officers* that union membership is encouraged or discouraged whenever a union causes an employer to affect an individual's employment status. The holding in *Local 357*, the majority stated, was that an 8(a)(3) or 8(b)(2) violation does not necessarily result from conduct which has the foreseeable result of encouraging union membership, but that given such "foreseeable result" the finding of a violation may turn upon an evaluation of the disputed conduct "in terms of legitimate employer or union purposes." The majority then pointed out that, in its view, *Local 357* is not to be interpreted "as permitting unions and their agents an open season to affect an employee's employment status for any reason at all—personal, arbitrary, unfair, capricious, and the like—merely because the moving consideration does not involve the specific union membership or activities of the affected employee."

Apart from the union's unlawful arbitrary action affecting the discriminatee's employment status, the majority further viewed the union's action here as equivalent to enforcement of its own rules. Therefore, in the absence of any authorization in the contract, the union's conduct amounted to an arbitrary imposition of an *ex post facto* rule of its own making, and its alleged breach by the employee resulted in a discriminatory reduction of his seniority status.[85]

Similarly, a union's attempt to enforce a bylaw provision which was not incorporated in its contract with the employer was held unlawful where the union caused the employer to refuse to reinstate an employee because he had obtained a withdrawal card during a strike and had thereby assertedly resigned and lost his seniority rights for purposes of reinstatement. The union's action was contrary to the contract's seniority provisions and had, as its real purpose, enforce-

[83] The majority also held that sec. 8(b)(1)(A) prohibits a bargaining representative from taking action against any employee "upon considerations or classifications which are irrelevant, invidious, or unfair." See pp. 84–85, *supra*.

[84] *Radio Officers* v *N.L.R.B.*, 347 U.S. 17.

[85] The majority found additional support for its ultimate conclusions in recent court decisions requiring "fair dealing" between a union and its members. *I.U.E. Local 801* v. *N.L.R.B.* and the companion case *N.L.R.B.* v. *General Motors, Frigidaire Div.*, 307 F. 2d 679 (C.A.D.C.). Chairman McCulloch and Member Fanning based their dissent upon their view that applicable legal principles required objective evidence of an intention to encourage or discourage membership which was not satisfied by an inference drawn from a motivating reason for the union's action not based upon the membership status of the discriminatee.

ment as a condition of employment of the union's bylaw provision that by obtaining a withdrawal card a member withdrew from "holding or seeking employment" within the local union's work and geographic jurisdiction.[86]

In another case,[87] the fact that employees had failed to comply with the provision of the union constitution in tendering their resignation from union membership did not serve the union as a defense where it requested the discharge of the employees because of their alleged dues delinquency. The requests were held violative of section 8(b)(2) because the employees had resigned their membership during a hiatus between contracts. They were therefore under no contractual obligation to continue their membership under the maintenance-of-membership clause of the new contract.[88]

(1) Enforcement of Dues Obligation

Under the union-security proviso to section 8(a)(3) a union may demand as a condition of employment the payment of periodic dues and fees. During the past year several cases involved the legality of union conduct in enforcing the dues obligations of its members.

In one case [89] a Board majority [90] held that a union-security clause was properly implemented at the hiring hall level even absent any permissive language to that effect in the contract. The union had required payment of a union initiation fee before referring an applicant who had already been accorded his 30-day grace period as a result of employment within the multiemployer group to which the employer belonged and which the hiring hall serviced. The contention was made that, absent a contract provision allowing such enforcement at the hiring hall level, the applicant's delinquency did not give the contracting parties a lawful reason for not first dispatching and hiring him. However, contrary to the General Counsel's and the dissenting member's view that the *Zaich* case [91] was inapposite because the agreement there, unlike here, expressly authorized enforcement of the union-security clause as a condition of referral, the majority relied on the rationale in *Zaich* to conclude that it would be cumbersome and unnecessary to refer to a member of an association or a multiemployer group an individual whose grace period had expired, only to have the union immediately request his discharge by the employer.

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[86] *Local 50, American Bakery & Confectionery Workers Union, AFL–CIO (Ward Baking Co.)*, 143 NLRB No. 41.

[87] *U.A.W., Local 899 (John I. Paulding)*, 142 NLRB No. 15.

[88] See also *U.A.W., Local 899 (John I. Paulding, Inc.)*, 137 NLRB 901, Twenty-seventh Annual Report (1962), pp. 152–153.

[89] *Mayfair Coat & Suit Co.*, 140 NLRB 1333.

[90] Chairman McCulloch and Members Fanning and Brown for the majority, Member Leedom dissenting, Member Rodgers not participating.

[91] *Building Material and Dump Truck Drivers, Local Union No. 420 (Matt J. Zaich Co.)*, 132 NLRB 1044.

Where a union accepted and retained a tender of delinquent dues and fines under a valid union-security agreement after it had requested discharge for such delinquency but before actual discharge, a Board majority [92] held that the union thereby waived its right to continue to request the delinquent member's discharge, and by continuing to do so, violated section 8(b)(2) and 8(b)(1)(A).[93] In the majority's view, the cases do not hold that a union, having obtained a valid union-security contract, may demand an employee's dues payment and, once having received it, then demand the employee's job as well.

In another case [94] a Board majority [95] held that a union caused the employer to discriminate against employees for reasons other than their failure to tender periodic dues and fees under the existing union-security agreement, thereby violating section 8(b)(2) and 8(b)(1)(A), where the employees were required to pay dues in an amount which included a charge of $1 for nonattendance at union meetings.[96] The Board refused to consider the $1 payment as a "reward for attendance" since the payment was clearly tied up with the dues structure in view of the bylaws which defined the payment as "one dollar refund of dues." Similarly, a union was held to have imposed a fine in violation of the Act by increasing monthly dues by $1, which was then to be refunded upon attendance at the union's monthly meetings.[97]

4. Refusal To Bargain in Good Faith

Section 8(b)(3) prohibits a labor organization from refusing "to bargain collectively with an employer, provided it is the representative of his employees subject to the provisions of section 9(a)." The requisites of good-faith collective bargaining are set forth in section 8(d) of the Act.

a. Obligation of Notice to State and Federal Mediation Services

In the *Kansas City Chip Steak Co.* case [98] the Board found the union had failed to fulfill its bargaining obligation in violation of section 8(b)(3) because it engaged in a strike without having given notice to the State labor commissioner of its labor dispute with the employer, as required by section 8(d)(3). That section requires, *inter alia*,

[92] Members Rodgers and Leedom joining in the principal opinion, Member Fanning concurring, and Chairman McCulloch and Member Brown dissenting.

[93] *Colgate-Palmolive Co.*, 138 NLRB 1037.

[94] *The Leece-Neville Co*, 140 NLRB 56.

[95] Chairman McCulloch and Members Rodgers and Leedom for the majority, Members Fanning and Brown dissenting.

[96] The union's bylaws required union members who failed to attend the union's monthly meetings to pay dues of $4 per month. Members who attended the meetings were charged $3 per month.

[97] *United Packinghouse, Food & Allied Workers, Local 673, AFL–CIO (J–M Poultry Packing Co.)*, 142 NLRB No. 84.

[98] *Amalgamated Meatcutters and Butcher Workmen of North America, Local #576 (Kansas City Chip Steak Co.)*, 140 NLRB 876.

that no party to a bargaining agreement shall modify or terminate it unless 30 days before the modification it notifies the Federal Mediation and Conciliation Service of the existence of the dispute, and simultaneously therewith also notifies any State or Territorial agency established to mediate and conciliate disputes. The union contended that there was no mediation and conciliation service in the State within the meaning of section 8(d)(3), but the Board found that the State had set up a mediation authority by empowering the labor commissioner to appoint mediators in labor disputes. In addition, the mediation service had been provided with funds and personnel and had exercised its authority to mediate disputes. In view of these circumstances, it was held that there existed a State agency "established to mediate and conciliate disputes" which the union was required to notify under section 8(d)(3).

The Board also had occasion to consider the consequences of a failure to comply with the notice requirements of section 8(d) in the *Fort Smith Chair Co.*[99] case, which is discussed in detail on pp. 74–75, *supra*. In that case a union's failure to give the required notice before striking resulted in the strikers' loss of their status as employees. The Board found no violation of the Act in the employer's subsequent discharge of the strikers and his refusal to bargain with the union.

5. Prohibited Strikes and Boycotts

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

a. Consumer Picketing

The Board has consistently held that consumer picketing in front of a secondary establishment constitutes restraint and coercion within the meaning of section 8(b)(4)(ii); and when it has for an object forcing or requiring any person to cease selling or handling the products of any other producer or processor, the picketing violates section 8(b)(4)(ii)(B).

During the past year, the Board had occasion to adhere to this interpretation of the Act. In the *Colony Liquor* case, it held that a union violated section 8(b)(4)(ii)(B) by engaging in consumer picketing of retail liquor stores, hotels, and restaurants in further-

[99] 143 NLRB No. 28.

ance of a dispute with a liquor distributor, where the object of the picketing was to cause the retail establishments to cease handling the distributor's products.[1] The Board took this occasion to note its disagreement with the holding by the Court of Appeals for the District of Columbia[2] that consumer picketing at the premises of a secondary employer for proscribed objectives does not, in itself, constitute coercion and restraint in violation of the Act. Moreover, the Board observed that the picketing in this case did, in fact, achieve its intended effect of coercing and restraining the retailers in the handling of the distributor's products when, subsequent to the commencement of the picketing, a retail establishment requested that the distributor suspend deliveries pending resolution of the dispute, and other business places discontinued selling the distributor's products.

In another case,[3] a union, having a dispute with a manufacturer, threatened to engage in consumer picketing at the establishments of secondary employers who were purchasers of the manufacturer's product. The threat was contained in a form letter sent to the secondary employers which stated that their premises would be picketed and their customers urged not to buy the manufacturer's product from them if they continued to deal with the manufacturer. The letter further stated that the union would refrain from picketing them if it received assurances that the manufacturer's product was no longer being used or sold. The union did not at any time engage in picketing at any of the secondary employers' premises. The Board, assuming that the union was making a bona fide effort in its letter to limit its threat to consumer picketing, held that the threat to engage in such picketing nevertheless violated section 8(b)(4)(ii)(B).[4]

b. Identity of Neutral Employer

The prohibition against secondary boycotts is intended to protect neutral or secondary employers from being drawn into a primary dispute between a union and another employer. Therefore, the identity of the employer with whom the union has its primary dispute may, at times, become the crucial issue. In a number of significant cases during the past year, the Board had occasion to determine this issue.

[1] *Local 445, International Brotherhood of Teamsters, etc. (Colony Liquor Distributors, Inc.)*, 140 NLRB 1097.

[2] *Fruit & Vegetable Packers, Local 760 (Tree Fruits Labor Relations Committee, Inc.) v. N.L.R.B.*, 308 F. 2d 311 (C.A.D.C.), reversing and remanding 132 NLRB 1172. Board's petition for certiorari granted June 10, 1963, 374 U.S. 804.

[3] *New York Typographical Union No. 6, International Typographical Union, AFL–CIO (Gavrin Press Corp.)*, 141 NLRB No. 108.

[4] The Board again noted its disagreement with the court's decision in *Fruit Packers Local 760, supra*, footnote 2. Moreover, the Board pointed out that the court had remanded that case to have the Board determine if the secondary employer "was in fact threatened, coerced or restrained." Here, the Board observed, the letter "in fact threatened" the secondary employers.

One such case [5] involved a dispute as to whether members of the respondent Longshoremen's Union, employed by a stevedoring company and its shipping agent, or members of the Teamsters union, employed at a marine terminal operated by a municipal Board of Harbor Commissioners, would do the work of moving cargo from the dock at shipside to the door of a storage company which had leased facilities at the terminal. The shipping agent had arranged with the Board of Harbor Commissioners for the docking and unloading of the ship at the terminal, and had engaged the stevedoring company to do the longshore work of unloading the ship. When the Board of Harbor Commissioners indicated that its own employees represented by the Teamsters would be assigned to take the cargo to the warehouse after it was unloaded by the longshoremen, the Longshoremen's Union objected, claiming the right under its contract with the stevedoring company to move the cargo to the warehouse as well as unload it. It sought to obtain the assignment of the work to its members by inducing them to refuse to unload the ship for their employer.

The respondent claimed the work under an employer association agreement covering the employees of the stevedoring company and shipping agent, and contended that by its conduct it merely sought to compel the stevedoring company to abide by its contract by assigning the work to its own employees. Hence, according to the respondent, the conduct herein was lawful primary activity designed to protect its job jurisdiction. However, a Board majority [6] pointed out that the Board of Harbor Commissioners, and not the stevedoring company or its shipping agent, had the ultimate authority to decide which contractor, and hence which group of employees, would perform the work in question. Citing numerous cases, the majority observed that the Board had held, with court approval, that "where the employer under economic pressure by a union is without power to resolve the underlying dispute, such employer is the secondary or neutral employer and that the employer with the power to resolve the dispute is the primary employer." Accordingly, the majority held that the Board of Harbor Commissioners, which controlled the assignment of the disputed work, was the primary employer and that the respondent union's conduct directed against the stevedoring company and its shipping agent was therefore secondary activity within the meaning of section 8(b)(4).[7]

[5] *International Longshoremen's Association, AFL–CIO, et al. (Board of Harbor Commissioners, Wilmington, Delaware)*, 137 NLRB 1178.

[6] Chairman McCulloch and Members Rodgers and Leedom for the majority, Member Fanning concurring and Member Brown dissenting.

[7] Dissenting Member Brown would dismiss the complaint since, in his view, the respondent unions were engaged in lawful primary activity by bringing economic pressure to bear on their own employer to protect their work in the bargaining unit as contemplated by their contract, and which they had traditionally performed.

A similar situation was involved in another case [8] in which a jurisdictional dispute developed when the respondent unions engaged in a work stoppage and other conduct to obtain work for their members employed by a stevedoring subcontractor, after the employer, who had engaged the services of the subcontractor for related work, assigned the disputed work to its own employees. The respondent unions contended that a coemployer relationship existed between the subcontractor and the employer and therefore the action was primary and no neutral employer was enmeshed in the dispute. They asserted that the sole object of the work stoppage was to obtain assignment of the work in question for the employees they represented.

A Board majority [9] found that no coemployer relationship existed since it was apparent from the record that the stevedoring subcontractor operated as an independent enterprise. It was also clear that the respondent union's objective was to achieve assignment of the disputed work to its members by disrupting the business relationship between the employer and subcontractor, and that the unions' conduct was designed to cause the subcontractor to bring pressure to bear on the employer to assign the work to them. The Board found this objective was apparent from the fact that the subcontractor had neither authority nor control over the assignment of the disputed work and, although less than a total cancellation of the business relationship occurred, the disruption of the relationship was for a "cease doing business" object within the meaning of section 8(b)(4)(B) of the Act.[10]

The relationship between a subcontractor and the employer engaging the subcontractor's services was at issue in another case [11] in which it was alleged that a strike against the employer by employees who were on the subcontractor's payroll was violative of section 8(b)(4)(B). A Board majority [12] dismissed the complaint upon finding that the strike, directed against the employer by the union which represented the subcontractor's employees, was primary activity. In this case the employer, after having subcontracted its delivery work to a

[8] *Local 1291, International Longshoremen's Association et al. (Pennsylvania Sugar Division, National Sugar Refining Co.)*, 142 NLRB No. 37.

[9] Chairman McCulloch and Members Rodgers and Leedom for the majority, Members Fanning and Brown dissenting.

[10] Dissenting Member Fanning was of the view that existence of a jurisdictional dispute herein precluded a finding that the respondent's conduct for the purpose of resolving the dispute was also violative of sec. 8(b)(4)(B). In his view, a logical extension of the majority's position would enjoin a union found to be lawfully striking for work awarded to it by the Board in a 10(k) proceeding from continuing such conduct under the conflicting provisions of sec. 8(b)(4)(B). Dissenting Member Brown was of the opinion that the sole object of the union's conduct was to obtain an assignment of the disputed work and no inference of other objectives was warranted.

[11] *Highway Truck Drivers and Helpers, Local 107, International Brotherhood of Teamsters, etc. (Sterling Wire Products Co.)*, 137 NLRB 1330.

[12] Chairman McCulloch and Members Fanning and Brown for the majority, Members Rodgers and Leedom dissenting.

contract hauler and having transferred its drivers to the hauler's payroll, declined to renew the contract upon expiration of its 2-year term. The drivers, who had continued performing the employer's deliveries under the hauling contract as they had before their transfer, were thereupon discharged by the hauler. The drivers began picketing the employer when he refused the union's request to put them back to work.

Two Board Members [13] based their dismissal of the complaint on their application of the "right-of-control" test and their consequent finding that a coemployer relationship existed between the employer and the hauler. Viewing the drivers' formal transfer to the hauler's payroll and their receipt of paychecks and notices of termination from the hauler as not dispositive of the situation, the two members found that the drivers were wholly under the picketed employer's control and direction with respect to performance of their duties, assignments, work stations, and use of vehicles, and that their seniority was bound up with their interests relative to that employer and not those relative to the hauler. In their view, the basic employment tenure of the drivers was under the control of the employer to as great a degree, if not to a greater degree, than it was under the control of the hauler. Of further significance was the fact that the parties themselves regarded the employer as a primary and not as a neutral secondary employer.[14]

A complaint was also dismissed in another case [15] insofar as it related to an incident resulting from a work assignment dispute which a Board majority [16] found to be primary activity. The dispute revolved around the assignment of equipment repair work by a general contractor to a supply company's employee who was authorized only to instruct the contractor's employees in the operation of new equipment and to supervise repair work. The respondent union engaged in a walkout when he was ordered by the contractor to perform repair work which one of the contractor's own employees had been doing. The parties eventually resolved the dispute by entering into an agreement which allocated the repair work to the satisfaction of all parties concerned.

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[13] Chairman McCulloch and Member Brown.

[14] Member Fanning agreed with the finding that the strike was lawful primary activity and joined in the dismissal of the complaint, but he deemed it unnecessary to decide whether a coemployer relationship existed. In his view, the strike against the employer was the result of a dispute over the reemployment of the employer's former drivers. Dissenting Members Rodgers and Leedom would have found no employer-employee relationship between the employer and the drivers and, instead would have found that the employer's arrangement with the hauler was the same as that with other shippers. Consequently, in their opinion, the union had no right to engage in picketing of the employer in order to pressure him over his choice of haulers.

[15] *International Union of Operating Engineers, Local 545 (Syracuse Supply Co.)*, 139 NLRB 778.

[16] Chairman McCulloch and Members Fanning and Brown for the majority, Members Rodgers and Leedom dissenting.

It was clear to the majority that in bringing direct pressure to bear on their own employer, the respondent union was engaged in primary activity for the purpose of preserving work for employees in the bargaining unit rather than because a nonunion employee was used on the job. Under these circumstances, it was of no legal consequence that an incidental *effect*, as contrasted with an *object*, of the walkout was to force the contractor to modify its method of doing business with the supply company.[17]

On the other hand, a majority [18] of the Board agreed with the trial examiner's conclusion in the same case that the union's work stoppage at the jobsite of another general contractor violated section 8(b)(4)(B) since one object of the union's conduct was to force or require the contractor to cease doing business with the supply company because the latter's employees were not represented by the union. In this instance, the union steward at the jobsite had checked the supply company's employee for a union card, announced to management the employees' intention of not working with a nonunion man, and signaled and talked to other employees who then engaged in the walkout which was found violative of the Act.[19]

In one case [20] the Board was confronted with a problem involving the picketing of premises jointly occupied by two companies. The trial examiner had found that the two companies, a ready-mix concrete manufacturer and a concrete supply company, did not constitute a "single employer" and that the supply company, which had no dispute with the respondent union, was entitled to the protection accorded neutral employers by section 8(b)(4). He therefore found that the union's picketing of the joint premises was unlawful because the union picketed an entrance reserved for the supply company's use.

However, a Board majority,[21] while noting that a union having a dispute with only one employer may picket two employers if they are "allies" or a "single employer," decided that it was not necessary to make such a finding in this case, since the supply company and concrete manufacturer had such "identity and community of interests" as

[17] Dissenting Members Rodgers and Leedom would have found the union's conduct violative of sec. 8(b)(4)(B) since, in their view, the record showed that the union objected to the performance of the repair work by the supply company's employee because the supply company did not employ its members Hence, the supply company was the primary employer and the union's conduct aimed at the contractor was secondary.

[18] Members Rodgers, Leedom, and Fanning for the majority, Chairman McCulloch and Member Brown dissenting.

[19] Chairman McCulloch and Member Brown dissented on the ground that the employees walked off the job in an effort to protect the work of the bargaining unit, as they did at the jobsite at which a majority found no violation.

[20] *Local 282, International Brotherhood of Teamsters, etc. (Acme Concrete & Supply Corp.)*, 137 NLRB 1321.

[21] Chairman McCulloch and Members Leedom, Fanning, and Brown for the majority, Member Rodgers dissenting.

to negate the claim that the supply company was a neutral employer. The majority based its conclusion on the interrelationship and interdependence of the two companies and on the close family connections among those who had important roles in the operations of both companies. Accordingly, since the supply company was not the kind of "third person" intended to be protected by section 8(b)(4), the union's picketing of it was found not violative of the Act.[22]

c. Proscribed Objectives

The objectives which a union cannot lawfully seek to achieve by the inducement or encouragement defined by clause (i) of section 8(b)(4) or by threats, coercion, or restraint defined by clause (ii), are enumerated in subparagraphs (A), (B), (C), and (D) of that section.

(1) Compelling Execution of Agreement Exempted From Section 8(e) Prohibition by Construction Industry Proviso

Subparagraph (A) prohibits a union from, *inter alia*, resorting to section 8(b)(4)(i) and (ii) conduct in order to force an employer to "enter into any agreement which is prohibited by section 8(e)." Section 8(e) makes it an unfair labor practice for an employer and a union to enter into any contract or agreement, express or implied, whereby such employer ceases or refrains, or agrees to cease or refrain, from handling, using, selling, transporting, or otherwise dealing in any of the products of any other employer, or to cease doing business with any other person. A proviso to section 8(e) exempts from the coverage of that section agreements between employers and labor organizations in the construction industry.[23]

The Board had occasion to rule on the construction exemption in a case [24] in which a general contractor in that industry was picketed by the respondent union for the purpose of having the contractor sign an agreement which, by its terms, would cover any construction work subcontracted by the contractor, who would thereby be compelled to cease doing business with its nonunion subcontractors if they did not comply with the agreement's provisions. With respect to section 8(b)(4)(A),[25] the Board found that the legislative history of the 1959 amendments of the Act shows that the construction proviso to section 8(e) permits the making of *voluntary* agreements relating to the contracting or subcontracting of work at a construction site. And

[23] Dissenting Member Rodgers would have found that the supply company was a neutral employer because of the absence of such factors as common ownership, common management, common control of labor relations, integration of operations, and complete dependence of one company on the other.

[23] Certain agreements in the "apparel and clothing industry" are also exempted by another proviso of the same section.

[24] *Construction, Production & Maintenance Laborers Union Local 383, AFL–CIO, et al. (Colson & Stevens Construction Co.)*, 137 NLRB 1650.

[25] The 8(b)(4)(B) aspect of the case is discussed at pp. 98–99, *infra*.

an agreement obtained by coercive conduct, the Board observed, would not be a voluntary one within the statutory context. The Board also noted legislative history which explains the effect of the 1959 amendments by stating that, since the section 8(e) proviso does not relate to the prohibitions of section 8(b)(4), strikes and picketing to enforce contracts excepted by the proviso would continue, as before, to be illegal under section 8(b)(4). Hence, reading section 8(e) together with section 8(b)(4)(A) in the light of the legislative history, the Board concluded that the construction exemption in section 8(e) was not intended to remove from the reach of section 8(b)(4) picketing and other proscribed conduct which is designed to secure contracts of the type involved in the instant case.

The Board applied this rule in other cases to find that strikes and related conduct directed against employers in the construction industry were violative of section 8(b)(4)(A) where the union's object was to obtain agreements under which the employer would either cease doing business with nonunion contractors [26] or subcontract work to a union contractor.[27] In another case [28] the Board had occasion to express disagreement with a trial examiner's observation that an agreement by which a building contractor will subcontract only to firms under a union contract is violative of section 8(e). Such agreements, the Board observed, are exempted from section 8(e) coverage by the construction industry proviso. However, the Board again pointed out that a union may not lawfully strike to obtain such an agreement.

(2) Disruption of Business Relationships

Section 8(b)(4)(B), prohibiting pressure on "any person" to cease doing business with "any other person," is intended to prevent the disruption of business relationship by proscribed tactics.

In assessing the scope of section 8(b)(4)(B) in the *Colson and Stevens* case,[29] the Board took into consideration its holdings in cases decided under section 8(b)(4)(A) of the Act before the 1959 amendments, the retention of that section's language in the present section 8(b)(4)(B), and the congressional purpose to prohibit the use of secondary pressure and economic force by unions to secure an objective such as the union there sought, namely, an agreement with the employer whereby he would be compelled to cease doing business with

[26] *The Essex County & Vicinity District Council of Carpenters & Millwrights, etc. (The Associated Contractors of Essex County, Inc.)*, 141 NLRB No. 80; *Hoisting & Portable Engineers Local Union 101, etc. (Sherwood Construction Co.)*, 140 NLRB 1175.

[27] *Local 60, United Association of Journeymen & Apprentices of the Plumbing & Pipe Fitting Industry of the United States and Canada (Binnings Construction Co.)*, 138 NLRB 1282.

[28] *Los Angeles Building & Construction Trades Council (Cecil Mays)*, 140 NLRB 1249.

[29] *Construction, Production & Maintenance Laborers Union Local 383, AFL–CIO, et al. (Colson & Stevens Construction Co.)*, 137 NLRB 1650.

nonunion employers if they failed to comply with the provisions of the agreement. The Board thereupon concluded that the respondent union's picketing was violative of section 8(b)(4)(B) as well as 8(b)(4)(A).[30]

In doing so, the Board noted that its cases decided before the 1959 amendments held that picketing under circumstances such as present in this case was for an object of forcing an employer to cease doing business, within the meaning of section 8(b)(4)(A). The Board further pointed out that, while the former section 8(b)(4)(A) became section 8(b)(4)(B) by virtue of the 1959 amendments, it was not changed otherwise, and the legislative history of the 1959 law showed that Congress did not intend to change existing law with respect to the legality of picketing to obtain and enforce restrictive agreements of the type involved in this case.

In one case,[31] a union's threat to picket an employer, because he allegedly violated his contract with the union, was held violative of section 8(b)(4)(B). The threat to picket was aimed at enforcement of a hot cargo provision through enforcement of a penalty provision for breach of the contract and, since enforcement of the hot cargo provision would have required the employer to cease doing business with a nonunion employer, the aforesaid violation was found.

Another instance of disruption of business relationships in violation of section 8(b)(4)(B) occurred where, although there was no explicit demand by the union that the employers involved cease doing business with another employer, the surrounding circumstance established that such was the union's object.[32] In this case, the respondent union's shop steward instructed the union's members, employed by the general contractor and an excavation contractor at a construction site, to stand around and block operation of the trucks of an electrical contractor, whose employees were members of another union, because those employees were doing work which the respondent union claimed for its members. In the Board's view, this clearly constituted inducement or encouragement to engage in a work stoppage or strike and the circumstances showed that the general contractor and the excavation contractor, in order to keep their employees at work, were faced with the choice of ceasing to do business with the electrical contractor or having the work performed in some other manner, as was finally done by the electrical contractor at the general contractor's

[30] The sec. 8(b)(4)(A) and 8(e) aspects of the case are discussed at pp. 97–98, *supra*. See also *Los Angeles Building & Construction Trades Council (Cecil Mays)*, *supra*, footnote 28, in which picketing and a threat to picket with an object of forcing the employers concerned to enter into an agreement which would cause them to cease doing business with their nonunion subcontractors was found violative of sec. 8(b)(4)(A) and (B).

[31] *Orange Belt District Council of Painters #48, AFL–CIO, et al. (Calhoun Drywall Co.)*, 139 NLRB 383.

[32] *Local Union 825, International Union of Operating Engineers, AFL–CIO (Nichols Electric Co.)*, 138 NLRB 540.

request. The Board observed that, even assuming that the respondent union merely intended by its strike to force the general contractor and the excavation contractor to require the electrical contractor to change its method of operation, this in itself would have disrupted or seriously curtailed the existing relationship between the electrical contractor and the other two contractors which would have been tantamount to causing the latter to cease doing business with the electrical contractor.

(a) Alteration of existing arrangements

During the year the Board was confronted with questions arising from attempts by unions to alter employers' existing contractual arrangements, which led to allegations that such attempts were in violation of the Act. Thus, in one case[33] the respondent union threatened to withdraw its members from a construction project if the employer did not renegotiate its contract with a subcontractor to require that certain work be performed by the union's members rather than by the subcontractor's employees who were represented by a different union. In finding that this threat violated section 8(b)(4)(B), the Board pointed out that, although there was no explicit demand by the union that the employer cancel the contract if the contractor refused to use the union's members, this action was the only alternative left to the employer if the contractor continued to refuse to replace its employees with the union's members. The Board therefore concluded that the union's threat had an object of forcing the employer to cease doing business with the contractor. The Board went on to say that, even assuming that the union did not "consciously contemplate" imposition of such a sanction, it was nonetheless clear that the union sought by its threat to require that the employer superimpose upon its agreement with the contractor an added condition of performance, that the work had to be done by the union's members. Acceptance of this condition would have required the employer to cease doing business with the contractor on the basis of their original arrangement. The objective of causing such a disruption of an existing business relationship, even though something less than a total cancellation of the business connection, is a "cease doing business" object within the meaning of section 8(b)(4)(B).

Another case[34] involved a dispute between the respondent union and a dairy company over the company's change in its method of hauling milk from a farmers' cooperative to the dairy company's

[33] *Local 3, International Brotherhood of Electrical Workers, AFL–CIO (New York Telephone Co.)*, 140 NLRB 729.

[34] *Milk Drivers' Union, Local 753, International Brotherhood of Teamsters, etc. (Pure Milk Assn.)*, 141 NLRB No. 103.

plant. Besides representing the dairy company's delivery drivers, the union also represented the drivers of the hauling contractor who had a contract with the dairy company to transport milk from the cooperative to the dairy's plant. The dispute arose when the dairy company terminated the hauling contract and made an arrangement under which the cooperative undertook to deliver the milk to the plant. It arranged to do so by entering into a contract for the transportation of the milk to the dairy by a different hauling contractor employing members of a different union. The union herein opposed this action by threatening to strike, and striking, the dairy company.

The Board found that the union's conduct was violative of section 8(b)(4)(B)[35] since one of the union's objects was to force the dairy company to cease doing business with the cooperative because the latter had engaged a hauling contractor who did not employ the union's members. The Board found no merit in the contention that no violation was committed because the union was not seeking a cessation of business between the dairy company and the cooperative, but was only objecting to the method of delivery.

6. Hot Cargo Agreements

Section 8(e) makes it an unfair labor practice for an employer and a union to enter into any contract or agreement, express or implied, whereby the employer ceases or refrains, or agrees to cease or refrain, from handling, using, selling, transporting, or otherwise dealing in any of the products of any other employer, or to cease doing business with any other person. It also provides that any contract "entered into heretofore or hereafter containing such an agreement shall be to such extent unenforcible and void."

In one case[36] a Board majority[37] adopted the trial examiner's conclusion that the *Lohman Sales*[38] construction of the word "product," as applied in that case to the section 8(b)(4) publicity proviso,[39] is equally applicable to the word "products" in section 8(e). As a result,

[35] The Board (Member Fanning dissenting) found that the union also violated sec. 8(b)(4)(A) Although a contract "job protection" clause forbidding reduction of the unit was found not violative of sec. 8(e), it was held that the union's interpretation of the clause during discussions with the employer broadened the literal wording of the clause into a new and different clause prohibited by sec. 8(e), thereby making the union's conduct violative of sec. 8(b)(4)(A).

[36] *Joint Council of Teamsters No. 38, et al (Arden Farms Co., et al.)*, 141 NLRB No. 14.

[37] Chairman McCulloch, Members Leedom and Fanning for the majority, Member Rodgers dissenting, Member Brown not participating.

[38] *International Brotherhood of Teamsters, etc. Local 537 (Lohman Sales Co.)*, 132 NLRB 901.

[39] The proviso in question permits publicity, other than picketing, for the purpose of truthfully advising the public that a product or products are produced by an employer with whom the labor organization has a primary dispute. This aspect of the *Lohman Sales* case is discussed in the Twenty-seventh Annual Report (1962) at pp. 162–163.

the majority sustained the trial examiner's holding that the labor of soliciting customers, delivering milk, and collecting accounts by employers engaged in manufacturing, processing, or distributing dairy products constitutes a "product" within the meaning of section 8(e). Hence, the agreement in this case, whereby the respondent employers agreed to do business only with those persons who had agreements with the respondent unions or were otherwise approved by the latter, was held violative of section 8(e).[40]

a. Contract Provisions Prohibited

The legality of "protection of rights" clauses was at issue in two companion cases[41] in which it was alleged that the agreements containing such clauses amounted to illegal hot cargo agreements within the meaning and proscription of section 8(e).

One of the clauses under consideration was a "picket line" clause which granted employees immunity from disciplinary action for their refusal to cross a picket line. In *Patton Warehouse*, the trial examiner had found this clause violative of section 8(e) because he believed that the section 8(b) proviso,[42] which protects unions from section 8(b)(4) violations when employees refuse to cross a picket line at another employer's place of business, was limited in its application to section 8(b)(4) and did not apply to section 8(e). However, the Board disagreed, pointing out that Congress meant to preserve in section 8(e) the limitations and safeguards with respect to certain types of secondary activities which had already been incorporated into section 8(b)(4). In the Board's view, the legislative history expressed legislative concern that certain so-called secondary activities were not to be proscribed. It therefore concluded that a picket-line clause, whose effect may be to cause a cessation of business between two employers, is nevertheless valid under section 8(e) insofar as it is in conformity with the proviso to section 8(b). Thus, a picket-line clause would be valid under section 8(e) if it were limited (1) to protected activities engaged in by employees against their own employer and (2) to activities against another employer who has been struck by his own employees, where the strike has been ratified or approved by their representative whom the employer is required to recognize under the Act.

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[40] Member Rodgers agreed that the contract clauses in issue were clearly violative of sec 8(e), but he dissented from the reliance on the rationale of *Lohman Sales*.

[41] *Truck Drivers Union Local No. 413, et al. Teamsters (The Patton Warehouse, Inc.)*, 140 NLRB 1474; *Truck Drivers & Helpers Local Union No. 728, et al. Teamsters (Brown Transport Corp.)*, 140 NLRB 1436.

[42] The proviso reads: "*Provided*, That nothing contained in this subsection (b) shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this Act . . . ."

In both of the cases herein, however, the Board found that the picket-line clauses were not so limited and were therefore invalid under section 8(e) because the clauses would prevent the disciplining of employees for refusing to cross picket lines at another employer's place of business, which might be established by a union not the majority representative, as well as preclude disciplining of employees who refuse to enter upon any property involved in a labor dispute, even though the dispute has not resulted in a strike.

Also under consideration in both cases were "struck goods" clauses which the trial examiner in *Patton Warehouse* had found preserved the right of secondary employees to refuse to handle products or to perform services "farmed out" to their employer by a struck employer where such "farming out" resulted from a labor dispute at the plant of the struck employer and made the secondary employer his "ally." In the trial examiner's view, this type of clause embodied nothing more than the struck work-ally doctrine which the Board and Congress have sanctioned and which Congress intended to preserve. However, the Board observed that the clauses in question exceeded permissible limits by overlooking an essential requirement of the ally doctrine, namely, that the struck work must be transferred to a secondary employer—the "ally"—through an arrangement with the primary employer. As the clause was written, the unions could demand exoneration of their members, employed by a secondary employer, if they refused to perform services which would customarily not be performed by their employer even where the performance of such services was *not* the subject of an arrangement between the primary and secondary employers. The Board pointed out that a violation of section 8(b)(4)(B) had been found where employees of a carrier refused to handle goods of a producer who was unable to assign the goods to a different carrier he had previously used, because that carrier had been struck.[43] It stated that, absent any arrangements between the struck and the secondary employers, the work previously performed by the struck employer may not be interfered with even though the secondary employees are performing a service which, but for the dispute, would customarily be performed by the employees of the struck employer. For these reasons, the Board found the struck goods clauses in both cases violative of section 8(e).

Two other contract clauses in *Patton Warehouse* provided (1) that sanctions would not be imposed upon employees who voluntarily choose not to handle goods or equipment involved in a labor controversy, and (2) that the contracting employer will continue its business relationship with a struck employer by any method deemed

[43] *United Marine Division of the National Maritime Union (D. M. Picton & Co.)*, 131 NLRB 693.

appropriate but not requiring the use of employees exercising their rights under the agreement of refusing to perform their normal duties. In the Board's view, these clauses were intended to effectuate union policy against handling struck goods or equipment, and the means, direct or indirect, by which this was to be accomplished, was tainted by the illegality of the object. It concluded that they constituted an unlawful agreement that the employers would cease or refrain from handling, using, transporting, or otherwise dealing in any of the products of any other employer, or would cease doing business with any other person where there was a controversy between such other employer or person or their employees on the one hand, and a labor union on the other hand.

In the same case the Board also held that a "subcontracting" clause, requiring the employer to refrain from using the services of any person who did not observe union standards relating to wages, hours, and conditions of employment, was unlawful under section 8(e). The Board found no merit in the contention that the subcontracting provision had for its purpose the preservation of jobs of employees in the contract unit, since the clause dictated to the employer those persons with whom he would be permitted to do business, rather than being limited to obligating him to refrain from contracting out work previously performed by employees in the bargaining unit.

The *Brown Transport* [44] case involved a "hazardous work" clause which required the employer to pay his employees triple wages and to provide various other benefits and protection if a final decision by a tribunal of competent jurisdiction required employees to handle goods of persons involved in a labor dispute. The Board found this to be a method for making it "difficult, expensive, and unlikely" for a contracting employer to insist that his employees handle hot cargo goods or equipment. In the Board's view, this clause was comparable in detrimental effect to the struck goods clause requirement that an employer continue to do business with a struck employer, but only by the use of "strange and uneconomic" means. It found that the "hazardous work" clause was designed to compel adherence by the contracting employers to the illegal picket line and struck goods clauses, without regard to their illegality, through economic coercion. Since these latter clauses were unlawful under section 8(e), the "hazardous work" clause was regarded as an implementation of the union's illegal object and this clause, therefore, was itself also illegal.

In one case,[45] "subcontracting" clauses which provided that the respondent employers would subcontract work only to employers who

[44] *Supra*, footnote 41.
[45] *Retail Clerks Union, Local 770, et al.* (*The Frito Co*), 138 NLRB 244.

were under contract with the respondent unions, or with specified unions, were held to have gone beyond permissible bounds in protecting work of employees in the unit. Since the clauses were, at least by implication, an agreement not to do business with those who did not so qualify, they were held invalid within the meaning of section 8(e).

7. Jurisdictional Disputes

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

An unfair labor practice charge under this section, however, must be handled differently from a charge alleging any other type of unfair labor practice. Section 10(k) requires that parties to a jurisdictional dispute be given 10 days, after notice of the filing of the charges with the Board, to adjust their dispute. If at the end of that time they are unable to "submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of the dispute," the Board is empowered to hear the dispute and make an affirmative assignment of the disputed work.[46]

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

a. Proceedings Under Section 10(k)

In order for the Board to proceed with a determination under section 10(k), the record made at the hearing must show that a work assignment dispute within the meaning of sections 8(b)(4)(D) and 10(k) exists; that there is reasonable cause to believe that the respondent union has resorted to conduct which is prohibited by section 8(b)(4) in furtherance of its dispute; and that the parties have not adjusted their dispute or agreed upon methods for its voluntary adjustment.

[46] *N.L.R.B.* v. *Radio & Television Broadcast Engineers Union Local 1212, IBEW (Columbia Broadcasting System)*, 364 U.S. 573 (1961); Twenty-sixth Annual Report (1961), p. 152.

(1) Disputes Subject to Determination

A dispute to be subject to determination under section 10(k) must concern the assignment of particular work to one group of employees rather than to members of another group. During the past fiscal year the Board had occasion to reject a respondent union's contention that because one group of employees was not represented by any labor organization, they could not be viewed as a claiming group of employees within the meaning of section 8(b)(4)(D).[47] The Board considered the union's argument, asserted as a matter of statutory construction, clearly without merit and observed that it has long held that employees have standing to claim disputed work in section 10(k) proceedings even though no union speaks on their behalf. The Board found further support for its position in the Supreme Court's *Columbia Broadcasting System* decision and in the legislative history pertaining to section 8(b)(4)(D).[48]

(2) Factors Evaluated in Determination of Dispute

During the past year, the Board continued to issue "affirmative" work assignment determinations in accordance with the *Columbia Broadcasting System* decision.

The Board was called upon in one case [49] to resolve a dispute arising at a newspaper plant over the assignment of composing-room work involving operation of a new process called photocomposition. This process, which creates type by using a photographic principle, replaced the molten metal or "hot metal" casting type of operation which had been used under the displaced system. Because the employer considered photocomposition an integrated process and since it replaced the earlier hot metal process, the employer assigned all of the work connected with the new process, including the darkroom tasks of developing and making prints, to members of the Typographers Union who had previously worked on the hot metal process. As a result, photographers in the editorial department, who were members of the Newspaper Guild and had been performing darkroom photographic work in preparation of advertising matter, claimed that they should have been assigned the darkroom work. Also, members of the Photo-Engravers Union claimed that they were entitled to that portion of the new process which involved the making of prints.

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[47] *International Brotherhood of Electrical Workers, AFL–CIO and its Local 639 (Bendix Radio Division of the Bendix Corp.)*, 138 NLRB 689.

[48] A Board majority (Chairman McCulloch, Members Rodgers, Leedom, and Brown for the majority, and Member Fanning dissenting) also rejected the union's contention that the union's only object was to compel an increase in wage rates and not to force assignment of work away from the employer's out-of-town employees to union members and local electricians.

[49] *Philadelphia Typographical Union, Local No. 2 (Philadelphia Inquirer, Division of Triangle Publications, Inc.)*, 142 NLRB No. 1.

A divided Board concluded that the members of the Typographers Union to whom the employer had originally assigned the work were entitled to the work in question and assigned the work accordingly. The principal opinion [50] observed that the factors [51] usually applied in jurisdictional disputes were of no assistance in this case and that it was necessary to rely on the Board's "experience and common sense," referred to by the Supreme Court in *Columbia Broadcasting System*, to resolve the dispute.

The principal opinion then noted that if the work were assigned to employees who were represented by the Typographers, employees who were represented by the Newspaper Guild and the Photo-Engravers would not suffer any loss of work; while on the other hand, employees who were represented by the Typographers might lose their employment if they were not awarded the disputed work. Other considerations were the fact that the Typographers Union had undertaken to train its members in the new technology and that the employer had decided that its newspaper would function best if the work were assigned to the employees who were represented by the Typographers Union. Particularly relied on was the fact that photocomposition was a substitute for the earlier hot metal process and that the Typographers members had performed such hot metal work in the past.[52]

In the past year, the Board was also asked to consider claims to disputed construction work based upon the "Miami Agreement" entered into in 1958 between the Building and Construction Trades Department and the Industrial Union Department of the AFL–CIO. This agreement was intended to settle a longstanding disagreement as to which international union, or which of their respective constituent locals, should represent workmen in the building and construction industry, as distinguished from employees occupied in operation or maintenance of production plants. The agreement provided that "new building construction" should be performed by workers represented by the building trades craft unions while "production and running maintenance work" should be allotted to workers represented by industrial unions.

[50] Chairman McCulloch and Member Fanning joined in the principal opinion, Member Rodgers concurred in the result, Member Leedom dissenting, and Member Brown, while not endorsing the dissenting opinion in its entirety, agreed with its conclusion.

[51] Bargaining agreements and union constitutions, skills and work involved, industry custom and practice, and employer's past practice

[52] Dissenting Member Leedom, with Member Brown in agreement with his conclusion, would have awarded the disputed work to the photographers because of the skills and work involved, the employer's past practice, and similarity to prior processes. He disagreed with the majority's refusal to apply these established criteria and its reliance on such novel factors as "substitution-of-function" test and "loss-of-jobs" test. In his view, the majority, contrary to precedent, had in effect given controlling weight to the employer's assignment of the work.

One of the cases [53] in which the Miami Agreement was considered involved a dispute arising from the building of an addition to the employer's automobile assembly plant. The respondent Building Trades Council and its constituent locals claimed that certain portions of the pipefitting and electrical work on the job, which the employer had assigned to its own maintenance employees as incidental to the installation of production equipment, must be assigned to the Trades Council's pipefitters and electricians as part of "new construction" under the Miami Agreement to which the employer's maintenance employees were subject. However, the Board pointed out that the Miami Agreement itself recognized a "doubtful" area between outright "new" building construction and production and maintenance work. Furthermore, the parties themselves had taken recourse to the adjustment procedures established by the agreement and had been unable to agree upon the proper allocation of the disputed work, thereby substantiating the Board's view that the work in dispute here fell within such middle area. Since the attempt to settle the dispute within the framework of the Miami Agreement had failed, the primary ground relied on by the Trades Council for claiming the disputed work was held ineffectual.

Turning to other factors apart from the Miami Agreement, the Board considered the similarity of the skill and training of the two claiming groups of workmen, the lack of coverage of the disputed work by the construction contract and subcontracts, the recognition of the craft status of the employer's maintenance employees under their bargaining agreement with the employer, and the evidence of past practice revealing a mixed experience instead of a consistent pattern in favor of the outside workmen. In view of these circumstances, the Board found no warrant for departing from the employer's assignment of the work to its own maintenance employees and determined the dispute in their favor.

A similar situation occurred in another case [54] in which a work dispute arose when a tire manufacturing company let a contract for the construction of a large addition to its research facilities, but, pursuant to its agreement with its employees' bargaining representative, the Rubber Workers union, and in keeping with past practice, the company reserved for its maintenance employees certain work connected with the construction job. The respondent Building Trades Council and its affiliated unions representing employees of the contractor and subcontractors involved in various phases of the con-

[53] *Local 1, Bricklayers, Masons & Plasterers International Union of America, AFL–CIO, et al. (Consolidated Engineering Co.)*, 141 NLRB No. 8.

[54] *Tri-County Building & Construction Trades Council of Akron and Vicinity, AFL–CIO (The John G. Ruhlin Construction Co.)*, 137 NLRB 1444.

struction work claimed the work being performed by the company's employees as "new" construction under the Miami Agreement to which the construction trade unions and the Rubber Workers International had subscribed. However, the Board again awarded the disputed work to the company's employees because of the uncertainty concerning the application of the Miami Agreement and the inability of the parties to resolve their disagreement pursuant to that agreement. The Board did not believe that under those circumstances it should nullify the work assignment provision of the bargaining contract between the company and the Rubber Workers Union as well as their established practices, particularly since these both predated and postdated the Miami Agreement.

In considering another case [55] involving an agreement entered into by two international unions in an attempt to eliminate jurisdictional disputes between them, a Board majority [56] gave effect to the agreement, even though the employers affected were not parties to it. The Board made an award of the work in dispute contrary to the employers' assignment.

In this case, the dispute was between Carpenters and Lathers locals over certain operations performed in the process of installing acoustical ceilings. The aforementioned agreement, negotiated between the Carpenters and Lathers international unions, in effect divided the entire installation process between the two competing groups, as a result of which the part of the process here in dispute fell to the Lathers. When the contractors in this case assigned the work in question to employees who were members of the Carpenters, the respondent Lathers local, basing its claim for the most part on the Carpenters-Lathers agreement, sought to obtain assignment of the work to its own members.

The Board majority found that the usual criteria for resolving jurisdictional disputes were not determinative in this case. Thus, the unions had no contracts with the employers and were not certified as bargaining representatives; the skills involved were possessed at least in part by members of both unions; company and area practice was split almost evenly; and efficiency of operation was not a factor since the contractors regularly used members of both unions in the performance of the disputed work. In such a state of balance, the majority considered it appropriate to give effect to the agreement between the two internationals, thereby effectuating the desirable policy of encouraging unions to settle jurisdictional disputes by

[55] *Local Union No. 68, Wood, Wire & Metal Lathers International Union AFL–CIO (Acoustics & Specialties, Inc.)*, 142 NLRB No. 101.

[56] Chairman McCulloch, Members Fanning and Brown for the majority, Members Rodgers and Leedom dissenting.

agreement. Such an attempt by unions to resolve jurisdictional disputes, the majority noted, is an important circumstance to be considered in making a jurisdictional dispute award. The majority also observed that an employer's assignment of disputed work cannot be in all cases the controlling factor in determining jurisdictional disputes, since to give it controlling effect would be contrary to the Supreme Court's decision in *Columbia Broadcasting System.*[57]

8. Recognitional or Organizational Picketing by Noncertified Union

Section 8(b)(7) of the Act makes it an unfair labor practice for a labor organization, in specific situations, to picket or threaten to picket for "an object" of "forcing or requiring" an employer to recognize or bargain with it, or employees to accept it, as the bargaining representative, unless the labor organization is currently certified as the employees' representative. But even a union which has not been certified is barred from such picketing only in the three general areas delineated in subparagraphs (A), (B), and (C) of section 8(b)(7).

Recognitional or organizational picketing is prohibited under the three subparagraphs of section 8(b)(7) as follows: (A) Where another union is lawfully recognized by the employer and a question concerning representation may not be appropriately raised under section 9(c); (B) where a valid election has been held within the preceding 12 months; or (C) where no petition for a Board election has been filed "within a reasonable period of time not to exceed 30 days from the commencement of such picketing." This last subparagraph provides further that if a timely petition is filed, the representation proceeding shall be conducted on an expedited basis. However, picketing for the informational purposes set forth in the second proviso to subparagraph (C)[58] is exempted from the prohibition of that subparagraph, unless it has the effect of inducing work stoppages by employees of persons doing business with the picketed employer.

a. Scope of Section 8(b)(7)

The proscriptions of section 8(b)(7) apply only to picketing, or the causing or threat thereof, for an object of recognition, bargaining,

[57] Dissenting Member Rodgers was of the opinion that the Carpenters-Lathers agreement, to which the employers were not parties, should not be the deciding and, in effect, controlling factor. Instead he would have assigned the work to the carpenters in view of the employees' skill and training, the area practice, and the employer's assignment of the disputed work. Member Leedom also would not have given controlling weight to the interunion agreement. In his view, although an employer's assignment should not be given controlling weight, it is entitled to substantial weight and should govern the result in the absence of countervailing factors of greater weight.

[58] The proviso exempts picketing for ". . . the purpose of truthfully advising the public (including consumers) that an employer does not employ members of, or have a contract with, a labor organization. . . ."

or organization, by a labor organization which has not been certified. The mere fact that picketing is peaceful is no defense to a section 8(b)(7) complaint.

b. Legality of Objectives

During the past year, the Board considered a number of cases in which it was required to determine whether particular picketing was for one of the objects of recognition, bargaining, or organization which might be proscribed by section 8(b)(7). Consistent with its established approach to these issues, in each case the Board considered all the circumstances involved, and did not place exclusive reliance on any single factor. Significant among those cases are the following.

(1) Permissible Objectives

(a) Protest against employer's unfair labor practices

The prohibitions of section 8(b)(7) do not encompass picketing which is solely in protest against unfair labor practices. In *Mission Valley Inn*,[59] a Board majority held that a union did not violate section 8(b)(7)(B) by picketing the employer after it lost an election at the employer's plant, where the union's sole object in picketing was found to be the immediate reinstatement of a number of strikers who had not been reinstated by the employer. Some of the strikers had returned to work under the terms of an agreement with the General Counsel settling unfair labor practice charges filed by the union. The union had objected to the settlement as remedially inadequate and refused to agree to it.

The Board rejected the contention that the picketing had a recognitional object in view of the union's prior bargaining request, its filing of representation petitions and refusal-to-bargain charges, and the wording on its picket signs. The conduct in question had occurred substantially in advance of the date on which the postelection 12-month period under section 8(b)(7)(B) began to run, and even before the date on which that section became effective. The Board found that the picketing was not timed or otherwise related to the union's representation petitions, noting that the picketing first began 3 months later in protest against the employer's alleged unfair labor practices, including the refusal to reinstate employees and refusal to bargain. Subsequently, upon failing to obtain satisfaction after having exhausted the Board's unfair practice and representation procedures, and prior to the effective date of section 8(b)(7), the union had voluntarily changed its picket signs to eliminate all references

[59] *Waiters & Bartenders Local 500, et al. (Mission Valley Inn)*, 140 NLRB 433, Chairman McCulloch and Members Fanning and Brown for the majority, Members Rodgers and Leedom dissenting.

to the employer's refusal to bargain. It thereafter confined its protest to the employer's refusal to reinstate all employees.[60]

But, upon the different factual situation in *Aetna Plywood*,[61] the Board found a section 8(b)(7)(B) violation, even though the reinstatement of discharged employees may have become an additional object of the union's picketing, where the original object of forcing the employer to recognize and bargain with the union continued after the Board had certified the results of an election which the union lost. During the strike prior to the election, the union filed unfair labor practice charges against the employer on two occasions. In both instances, the Board subsequently found the allegations of discriminatory discharges, failure to bargain, and other violations to be without merit.

The Board rejected the union's contention that whatever might have been its original object in picketing, its sole object since before the election has been to require the employer to rehire the discharged employees. Looking to all the facts and circumstances in drawing a reasonable inference as to the object of the picketing, the Board noted that at no time, either before or after the election, had the union disclaimed its position as a bargaining representative with whom the employer was legally bound to bargain. Nor had the union changed its picket signs since the pickets were first posted.

(b) "Area standards" picketing

In *Texarkana Construction Co.*,[62] a Board majority held that a council of local unions did not picket for a proscribed object when it picketed to induce an employer to raise its wages to the level of the prevailing rate for the area. The unions made no demand upon the employer for recognition, nor did they claim to represent its employees, or attempt to organize them. Although several employees of the employer refused to work after the picket line was established, the Board noted that the actions were not solicited by the unions and did not constitute proof of a proscribed object since neither tacit nor vocal approval of picketing is tantamount to the acceptance or selection of a union as a bargaining representative.

(2) Prohibited Objectives

In two cases, one involving picketing for a "members only" contract and the other, picketing for a contract covering future employees, the

[60] The majority also rejected the argument based on the premise that the recognition or bargaining object present at the outset of the picketing continues to be operative at all times thereafter where the picketing continues without a break.

[61] *Warehouse & Mail Order Employees, Local 743, IBT (Aetna Plywood & Veneer Co.)*, 140 NLRB 707.

[62] *Local 107, Hod Carriers, et al. (Texarkana Construction Co.)*, 138 NLRB 102, Chairman McCulloch and Members Fanning and Brown for the majority, Members Rodgers and Leedom dissenting.

Board found the objectives to be within the scope of section 8(b)(7). In *Sherwood Construction Co.*,[63] the union's picketing of a construction contractor, without certification or the filing of a timely representation petition, was held violative of section 8(b)(7)(C) even if, as asserted, the sole object of picketing was to cause the contractor to enter into a contract covering the union members currently or thereafter employed. The Board held that forcing or requiring an employer to recognize and bargain with a union as the representative of only the union members among his employees is an object within the scope of section 8(b)(7), even though exclusive recognition for all employees in an appropriate unit is not also being sought. In *R. S. Noonan*,[64] the union's picketing of a construction contractor was held violative of section 8(b)(7)(C) where the union demanded that the contractor, who currently employed no operating engineers, sign a contract which recognized it as bargaining representative for any operating engineers which the employer might thereafter hire. Picketing for the object of recognition and bargaining to cover future employees was held to be proscribed by section 8(b)(7), since in the Board's view the term "his employees," as used in section 8(b)(7), applies to future or prospective employees as well as those currently employed. It also viewed the contention that a union could picket indefinitely to force an employer to sign a prehire contract as contrary to the purposes of section 8(b)(7), noting that although section 8(f) permits prehire contracts in the construction industry, a union cannot use coercive techniques, such as picketing, to force an employer to sign such a contract.

(3) Alleged Change of Objective

During fiscal 1963, the Board had occasion to decide in a number of cases whether a proscribed object within the meaning of section 8(b)(7) continued to exist where a union's original objective allegedly changed as evidenced by such intervening circumstances as changed picket signs, withdrawal of recognition request, or loss of an election.

In *Jack Picoult*,[65] the Board held that a change of a picket sign, which initially stated that employees working on the job were not union members, to subsequently read that the employees were receiving substandard wages and inferior working conditions, did not under the circumstances establish a change in the recognitional purpose of the uninterrupted picketing.[66] Even as changed, the signs still did not

[63] *Hoisting & Portable Engineers Local 101, Operating Engineers (Sherwood Construction Co., Inc.)*, 140 NLRB 1175.

[64] *Local 542, Operating Engineers (R. S. Noonan, Inc.)*, 142 NLRB No. 131.

[65] *Local 3, IBEW (Jack Picoult)*, 137 NLRB 1401.

[66] See *IBEW Local 113 (I.C.G. Electric, Inc.)*, 142 NLRB No 145, where the picket sign protest against "substandard" working conditions was not read as being encompassed within the language or purport of the proviso protecting picketing for the purpose of advising the public "that an employer does not employ members of, or have a contract with, a labor organization."

reflect either of the objectives which the union subsequently asserted it sought by the prolongation of the picketing. Similarly, in *Alfred S. Austin Construction Co.*,[67] although the text of a picket sign was altered to read that the employer did not pay prevailing wages, the Board held that the original picket signs, which stated that the employer did not recognize or have a contract with the union, expressed the union's real aim in picketing and clearly disclosed a recognition purpose.[68]

In *Firestone Tire & Rubber Co.*,[69] even though a union withdrew its earlier request for recognition a year prior to picketing, and subsequently informed the employer that it was merely going to advertise to the public that one of its stores was nonunion, and even though it repeated this position subsequent to establishing the picket line and again subsequent to losing an election, the Board held that the postelection picketing was for recognition and bargaining. After each instance in which the union alleged that it was not making any demands on the employer, it took the position that the picket line would be removed only if the employer signed a contract.

In *Coed Collar Co.*,[70] a Board majority rejected a union's claim of abandonment of an organizational and recognitional object, and held that the union violated section 8(b)(7)(B) by picketing a manufacturer and a retail store handling his products, after losing a valid election. Noting the concededly organizational and recognitional object of the preelection picketing of the manufacturer and of his products at the retail store, the majority found that that object continued after the election, rather than having been abandoned, despite a 2-day hiatus during which the union withdrew its picket line at the manufacturer's plant. The picketing was resumed at the plant on the day the union lost the election, and was uninterrupted at the retail store. Postelection picket signs at the plant, which were changed on the day of the election, signified that the picketing was to protest asserted unfair labor practices, but the protest was against acts committed by a company not shown to have been allied, or to have constituted a single employer, with the manufacturer. Moreover, during the months prior to the election, the union had not mentioned that its picketing had a protest object.

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[67] *Construction, Shipyard & General Laborers Local 1207, et al. (Alfred S. Austin Construction Co., Inc.)*, 141 NLRB No. 24, decided by a Board panel composed of Members Rodgers, Fanning, and Brown.

[68] Member Rodgers would also have found that the picket signs as changed also evidenced the union's recognitional object.

[69] *Carquinez Lodge No. 1492, IAM (The Firestone Tire & Rubber Co.)*, 139 NLRB 1477.

[70] *ILGWU (Coed Collar Co.)*, 137 NLRB 1698. Members Rodgers, Leedom, Fanning, and Brown for the majority, Chairman McCulloch dissenting.

c. Computation of Permissible Period for Picketing

Section 8(b)(7)(C) limits recognitional or organizational picketing by a noncertified union, not barred by section 8(b)(7)(A) or (B), to a reasonable period not to exceed 30 days, unless a representation petition is filed prior to the expiration of that period. Absent the filing of a timely petition, continuation of the picketing beyond the reasonable period or 30 days violates the section. The Act does not define a reasonable period of time, but the language of the section as well as its legislative history indicates that picketing for a period less than 30 days may be considered as unlawful—the 30-day limitation being merely an outside limitation. Thus, in *Eastern Camera & Photo Corp.*,[71] the Board held that in view of a union's picket line misconduct, i.e., threats of physical violence, use of coercive and abusive language, and blocking ingress and egress to and from the struck premises, 26 days of recognitional and organizational picketing was more than a reasonable period of time for the filing of a petition within the mandate of section 8(b)(7)(C).

In *Colson and Stevens Construction Co.*,[72] a Board majority refused to permit the tacking of intermittent periods of coordinated picketing by two different unions, neither of whose period of picketing exceeded 30 days but whose combined picketing exceeded that period. The Board found that the unions were not engaged in a joint venture in the picketing.

In computing the 30-day period which provided the basis for its section 8(b)(7)(C) finding in *I.C.G. Electric*,[73] a Board majority included the period during which picketing took place in the absence of the primary employer and his employees from the picketed construction sites. The Board found that picketing was directed against the primary employer rather than solely against secondary employers, even though the primary employer was absent from the sites during certain periods of the picketing. In so finding, it noted that the pickets at all times carried signs protesting the substandard working conditions of employees of this employer, the union had made efforts over a period of 4 years to obtain a contract with him, and several times during the picketing, union representatives approached him for that same purpose.

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[71] *District 65, Retail, Wholesale & Department Store Union (Eastern Camera & Photo Corp.)*, 141 NLRB No. 85.

[72] *Construction, Production & Maintenance Laborers Union Local 383, et al. (Colson & Stevens Construction Co., Inc.)*, 137 NLRB 1650. Chairman McCulloch and Members Fanning and Brown for the majority, Members Rodgers and Leedom dissenting.

[73] *IBEW, Local 113 (I C G. Electric, Inc.)*, 142 NLRB No 145, Chairman McCulloch and Members Rodgers, Leedom, and Fanning joining in the principal opinion, Member Brown concurring in part and dissenting with respect to this aspect.

d. Service Interruption "Effect" Invalidating Informational Picketing

Even though picketing is conducted for a proscribed object, a violation of section 8(b)(7)(C) is not established if the picketing is for the purpose of truthfully advising the public, including consumers, that the employer does not employ members of, or have a contract with, a labor organization, unless such picketing has "an effect" of disrupting deliveries or services within the meaning of the publicity proviso to section 8(b)(7)(C).[74] In *Barker Bros.*,[75] a Board majority announced that where delivery or work stoppages occur, the test for determining whether they remove informational picketing from the second proviso's protective ambit will depend upon whether the picketing has had an actual impact which has disrupted, interfered with, or curtailed the employer's business.[76]

Applying this test to the variant facts of four companion cases,[77] the Board found in two of the cases that disruption of deliveries and services resulting from a union's informational picketing at an employer's retail store did not constitute "an effect" within the meaning of the second proviso to section 8(b)(7)(C). In one case,[78] the union took active measures to ensure that there would be no interruption in the employer's pickups and deliveries, and during the extensive period of picketing there were only three delivery stoppages, two work delays, and several delivery delays. There was no evidence as to the impact of these stoppages and delays on the employer's business. In the second case,[79] the union's informational picketing resulted in only one service stoppage and a temporary service delay

[74] The "effect" clause of the second proviso to sec. 8(b)(7)(C), which is also known as the "publicity" or "informational picketing" proviso, reads as follows: "unless an effect of such picketing is to induce any individual employed by any other person in the course of his employment, not to pick up, deliver or transport any goods or not to perform any services."

[75] *Retail Clerks Union Local 324, etc. (Barker Bros. Corp. and Gold's, Inc.)*, 138 NLRB 478, Chairman McCulloch and Members Fanning and Brown for the majority, Members Rodgers and Leedom dissenting.

[76] The Board noted that a number of Federal court judges in denying sec. 10(l) injunctions had independently reached the same conclusions as to statutory construction and legislative intent. *LeBus* v. *Building & Construction Trades Council (Houston Contracting Co.)*, 199 F. Supp. 628 (D.C.E.La.); *McLeod* v. *Chefs, Cooks, etc., Local 89 (Stork Restaurant)*, 280 F. 2d 760 (C.A. 2); *Graham* v. *Retail Clerks International Association, Local No. 57 (Hested Stores Co.)*, 188 F. Supp. 847 (D.C. Mont.).

[77] In the majority's view, once the union demonstrates that it has engaged in informational picketing, it then becomes incumbent upon the General Counsel, as part of his prosecutory burden, to establish that the picketing did in fact interfere with, disrupt, or curtail the employer's business.

[78] *Barker Bros. Corp. and Gold's Inc., supra,* footnote 75

[79] *Retail Clerks, Local 57 (Hested Stores Co.)*, 138 NLRB 498, Chairman McCulloch and Members Fanning and Brown for the majority, Members Rodgers and Leedom dissenting.

of a few hours, which in no way interfered with, disrupted, or curtailed the employer's business.[80]

Conversely, in the other two companion cases, the Board found that a union's informational picketing had a sufficient impact on the picketed employer's business so as to constitute "an effect" within the meaning of the second proviso. In one of these cases,[81] truckdrivers employed by liquor distributors refused to cross the picket line at the employer's restaurant and forced the employer to make other arrangements for obtaining liquor and other supplies. The picketing compelled the employer to modify his method of doing business with suppliers whose products were essential to his daily operations, and thus disrupted and interfered with his business. In the other case,[82] employees of subcontractors refused for a period of 3 weeks to cross the picket line at a construction site, and employees of other employers also refused to perform services or make deliveries to the picketed general contractor. The picketing caused delay in completing various jobs at the construction site, and thereby disrupted and interfered with the contractor's business operations.[83]

e. Validity of Expedited Elections

Although section 9(c) requires that a hearing be held prior to any election pursuant to a petition filed thereunder, an exception to this requirement is the "expedited" election directed by the statute to be held where the petition is filed in a context of picketing which would have violated section 8(b)(7)(C) but for the filing of the petition.[84] If the picketing would not have violated section 8(b)(7)(C), the holding of an "expedited" election exceeds the Board's authority, and such an election could not therefore be valid for purposes of

[80] See also *Retail Clerks Union, Local 1404 (Jay Jacobs Downtown, Inc.)*, 140 NLRB 1344, where a panel majority comprised of Chairman McCulloch and Member Brown, Member Leedom dissenting, held that three minor refusals by employees of other employers to make deliveries or perform services for the employer during the 5 months of informational picketing did not disrupt, interfere with, or curtail the employer's business, nor was there any actual impact on the business, *Retail Store Employees' Union, Local 428, Retail Clerks (Martino's Complete Home Furnishings)*, 141 NLRB No. 40, where a Board majority comprised of Chairman McCulloch and Members Fanning and Brown, Members Rodgers and Leedom dissenting, held that seven instances of truckdrivers of other employers having refused to cross the picket line to deliver goods to the employer during 6 months of picketing constituted "isolated" instances when considered in the light of the total number of deliveries made during the period of picketing, and that the disruption had no real impact on the operation of the employer's business

[81] *San Diego County Waiters and Bartenders Union Local 500, etc (Joe Hunt's Restaurant)*, 138 NLRB 470, Chairman McCulloch and Members Fanning and Brown joining in the principal opinion, Members Rodgers and Leedom concurring.

[82] *Local 429, IBEW (Sam Melson, General Contractor)*, 138 NLRB 460, Chairman McCulloch and Members Fanning and Brown joining in the principal opinion, Members Rodgers and Leedom concurring.

[83] See also *American Federation of Grain Millers, Local 16 (Bartlett & Co., Grain)*, 141 NLRB No. 71.

[84] A second exception to this requirement concerns consent elections under sec. 9(c)(4).

finding a violation of section 8(b) (7) (B)[85] if the union should engage in recognitional or organizational picketing within the year following. Thus, in *Hested Stores Co.*,[86] a Board majority held that postelection picketing was not prohibited by section 8(b) (7) (B) where an expedited election was not valid because preelection picketing, although having had an object of organization or recognization otherwise proscribed by section 8(b) (7) (C), was privileged in that it fell within the scope of the publicity proviso and did not have any appreciable effect of stopping deliveries or services to the picketed employer.

On the other hand, the Board found in *Delsea Iron Works*[87] that an expedited election based on a reinstated representation petition, which antedated a section 8(b) (7) (C) charge and was initially filed less than 30 days after picketing commenced, was valid. The picketing, which admittedly was for a recognitional object, began 2 weeks before the union filed the representation petition. The contention that the regional director improperly reinstated this previously withdrawn petition after the picketing had continued for more than 30 days was rejected. Within 2 weeks following the approval of the request for withdrawal of the petition, section 8(b) (7) (C) and 8(a) (5) charges and a request to reinstate the petition were filed. In these circumstances, the Board was of the view that the regional director reasonably exercised his discretion by reinstating the petition and conducting an expedited election. The restoration of the petition thus had the effect of establishing the proper predicate for the conduct of an expedited election pursuant to section 8(b) (7) (C).

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[85] With respect to the question of whether a proscribed object exists, see *Waiters & Bartenders Local 500, et al. (Mission Valley Inn)*, 140 NLRB 433, discussed *supra*, pp. 111–112.

[86] *Retail Clerks, Local 57 (Hested Stores Co.)*, *supra*, footnote 79

[87] *Delsea Iron Works, Inc.*, 140 NLRB 1316

VI

Supreme Court Rulings

During fiscal year 1963, the Supreme Court decided four cases involving questions concerning the administration and interpretation of the National Labor Relations Act. Two cases dealt with the scope of the Board's jurisdiction: over a local employer whose interstate supplier bought goods from out of State, and over maritime operations of foreign-flag ships employing alien seamen. Another case involved the granting of superseniority by an employer to replacements for strikers and to employees who went to work during a strike. The last case concerned the legality of the "agency shop" under section 8(a)(3) of the Act. The Board was upheld on the merits in three of these cases and was reversed in one case. In addition, there was one case which presented the question of whether the courts have jurisdiction under section 301 of the Labor Management Relations Act to remedy a breach of a collective-bargaining agreement which would also constitute an unfair labor practice within the Board's jurisdiction.

1. Scope of Board Jurisdiction

a. Domestic

In *Reliance Fuel*,[1] the Supreme Court held that the Board correctly asserted jurisdiction over an employer engaged solely in intrastate commerce, on the basis of his purchases within the State of a "substantial amount" of goods from a supplier engaged in interstate commerce. Reliance Fuel Oil Corporation, a New York distributor of fuel oils with gross annual sales in excess of $500,000, purchased within the State fuel oil and related products valued in excess of $650,000 from Gulf Oil Corporation. These products had been shipped to Gulf from outside New York State prior to sale or delivery to Reliance, and had then been stored in Gulf tanks located within the State. On the basis of this "indirect inflow" of out-of-State supplies, the Board concluded that Reliance's operations affected commerce within the meaning of

[1] *N.L.R.B.* v. *Reliance Fuel Oil Corp.*, 371 U.S 224.

section 2(6) and (7) of the Act. But the Second Circuit held that it was necessary for the Board to go further and demonstrate the manner in which a labor dispute at Reliance would affect or tend to affect commerce.[2] In a *per curiam* opinion, the Supreme Court reversed the Second Circuit. The Court noted that, "in passing the National Labor Relations Act, Congress intended to and did vest in the Board the fullest *jurisdictional* breadth constitutionally permissible under the Commerce Clause." The Court continued, "This being so, the jurisdictional test is met here: The Board properly found that by virtue of Reliance's purchases from Gulf, Reliance's operations and the related unfair labor practices 'affected' commerce, within the meaning of the Act."

b. International

In the *Sociedad* case,[3] the Supreme Court, reversing the Board, held that the Act's coverage did not extend to alien seamen serving on foreign-flag ships, even though the ships were beneficially owned and operated by an American corporation through a foreign subsidiary.

United Fruit Company is an American corporation which grows, transports, and sells large quantities of tropical produce. Empresa Hondurena de Vapores, S.A., wholly owned by United Fruit, is a Honduran shipline whose ships are chartered only to United Fruit for transport of its produce between Central and South American locations and United States ports. The National Maritime Union of America filed a petition with the Board, pursuant to section 9(c) of the Act, seeking certification as the collective-bargaining representative of the Honduran seamen employed on these ships. The Board found that United Fruit operated a single, integrated maritime operation, which included the Empresa cargo ships, and that United Fruit and Empresa were joint employers of the Honduran seamen. The Board, applying the principles enunciated in its earlier *West India* case,[4] further concluded that the maritime operations involved had sufficient United States contacts to bring them within the Act's coverage despite the foreign registry of the ships and the foreign nationality of the seamen. Accordingly, the Board directed an election among the seamen to determine whether they wished NMU, Sindicato (a Honduran union which had intervened in the proceeding), or no union to act as their labor representative. Two suits were then brought—by Empresa and

[2] 297 F 2d 94.

[3] *McCulloch* v. *Sociedad Nacional de Marineros de Honduras; McLeod* v. *Empresa Hondurena de Vapores, S A.; National Maritime Union of America, AFL–CIO* v. *Empresa Hondurena de Vapores, S.A*, 372 U.S. 10.

[4] In *West India Fruit & Steamship Co.*, 130 NLRB 343, the Board declared that it would apply the Act to foreign-flag vessels when they had substantial points of contact with the United States and these outweighed their foreign points of contact

by Sociedad—in the District Courts for the Southern District of New York and for the District of Columbia, respectively, which resulted in injunctions against the conduct of the Board election.[5]

The Supreme Court sustained the injunction in the suit brought by Sociedad, the Honduran union.[6] The Court, following its earlier decision in *Benz*,[7] in which it held that the Act did not apply to a foreign ship operated by foreign seamen while the vessel was temporarily in an American port, held that no different result was warranted where, as here, the vessels operated in a regular course of trade between foreign ports and those of the United States, and the foreign owner of the ships is in turn owned by an American corporation. The Court noted that, under well established principles of international law, the law of the flag country ordinarily governs all internal affairs of the ship. The Board "balancing of contracts" theory was a departure from this principle and created a real "possibility of international discord." Accordingly, the Court concluded that, "for us to sanction the exercise of local sovereignty under such conditions in this 'delicate field of international relations there must be present the affirmative intention of the Congress clearly expressed' [quoting from *Benz*]. Since neither we nor the parties are able to find any such clear expression we hold that the Board was without jurisdiction to order the election."[8]

2. Superseniority

In *Erie Resistor*,[9] the Supreme Court upheld the Board's ruling that an employer violated section 8(a) (1) and (3) of the Act by granting superseniority to replacements for strikers and strikers who

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[5] 200 F. Supp. 484 (D C S N Y), reversed 300 F. 2d 222 (C A. 2); 201 F. Supp. 82 (D.C D.C).

[6] The Court selected this case as the vehicle for its decision rather than the suit brought by Empresa, for a question existed as to whether Empresa, which was in a position to have its contentions reviewed under secs 9(d) and 10(e) and (f) of the Act, could properly maintain an independent equity suit in the district court. The Court found that the suit brought by Sociedad, which could not avail itself of the statutory review procedure, fell within the limited exception fashioned in *Leedom* v. *Kyne*, 358 U S 184, for "the presence of public questions particularly high in the scale of our national interest because of their international complexion is a uniquely compelling justification for prompt judicial resolution of the controversy over the Board's power" 372 U.S at 17.

[7] *Benz* v. *Compania Naviera Hidalgo*, 353 U S 138.

[8] In the companion case of *Incres Steamship Co.* v. *International Maritime Workers*, 372 U.S 24, the Court held that the rationale of *Sociedad* also applied to the situation there presented. In *Incres*, the New York Court of Appeals had reversed an injunction which had issued against picketing of a foreign-flag ship with substantial American contacts, on the ground that, under *San Diego Bldg Trades Council* v. *Garmon*, 359 U.S. 236, the activity was "arguably" subject to the Board's jurisdiction. 10 N.Y. 2d 218. The Supreme Court reversed saying, "although it was arguable that the Board's jurisdiction extended to this dispute at the time of the New York Court of Appeals' decision, our decision in *Sociedad Nacional* clearly negates such jurisdiction now"

[9] *N.L.R.B.* v. *Erie Resistor Corp*, 373 U S 221, sustaining 132 NLRB 621.

returned to work during the strike.[10] The Court pointed out that it was not decisive that the employer may have been motivated by a legitimate business purpose in promulgating its superseniority policy. Quoting from *Radio Officers* and *Local 357*,[11] the Court reemphasized that specific evidence of an intent to discriminate or to interfere with union rights is "not an indispensable element of proof of violation." "Some conduct may by its very nature contain the implications of the required intent; the natural foreseeable consequences of certain conduct may warrant the inference. . . ." In the Court's view, a grant of superseniority conditioned upon employees going to work during a strike falls in this category; "it *is* discriminatory and it *does* discourage union membership and whatever the claimed overriding justification may be, it carries with it unavoidable consequences which the employer not only foresaw but which he must have intended." In such a situation, the task is one "of weighing the interests of employees in concerted activity against the interest of the employer in operating his business in a particular manner and of balancing in the light of the Act and its policy the intended consequences upon employee rights against the business ends to be served by the employer's conduct."

The Court concluded that "in view of the deference paid the strike weapon by the federal labor laws and the devastating consequences upon it which the Board found was and would be precipitated by respondent's inherently discriminatory superseniority plan," the Board was reasonable in holding that the employer's asserted business purpose did not outweigh the invasion of employee rights.[12] While italics disavowing any "intention of questioning the continuing validity of the *Mackay* rule,"[13] which permits an employer permanently to replace economic strikers, the Court refused to extend it to the instant case; "[b]ecause the employer's interest must be deemed to outweigh the damage to concerted activities caused by permanently replacing strikers does not mean it also outweighs the far greater encroachment resulting from super-seniority in addition to permanent replacement."

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[10] On the basis of this conclusion, the Court sustained the Board's further holding that the employer violated sec. 8(a)(5) by insisting, as a condition of concluding a collective-bargaining agreement with the union, that the agreement contain a clause ratifying the company's grant of superseniority.

[11] *Radio Officers* v. *N.L.R.B.*, 347 U S. 17; *Local 357, Teamsters* v. *N L R B.*, 365 U S 667.

[12] The Court adverted to the following considerations relied on by the Board (373 U S at 230–231): (1) Superseniority affects the tenure of all strikers, not merely those who are actually replaced; (2) it operates to the detriment of strikers only; (3) in effect it offers individual benefits to strikers as an inducement to abandon the strike; (4) it renders a crippling blow to the strike effort; and (5) it makes future bargaining difficult if not impossible for the collective-bargaining representative by dividing the employees into two camps, those who remained loyal to the union and those who returned to work before the end of the strike.

[13] *N.L.R.B.* v. *Mackay Radio & Telegraph Co.*, 304 U S. 333.

3. Union-Security Arrangements—The Agency Shop

In the *General Motors* case,[14] the Supreme Court held that an "agency shop" arrangement[15] does not constitute an unfair labor practice under section 8(a)(3) of the Act, where it is not unlawful under State law, and therefore an employer's refusal to bargain with a union about its inclusion in a collective-bargaining agreement is an unfair labor practice under section 8(a)(5) of the Act. Examining the legislative history, the Court found nothing to indicate that Congress intended the 1947 amendments "to validate only the union shop and simultaneously to abolish, in addition to the closed shop, all other union-security arrangements permissible under state law." In the Court's view, the 1947 amendment of section 8(a)(3) and its proviso was intended to achieve two purposes: to abolish the closed shop, but at the same time to permit employers and unions to agree that "free riders" would start paying their own way. The "agency shop" was compatible with this objective. Nor did the literal wording of the first proviso to section 8(a)(3), which privileges agreements requiring "membership" in a union after the first 30 days of employment, require a different conclusion. The Court pointed out that, under the second proviso to section 8(a)(3), "The burdens of membership upon which employment may be conditioned are expressly limited to the payment of initiation fees and monthly dues." The "agency shop" proposal here "conditioned employment upon the practical equivalent of union 'membership' as Congress used that term in the proviso to § 8(a)(3)"; the "proposal for requiring the payment of dues and fees imposes no burdens not imposed by a permissible union shop contract and compels the performance of only those duties of membership which are enforceable by discharge under a union-shop arrangement."[16]

4. The Jurisdiction of Courts To Remedy Breaches of a Contract Which Also Constitute Unfair Labor Practices

In the *Doyle Smith* case,[17] the Supreme Court, consistent with the position which the Board had advanced as *amicus curiae*, held that the

[14] *N.L.R.B.* v. *General Motors Corp.*, 373 U.S. 734, reversing 303 F 2d 428 (C A 6).

[15] An arrangement under which all employees are required as a condition of continued employment to pay dues to the union and pay the union's initiation fee, but they are given the option of becoming union members.

[16] In *Retail Clerks International Association, Local 1625* v *Alberta Schermerhorn*, 373 U S 746, decided the same day as *General Motors*, the Court held that the "agency shop" was also within the scope of section 14(b) of the Act, and therefore it could properly be prohibited by the State of Florida under its "right-to-work" law. The Court scheduled for reargument next term the question of whether the State courts, or only the Board, would have jurisdiction to enforce the State's prohibition. The Court invited the views of the Board on this question.

[17] *Doyle Smith* v. *Evening News Association*, 371 U S. 195.

State court had jurisdiction under section 301 of the Labor Management Relations Act to remedy an alleged breach of a collective-bargaining agreement notwithstanding that the conduct involved would also constitute an unfair labor practice under the National Labor Relations Act. In that case, an employee (individually and on behalf of other members of the Newspaper Guild) brought suit against his employer, the Evening News Association, in a Michigan court, seeking damages for breach of the no-discrimination clause of the collective-bargaining agreement between the Guild and Evening News.[18] The conduct constituting the alleged breach of contract—discriminatory treatment of Guild members during a strike against Evening News by members of another union—was concededly an unfair labor practice under section 8(a)(3) of the Act. The trial court dismissed the suit, and the Michigan Supreme Court affirmed, on the ground that, since the conduct alleged was arguably an unfair labor practice, under the *Garmon*[19] preemption principles, the subject matter of the suit was within the Board's exclusive jurisdiction. The Supreme Court reversed the judgment of the Michigan Supreme Court.

The Court, reemphasizing the position taken in two earlier cases,[20] held that the *Garmon* preemption doctrine was not applicable to section 301 suits for breach of collective-bargaining contracts. The Court declared that "the authority of the Board to deal with an unfair labor practice which also violates a collective bargaining contract is not displaced by § 301, but it is not exclusive and does not destroy the jurisdiction of the courts in suits under § 301." Turning to the argument that this suit was not within the purview of section 301 because it was brought by an individual employee, the Court in effect overruled its earlier ruling in *Westinghouse*[21] that section 301 did not sanction suits for the vindication of "uniquely personal" employee rights. The Court pointed out that the rights of individual employees "are a major focus of the negotiation and administration of collective bargaining contracts." Furthermore, "individual claims lie at the heart of the grievance and arbitration machinery . . . and many times precipitate grave questions concerning . . . the collective bargaining contract on which they are based." Thus, "to exclude these claims from the ambit of § 301 would stultify the congressional policy of having the administration of collective bargaining contracts ac-

[18] The contract contained a clause providing that "there shall be no discrimination against any employee because of his membership or activity in the Guild."

[19] *San Diego Building Trades Council* v. *Garmon*, 359 U.S. 236.

[20] *Local 174, Teamsters* v. *Lucas Flour Co.*, 369 U.S. 95; *Atkinson* v *Sinclair Refining Co.*, 370 U.S. 238.

[21] *Association of Westinghouse Salaried Employees* v. *Westinghouse Electric Corp.*, 348 U.S. 437.

complished under a uniform body of federal substantive law." Finally, the Court held that jurisdiction conferred on the courts by section 301 extended to suits brought by individual employees as well as by labor organizations. For otherwise suits by employees would be governed by State law, whereas a suit by a union for the same breach of the same contract would be governed by Federal law under section 301.

VII

Enforcement Litigation

Board orders in unfair labor practice proceedings were reviewed by courts of appeals in 198 enforcement or review proceedings during fiscal 1963.[1] This was a substantial increase from the 148 enforcement proceedings experienced in both fiscal 1962 and fiscal 1961. Some of the more important decisions resulting from that litigation are summarized in this chapter.

A. Jurisdiction of the Board

Challenges to the Board's exercise of jurisdiction were consistently rejected by the courts of appeals in litigation during the year. Any questions concerning the scope of the Board's reach created by the remand last year of the *Reliance Fuel Oil* and *Benevento* cases for further explication of the Board's jurisdictional bases[2] seems now resolved in the Board's favor.[3] The Supreme Court's affirmance of the Board's position in its decision in the *Reliance Fuel* case, discussed *supra*, pp. 119–120, undoubtedly contributed to that result.

B. Employer Unfair Labor Practices

1. Interference With Section 7 Rights

a. Interrogation

The essential nature of the requirement that the manner and circumstances of an employer's interrogation of employees concerning their protected activities adequately support an inference of coercive effect upon them, before it may be found violative of the Act, was illustrated by two cases this past year.

[1] Results of enforcement litigation are summarized in table 19 of Appendix A.

[2] Twenty-seventh Annual Report (1962), p 203.

[3] See, e.g, *N L.R.B.* v. *Customer Control, Inc*, 309 F. 2d 150 (C A 2); *N L R.B.* v. *Benevento Sand & Gravel*, 316 F. 2d 224 (C A. 1); *N.L.R B.* v. *Sightseeing Guides and Lecturers Local 20076*, 310 F. 2d 40 (C.A. 2); *N.L.R.B.* v. *Carteret Towing Co., Inc.*, 307 F. 2d 835 (C.A. 4); *N.L.R.B.* v. *Benton & Co.*, 313 F. 2d 629 (C A. 5); *N.L.R.B.* v. *Citizens Hotel Co.*, 313 F. 2d 708 (C.A. 5); *and N.L.R.B.* v. *Holiday Hotel Management*, 311 F. 2d 380 (C.A. 10).

In the *Kress* case,[4] the Ninth Circuit set aside the Board's finding and held that an employer did not violate the Act by individually interrogating employees concerning their designations of the union. The employer explained to each that its purpose was to check the adequacy of the showing of interest claimed on the union's petition for a Board election, which it doubted because of volunteered statements from some employees. Each was assured that his job was not endangered by his answer and that he could refuse to answer. Holding contrary to the Board's view that such interrogation was necessarily coercive and interference, see *supra*, p. 65, the court noted that it could find no evidence in the record of a background of employer hostility to union organization, or that the employees actually disbelieved the employer's assurance, to support a conclusion of coercion or interference.[5]

In *Lindsay Newspapers, Inc.*,[6] the court sustained the Board's determination that the employer had violated the Act when its attorneys systematically interrogated the company's employees concerning their union activities, ostensibly in preparation for a Board representation proceeding. The court noted the expressed antiunion attitude of the company's president and stressed the coercive impact on the employees of the attorneys' use of a court reporter in swearing them to tell the truth and transcribing their answers.[7]

b. Prohibitions Against Union Activities

The legality of a department store's prohibition of union solicitation on company time and premises was again the subject of a circuit court decision the past year. In the *May Department Stores* case,[8] the Sixth Circuit set aside the Board's finding that an employer had violated the Act by applying a broad, but valid, no-solicitation rule so as to deny the union an equal opportunity to reply to the employer's lawful antiunion speeches on company time and premises. The court held that the Board was required by the Supreme Court decisions in the *Babcock* and *Nutone* cases[9] to first make findings as to the availability of alternative means of communication by which the union may reasonably reach the employees before holding the employer's action in such a situation illegal. The court then concluded that the Board's

[4] *S.H. Kress & Co.* v. *N L.R.B.*, 317 F. 2d 225.

[5] *Id.*, at 228–229.

[6] *N.L R.B.* v. *Lindsay Newspapers, Inc.*, 315 F. 2d 709 (C.A 5).

[7] *Id.* at 711. The court also noted that under applicable State law there are no legal sanctions available if the employee violates his oath in such a proceeding, and thus "a false impression of solemnity and inviolability is sought to be created which in a sense is nothing more than an effort to 'scare' a witness into telling the truth."

[8] *The May Department Stores Co.* v. *N.L.R.B.*, 316 F. 2d 797.

[9] *N.L.R.B.* v. *Babcock & Wilcox Co.*, 351 U.S. 105; *N.L R B.* v. *United Steelworkers of America, CIO (Nutone)*, 357 U.S. 357.

characterization of alternative avenues as "ineffective" in comparison to solicitation on company time and premises does not in and of itself render the employer's conduct unfair under the Act.

In two other cases, the Board's invalidation of employer rules prohibiting the wearing of union buttons and insignia by employees at work was upheld, although the circuit court in each case emphasized that its decision was restricted to the particular facts of the case and modified the Board's order accordingly. In the *Floridan Hotel* case [10] involving an employer who, with no discriminatory purpose, prohibited the wearing of union buttons by employees who came in regular contact with the guests of the hotel, the Fifth Circuit sustained the Board's limitation on the employer's right to regulate the dress of his employees where the wearing of the buttons was in no way shown to interfere with employee discipline or the operation of the business. However, in reaching its decision in the *Power Equipment* case,[11] where the Board had found the employer interfered with employees' protected activity by ordering them to remove bowling shirts with union identification which they wore to work, the Sixth Circuit relied on the background of company opposition to the union, and its failure to give any explanation at the time of its order or to prove any unusual circumstances which would justify the order.[12]

c. Import of Section 8(c)

In *Colvert Dairy Products*,[13] the Tenth Circuit denied enforcement of the Board's order where the Board, in adopting the trial examiner's finding *in toto*, considered statements made by an employer to assembled employees immediately preceding an election, as background evidence establishing a union animus. Such inference was relied upon notwithstanding the finding that the employer had not committed any unfair labor practice by assembling the employees and reading the prepared statements to them. Although the court emphasized that evidence of attitude is material to, or admissible in, the determination of intent or the evaluation of credibility in labor cases, the court held that "statements," otherwise protected by section 8(c), cannot serve as the "determinative" foundation for unfair labor practice findings. Reading the Board's decision as giving such weight to the employer's statements, the court set aside the Board's order.

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[10] *N.L.R.B.* v *Floridan Hotel of Tampa, Inc*, 318 F. 2d 545. This case had reached the Fifth Circuit earlier, 300 F. 2d 204, and had been remanded to the Board because the court could not agree with the Board that the hotel had sought to restrict all employees in wearing buttons, not just those in regular contact with the hotel guests 137 NLRB 1484.

[11] *N.L.R.B.* v. *Power Equipment Co.*, 313 F. 2d 438.

[12] *Id.* at 442.

[13] *N.L.R.B.* v. *Colvert Dairy Products Co.*, 317 F. 2d 44. Petition for rehearing denied June 6, 1963.

2. Employer Obligation to Dissident Employee Groups

The courts had occasion to consider a number of cases involving relations between employers and groups of dissident employees where a union was the recognized representative of all the employees.

In *Lundy Manufacturing Co.*,[14] the Second Circuit sustained the Board's finding that despite the presence of a recognized union, in the absence of a functioning grievance procedure, a dissident group may process grievances. The Seventh Circuit in *Sunbeam Lighting*,[15] however, rejecting the Board's finding that a majority of the employees struck in support of bargaining demands, held that an employer may discharge employees comprising a minority, as found by the court, who strike in protest of a "final offer" by the company which the certified representative had not yet presented to the employees for consideration, as it had promised the employer to do.

The First Circuit, in *Simmons, Inc.*,[16] contrary to the Board's finding, held that a strike by a majority of the company's employees to protest the discharge of five dissident committeemen was unprotected activity, even though one of the discharges was an unfair labor practice. The court concluded that the strike would have occurred even if there had been no illegal discharge and hence could not be deemed an unfair labor practice strike; and further the employees as economic strikers were not entitled to the protection of the Act since the strike was in breach of a no-strike clause in the contract between the employer and the bargaining representative and, in a sense, in derogation of the bargaining agent's authority. To like effect, the Second Circuit in the *Eskin* case,[17] affirming the Board, held that a company could discharge a disaffected majority of its employees who struck because of the discharge of two employees for their failure to pay their initiation fees and dues to the statutory bargaining agent. The walkout was not only unprotected but unlawful, since it violated the no-strike provision of the collective-bargaining contract and had as its purpose to force the company to repudiate the union security provision of the contract or to negotiate directly with the dissident group rather than with the union.

3. Discrimination Against Employees

a. Replacement of Locked-Out Employees

In *Brown Food Store*,[18] the Board had concluded that nonstruck employers, who were members of a multiemployer unit, violated

[14] *N.L.R.B.* v. *Lundy Mfg. Co.*, 316 F. 2d 921.
[15] *N.L.R.B.* v. *Sunbeam Lighting Co., Inc.*, 318 F. 2d 661.
[16] *Simmons, Inc.* v. *N.L.R.B.*, 315 F. 2d 143.
[17] *Confectionery & Tobacco Drivers (M. Eskin & Son)* v. *N.L.R.B.*, 312 F. 2d 108.
[18] *N.L.R.B.* v. *Brown Food Store*, 319 F. 2d 7 (C.A. 10)

section 8(a) (1) and (3) by locking out and then temporarily replacing their employees. The Board majority found the situation distinguishable from that in *Buffalo Linen*[19] on the ground that it could not be said that the nonstruck employers were acting to protect the integrity of the multiemployer unit, as in that case, but rather that here the action was "retaliatory" in purpose. The Tenth Circuit denied enforcement of the Board's order on the ground that the Board's view rendered the *Buffalo Linen* lockout privilege "largely illusory," for the employers could exercise it only by forgoing their basic right, given by *Mackay Radio & Tel. Co.*,[20] to replacement of employees in order to continue operations.

b. Organization of Plant To Render Craft Unit Inappropriate

In the *Weyerhaeuser Co.* case,[21] the Board had concluded that the company's reorganization of its printing department in such a manner as to intentionally render a lithographic unit inappropriate, constituted interference with the employees' organizational rights, violative of section 8(a) (1), and also discriminated against the lithographic employees to discourage membership in their union, in violation of section 8(a) (3). The Seventh Circuit denied enforcement, holding that there was no evidence that the company's institution of a new program of training and interchange of employees was motivated by union animus or that such conduct interfered with or discriminated against any employees who may have wished to become members of the lithographic union. In the view of the court, there was no reasonable connection between the company's conduct and the employees' rights.

4. The Collective-Bargaining Obligations of Employers and Labor Organizations—Section 8(a) (5) and 8(b) (3)

The parallel provisions of section 8(a) (5) and 8(b) (3) of the Act require good-faith bargaining between an employer and a union which is the statutory representative of its employees. Significant cases decided during the year concerned issues pertaining to the obligation to furnish information preliminary to arbitration, mandatory subjects of bargaining, and unilateral decisions to subcontract.

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[19] *Truck Drivers Local Union No 449, International Brotherhood of Teamsters, etc.* v. *N.L.R.B.*, 353 U.S. 87; see Twenty-first Annual Report p. 135 and Twenty-second Annual Report, p. 116.

[20] *N.L.R B.* v. *Mackay Radio & Tel. Co.*, 304 U.S. 333. In *Mackay*, the Supreme Court established the general right of a struck employer to preserve his business by hiring replacements for economic strikers.

[21] *Weyerhaeuser Co.* v. *N.L.R.B.*, 311 F. 2d 19.

a. Furnishing of Information Preliminary to Arbitration

In the *Sinclair Refining Co.*, case [22] the Fifth Circuit denied enforcement of the Board's order requiring the employer to furnish the union with data which the union claimed it needed before deciding whether to proceed with arbitration in a grievance case. Relying upon the Supreme Court's arbitration case trilogy,[23] the Court held that since the grievance involved a threshold question of contract interpretation, the company could not be found guilty of a refusal to bargain in failing to supply the data until the relevancy of the data sought had first been determined under the grievance and arbitration procedures of the contract.

b. Mandatory Subject of Bargaining

Two cases involved the question of mandatory subjects of bargaining. In one of these [24] the Fourth Circuit, relying on the *Borg-Warner* case,[25] agreed with the Board that an indemnity provision sought by an employer was a nonmandatory subject of bargaining. In *Arlington* the indemnity proposal provided for compensation to the employer by the union for damages that might result from action by third parties whose conduct was not within the actual control of either party to the agreement. In agreeing with the Board, the court observed, the "indemnity proposal cannot be found to be a mandatory subject because it, like the performance bond, is related to security for the contracting party (the proponent) rather than relating to a benefit or security for the employees." The court observed that while such clauses provided reasonable protection, "neither provision relates to 'wages, hours, and other terms and conditions of employment.' "

In the other case,[26] the employer refused to comply with a union's contract demand that it contribute to an industry promotion fund, contending that it was not a mandatory subject of bargaining. The Sixth Circuit agreed with the Board's rationale that "To hold . . . under this Act, that the party must bargain at the behest of another on any matter which might conceivably enhance the prospects of the industry would transform bargaining over the compensation, hours, and employment conditions of employees into a debate over policy objectives." Accordingly the court affirmed the Board's holding that the question of participation in an industry promotion fund is not a mandatory subject of bargaining because it is neither wages, hours, nor a term or condition of employment.

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[22] *Sinclair Refining Co.* v *N L R B.*, 306 F. 2d 569 (C.A. 5).

[23] *Steelworkers* v. *American Manufacturing Co*, 363 U.S 593; *Steelworkers* v. *Enterprise Wheel and Car Co.*, 363 U S. 593; *Steelworkers* v. *Warrior and Gulf Navigation Co.*, 363 U S. 574.

[24] *N.L R B.* v. *Arlington Asphalt Company*, 318 F. 2d 550, (C A. 4).

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

[26] *N.L.R.B.* v. *Detroit Resilient Floor Decorators Local 2265*, 317 F. 2d 269 (C.A 6).

c. Unilateral Termination of Operations

In *Town and Country Manufacturing Co., Inc.*,[27] the Fifth Circuit agreed with the Board that the employer's determination to subcontract its trailer-hauling operation and consequently discharge its drivers was the result, at least in part, of the employer's desire to rid itself of the union. Accordingly, the court held that the discharge of the union employees without first bargaining with the union on the question of subcontracting out its work constituted a violation of section 8(a)(3), (5), and (1) of the Act. The court cautioned that the employer was not under a duty to agree with the union and that it was not holding that the work may not be contracted out. Rather, the employer must in good faith bargain upon the question "whether the company should not return to its former method of doing its hauling with its own employees."

C. Union Unfair Labor Practices

The more important issues decided by the courts of appeals in cases under section 8(b) concerned the reach of paragraph (2), which bans unions from causing or attempting to cause discrimination in employment; prohibited secondary activity under paragraph (4); limitations upon union imposition of dues and initiation fees under paragraph (5); and prohibited organizational or recognitional picketing under paragraph (7). Cases dealing with prohibited hot cargo objectives under section 8(e) were also considered in several instances.

1. Causing Discrimination by an Employer

In *Local 294*[28] the Second Circuit, reversing the Board, held that the union did not violate section 8(b)(2) by causing an employer to deny the regular assignment of "extra" trips to a union truckdriver in order to effectuate the union's policy of keeping the "extra" trips available for unemployed drivers. The court found that these facts did not establish that the union was motivated by considerations having to do with union membership or activity, one of the requisites of an 8(b)(2) violation. In the absence of discrimination based on these considerations, the court held that it was irrelevant that the union's action had the effect of encouraging union membership. The court rejected "the proposition . . . that Section 8(b)(2) is violated because the display of the union's power over the priority status of employees" encouraged union membership. It held that a union does not violate section 8(b)(2) unless the discrimination which the union seeks would constitute a violation of section 8(a)(3) if the employer

[27] *Town & Country Mfg. Co., Inc.* v *N.L.R.B.*, 316 F. 2d 846 (C.A. 5).
[28] *N.L.R.B.* v. *Local 294, International Brotherhood of Teamsters, etc*, 317 F. 2d 746.

acted with the same motivation as the union, but without union suggestion or compulsion. However, in a comparable situation the Third Circuit in a brief *per curiam* opinion in *Local 65* [29] enforced the Board's order, where a union was found to have violated section 8(b)(2) by causing the discharge of a union member who disregarded union work rules concerning starting and quitting times. The discharge was found to be in furtherance of union discipline.

2. Limitations Upon Union Imposition of Dues and Initiation Fees

In *Food Fair Stores*,[30] the Third Circuit sustained the Board's conclusion that by exacting payment of a strike assessment—imposed by the union to aid strikers at another chain of foodstores—from employees as a condition of their continued employment, both the company and the union violated the Act. It affirmed the Board's holding that a strike assessment levied by a union upon its members is not encompassed within the term "periodic dues" as used in section 8(a)(3) and 8(b)(2) of the Act. The court, in modifying the Board's reimbursement order, held those employees who, before the threats were made by the company and the union, had voluntarily signed authorizations permitting the checkoff of "membership dues, initiation fees and assessments," were not entitled to reimbursement as were the rest of the employees.

In the first such court case to arise under section 8(b)(5) of the Act, which makes it an unlawful practice to "require of employees covered by an agreement authorized under subsection (a)(3) the payment, as a condition precedent to becoming a member of such organization, of a fee in an amount which the Board finds excessive or discriminatory under all the circumstances," the Third Circuit in *Television and Radio Broadcasting Studio Employees, Local 804*,[31] upheld the Board's finding that a union's increase of its initiation fee from $50 to $500 was excessive, discriminatory, and therefore violative of the Act. The Board had relied on, *inter alia*, the fact that no other union in the area representing the same trade charged comparable fees, that the increase was tenfold, and that the real purpose of the raise was to curtail the company's practice of hiring part-time employees, which reduced the full-time employment available to union members. The court rejected the argument that only employees, and

[29] *N.L.R.B.* v *Local 65, United Brotherhood of Carpenters and Joiners of America, AFL–CIO*, 318 F. 2d 419.

[30] *N.L.R.B.* v. *Food Fair Stores, Inc. and Retail Food Clerks Union, 1245, Retail Clerks International Assn.*, AFL–CIO, 307 F. 2d 3.

[31] *N.L.R.B.* v. *Television & Radio Broadcasting Studio Employees, Local 804 (Triangle Publications)*, 315 F. 2d 398.

not the company as here, could properly file an 8(b)(5) charge. The court also upheld the Board's remedy which called for the union's reimbursement of all initiation fees in excess of $50, finding that basing the order upon the union's fee scale as it existed before the discriminatory change did not establish a presumption that any fee in excess of that amount was discriminatory.

3. Prohibited Secondary Activities

a. Refusal To Refer Employees

In *Local 825, International Union of Operating Engineers*,[32] the Third Circuit sustained the Board's finding that the respondent violated section 8(b)(4)(ii)(B) of the Act by refusing to refer union members to a neutral employer, although obligated to do so by contract, with the object of forcing that neutral employer to cease doing business with a subcontractor, in order to force the subcontractor to recognize and bargain with the union. The court noted that while the statute deals with secondary boycotts, its provisions are not restricted to situations involving the use of force or violence as a means of bringing pressure against the secondary employer, but include economic sanctions as well. Here, the respondent's refusal to refer employees was a device to exert secondary pressure against the subcontractor to require him to recognize the union and to this extent the refusal was unlawful.

b. Picketing at Railway Gate

In the *Carrier Corporation* case [33] the company petitioned the Second Circuit to review the Board's dismissal of a complaint that the union had violated section 8(b)(4)(i) and (ii)(B) by picketing a gate on the railroad right-of-way adjacent to the company's premises while the railroad was performing services incident to the normal operations of the company. The Board had found that the work of the railroad employees passing through the gate was related to the normal operations of the company, which relied on railroad as well as on trucking service to obtain deliveries and to ship its finished products, and concluded that the picketing at the gate was legitimate primary activity, within the meaning of *Local 761*.[34] The Second Circuit set aside the Board's dismissal of the complaint, concluding that the railroad picketing was "secondary," not "primary," because in picketing at the railroad gate "the union was not furthering

[32] *N.L.R.B.* v. *Local 825, International Union of Operating Engineers, AFL–CIO*, 315 F. 2d 695.

[33] *Carrier Corp* v. *N.L.R.B.*, 311 F. 2d 135. Union's petition for certiorari granted 373 U.S. 908.

[34] *Local 761, International Union of Electrical, Radio & Machine Workers* v. *N.L.R.B.*, 366 U.S. 667. Twenty-sixth Annual Report, pp. 157–158.

its legitimate objective of publicizing its dispute to Carrier employees . . . . In picketing on the railroad right of way the union demonstrated that its manifest, and *sole*, objective was to induce or encourage railroad employees, or to coerce the railroad, to refuse to handle Carrier goods or otherwise to deal with the primary employer." The court distinguished *Local 761*, finding that it "dealt with picketing at the premises of the primary employer," whereas in *Carrier* "the union activity occurred on the right of way of the New York Central . . . ."

c. Inducement of Supervisors

The Board has previously held, with court approval, that the term "any individual employed by" in section 8(b)(4)(i) does not include corporate officers, high-ranking supervisors and others high up the management ladder, but that it does apply to rank-and-file workers and minor supervisors who, although they are management's representatives at a low level, are through their work association and other interests still closely aligned with those whom they direct and oversee.[35] However, in *Servette, Inc.*,[36] the Ninth Circuit held, contrary to the Board's interpretation, that the term "individual" could not properly be restricted to low level management personnel and that store managers, whom the respondent union sought to persuade not to stock merchandise distributed by Servette, were "individuals" within the meaning of the pertinent section. Congress, the court concluded, intended by the plain and unambiguous language used, to include all supervisors under its ban.

d. Scope of Publicity Proviso

In *Great Western Broadcasting Corp.*[37] the Ninth Circuit also disagreed with the Board's holding that threats to handbill all advertisers using the services of a television station so they would discontinue their patronage of the station were protected by the publicity proviso to section 8(b)(4).[38] In the court's view, the proviso only applied to a primary employer who manufactured a physical product, and did not include a television station which merely furnished a service. According to the court, the context in which the words "produce" and "product" are found indicates that in using them Congress was refer-

[35] *N.L.R.B.* v. *Local 294, Teamsters,* 298 F. 2d 105 (C.A. 2), Twenty-seventh Annual Report, p 219

[36] *Servette, Inc.* v. *N.L.R.B.,* 310 F. 2d 659, Board petition for certiorari granted, 373 U.S. 804.

[37] *Great Western Broadcasting Corp., d/b/a KXTV* v. *N.L.R.B. (American Federation of Television & Radio Artists, etc.),* 310 F. 2d 591 (1962), Board petition for certiorari granted, 373 U.S. 804.

[38] For a discussion of the Board's rationale see Twenty-seventh Annual Report, pp 162–164.

ring to one kind of economic activity and its result rather than all economic activity and its result. While the term "product" is not defined in the Act, the context indicated to the court that, in the proviso, Congress was referring to the activity of a primary employer in applying capital, labor, and enterprise to effect the conversion of raw materials in his possession into a more finished tangible article through physical creative activity, rather than referring to the rendition of a service.

4. Prohibited Hot Cargo Objectives

Four cases decided by the courts during the year further defined the objectives prohibited under section 8(e) and section 8(b)(4) of the amended Act. Two cases expressed judicial approval of the Board's approach to the "entering into" language of section 8(b)(4)(A).

a. Validity of Agreement Under Section 8(e)

In *District 9, IAM* [39] the Court of Appeals for the District of Columbia Circuit affirmed the Board's holding that an agreement requiring the employer to give preference to shops having contracts with the union, whenever the employer subcontracted work covered by the contract, was prohibited by section 8(e) and 8(b)(4)(ii)(A). The court rejected the union's contention that the clause was merely an attempt to preserve bargaining unit work, finding that the limitation was "not strictly germane to the economic integrity of the principal work unit." The court quoted with approval the Board's decision wherein it found no distinction between a clause prohibiting the handling of products produced by a nonunion employer, and a clause such as the instant one, prohibiting subcontracting work to a nonunion firm.

The same court in *New York Mailers' Union No. 6* [40] agreed with the Board that the union violated section 8(b)(4)(i) and (ii)(B) by ordering mailroom employees of three New York newspapers not to handle Sunday supplements printed by a company at which another local of the same union was on strike. While the court recognized that Congress had preserved the right of unions not to handle "struck work," it only included "farmed-out" struck work, which but for the strike would have been done by the striking employees. Goods customarily handled by the employees of the secondary employer were not within the exception. The court also found it immaterial that there was a provision in the contract between the union and the three newspapers that the employees would not have to handle struck goods;

[39] *District 9, IAM* v. *N.L.R.B.*, 315 F. 2d 33

[40] *New York Mailers Union No. 6, ITU* v. *N.L.R.B.*, 316 F. 2d 371.

that other employees were available to do the work; or that the union represented both the primary and secondary employers' employees.

In the *Los Angeles Mailers* case [41] a similar clause prohibited the employer from making his employees handle goods from shops with whom the union was involved in a strike or lockout. Affirming the holding that such clause violated section 8(e), the District of Columbia Circuit agreed with the Board's reasoning that there was no distinction between an employer agreeing that he will not do business with another employer and, on the other hand, agreeing that he will not require his employees to handle outside merchandise from another employer. Such an employer is actually agreeing to stop doing business with the other employer under the specified circumstances.

The Ninth Circuit in *Lithographers Local 17*,[42] reviewed five clauses found by the Board to be illegal under section 8(e). The clauses were substantially the same as those found illegal by the Board in another case, subsequently affirmed by the Fifth Circuit in *Employing Lithographers of Greater Miami* v. *N.L.R.B.*[43] The Ninth Circuit concurred with the Fifth Circuit in finding violative of section 8(e), a "trade shop" clause, permitting the union to reopen and terminate the agreement if the employer requested his employees to handle nonunion goods, a "termination clause," allowing the union to terminate the agreement if the employer asked the employees to handle struck work regardless of whether it was "customary" or "farmed-out" work, and a "refusal to handle clause" whereby the employer agreed not to discharge or discipline an employee who refuses to handle nonunion or struck work. The court, in disagreement with the Fifth Circuit, found that "struck work" and "chain shop" clauses were legal. The "struck work" clause required the employer not to render assistance to any employer struck by the union with regard to work which was not customarily handled by the primary employer. It was held lawful since in the court's view it only embodied the Board's "ally doctrine." The "chain shop" clause, which obligated the employer not to request his employees to do his own work at any of his plants if the union was on strike or locked out at another of his plants or the plant of a subsidiary, was held lawful since its purpose was not to contractually bind a primary employer not to handle the work of another person or employer, even assuming a subsidiary could be an "other" employer.

b. Actions Which Constitute "Entering Into"

In *Los Angeles Mailers Union No. 9*,[44] the Court of Appeals for the District of Columbia rejected the union's contention that coercive

[41] *Los Angeles Mailers Union No. 9, ITU* v *N.L.R.B.*, 311 F. 2d 121

[42] *N.L.R.B.* v. *Amalgamated Lithographers of America (Ind.) et al.*, 309 F 2d 31. Union petition for certiorari denied.

[43] 301 F. 2d 20. See Twenty-seventh Annual Report, p. 223–224.

[44] *Supra.*

activity to compel an employer to comply with a preexisting hot cargo agreement was not violative of section 8(b)(4)(ii)(A) which makes it unlawful for a union to force an employer to "enter into any agreement which is prohibited by section 8(e)." The court, in agreeing with the Board, stated that the thrust of Congress' effort in the area of the secondary boycott has been to do away entirely with contractual provisions which come within section 8(e), and that for a union to seek to compel observance of such an agreement "is in substance to have it agreed to, which is no different from having it entered into."

5. Prohibited Organizational or Recognitional Picketing

a. Picketing Within 1 Year of Valid Election

Section 8(b)(7)(B) prohibits recognitional or organizational picketing by a noncertified union where a valid election has been conducted under section 9(c) within the preceding 12 months. In *Local 182*,[45] the union picketed the employer before a representation election and continued the picketing after losing it. The Second Circuit affirmed the Board's holding that the union's activities after the election—union agents sat in parked cars near the employer's premises, having previously planted two signs in a snowbank abutting the employer's entrance—constituted "picketing" within the meaning of section 8(b)(7). It further agreed that the picketing was for the object of "forcing or requiring an employer to recognize or bargain" with the union, which conduct, the court stated, "the language and structure of § 8(b)(7), its legislative history, its manifest purpose, its administrative construction, and such judicial decisions as have been rendered, unite to negate . . . ."[46] The court enforced the Board's order which it said would not be rendered moot merely by a lapse of time since "[a] direction to enforce the Board's order necessarily connotes judicial approval of its findings and conclusions that respondent's conduct violated § 8(b)(7), which are essential to its validity, and this might furnish 'reasonable cause to believe' under § 10(l) with respect to subsequent picketing of the same general nature by the Union against the Company."

b. Proof of Objectives of Picketing

Section 8(b)(7)(C) limits recognitional or organizational picketing by a noncertified union, not otherwise barred by section 8(b)(7)(A) or (B), to a reasonable period not to exceed 30 days, unless a

[45] *N.L.R.B.* v. *Local 182, International Brotherhood of Teamsters, etc.*, 314 F 2d 53 (C.A. 2).

[46] The court rejected the union's contention that the proviso to sec 8(b)(7)(C) which privileges picketing "for the purpose of truthfully advising the public (including consumers)" also applied to sec. 8(b)(7)(B) picketing "where within the preceding twelve months a valid election under section 9(c) of this Act has been conducted."

representation petition is filed prior to the expiration of that period. Absent the filing of a timely petition, continuation of the picketing beyond the reasonable period, or 30 days, violates the section.

In two cases where the Board found violations of this section, the object of the picketing was evaluated by the courts. In *Local 3*,[47] the Second Circuit refused to accept the Board's finding that the union's object in picketing a construction contractor was to force the contractor to recognize it as representative of the contractor's electrical workers. The Board had found that the union's efforts to gain recognition from the employer and the picket sign initially used by it plainly showed that the picketing began with a recognitional object and that, in the circumstances of the case, the mere change in legend of the picket signs after 30 days did not show a change in the purpose of the uninterrupted picketing. Moreover, the picket signs as changed did not reflect either of the objectives which the union subsequently asserted it sought by the prolongation of the picketing. Having found that the picketing continued to have a recognitional objective and did not have an informational one, the Board concluded that it need not determine whether the union's second picket sign would have satisfied the informational picketing proviso of section 8(b)(7)(C).

The Second Circuit remanded the case, specifying two reasons for its action. First, it thought the Board might have improperly treated the wording on the two picket signs as evidence of an illegal objective under section 8(b)(7), since the wording of the picket signs might on its face be within the protection of the informational picketing proviso. And second, if the Board, in concluding that the picketing lacked an informational purpose, relied upon its previous finding that the union picketed the employer with a recognitional objective, it might have misconstrued the import of subparagraph (C) by failing to consider that the existence of the informational purpose renders the prohibitions of the section inoperative even though the object of the picketing is recognitional. The case was remanded for further consideration of whether the picketing was "for the purpose of truthfully advising the public," and more specifically, for "a finding of whether or not the union's tactical purpose was to signal economic action, backed by organized group discipline."

However, in *Local 705*,[48] the District of Columbia Circuit, in a *per curiam* decision, affirmed the Board's finding that the object of the union's picketing was to force or require the company to recognize or bargain with it as representative of its employees, in violation of section 8(b)(7)(C) of the Act. The court stated it was immaterial that requiring the company to recognize and bargain with the union

[47] *N.L.R.B.* v. *Local 3, IBEW, AFL–CIO*, 317 F. 2d 193.
[48] *Local 705, Teamsters et al* v. *N L.R.B*, 307 F. 2d 197.

was not the *sole* object of the picketing and that the picketing may have had an object that was proscribed by another section of the Act.

D. Representation Issues

1. Appropriateness of Single-Location Units

Bargaining orders issued by the Board in two cases arising under section 8(a)(5) were contested, unsuccessfully, on the ground that the Board had misapplied the law or exceeded its statutory discretion in finding single-location units of employees of a multilocation enterprise appropriate for collective-bargaining purposes. In *Quaker City* [49] the Fourth Circuit enforced the order in the case in which the Board reversed the policy established in *Metropolitan Life* [50] under which the Board would avoid certifying bargaining units of insurance agents less than statewide or companywide in scope. The Board had pointed out that its policy established in *Metropolitan Life* was based on the expectation that debit insurance agents would be organized on a statewide basis and since the expected statewide organization had not developed, it would no longer adhere to that restrictive policy. The court affirmed the Board's action in finding a single district office unit of debit insurance agents to be an appropriate unit, rejecting the employer's contention that the Board's finding violated section 9(c)(5) of the Act because it gave controlling weight to the extent of union organization. The court found that the extent of organization was "only one of the factors leading to the Board's decision" and was not the controlling factor.

In *Mountain State Telephone*,[51] the Board had certified a unit of all janitors, building mechanics, and garage attendants employed by the employer in its Billings, Montana, plant. The employer contended that the Board's finding that 10 employees in 1 department of a single exchange in one State, with no prior history of collective bargaining, constitute an appropriate bargaining unit was contrary to the Board's announced policy in telephone utility cases and therefore arbitrary and capricious. The Tenth Circuit, observing that in a number of cases involving integrated telephone companies the Board has stated that systemwide units are normally most appropriate, nevertheless held that it is the function of the Board, not the courts, to make the determination and that the Board's unit determination in the case was neither arbitrary nor capricious.

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[49] *N L R.B.* v *Quaker City Life Insurance Co.*, 319 F. 2d 690.

[50] *Metropolitan Life Insurance Co.*, 56 NLRB 1635.

[51] *The Mountain States Telephone & Telegraph Co* v. *N.L R.B*, 310 F. 2d 478, certiorari denied 371 U.S 875

E. Remedial Orders

Enforcement of Board remedial orders in several significant cases turned upon the formula for computation of the amount of monetary restitution awarded an employee who had been discriminatorily terminated, and upon the extent of employer obligation to remedy a unilateral subcontracting of operations.

1. Backpay Awards

In *A.P.W. Products Co.*,[52] the Second Circuit upheld a backpay reimbursement order in which the Board discontinued the practice originated in 1936 in the *Haffelfinger* case [53] of tolling backpay awards from the date of the intermediate report, not awarding such relief until the date of the Board decision making such an award. The Board had ordered that the discriminatee be reinstated with backpay and that such pay be computed without excluding the tolling period, thus overruling the *Haffelfinger* decision. The court accepted the Board's determination that the *Haffelfinger* rule operated "in the direction of benefiting the wrongdoer at the expense of the wronged—a result antithetical to the fundamental aim of the Board's remedial authority and powers." The court rejected the company's contentions that the Board could not overrule *Haffelfinger* by an adjudicative decision having retroactive effect under the procedure it followed. In granting the Board's petition for enforcement, the court said:

> . . . [E]ven the highest tribunal has been known to overrule its own precedents, on matters of some moment, though the issue had not been argued before it. . . . The arguments A.P.W would make on remand have already been made by the dissenting members and rejected by the majority Although we thus do not altogether approve the procedure here, we nevertheless grant enforcement.

The Second Circuit also approved [54] of the Board's action in requiring the payment of 6 percent interest as part of the backpay award as an implementation of the Board's declared policy to make the discriminatee more nearly whole for the wrong inflicted.[55] The court held that such an award was within the broad remedial authority of the Board and that it was immaterial that the Board had not heretofore seen fit to exercise its authority in this manner. Similarly, the District of Columbia Circuit, in approving the award of interest on backpay in *Aztec Ceramics*,[56] held that it could not regard changes in remedial mechanism as beyond the Board's powers so long as they

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[52] *N L R B.* v. *A P W. Products Co.*, 316 F. 2d 899.

[53] *E. R. Haffelfinger Co*, 1 NLRB 760, 767 (1936)

[54] *Reserve Supply Corp. of L I, Inc.* v. *N L R B.*, 317 F 2d 785 (C A 2).

[55] In *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962), the Board for the first time awarded interest on backpay, thereby reversing its longstanding policy to the contrary

[56] *International Brotherhood of Operative Potters, AFL–CIO* v *N L R B et al.; Aztec Ceramics Co.* v. *N L.R B. et al*, 320 F. 2d 757 (C.A D C).

reasonably effectuate the congressional policies underlying the statutory scheme, citing *N.L.R.B.* v. *Seven-Up Bottling Co.*, 344 U.S. 344 (1953).

2. Reinstatement of Discontinued Operations

In *Town & Country Mfg. Co.*,[57] the Fifth Circuit affirmed the Board's finding that the company's unilateral determination to subcontract its hauling work and the consequent discharge of its drivers was the result in part at least of the company's determination to rid itself of the union. The court enforced the Board's order requiring the company to rescind its plan to subcontract the hauling operations, reinstate its drivers with full backpay, and bargain with the union about any change in its methods of operation.

In *Sidele Fashions, Inc.*,[58] the Third Circuit in a *per curiam* opinion enforced a Board order which because of the circumstances of the case required the employer to reinstate his operations in Philadelphia only if he failed to offer employment at his South Carolina plant to all employees unlawfully terminated at Philadelphia, to their former or substantially equivalent positions, and to provide them with travel and moving expenses if they accepted. However, in two cases[59] the Fourth and Sixth Circuits emphasized that enforcement of Board orders requiring reinstatement of discontinued activities of employers would not be granted where the discontinuance was prompted by legitimate business motives and lacked illegal purposes or motivation.

[57] *Town & Country Mfg. Co., Inc* v. *N L R B.*, 316 F. 2d 846

[58] *Philadelphia Dress Joint Board, International Ladies' Garment Workers' Union, AFL–CIO* v *N L R B*, 305 F 2d 825

[59] *N.L R B* v *Preston Feed Corp*, 309 F. 2d 346; *N L R B.* v *E. S. Kingsford, etc.*, 313 F. 2d 826 See also *N.L R.B.* v. *New England Web, Inc., et al*, 309 F. 2d 696, where the First Circuit found that the employer had not violated any statute by closing down his business.

VIII

Injunction Litigation

Sections 10 (j) and (l) authorize application to the U.S. District Courts, by petition on behalf of the Board, for injunctive relief pending hearing and adjudication of unfair labor practice charges by the Board.

A. Injunction Litigation Under Section 10(j)

Section 10(j) empowers the Board, in its discretion, to petition a district court, after issuance of an unfair labor practice complaint against an employer or a labor organization, "for appropriate temporary relief or restraining order" in aid of the unfair labor practice proceeding pending before the Board. In fiscal 1963, the Board filed eight petitions for temporary relief under the discretionary provisions of section 10(j)—six against employers and two against unions.[1] Injunctions were obtained in six cases, denied in one case, and one case was dismissed on a procedural issue.[2] Orders were granted against employers in four cases, three of which involved alleged violations committed during the course of the employer's opposition to union organizing campaigns, and one involving an employer's refusal to bargain with a representative certified by the Board. Orders were obtained against unions in two related cases involving alleged violations of the unions' obligation to bargain in good faith.

In *Tiffany Tile Corporation*,[3] the regional director had scheduled an election following organizational activity by the union and the filing of a petition for an election. Acts and conduct of the company in opposition to the union and in laying off numerous employees who had signed union authorization cards became the basis of an unfair labor practice complaint pending before the Board. The regional director postponed and rescheduled the election so that a section 10(j)

[1] See tables 18 and 20 in appendix

[2] *Madden* v. *Continental Distilling Sales Co* (D C N.D Ill.) Civil Action No. 3 C 9.

[3] *Boire* v. *Tiffany Tile Corp.* (D.C. Fla.), Apr. 13, 1963.

injunction to prevent continuation of the employer's unlawful conduct could be sought in the interim. The district court granted the petition for a temporary injunction and ordered the employer to cease interfering with, restraining, or coercing employees in the exercise of their rights under section 7 of the Act, proscribing the employer from interrogation of employees, threatening them with discharge or other reprisals, engaging in surveillance, discouraging membership in the union by laying off, discharging, failing or refusing to hire or reinstate employees, and threatening to close or move its plant. The court also ordered the employer to place all employees laid off or discharged as a result of their union activity on a preferential hiring list, pending determination of the unfair labor practice charges.

In *Burlington Industries, Inc.*,[4] the district court denied a petition for a section 10(j) injunction, where the Board, prior to holding a scheduled election, sought to enjoin the employer from engaging in certain section 8(a)(1) conduct designed to coerce the employees into voting against the union. The hearing on the Board's petition was set by the court for a date 20 days after the election, which the union lost.[5] Subsequently, the petition was amended, alleging that it could fairly be anticipated that, unless enjoined, the employer would continue the unlawful conduct. The court denied the injunction since no election was pending, holding that to grant such an injunction would put the employer under the intimidating influence of a court order for an indeterminable future period. However, the court indicated that its action would not preclude resort to its authority when an election was pending, should the employer engage in a repetition of the alleged conduct.

In *Manning, Maxwell and Moore, Inc.*[6] the employer, following a consent agreement to be bound by a Board-directed election, nevertheless refused to bargain with the union after it won the election and had been certified by the Board. The company asserted that the election had been vitiated by alleged threats made by the union to employees. The union filed section 8(a)(5) charges and the trial examiner issued a decision finding a refusal to bargain in violation of the Act. The employer, however, contended it had no obligation to honor the certification until it had been reviewed by a court and the employer thereafter ordered to bargain. It had expressed its intention to continue to operate its plant, including its direct employee relations, "without bargaining."

[4] *Penello* v *Burlington Industries, Inc, Vinton Weaving Company Plant,* 54 LRRM 2165 (D C Va.).

[5] Conduct of the type sought to be enjoined by the sec 10(j) proceeding was made the basis for objections to the election. The regional director found the objections meritorious and set aside the election with provision for another at a later date.

[6] *LeBus* v. *Manning, Maxwell and Moore, Inc,* 218 F. Supp 702 (D C. W. La).

Following issuance of the trial examiner's decision the Board petitioned the district court for an injunction directing the employer to honor the certification and bargain collectively with the union, pending ultimate disposition of the unfair labor practice charges. The district court, taking into account the factors that the employer had agreed to be bound by the regional director's rulings on objections to the election, that the regional director had reasonably concluded that the employer's objections raised no material or substantial issues, and further, that there was some evidence that the employer was threatening to take unilateral action with respect to terms and conditions of employment, issued the injunction "for the protection of the public interest and in aid of a policy which Congress had made plain."

In *Gas Appliance Supply Corporation*,[7] the district court refused the Board's request for an injunction directing the company to place alleged discriminatees, discharged during an organizing campaign, on a preferential hiring list and to bargain with the union. However, since a *prima facie* case of section 8(a)(1), (3), and (5) violations by the company had been made out, the court enjoined the company from threatening to close its plant or move its operations, engaging in any form of reprisal against employees if they joined or remained members of the union, illegally conditioning employment by requiring employees to refrain from engaging in collective bargaining through the union, or by any other means interfering with employees' section 7 rights, pending Board determination of the allegations of the complaint.

In *Sea-Land Service, Inc.*,[8] a company engaged in ship transportation service with land delivery to Puerto Rico had collective-bargaining agreements with the International Longshoremen's Association covering employees at separate terminals at San Juan and Ponce. When the ILA International ordered its Local 1855 at Ponce to dissolve and merge with another local, union members at Ponce refused to do so, disaffiliated from the ILA, and formed the Insular Labor Organization (ILO). Subsequently, in a Board-conducted election, the ILO was selected by a majority of the employees at Sea-Land's Ponce terminal to represent them. The company refused to recognize or bargain with ILO, and unilaterally transferred its Ponce cargo operations to its San Juan terminal where the work involved was performed by members of a local affiliated with the ILA, an action it had threatened if ILO won the election. After a strike in protest against these unfair labor practices terminated, the ILO made an unconditional offer to return to work but the company refused to rein-

[7] *Getreu* v. *Gas Appliance Supply Corp., Triton Corp and Milton Keiner*, CA No. 5291 (D.C. S. Ohio); Apr 5, 1963

[8] *Compton* v *Sea-Land Service, Inc* (D.C. P.R.), Feb 20, 1963, 53 LRRM 2016 47 CCH Lab Cases ¶ 18, 140.

state the employees. The district court, concluding that there was reasonable cause to believe that the company's conduct was in violation of section 8(a)(1), (2), (3), and (5) of the Act and that necessary injunctive relief was justified pending resolution of the charges before the Board, enjoined the company from refusing to reinstate employees to their regular stevedoring work and from rendering assistance to the rival ILA in order to compel the certified bargaining representative (ILO) to dissolve and merge with the ILA.

In *Local 1800, ILA*,[9] the International Banana Handlers Council, AFL–CIO, and the banana-handling companies had reached agreement on substantially all the provisions of a new master contract covering the handling of that highly perishable commodity, as a matter separate and apart from general cargo handling. The agreement provided for the automatic incorporation of wage provisions and other economic terms from the relevant general cargo agreements then in process of negotiation, and further provided for a continuing extension of the old contract until 1 day following the date agreement was reached on general cargo contracts. By practice and the understanding of the parties the banana-handling contract was contingent upon the approval of the International before becoming effective. Although full agreement on the contract had been reached and the ILA district had approved, the International withheld its approval until agreement could be reached on all longshoremen's contracts in issue, thereby maximizing pressure on the employers, since without its approval the contract extension would not take place and the employees of the banana-handling companies were free to strike, as they in fact had done. The district court granted an injunction, sought by the Board pursuant to section 10(j), finding that the International had "patently withheld [its approval] without appearance of probable cause," and was thereby "patently availing itself of the pressure of a strike in the Gulf area to aid it in its negotiations in New York on general cargo, . . ." The court concluded that these circumstances gave the Board reasonable cause to believe the unions had violated their statutory bargaining obligations,[10] and therefore issued a preliminary injunction ordering the unions to give effect to the extended agreement.

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[9] *LeBus* v. *Local 1800, ILA, et al* (*Standard Fruit & Steamship Co.*), (D.C.E. La.), Jan 16, 1963, 52 LRRM 2500 46 CCH Lab. Cases ¶ 18, 106 See also *Johnson* v. *Local 1422, ILA, et al* (*Standard Fruit & Steamship Co & United Fruit Co*). (D.C.E S.C.), Jan 16, 1963, where a similar petition was based on violations of sec 8(b)(3) and 8(b)(4)(i) or (ii)(B) and was brought under both secs 10 (j) and (l). It involved the banana handlers' strike at the port of Charleston, S C, during the east coast strike in January 1963.

[10] The court found the violation might result from the unions' (1) failing to disclose that their negotiators were without binding authority, or (2) sending negotiators with full authority but under instructions not to sign even if agreement were reached, or (3) conditioning execution of the agreed contract upon agreement being reached on all other contracts also.

B. Injunction Litigation Under Section 10(l)

Section 10(l) imposes a mandatory duty on the Board to petition for "appropriate injunctive relief" against a labor organization or its agent charged with a violation of section 8(b)(4)(A), (B), (C),[11] or section 8(b)(7),[12] and against an employer or union charged with a violation of section 8(e),[13] whenever the General Counsel's investigation reveals "reasonable cause to believe that such charge is true and a complaint should issue." In section 8(b)(7) cases, however, a district court injunction may not be sought if a charge under section 8(a)(2) of the Act has been filed alleging that the employer has dominated or interfered with the formation or administration of a labor organization and, after investigation, there is "reasonable cause to believe such charge is true and that a complaint should issue." Section 10(l) also provides that its provision shall be applicable, "where such relief is appropriate," to violations of section 8(b)(4)(D) of the Act, which prohibits strikes and other coercive conduct in support of jurisdictional disputes. In addition, under section 10(l) a temporary restraining order pending the hearing on the petition for an injunction may be obtained, without notice to the respondent, upon a showing that "substantial and irreparable injury to the charging party will be unavoidable" unless immediate injunctive relief is granted. Such *ex parte* relief, however, may not extend beyond 5 days.

In fiscal 1963, the Board filed 215 petitions for injunctions under section 10(l).[14] As in past years, most of the petitions, 150 in number, were based on charges alleging violations of the secondary-boycott and sympathy-strike provisions now contained in section 8(b)(4)(i) and (ii)(B) of the Act.[15] Thirty-one petitions involved strikes or other proscribed conduct in furtherance of jurisdictional disputes in violation of section 8(b)(4)(D); one petition was based on a charge alleging prohibited conduct to compel an employer or self-employed person to join a labor organization in violation of section 8(b)(4)(A);

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

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

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

[14] Thirty-six of the petitions filed alleged violations of more than one section of the Act.

[15] Of these 150 petitions, 34 alleged violations of other sections of the Act as well.

and two petitions were based on charges of strikes against Board certifications of representatives in violation of section 8(b)(4)(C). Eleven cases were predicated on charges alleging unlawful hot cargo agreements under section 8(e) of the Act, which prohibits agreements between employers and labor organizations whereby the employer agrees not to do business with another employer, and 22 cases involved charges alleging strikes or other coercion to obtain such hot cargo agreements, which conduct is proscribed by section 8(b)(4)(A) of the Act. Thirty-nine petitions were predicated on charges alleging violations of the recognitional and organizational picketing prohibitions of section 8(b)(7). Of these, 7 cases involved alleged violations of subparagraph (A) by recognitional picketing when the employer was lawfully recognizing another union with which he had a contract that barred an election; 9 were based on charges alleging violations of subparagraph (B) by recognitional or organizational picketing within 12 months after a valid election among the employees; and 23 alleged violations of subparagraph (C) by recognitional or organizational picketing for more than a reasonable period without a petition for an election having been filed.[16]

During this period 76 petitions under section 10(l) went to final order, the courts granting injunctions in 70 cases and denying injunctions in 6 cases.[17] Injunctions were issued in 39 cases involving alleged secondary boycott action proscribed by section 8(b)(4)(B). In one other case, an injunction was issued enjoining violations of section 8(b)(4)(B) and also 8(b)(4)(A), which proscribes certain conduct to obtain hot cargo agreements barred by section 8(e); one also enjoined violations of section 8(b)(4)(A); and one injunction was issued enjoining the continued effectuation of such hot cargo agreements. Injunctions were granted in 13 cases involving jurisdictional disputes in violation of section 8(b)(4)(D). Four of these cases also involved proscribed activities under section 8(b)(4)(B). Injunctions were issued in 15 cases involving recognitional or organizational picketing in violation of section 8(b)(7). Of these, four involved picketing in violation of subparagraph (A) where the employer lawfully recognized another union with which he had a contract; two involved picketing where a valid election had been conducted within the preceding 12 months, in violation of subparagraph (B); and nine involved picketing conducted beyond a reasonable period of time without a petition for an election having been filed, as required by subparagraph (C).

Of the six injunctions denied under section 10(l), five involved alleged secondary boycott situations under section 8(b)(4)(B), two

[16] All of these cases and the action therein are reflected in table 20, appendix A.
[17] See tables 19 and 20 in appendix A.

of these also involved alleged unlawful conduct under section 8(b)(4)(A) to force an employer to enter into an agreement proscribed by section 8(e); the remaining case involved solely an alleged violation of section 8(b)(4)(A).

Almost without exception, the cases going to final order were disposed of by the courts upon findings that the established facts under applicable legal principles either did or did not suffice to support a "reasonable cause to believe" that the statute had been violated. Such being the basis for their disposition, the precedence value of the cases is limited primarily to a factual rather than a legal nature. The decisions are not *res judicata* and do not foreclose the subsequent proceedings on the merits before the Board. In several cases, however, legal issues of substantial importance to the nature of the injunction proceeding were determined. These included cases in which the court held that it need not accept the Board's interpretation of the statute in a matter of first impression, and cases in which the court defined the role in the injunction proceeding of a charging party who seeks to intervene.

1. Court's Discretion To Reject Board's Construction of the Statute

In the *Essex County Millwrights* [18] case the Board petitioned for an injunction under section 10(l), alleging that the respondent union had violated section 8(b)(4)(i) and (ii)(A) by having engaged in a strike to force an association of building contractors employing its members to agree to a contract provision which would permit the employees to refuse to work if nonunion employees were permitted to work on the jobsite. The Board views such a provision as a hot cargo clause since it is an implied agreement by the employers to cease doing business with other persons employing nonunion workers. Only shortly before the filing of the petition the Board had announced its first decision construing the applicable statutory provisions added by the 1959 amendments, and setting forth the construction of the statute which comprised the legal basis for the injunction proceedings in the *Essex County Millwrights* case.[19] Upon its analysis of the statutory language and the legislative history of section 8(e) and 8(b)(4)(A), the Board had concluded that although a hot cargo agreement voluntarily agreed to in the construction industry does not violate section 8(e) because of the proviso exempting that industry from the prohibitions of that section, Congress did not intend to relax the estab-

[18] *Cuneo* v *Essex County and Vicinity District Council of Carpenters and Millwrights, UBCJA* (D.C.N.J.), 50 LRRM 2979, 45 CCH Lab Cases ¶ 17,826

[19] *Construction, Production & Maintenance Laborers Union Local 383 (Colson & Stevens)*, 137 NLRB 1650, *supra*, pp 97–98.

lished construction of the statute as prohibiting strikes or coercive pressures to obtain such a clause.

Notwithstanding the Board's view of the statutory provisions in the published case, which at the time constituted the only decision by an adjudicative body responsible for interpretation of the statute, the district court, disagreeing with the Board's interpretation, concluded that there was no reasonable cause to believe that the strike was violative of the Act.[20] Since it concluded that the construction industry proviso to section 8(e) exempts labor organizations in that industry from the reach of section 8(b)(4)(A) also, it refused to enjoin the strike.[21]

In *Phillips* v. *UMW, District 19*,[22] a district court granted the Board's motion to dissolve an injunction restraining recognitional picketing. The court accepted, over objections of the company, the position of the General Counsel as to the construction of the proviso to section 10(l) that section 8(a)(2) charges of illegal support filed against the company subsequent to the granting of the injunction rendered the injunction improvident under the statute.

2. Participation by Charging Party

In two cases district courts rejected the efforts of the parties who filed the charges with the Board resulting in the injunction proceeding to intervene in that proceeding and exercise control over its conduct. In *Penello* v. *Burlington Industries*,[23] the court denied the motion of the charging union to intervene as a coplaintiff in a proceeding under section 10(j) to enjoin an employer's interference with a Board election. And in *Phillips* v. *United Mine Workers District 19*,[24] the court denied the application of the company to intervene to oppose the Board's motion to dissolve an injunction against recognitional picketing because of the filing of section 8(a)(2) charges of illegal support by the company. The company also unsuccessfully sought to institute a proceeding for alleged contempt of the injunction. In both cases the courts emphasized that under section 10(l) the charging party is afforded merely an opportunity to appear by counsel and present relevant testimony, and that to permit it to intervene formally as a "party" to the proceeding would divest the Board of its exclusive

[20] No court of appeals had then had occasion to consider the issues in the exercise of the reviewing functions of those tribunals.

[21] In *Cuneo* v. *International Union of Operating Engineers, Local 825* (D.C.N.J.), 52 LRRM 2927, 47 CCH Lab Cases ¶ 18,229, another judge in the same district denied an injunction sought on the same legal theory, citing the *Essex County Millwrights'* (*supra*, footnote 18) decision by the court as controlling, even though the Board had by then announced several more decisions affirming its view of the statute.

[22] 218 F. Supp. 103 (D C. Tenn.).

[23] 54 LRRM 2165 (D C. Va.), March 21, 1963, unreported.

[24] *Supra*, footnote 22.

control over the conduct of the proceeding, contrary to the scheme of the Act. In the latter case the court also specifically denied the application of the company for permission to institute contempt actions for alleged violations of the injunction, analogizing the situation to an attempt to institute proceedings for contempt of a court decree enforcing a Board order, it being well settled that a charging party may not initiate such an action.

IX

Contempt Litigation

During fiscal 1963, petitions for adjudication in contempt for noncompliance with decrees enforcing Board orders were filed in 10 cases, 9 for civil contempt and 1 for both civil and criminal contempt. In two of these, the petitions were withdrawn following compliance by respondents during the course of the proceedings;[1] in one, the court directed compliance upon the pleadings;[2] in two, the petitions were granted after oral argument;[3] in another, the Board's petition was dismissed;[4] while in four other cases the respective courts referred the issues raised by the pleadings to Special Masters for trial and recommendation.[5] In two cases the Board was granted discovery orders prior to the institution of any contempt proceedings, one for the purpose of testing the company's claim of financial inability to comply with the court's decree,[6] and the other to explore the relationship between the respondent company and another corporation which succeeded to the respondent's business.[7] In another case, in lieu of utilizing contempt sanctions to compel a company to sign a collective-bargaining agreement in accordance with the court's decree, the court, upon application of the Board, designated an agent to sign the agreement in the name of the respondent.[8]

Decisions of interest were issued in *Deena Artware*, *Latex Industries*, *Diamond Manufacturing Company*, and *E. L. Dell.* In *Deena*

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[1] *N L R B* v. *Fontainebleau Hotel Corp.* (C A 5), No. 19,479, *N L.R B* v *ILA District Council of the Ports of Puerto Rico, ILA, Ind.* (C A D C.), No. 15,296.

[2] *N L R B* v. *Latex Industries Inc*, 53 LRRM 2458 (C A. 6), 45 CCH Lab Cases ¶ 17,822

[3] *N.L.R B.* v. *Diamond Mfg. Co, Inc*, 309 F 2d 688 (C A. 5); *N.L R B* v. *Jacob Vander Wal d/b/a Superior Business Forms*, 316 F 2d 631 (C A 9).

[4] *N L R B* v *E. L. Dell, Jr., Trading as Waycross Machine Shop*, 309 F. 2d 867, rehearing denied without prejudice, 311 F. 2d 575 (C A. 5).

[5] *N L R B.* v. *American Aggregate Company, Inc.*, contempt of 285 F 2d 529 (C.A. 5) *N L.R B* v *Deena Artware, Inc.*, 310 F 2d 470 (C A. 6); *N.L R B.* v. *Local 5881, UMW* (C A. 6), No. 637, *N.L.R B* v. *Poray, Inc.* (C A. 7), No 13,692 In *Local 5881* the Special Master's report recommending contempt adjudication is now before the court for confirmation.

[6] *N L R B.* v. *Owenahome, Inc.* (C A. 7), No. 13,691.

[7] *N L R B* v. *Factfinders Detective Bureau* (C.A. 1), No. 5,978.

[8] *Kasco Trucking Corp* v. *N.L R.B.* (C A. 2), order entered May 31, 1963

Artware, in the latest of an extended series of proceedings,[9] the court rejected an attack on jurisdictional grounds made by those respondents in the contempt action who had not been named in the underlying Board proceedings, thereby sustaining the Board's position that service of process on affiliated corporations is not necessary when the relationship between the separate corporations is such as to constitute them a single enterprise, in which case jurisdiction over one constitutes jurisdiction over all of them. In *Latex Industries* the court ruled that the respondent's attempted alteration of the notice required to be posted by a court decree enforcing a Board order, constituted a prohibited collateral attack on the decree.

In *Diamond Manufacturing Company* the Fifth Circuit, noting that it had before it the pleadings only, but that respondents' answers admitted a refusal to post Board notices and a refusal on the part of the company in some respects to bargain in good faith, as required by the decree, summarily adjudged the company and its president in contempt for their failure to post, but levied prospective fines of $500 per week on each until they complied with the order of the court in every respect. On the other hand, in *Dell*, the court dismissed the entire proceeding because it found that the pleadings raised issues which required resolution by means of a trial, which the Board had failed to request.[10] The court stated, however, that it "recognizes that under the requirements of the National Labor Relations Act it must, on occasions, be prepared to conduct just such a hearing," and that it would, "upon proper notice from the Labor Board," make arrangements to permit the Board to adduce oral testimony.

[9] For reports of prior proceedings, see Twenty-fifth Annual Report (1960), p. 124, and Twenty-third Annual Report (1958), p. 140.

[10] On rehearing, 311 F 2d 575, the court pointed out that the dismissal was without prejudice.

X

Miscellaneous Litigation

Litigation engaged in by the Board and the General Counsel during fiscal 1963 for the purpose of aiding or protecting their administrative processes included the defense of actions seeking nullification of the Board's unit determinations and other rulings in representation proceedings. Other such litigation involved action to obtain judicial review of the refusal of the General Counsel to issue or prosecute unfair labor practice complaints, judicial intervention in an unfair labor practice proceeding, and challenges to the procedural prerogatives and settlement authority of the Board in obtaining compliance with its orders.

1. Representation Proceedings

Petitions during the past year for district court relief from Board action at varying stages of representation proceedings were opposed by the Board primarily on the ground that the court was without jurisdiction to grant relief since the Board action would subsequently be reviewable in a judicial proceeding under section 10 of the Act. In *Eastern Greyhound Lines* [1] an employer sought to enjoin the Board from holding an election among its employees. It contended that the Board's determination that the employees were not supervisors was an erroneous interpretation of the statutory definition of that term [2] and the Board, by thus disregarding the statutory definition, was acting contrary to the mandate of the statute. The plaintiff's efforts to thus invoke the jurisdiction of the district court under the doctrine of *Leedom* v. *Kyne*,[3] pursuant to which the court may intervene when the Board has violated an express mandate of the Act, was rejected by the court. In dismissing the complaint, the court pointed out that the Board's determination was expressly an application of the statutory definition to the facts established at the hearing; therefore, the

[1] *Eastern Greyhound Lines* v. *Fusco* (D C. N. Ohio), Sept. 12, 1962, 51 LRRM 2278, 45 CCH Lab Cases ¶ 17,183, appeal pending (C.A. 6).

[2] Sec. 2(11) of the Act.

[3] 358 U.S. 184 (1958).

most that could be involved was an erroneous finding and conclusion by the Board of which judicial review could be had in due course under section 10 of the Act.

Similar contentions were rejected by the district and appellate courts in the *Surprenant* case.[4] There, the regional director set aside an election before the ballots were counted because of meritorious unfair labor practice charges against the employer which were filed immediately before the election. The employer contended that the statute requires the Board to certify the results of any election held and that the refusal to do so in this case was improper since no unfair labor practice had been committed. The court rejected this contention on the ground that the employer had no "legal interest" in the results of an election held at the behest of the union and that, even if it did, the exclusive nature of the Board's jurisdiction in this instance was demonstrated by the fact that disposition of the company's claim of Board error would require the court to determine whether the company had committed any unfair labor practices, an issue which may be resolved only by the Board.

In another case, however, the Fifth Circuit affirmed a district court's enjoining the Board from conducting an election in *Greyhound Corp.* v. *Boire*.[5] In directing the election, the Board had found a joint-employer relationship existed between Greyhound and Floors, Inc., as to the employees performing janitorial services at the Greyhound depot. The district court found that the factors relied upon by the Board were as a matter of law insufficient to create a joint-employer relationship with respect to those employees, but that, to the contrary, the findings established as a matter of law that Floors, Inc., was an independent contractor and, for the purpose of collective bargaining, its employees were not employees of Greyhound. Concluding that section 9 of the Act "contemplates representation proceedings only as regards the employer of the employees comprising the unit found appropriate by the Board," the district court held that the Board had exceeded its statutory authority in directing the election in this case. The district court further held that it had jurisdiction under *Leedom* v. *Kyne*, *supra*, rejecting the Board's contention that that decision had no application to an employer who had an adequate remedy under section 10 (e) and (f) of the Act. The appellate court in affirming the district court stated that it was in agreement with the principles stated and the decision reached by the lower court.

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[4] *Surprenant* v. *Alpert*, Jan. 31, 1963, 52 LRRM 2697, 46 CCH Lab. Cases ¶ 18,116 (D C. Mass.), affirmed June 4, 1963 (C A. 1), 53 LRRM 2405, 47 CCH Lab. Cases ¶ 18,306.

[5] *Boire* v. *The Greyhound Corp.*, 309 F. 2d 397, affirming *Greyhound Corp.* v. *Boire*, 205 F. Supp. 686 (D C S. Fla.).

The Board petitioned the Supreme Court for a writ of certiorari which has been granted.[6]

2. Issuance and Prosecution of Complaints

In three other district court cases, parties who had filed unfair labor practice charges sought relief from the General Counsel's disposition of the charges without Board action. In one case the General Counsel had refused to issue a complaint on the charge but did not dismiss the charge. In another he issued a complaint but withdrew it when subsequently discovered evidence convinced him the charges were without merit. In the third he withdrew a complaint pursuant to a settlement with the respondent to which the union objected.

In *Division 1267*,[7] the union sought to require the General Counsel to issue a complaint based on charges filed by the union alleging substantially that the Dade County, Florida, Transit Authority was a successor to public transit companies whose employees the union represented, and that it had refused to recognize and bargain with it as such representative. Although the General Counsel had refused to issue the complaint, he did not dismiss the charges but only deferred a final decision pending the outcome of a State court action to determine whether the Transit Authority was entitled to the status of a Government agency under State law. The union asserted that the General Counsel had abused his discretion by failing to issue a complaint, and sought a judgment that the transit system and Dade County were not exempt from the prohibitions imposed upon employers by section 8 of the Act. The district court dismissed for lack of jurisdiction and the District of Columbia Circuit affirmed,[8] stating that the Act gives the General Counsel discretion, independent of review by the courts, regarding the handling of unfair labor practice charges, and his decision to defer action on the union's charge in this case was within his discretion.

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[6] *Boire* v. *Greyhound Corp*, 372 U.S. 964. Noting the pendency of this case before the Supreme Court, a district court has granted an injunction in another case involving a similar issue of joint employer relationships, pending disposition of the issue by the Supreme Court *Checker Cab Co* v *Roumell*, May 23, 1963 (D.C.E. Mich.) The decision has been appealed by the Board But see also *City Cab Co* v. *Roumell*, 218 F. Supp. 669 (D.C.E. Mich.), where on substantially identical facts the district court dismissed the complaint for lack of jurisdiction.

In *Sprecher Drilling Corp.* v. *Waers*, Dec. 13, 1962 (D.C. Wyo.), a district court held that the Board exceeded its statutory authority by including as employees in a unit entitled to vote in an election, former employees who were not then employed by the company but might be on future jobs. It enjoined the Board from permitting such persons to vote in the election. That decision also has been appealed by the Board.

[7] *Division 1267, Amalgamated Assn. of Street, Electric Railway & Motor Coach Employees of America* v *Rothman* (D.C.D.C.).

[8] *Division 1267, Amalgamated Assn of Street, Electric Railway & Motor Coach Employees of America* v *Ordman, et al.*, 53 LRRM 2501 (C.A.D.C.), 47 CCH Lab Cases ¶ 18,308.

In *Quintana*,[9] the regional director, in exercise of authority under the Board's Rules,[10] withdrew an outstanding complaint before hearing and dismissed the unfair labor practice charge, following the discovery of additional evidence which satisfied him that no violation had occurred. His action was sustained by the General Counsel. The charging party then sought an injunction to require the regional director and the General Counsel to prosecute the complaint. The district court denied the relief requested, holding that the decision to proceed with a complaint or withdraw it was within the discretion of the General Counsel.

In *Local 112*,[11] the union sought injunctive relief directing the General Counsel to proceed to hearing on a complaint which had been issued against an employer based upon charges filed by the union. The complaints had been withdrawn by the regional director pursuant to the terms of a settlement agreement he entered into with the company notwithstanding the union's objections to the settlement as remedially inadequate. On appeal by the union, the General Counsel sustained the regional director's approval of the settlement. No Board order was entered since the objections to the settlement, although also filed with the Board, were not acted upon by it but were only referred to the General Counsel.

The district court held that the Board, rather than the General Counsel, must make final disposition of a charging party's objections to an informal settlement entered into after issuance of a complaint but prior to hearing. Without considering the merits of the settlement itself, the court held that neither section 3(d) of the Act nor the Board's delegation of authority to the General Counsel place in the latter's hands the right to settle a case after complaint has issued, absent agreement of the charging party. The court stated that the General Counsel may not exercise the authority delegated to him under section 3(d) to preclude a charging party from obtaining a ruling from the Board on his objections to a proposed settlement, once a complaint has issued. The court viewed the *Textile Workers (Roselle Shoe Co.)*[12] decision as controlling, thereby ruling, in effect, that the charging party was entitled to receive from the Board either a hearing on its objections to the settlement or a statement of reasons for acceptance of the settlement notwithstanding the objections.

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[9] *Quintana* v. *Corenman, et al.* (D C. N Mex), July 5, 1963

[10] "Sec. 102 18 *Withdrawal*—Any such complaint may be withdrawn before the hearing by the regional director on his own motion " Rules and Regulations and Statements of Procedure, Series 8, as amended.

[11] *Local 112, International Union, Allied Industrial Workers of America, AFL–CIO* v. *Rothman, et al.*, 209 F. Supp. 295 (D C D.C.).

[12] *Textile Workers* v. *N.L.R.B.*, 294 F. 2d 738 (C.A.D.C.) 1961.

3. Unfair Labor Practice Hearings

In *Chicago Automobile Trades Assn.* v. *Madden*,[13] the association sought to restrain the Board from proceeding with a trial *de novo* against the association and other parties in an unfair labor practice case pending before the Board. One trial of the issues had been begun, but the trial examiner had recessed the hearing *sine die* and disqualified himself because of his personal health. The Board directed a trial *de novo* before a different trial examiner, although the original trial examiner was by then hearing other cases. The district court, exercising its general equity power, held that the association and other respondents in the unfair labor practice case were entitled to the injunctive relief sought, even though they had failed to exhaust their administrative remedies, since irreparable injury would result in that the respondents would be required to spend time and money again defending the same charges. The court found that there was no adequate administrative or other remedy, due to the lack of an interlocutory appeal. The district court ordered the Board and its Chief Trial Examiner to reassign the case to the original trial examiner to complete the hearing and issue his intermediate report within a specified time. The Board has appealed this decision.

4. Compliance Hearings

a. Issues Litigable

In *C.C.C. Associates* [14] the Second Circuit affirmed a district court's findings that the Board's investigation of questions of successor employer and corporate officer responsibility in a backpay proceeding was in conformity with the appellate court's enforcement decree issued against the respondent, its "officers, agents, successors, and assigns," and that such questions were properly litigable in that proceeding. The district court had enforced Board subpenas against persons not parties in the unfair labor practice proceeding but who were named in and served with the backpay specifications. On appeal, the basic question presented was whether, after the entry of an enforcement decree by a court of appeals, the Board may, without that court's express permission, conduct an inquiry into derivative responsibility for compliance with that decree. Noting that backpay proceedings are not an original action to determine violations of the law, but are rather ancillary enforcement proceedings which the Board is otherwise empowered to conduct, the court of appeals held that it

[13] 215 F. Supp 828.

[14] *N.L.R.B.* v. *C C.C. Associates, Inc., et al.* and *N.L.R B.* v. *John J. Harris,* 306 F. 2d 534 (C.A. 2).

was not necessary for the Board to apply to the court for permission to conduct a supplemental hearing on successor or derivative liability for backpay or reinstatement.

b. Settlement Authority

In *International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, etc.* v. *N.L.R.B. and Piasecki Aircraft Corporation*,[15] the Court of Appeals for the Third Circuit, in a *per curiam* decision, denied a petition filed by the union for review of the Board's order denying its motion for a formal backpay proceeding in lieu of a negotiated settlement of employer liability. The Board conceded and the court found that the court had jurisdiction to entertain the union's petition as a matter ancillary to the original enforcement proceeding, since it raised issues concerning performance of the terms of the decree entered by the court.

The Board's approval of the settlement was based upon its judgment that under all the circumstances, substantial compliance with the Board order and court decree would be achieved by the settlement agreement. The union had been informed and consulted during settlement negotiations and was allowed every opportunity to present its views on the question of compliance as well as its reason for disapproval of the settlement. The circuit court found there had been no abuse of discretion by the Board in working out the settlement of the obligations under its decree. It noted that "[i]n its settlement of the problems presented, the Board reached an admirable practical result under all of the difficult circumstances."

[15] 316 F. 2d 239.

APPENDIX A

Statistical Tables for Fiscal Year 1963

Table 1.—Total Cases Received, Closed, and Pending (Complainant or Petitioner Identified), Fiscal Year 1963

	Number of cases				
	Total	Identification of complainant or petitioner			
		AFL–CIO affiliates	Unaffiliated unions	Individuals	Employers
	All cases [1]				
Pending July 1, 1962	6,704	2,961	1,181	1,633	929
Received fiscal 1963	25,371	10,663	5,246	6,248	3,214
On docket fiscal 1963	32,075	13,624	6,427	7,881	4,143
Closed fiscal 1963	24,678	10,338	5,171	5,969	3,200
Pending June 30, 1963	7,397	3,286	1,256	1,912	943
	Unfair labor practice cases				
Pending July 1, 1962	4,624	1,733	593	1,532	766
Received fiscal 1963	14,166	4,667	1,679	5,495	2,325
On docket fiscal 1963	18,790	6,400	2,272	7,027	3,091
Closed fiscal 1963	13,605	4,412	1,623	5,240	2,330
Pending June 30, 1963	5,185	1,988	649	1,787	761
	Representation cases				
Pending July 1, 1962	2,060	1,228	588	81	163
Received fiscal 1963	11,116	5,996	3,567	664	889
On docket fiscal 1963	13,176	7,224	4,155	745	1,052
Closed fiscal 1963	10,981	5,926	3,548	637	870
Pending June 30, 1963	2,195	1,298	607	108	182
	Union-shop deauthorization cases				
Pending July 1, 1962	20	----	----	20	----
Received fiscal 1963	89	----	----	89	----
On docket fiscal 1963	109	----	----	109	----
Closed fiscal 1963	92	----	----	92	----
Pending June 30, 1963	17	----	----	17	----

[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 labor organization under sec 8(b)(1), (2), (3), (5) (6)

CC A charge of unfair labor practices against a labor organization under sec 8(b)(4)(i) or (ii), (A), (B), (C)

CD A charge of unfair labor practices against a labor organization under sec. 8(b)(4)(i) or (ii)(D).

CE A charge of unfair labor practices against a labor organization and employer under sec 8(e)

CP A charge of unfair labor practices against a labor organization under sec. 8(b)(7)(A), (B), (C)

RC A petition by a labor organization or employees for certification of a representative for purposes of collective bargaining under sec 9(c)(1)(A)(i)

RM A petition by employer for certification of a representative for purposes of collective bargaining under sec 9(c)(1)(B)

RD A petition by employees under sec 9(c)(1)(A)(ii) asserting that the union previously certified or currently recognized by their employer as the bargaining representative no longer represents a majority of the employees in the appropriate unit

UD A petition by employees under sec. 9(e)(1) asking for a referendum to rescind a bargaining agent's authority to make a union-shop contract under sec 8(a)(3)

Table 1A.—Unfair Labor Practice and Representation Cases Received, Closed, and Pending (Complainant or Petitioner Identified), Fiscal Year 1963

	Number of unfair labor practice cases					Number of representation cases				
	Total	Identification of complainant				Identification of petitioner				
		AFL–CIO affiliates	Unaffiliated unions	Individuals	Employers	Total	AFL–CIO affiliates	Unaffiliated unions	Individuals	Employers
	CA cases [1]					RC cases [1]				
Pending July 1, 1962	3,276	1,685	569	1,017	5	1,822	1,228	588	2	4
Received fiscal 1963	9 550	4,553	1,581	3,393	23	9,562	5,986	3,557	5	14
On docket fiscal 1963	12,826	6,238	2,150	4,410	28	11,384	7,214	4,145	7	18
Closed fiscal 1963	9,173	4,310	1,533	3,311	19	9,480	5,919	3,539	5	17
Pending June 30, 1963	3,653	1,928	617	1,099	9	1,904	1,295	606	2	1
	CB cases [1]					RM cases [1]				
Pending July 1, 1962	738	37	20	489	192	159	0	0	0	159
Received fiscal 1963	2,753	79	53	2,053	568	875	2	2	3	868
On docket fiscal 1963	3,491	116	73	2,542	760	1,034	2	2	3	1,027
Closed fiscal 1963	2,548	74	47	1,868	559	853	1	2	1	849
Pending June 30, 1963	943	42	26	674	201	181	1	0	2	178
	CC cases [1]					RD cases [1]				
Pending July 1, 1962	347	3	3	19	322	79	0	0	79	0
Received fiscal 1963	1,142	14	20	26	1,082	679	8	8	656	7
On docket fiscal 1963	1,489	17	23	45	1,404	758	8	8	735	7
Closed fiscal 1963	1,132	12	18	38	1,064	648	6	7	631	4
Pending June 30, 1963	357	5	5	7	340	110	2	1	104	3

	CD cases [1]									
Pending July 1, 1962	114	4	1	1	108					
Received fiscal 1963	304	18	7	6	273					
On docket fiscal 1963	418	22	8	7	381					
Closed fiscal 1963	325	14	7	4	300					
Pending June 30, 1963	93	8	1	3	81					
	CE cases [1]									
Pending July 1, 1962	35	4	0	1	30					
Received fiscal 1963	63	1	14	7	41					
On docket fiscal 1963	98	5	14	8	71					
Closed fiscal 1963	55	0	14	5	36					
Pending June 30, 1963	43	5	0	3	35					
	CP cases [1]									
Pending July 1, 1962	114	0	0	5	109					
Received fiscal 1963	354	2	4	10	338					
On docket fiscal 1963	468	2	4	15	447					
Closed fiscal 1963	372	2	4	14	352					
Pending June 30, 1963	96	0	0	1	95					

[1] See table 1, footnote 1, for definitions of types of cases.

Table 2.—Types of Unfair Labor Practices Alleged, Fiscal Year 1963

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] 9,550	[1] 100 0	8(a)(3)	6,840	71 6
			8(a)(4)	240	2 5
8(a)(1)	[2] 9,550	[2] 100 0	8(a)(5)	2,584	27 1
8(a)(2)	729	7 6			

B CHARGES FILED AGAINST UNIONS UNDER SEC 8(b)

Total cases	[1] 4 553	[1] 100 0	8(b)(4)	1,446	31 8
			8(b)(5)	28	.6
8(b)(1)	2,399	52 7	8(b)(6)	14	3
8(b)(2)	1,785	39 2	8(b)(7)	354	7 8
8(b)(3)	291	6 4			

C ANALYSIS OF 8(b)(4) AND 8(b)(7)

Total cases 8(b)(4)	[1] 1,446	[1] 100 0	Total cases 8(b)(7)	[1] 354	[1] 100.0
8(b)(4)(A)	192	13 3	8(b)(7)(A)	62	17.5
8(b)(4)(B)	1 080	74 7	8(b)(7)(B)	32	9 0
8(b)(4)(C)	35	2 4	8(b)(7)(C)	273	77 1
8(b)(4)(D)	307	21 2			

D CHARGES FILED AGAINST UNIONS AND EMPLOYERS UNDER SEC 8(e)

Total cases 8(e)	63	100.0			

[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 figures for the 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 Action Taken, by Number of Cases, Fiscal Year 1963

Formal action taken	All cases	Unfair labor practice cases				Representation cases
		All C cases [1]	CA cases [1]	Other C cases [1]	10(k) C cases [1]	
Complaints issued	2,043	2,043	1,545	498		
Notices of hearing issued	5,754	55			55	5,699
Cases heard	3,573	1,155	860	251	44	2,418
Intermediate reports issued	1,085	1,085	879	206		
Decisions issued, total	3,964	1,242	887	295	60	2,722
Decisions and orders	1,067	1,067	[2] 780	[3] 227	60	
Decisions and consent orders	175	175	107	68		
Elections directed by regional director	1,944					1,944
Dismissals on record by regional director	218					218
Elections directed by Board	137					137
Dismissals on record by Board	57					57
Board decisions after granting review of regional directors' decisions	64					64
Board decisions after granting review of regional directors' decision on objections and/or challenges	25					25
Board rulings on objections and/or challenges in stipulated election cases	277					277

[1] See table 1, footnote 1, for definitions of types of cases.

[2] Includes 80 cases decided by adoption of intermediate report in absence of exceptions

[3] Includes 22 cases decided by adoption of intermediate report in absence of exceptions.

Table 4.—Remedial Action Taken in Unfair Labor Practice Cases Closed, Fiscal Year 1963

A BY EMPLOYERS[1]

	Total	By agreement of all parties	By recommendation of trial examiner	By Board or court order
	Cases			
Notice posted	1,828	1,338	78	412
Recognition or other assistance withheld from employer-assisted union	110	74	5	31
Employer-dominated union disestablished	45	21	1	23
Workers placed on preferential hiring list	133	99	4	30
Collective bargaining begun	548	418	19	111
	Workers			
Workers offered reinstatement to job	3,478	2,280	41	1,157
Workers receiving backpay	6,890	[2] 5,214	106	[3] 1,570
Backpay awards	$2,677,511	$1,089,414	$74,520	$1,513,577

B BY UNIONS[4]

	Cases			
Notice posted	640	477	18	145
Union to cease requiring employer to give it assistance	28	16	1	11
Notice of no objection to reinstatement of discharged employees	45	27	0	18
Collective bargaining begun	125	113	2	10
	Workers			
Workers receiving backpay	129	[2] 93	0	[3] 36
Backpay awards	$71 640	$25,200	0	$46,440

[1] In addition to the remedial action shown, other forms of remedy were taken in 519 cases
[2] Includes 45 workers who received backpay from both employer and union
[3] Includes 9 workers who received backpay from both employer and union
[4] In addition to the remedial action shown, other forms of remedy were taken in 492 cases.

Table 5.—Industrial Distribution of Unfair Labor Practice and Representation Cases Received, Fiscal Year 1963

Industrial group [1]	Unfair labor practice cases								Representation cases			
	All cases	All C cases	CA [2]	CB [2]	CC [2]	CD [2]	CE [2]	CP [2]	All R cases	RC [2]	RM [2]	RD [2]
Total	25,282	14,166	9,550	2,753	1,142	304	63	354	11,116	9,562	875	679
Manufacturing	12,670	6,644	5,223	1,026	222	77	10	86	6,026	5,272	363	391
Ordnance and accessories	40	22	18	4	0	0	0	0	18	16	0	2
Food and kindred products	1,708	821	632	133	38	3	5	10	887	792	46	49
Tobacco manufacturers	19	11	9	1	0	1	0	0	8	6	0	2
Textile mill products	326	207	169	31	2	0	0	5	119	102	13	4
Apparel and other finished products made from fabric and similar materials	548	392	310	54	10	1	0	17	156	119	27	10
Lumber and wood products (except furniture)	446	209	183	12	11	1	0	2	237	194	19	24
Furniture and fixtures	543	323	268	37	7	3	0	8	220	184	20	16
Paper and allied products	483	211	166	31	9	2	0	3	272	240	10	22
Printing, publishing, and allied industries	768	367	256	59	30	16	0	6	401	346	28	27
Chemicals and allied products	757	323	254	52	11	4	0	2	434	394	15	25
Products of petroleum and coal	188	111	75	23	8	4	0	1	77	63	5	9
Rubber products	512	253	204	37	5	5	0	2	259	234	10	15
Leather and leather products	217	120	95	21	0	0	1	3	97	86	9	2
Stone, clay, and glass products	731	371	275	44	33	11	2	6	360	308	33	19
Primary metal industries	747	413	305	103	2	2	0	1	334	291	17	26
Fabricated metal products (except machinery and transportation equipment)	1,385	690	574	94	9	8	0	5	695	609	43	43
Machinery (except electrical)	985	456	365	57	20	8	0	6	529	461	28	40
Electrical machinery, equipment, and supplies	983	568	455	90	13	5	0	5	415	378	17	20
Aircraft and parts	184	116	91	23	0	0	0	2	68	58	3	7
Ship and boat building and repairing	97	57	48	9	0	0	0	0	40	39	0	1
Automotive and other transportation equipment	467	311	235	65	8	3	0	0	156	136	7	13
Professional, scientific, and controlling instruments	174	102	85	14	1	0	2	0	72	58	4	10
Miscellaneous manufacturing	362	190	151	32	5	0	0	2	172	158	9	5
Agriculture, forestry, and fisheries	3	0	0	0	0	0	0	0	3	3	0	0
Mining	376	251	127	67	48	2	1	6	125	113	3	9
Metal mining	47	24	17	4	2	1	0	0	23	22	0	1
Coal mining	192	162	61	55	40	0	1	5	30	27	1	2
Crude petroleum and natural gas production	44	19	16	3	0	0	0	0	25	23	1	1
Nonmetallic mining and quarrying	93	46	33	5	6	1	0	1	47	41	1	5

Construction	2,514	2,247	688	696	551	174	8	130	267	225	39	3
Wholesale trade	1,757	775	545	144	52	3	4	27	982	831	80	71
Retail trade	3,086	1,394	1,080	166	58	10	20	60	1,692	1,324	260	108
Finance, insurance, and real estate	168	88	58	12	13	1	0	4	80	74	3	3
Transportation, communication, and other public utilities	2,969	1,790	1,136	449	152	23	12	18	1,179	1,033	82	64
Local passenger transportation	217	119	94	23	1	0	1	0	98	83	12	3
Motor freight, warehousing, and transportation services	1,818	1,056	699	233	92	9	10	13	762	677	50	35
Water transportation	402	331	125	155	41	6	1	3	71	64	5	2
Other transportation	67	39	24	8	6	0	0	1	28	25	1	2
Communications	275	162	132	19	7	3	0	1	113	91	10	12
Heat, light, power, water, and sanitary services	190	83	62	11	5	5	0	0	107	93	4	10
Services	1,739	977	693	193	46	14	8	23	762	687	45	30

[1] Source: Standard Industrial Classification, Division of Statistical Standards, U.S. Bureau of the Budget, Washington, 1957.
[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 1963

Division and State [1]	All cases	Unfair labor practice cases							Representation cases			
		All C cases	CA [2]	CB [2]	CC [2]	CD [2]	CE [2]	CP [2]	All R cases	RC [2]	RM [2]	RD [2]
Total	25,282	14,166	9,550	2,753	1,142	304	63	354	11,116	9,562	875	679
New England	1,170	604	404	112	51	7	14	16	566	499	40	27
Maine	109	58	42	12	4	0	0	0	51	51	0	0
New Hampshire	57	18	10	3	3	2	0	0	39	36	1	2
Vermont	23	10	9	0	0	0	0	1	13	13	0	0
Massachusetts	650	337	225	62	31	4	3	12	313	270	30	13
Rhode Island	83	41	18	9	2	0	11	1	42	39	2	1
Connecticut	248	140	100	26	11	1	0	2	108	90	7	11
Middle Atlantic	5,501	3,207	1,986	714	274	98	11	124	2,294	2,020	161	113
New York	2,749	1,672	995	395	141	56	6	79	1,077	941	87	49
New Jersey	1,205	651	444	133	43	16	2	13	554	492	30	32
Pennsylvania	1,547	884	547	186	90	26	3	32	663	587	44	32
East North Central	5 735	3,165	2,229	648	178	44	11	55	2,570	2,208	183	179
Ohio	1,505	749	542	151	40	5	1	10	756	645	75	36
Indiana	725	397	306	69	15	2	0	5	328	283	22	23
Illinois	1,682	1 005	661	233	66	22	7	16	677	605	31	41
Michigan	1,321	787	559	157	40	11	1	19	534	433	43	58
Wisconsin	502	227	161	38	17	4	2	5	275	242	12	21
West North Central	1,763	821	609	111	53	20	3	25	942	833	50	59
Iowa	246	90	79	6	3	2	0	0	156	144	4	8
Minnesota	274	103	76	15	7	1	1	3	171	150	15	6
Missouri	811	432	290	82	32	14	1	13	379	330	22	27
North Dakota	38	13	11	1	1	0	0	0	25	17	1	7
South Dakota	25	5	3	0	1	1	0	0	20	19	0	1
Nebraska	161	90	74	5	3	2	0	6	71	65	5	1
Kansas	208	88	76	2	6	0	1	3	120	108	3	9

South Atlantic	2,700	1,532	1,136	236	127	20	2	11	1,168	1,061	63	44
Delaware	48	29	17	3	7	1	0	1	19	17	0	2
Maryland	380	182	131	23	20	4	0	4	198	181	10	7
District of Columbia	146	58	30	22	1	3	2	0	88	81	6	1
Virginia	330	171	153	10	6	2	0	0	159	142	12	5
West Virginia	204	128	64	35	26	2	0	1	76	73	1	2
North Carolina	315	183	161	15	6	0	0	1	132	121	6	5
South Carolina	126	85	74	8	2	0	0	1	41	37	2	2
Georgia	364	190	143	32	13	2	0	0	174	156	11	7
Florida	787	506	363	88	46	6	0	3	281	253	15	13
East South Central	1,364	833	564	159	79	15	1	15	531	486	27	18
Kentucky	330	193	93	57	34	8	0	1	137	124	7	6
Tennessee	568	353	275	46	22	2	0	8	215	202	9	4
Alabama	344	215	136	47	21	5	1	5	129	115	8	6
Mississippi	122	72	60	9	2	0	0	1	50	45	3	2
West South Central	1,719	1,027	731	168	79	31	3	15	692	603	39	50
Arkansas	198	117	108	9	0	0	0	0	81	67	7	7
Louisiana	442	306	165	77	43	7	1	13	136	120	8	8
Oklahoma	167	76	56	10	6	4	0	0	91	78	3	10
Texas	912	528	402	72	30	20	2	2	384	338	21	25
Mountain	1,050	591	413	95	54	11	2	16	459	365	54	40
Montana	110	58	32	9	9	4	0	4	52	30	13	9
Idaho	100	51	46	3	2	0	0	0	49	36	7	6
Wyoming	42	26	15	3	7	1	0	0	16	12	2	2
Colorado	323	183	129	35	10	3	1	5	140	115	14	11
New Mexico	125	85	59	15	8	0	0	3	40	30	7	3
Arizona	177	101	59	25	10	3	1	3	76	62	8	6
Utah	85	36	28	3	4	0	0	1	49	46	1	2
Nevada	88	51	45	2	4	0	0	0	37	34	2	1
Pacific	3,540	2,030	1,191	464	231	54	15	75	1,510	1,153	228	129
Washington	353	180	110	35	19	7	0	9	173	110	36	27
Oregon	246	123	89	17	11	3	0	3	123	79	23	21
California	2,941	1,727	992	412	201	44	15	63	1,214	964	169	81
Outlying areas	740	356	287	46	16	4	1	2	384	334	30	20
Alaska	55	25	16	7	1	1	0	0	30	17	10	3
Hawaii	152	62	44	5	8	3	1	1	90	74	9	7
Puerto Rico	529	269	227	34	7	0	0	1	260	240	10	10
Virgin Islands	4	0	0	0	0	0	0	0	4	3	1	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.—Analysis of Stages of Disposition of Unfair Labor Practice Cases Closed, Fiscal Year 1963

Stage and method of disposition	All C cases		CA cases [1]		CB cases [1]		CC cases [1]		CD cases [1]		CE cases [1]		CP 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	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed
Total number of cases closed	13,605	100 0	9,173	100 0	2,548	100 0	1,132	100 0	325	100 0	55	100.0	372	100 0
Before issuance of complaint	11,714	86 1	7,768	84 7	2,315	90 9	960	84 8	314	96 7	47	85 5	310	83.3
Adjusted	2,401	17 6	1,500	16 3	348	13 7	331	29 3	[2] 133	41 0	8	14 6	81	21 8
Withdrawn	5,259	38 7	3,510	38 3	1,095	43 0	400	35 3	[3] 114	35 1	27	49 1	113	30 3
Dismissed	4,054	29 8	2,758	30 1	872	34 2	229	20 2	[4] 67	20 6	12	21 8	116	31 2
After issuance of complaint, before opening of hearing	801	5 9	569	6 2	108	4 3	91	8 0	4	1 2	2	3.6	27	7 3
Adjusted	564	4 1	440	4 8	65	2 6	42	3 7	0	.0	0	.0	17	4 6
Compliance with stipulated decision	1	(5)	1	(5)	0	.0	0	0	0	.0	0	.0	0	.0
Compliance with consent decree	100	.8	48	.5	20	.8	29	2 5	1	.3	0	0	2	.5
Withdrawn	111	.8	61	.7	19	.7	19	1 7	3	.9	2	3 6	7	1.9
Dismissed	25	.2	19	2	4	.2	1	1	0	.0	0	0	1	3
After hearing opened, before issuance of intermediate report	141	1 0	102	1 1	16	6	20	1 8	3	.9	0	0	0	.0
Adjusted	51	.4	45	5	3	.1	3	3	0	.0	0	0	0	0
Compliance with stipulated decision	3	(5)	1	(5)	0	0	0	.0	2	.6	0	0	0	.0
Compliance with consent decree	77	6	51	6	11	.4	15	1 3	0	0	0	.0	0	.0
Withdrawn	4	(5)	1	(5)	0	.0	2	.2	1	.3	0	.0	0	0
Dismissed	6	(5)	4	(5)	2	.1	0	0	0	.0	0	.0	0	0
After intermediate report, before issuance of Board decision	103	8	83	.9	13	.5	5	.4	0	0	0	.0	2	5
Adjusted	2	(5)	2	(5)	0	0	0	.0	0	0	0	.0	0	.0
Compliance	98	.8	79	.9	13	5	4	.3	0	0	0	.0	2	.5
Withdrawn	2	(5)	1	(5)	0	0	1	.1	0	0	0	.0	0	0
Dismissed	1	(5)	1	(5)	0	0	0	0	0	0	0	.0	0	.0
After Board order adopting intermediate report in absence of exceptions	65	.5	47	.5	16	.6	2	.2	0	0	0	.0	0	.0
Compliance	29	.2	24	3	3	.1	2	2	0	.0	0	.0	0	.0
Dismissed	36	.3	23	2	13	.5	0	0	0	.0	0	.0	0	.0

After Board decision, before court decree	492	3 6	373	4 1	41	1 6	40	3 5	4	1 2	4	7 3	30	8 1
Compliance	293	2 2	210	2 3	23	.9	32	2 8	3	.9	4	7 3	21	5 7
Withdrawn	2	(5)	0	0	2	.1	0	.0	0	.0	0	0	0	0
Dismissed	196	1 4	162	1 8	16	.6	8	7	1	3	0	0	9	2 4
Otherwise	1	(5)	1	(5)	0	0	0	0	0	0	0	0	0	0
After circuit court decree, before Supreme Court action	239	1 7	190	2 1	33	1 3	12	1 1	0	0	1	1 8	3	.8
Compliance	192	1 4	146	1 6	31	1 2	11	1 0	0	0	1	1 8	3	.8
Dismissed	41	3	38	.4	2	1	1	.1	0	0	0	0	0	.0
Otherwise	6	(5)	6	.1	0	0	0	0	0	0	0	0	0	0
After Supreme Court action	50	4	41	4	6	.2	2	.2	0	0	1	1 8	0	.0
Compliance	42	.3	36	4	4	1	1	1	0	0	1	1.8	0	.0
Dismissed	8	.1	5	(5)	2	.1	1	.1	0	.0	0	.0	0	.0

[1] See table 1, footnote 1, for definitions of types of cases.
[2] Includes 87 cases adjusted before 10(k) notice; 2 cases adjusted after 10(k) notice, and 44 cases compliance with 10(k) Board decision.
[3] Includes 106 cases withdrawn before 10(k) notice, 6 cases withdrawn after 10(k) notice, and 2 cases withdrawn after 10(k) hearing.
[4] Includes 53 cases dismissed before 10(k) notice, and 14 cases dismissed by 10(k) Board decision.
[5] Less than one-tenth of 1 percent.

Table 8.—Disposition of Unfair Labor Practice Cases Closed, Fiscal Year 1963

Stage of disposition	All C cases		CA cases [1]		CB cases [1]		CC cases [1]		CD cases [1]		CE cases [1]		CP 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	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed
Total number of cases closed	13,605	100 0	9,173	100 0	2,548	100 0	1,132	100 0	325	100 0	55	100 0	372	100 0
Before issuance of complaint	11,714	86 1	7,768	84.7	2,315	90 9	960	84 8	[3] 314	96 7	47	85 5	310	83 3
After issuance of complaint, before opening of hearing [2]	801	5 9	569	6 2	108	4 3	91	8 0	4	1 2	2	3 6	27	7 3
After hearing opened, before issuance of intermediate report [2]	141	1 0	102	1 1	16	.6	20	1 8	3	9	0	0	0	0
After intermediate report, before issuance of Board decision	103	.8	83	.9	13	5	5	4	0	0	0	.0	2	5
After Board order adopting intermediate report in absence of exceptions	65	5	47	5	16	6	2	.2	0	0	0	.0	0	0
After Board decision, before court decree	492	3 6	373	4 1	41	1 6	40	3 5	4	1 2	4	7 3	30	8 1
After circuit court decree, before Supreme Court action	239	1 7	190	2 1	33	1 3	12	1 1	0	0	1	1 8	3	8
After Supreme Court action [4]	50	4	41	4	6	2	2	2	0	0	1	1 8	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 68 cases in which a notice of hearing issued pursuant to sec 10(k) of the Act Of these 68 cases, 8 were closed after notice, 2 were closed after hearing, and 58 were closed after 10(k) Board decision

[4] Includes either denial of writ of certiorari or granting of writ and issuance of opinion

Table 9.—Disposition of Representation Cases Closed, Fiscal Year 1963

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	10,981	100 0	9,480	100 0	853	100 0	648	100 0
Before issuance of notice of hearing	5,481	49 9	4 561	48 1	510	59 8	410	63. 3
After issuance of notice of hearing, before close of hearing	3,112	28 3	2,797	29 5	185	21. 7	130	20. 1
After hearing closed, before issuance of decision	128	1 2	111	1 2	9	1. 0	8	1. 2
After issuance of regional director decision	2,029	18 5	1,812	19 1	122	14 3	95	14. 6
After issuance of Board decision	231	2 1	199	2 1	27	3. 2	5	8

[1] See table 1, footnote 1, for definitions of types of cases

Table 10.—Analysis of Methods of Disposition of Representation Cases Closed, Fiscal Year 1963

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	10,981	100 0	9,480	100 0	853	100 0	648	100 0
Consent election	3,450	31 4	3,132	33 0	202	23 7	116	17 9
Before notice of hearing	2,287	20 8	2,060	21 7	158	18 5	69	10 6
After notice of hearing, before hearing closed	1,141	10 4	1,052	11 1	43	5 1	46	7 1
After hearing closed, before decision	22	.2	20	2	1	1	1	2
Stipulated elections	1,964	17 9	1,844	19 4	82	9 6	38	5 9
Before notice of hearing	886	8 1	818	8 6	48	5 6	20	3 1
After notice of hearing, before hearing closed	802	7 3	764	8 1	26	3 0	12	1 9
After hearing closed, before decision	13	1	12	.1	0	0	1	.1
After postelection decision	263	2 4	250	2.6	8	1 0	5	8
Expedited elections (8(b)(7)(C))	29	.3	4	1	25	2 9	0	.0
Before notice of hearing	27	2	4	1	23	2 7	0	.0
After notice of hearing, before hearing closed	2	1	0	0	2	2	0	0
Withdrawn	2,753	25 0	2,229	23 5	283	33 2	241	37 2
Before notice of hearing	1,585	14 4	1,223	12 9	173	20 3	189	29 1
After notice of hearing, before hearing closed	937	8 5	791	8 4	96	11 3	50	7 7
After hearing closed, before decision	76	.7	69	.7	6	7	1	2
After regional director decision and direction of election	136	1 2	127	1 3	8	9	1	.2
After Board decision and direction of election	19	2	19	2	0	0	0	.0
Dismissed	988	9 0	646	6 8	166	19 5	176	27 1
Before notice of hearing	570	5 2	338	3 6	103	12 1	129	19 9
After notice of hearing, before hearing closed	97	.9	61	6	16	1 9	20	3 0
After hearing closed, before decision	13	1	7	.1	1	1	5	8
By regional director decision	249	2 3	200	2 1	30	3 5	19	2.9
By Board decision	59	5	40	4	16	1 9	3	5
Regional director-ordered election	1,644	15 0	1,485	15 7	84	9 8	75	11 6
Board-ordered election	153	1 4	140	1.5	11	1 3	2	3

[1] See table 1, footnote 1, for definitions of types of cases

Table 11.—Types of Elections Conducted, Fiscal Year 1963

Type of case [1]	Total elections	Type of Election				
		Consent [2]	Stipulated [3]	Board ordered [4]	Regional director directed [5]	Expedited elections under 8(b)(7)(C)[6]
All elections, total	7,141	3,384	1,929	142	1,653	33
Eligible voters, total	506,507	166,394	177,760	29,209	131,860	1,284
Valid votes, total	456,519	150,429	163,629	24,828	116,553	1,080
RC cases, total	6,512	3,085	1,820	133	1,468	6
Eligible voters	468,116	152,982	166,526	27,768	120,640	200
Valid votes	423,302	138,300	153,691	23,654	107,493	164
RM cases, total	359	177	68	7	80	27
Eligible voters	21,249	9,160	5,430	952	4,623	1,084
Valid votes	18,667	8,265	4,925	800	3,761	916
RD cases, total	225	115	38	2	70	0
Eligible voters	13,256	4,068	5,457	489	3,242	0
Valid votes	11,648	3,714	4,779	374	2,781	0
UD cases, total	45	7	3	0	35	----
Eligible voters	3,886	184	347	0	3,355	----
Valid votes	2,902	150	234	0	2,518	----

[1] See table 1, footnote 1, for definitions of types of cases.
[2] Consent elections are held by an agreement of all parties concerned. Postelection ruling and certification are made by the regional director.
[3] 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.
[4] Board-ordered elections are held pursuant to a decision and direction of election by the Board. Postelection rulings on objections and/or challenges are made by the Board.
[5] Regional director-directed elections are held pursuant to a decision and direction of election by the regional director
[6] Expedited elections under 8(b)(7)(C) are held pursuant to direction by the regional director. Postelection rulings on objections and/or challenges are final and binding by the regional director, unless the Board grants an appeal on application by one of the parties.

Table 12.—Results of Union-Shop Deauthorization Polls, Fiscal Year 1963

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	45	32	71 1	13	28 9	3,886	2,790	71 8	1,096	28 2	2,902	74 7	2,050	52 8
AFL-CIO	25	18	72 0	7	28 0	3,385	2,525	74 6	860	25 4	2,533	74 8	1,809	53 4
Unaffiliated	20	14	70 0	6	30 0	501	265	52 9	236	47 1	369	73 7	241	48 1

[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 1963

Union affiliation	Elections participated in			Employees involved (number eligible to vote)			Valid votes cast			
	Total	Won	Percent won	Total eligible	Employees in units selecting bargaining agent		Total	Percent of total eligible	Cast for the union	
					Number	Percent of total eligible			Number	Percent of total cast
Total	[2] 6,871	4,052	59 0	[2] 489,365	265,747	54. 3	[2] 441,969	90. 3	264,727	59 9
AFL–CIO	4,749	2,565	54. 0	399,133	172. 415	43 2	360,326	90 3	174,948	48 6
Unaffiliated	2,768	1,487	53. 7	207,305	93,332	45 0	185,895	89 7	89,779	48 3

[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 of 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 1963

Affiliation of participating union	Number of elections				Number of employees involved (number eligible to vote)				
	Total	In which representation rights were won by—		In which no representative was chosen	Total	In units in which representation rights were won by—		In units where no representative was chosen	Total valid votes cast
		AFL-CIO affiliates	Unaffiliated unions			AFL-CIO affiliates	Unaffiliated unions		
Total	6,871	2,565	1,487	2,819	489,365	172,415	93,332	223,618	441,969
1-union election:									
AFL-CIO	3,888	2,121		1,767	256,480	101,508		154,972	233,788
Unaffiliated	2,046		1,136	910	73,762		32,213	41,549	66,970
2-union elections:									
AFL-CIO v. AFL-CIO	215	157		58	25,580	14,256		11,324	22,286
AFL-CIO v. Unaffiliated	591	257	257	77	102,121	49,615	38,035	14,471	92,188
Unaffiliated v. Unaffiliated	76		72	4	16,470		16,199	271	14,673
3-(or more) union elections	55	30	22	3	14,952	7,036	6,885	1,031	12,064

[1] For definition of this term, see table 13, footnote 1.

Table 14.—Decertification Elections by Affiliation of Participating Unions, Fiscal Year 1963

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	225	60	26 7	165	73. 3	13, 256	5, 223	39 4	8, 033	60 6	11, 648	87. 9	5, 434	46 7
AFL-CIO	139	37	26 6	102	73 4	10, 017	3, 944	39. 4	6, 073	60 6	8, 809	87. 9	4, 069	46. 2
Unaffiliated	76	15	19 7	61	80 3	2, 396	631	26 3	1, 765	73 7	2, 073	86 5	727	35 1
AFL-CIO v. Unaffiliated	10	[1] 8	80 0	2	20 0	843	648	76. 9	195	23. 1	766	90 9	638	83 3

[1] Of the 8 elections resulting in certification, AFL-CIO won 6; Unaffiliated won 2.

Table 14A.—Voting in Decertification Elections, Fiscal Year 1963

Union affiliation	Elections in which a representative was redesignated					Elections resulting in decertification				
	Employees eligible to vote	Total valid votes cast	Percent casting valid votes	Votes cast for winning union	Votes cast for no union	Employees eligible to vote	Total valid votes cast	Percent casting valid votes	Votes cast for losing union	Votes cast for no union
Total	5, 223	4, 762	91 2	3, 120	1, 642	8, 033	6, 886	85. 7	2, 314	4, 572
AFL-CIO	3, 944	3, 574	90 6	2, 189	1, 385	6, 073	5, 235	86. 2	1, 880	3, 355
Unaffiliated	631	588	93 2	371	217	1, 765	1, 485	84 1	356	1, 129
AFL-CIO v Unaffiliated	648	600	92 6	560	40	195	166	85 1	78	88

Table 15.—Geographic Distribution of Collective-Bargaining Elections, Fiscal Year 1963

Division and State [1]	Total	Number of elections in which representation rights were won by—		Number of elections for which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for—			Employees in units choosing representation
		AFL-CIO affiliates	Unaffiliated unions				AFL-CIO affiliates	Unaffiliated unions	No union	
Total	6,871	2,565	1,487	2,819	489,365	441,969	174,948	89,779	177,242	265,747
New England	380	112	90	178	29,947	27,180	10,150	3,203	13,827	11,741
Maine	36	13	4	19	5,127	4,679	1,938	268	2,473	1,514
New Hampshire	35	7	5	23	3,855	3,613	1,299	38	2,276	572
Vermont	9	1	2	6	418	386	125	65	196	135
Massachusetts	207	63	52	92	13,577	12,173	4,332	1,997	5,844	5 507
Rhode Island	26	8	8	10	1,890	1,676	816	158	702	1 493
Connecticut	67	20	19	28	5,080	4,653	1,640	677	2,336	2,520
Middle Atlantic	1,263	467	317	479	105,173	94,864	40,121	28,255	26,488	71,485
New York	575	235	138	202	51,158	45,139	24,033	9,469	11,637	36,608
New Jersey	293	97	76	120	17,310	15,692	4,967	5,239	5,486	9,903
Pennsylvania	395	135	103	157	36,705	34,033	11,121	13,547	9,365	24 974
East North Central	1,642	630	325	687	112,709	102,977	42,482	20,198	40,297	64,103
Ohio	491	179	110	202	34,427	31,655	11,777	7,761	12,117	18,717
Indiana	215	74	36	105	14,977	13,954	5,553	1 114	7,287	5,364
Illinois	408	151	76	181	36,118	32,769	13,707	7,154	11,908	22,447
Michigan	345	139	70	136	17,211	15,630	7,083	2,753	5,794	10,332
Wisconsin	183	87	33	63	9,976	8,969	4,362	1,416	3,191	7,243
West North Central	625	260	142	223	27,436	24,860	10,779	3,921	10,160	15,320
Iowa	116	47	22	47	4,254	3 962	1,532	509	1,921	1,780
Minnesota	109	52	24	33	3,618	3,030	1,438	432	1,160	2,435
Missouri	242	105	59	78	11,033	10,038	4,393	2,177	3,468	7,010
North Dakota	12	6	4	2	323	299	160	59	80	267
South Dakota	13	6	0	7	1,814	1,672	567	8	1,097	102
Nebraska	53	18	12	23	1,894	1,752	674	159	919	743
Kansas	80	26	21	33	4,500	4,107	2,015	577	1,515	2,983
South Atlantic	760	266	145	349	64,800	58,904	19,430	10,168	29,306	27,882
Delaware	16	8	4	4	2,708	2,520	690	1,088	742	1,609
Maryland	122	37	23	62	12,584	11,890	3,162	1,365	7,363	4,594

District of Columbia	52	23	14	15	1,561	1,180	471	175	534	1,001
Virginia	101	38	21	42	11,104	9,933	3,140	3 988	2,805	8,289
West Virginia	49	14	15	20	6,337	6,010	1,936	979	3,095	1,413
North Carolina	93	31	4	58	8,779	7,938	3,071	361	4,506	2,142
South Carolina	25	7	3	15	3,352	3,147	936	229	1,982	491
Georgia	124	45	25	54	10,182	9,272	3,861	672	4,739	4,509
Florida	178	63	36	79	8,193	7,014	2,163	1,311	3,540	3,884
East South Central	352	123	75	154	32,575	30,139	11,529	4,165	14,445	14,042
Kentucky	90	21	30	39	6,212	5,856	2,072	969	2,815	2,833
Tennessee	145	48	28	69	16,846	15,362	6,363	1 709	7 290	7,384
Alabama	82	30	17	35	7,021	6,624	2,011	1 356	3,257	2,578
Mississippi	35	24	0	11	2,496	2,297	1,083	131	1,083	1,247
West South Central	473	198	80	195	36,653	33,579	12,800	5,231	15,548	16,939
Arkansas	57	24	7	26	5,542	5,088	2,445	79	2,564	2,062
Louisiana	84	37	17	30	5,047	4,706	1,628	786	2,292	2,674
Oklahoma	61	22	10	29	3,274	2,993	1,177	243	1,573	979
Texas	271	115	46	110	22,790	20,792	7,550	4,123	9,119	11,224
Mountain	325	123	77	125	17,161	14,554	5,595	3,079	5,880	9,823
Montana	27	12	6	9	676	613	289	47	277	390
Idaho	32	9	10	13	2,592	2,284	725	381	1,178	1,294
Wyoming	13	4	3	6	1,199	688	515	37	136	1,053
Colorado	94	36	18	40	3,400	3 012	805	749	1 458	1,360
New Mexico	22	10	5	7	1 553	1,355	189	902	264	1,360
Arizona	68	33	15	20	5,302	4,648	2 254	656	1 738	3,030
Utah	38	7	13	18	1,187	1,053	267	234	552	353
Nevada	31	12	7	12	1,252	901	551	73	277	983
Pacific	822	289	164	369	42,008	37 175	14,063	6,433	16,679	18,736
Washington	111	45	19	47	3,233	2,839	984	717	1 138	1,603
Oregon	62	23	11	28	2 233	1,924	715	270	939	919
California	649	221	134	294	36,542	32,412	12,364	5,446	14,602	16,214
Outlying areas	229	97	72	60	20,903	17,737	7,999	5,126	4,612	15,676
Alaska	12	2	7	3	398	358	22	158	178	176
Hawaii	53	17	23	13	2,680	2,464	932	854	678	2 101
Puerto Rico	162	76	42	44	17,782	14 881	7,013	4,114	3,754	13,356
Virgin Islands	2	2	0	0	43	34	32	0	2	43

[1] The States are grouped according to the method used by the Bureau of the Census, U S Department of Commerce

Table 16.—Industrial Distribution of Collective-Bargaining Elections, Fiscal Year 1963

Industrial group [1]	Number of elections				Eligible voters	Valid votes cast
	Total	In which representation rights were won by—		In which no representative was chosen		
		AFL-CIO affiliates	Unaffiliated unions			
Total	6,871	2,565	1,487	2,819	489,365	441,969
Manufacturing	4,002	1,561	720	1,721	364,449	333,649
Ordnance and accessories	7	4	0	3	395	355
Food and kindred products	592	165	179	248	33,579	30,298
Tobacco manufacturers	5	2	0	3	962	791
Textile Mill products	66	22	11	33	10,382	9,421
Apparel and other finished products made from fabrics and similar materials	72	25	7	40	8,437	7,729
Lumber and wood products (except furniture)	173	57	32	84	12,317	11,094
Furniture and fixtures	143	59	12	72	13,478	12,182
Paper and allied products	172	79	31	62	12,760	11,596
Printing, publishing, and allied industries	261	98	68	95	6,523	6,006
Chemicals and allied products	309	130	63	116	29,258	27,039
Products of petroleum and coal	63	26	19	18	6,867	6,252
Rubber products	163	65	19	79	12,249	11,352
Leather and leather products	68	24	4	40	13,620	12,524
Stone, clay, and glass products	218	91	48	79	13,069	12,015
Primary metal industries	246	102	35	109	23,525	21,844
Fabricated metal products (except machinery and transportation equipment)	470	197	62	211	30,628	28,287
Machinery (except electrical)	359	160	27	172	38,405	35,764
Electrical machinery, equipment, and supplies	295	116	36	143	64,261	58,588
Aircraft and parts	38	12	9	17	3,742	3,477
Ship and boat building and repairing	20	8	6	6	1,619	1,470
Automotive and other transportation equipment	116	60	21	35	13,226	11,865
Professional, scientific, and controlling instruments	48	16	10	22	6,944	6,286
Miscellaneous manufacturing	98	43	21	34	8,203	7,414
Agriculture, forestry, and fisheries	1	1	0	0	43	43
Mining	54	20	16	18	5,329	4,620
Metal mining	12	4	2	6	3,135	2,895
Coal mining	14	1	6	7	305	283
Crude petroleum and natural gas production	9	5	3	1	554	287
Nonmetallic mining and quarrying	19	10	5	4	1,335	1,155
Construction	130	55	16	59	5,655	4,169
Wholesale trade	655	137	253	265	15,431	14,033
Retail trade	935	425	132	378	34,717	30,191
Finance, insurance, and real estate	54	33	3	18	3,443	3,280
Transportation, communication, and other public utilities	655	176	258	221	39,094	35,014
Local passenger transportation	39	17	12	10	3,250	2,770
Motor freight, warehousing, and transportation services	425	63	217	145	16,748	14,941
Water transportation	39	20	9	10	1,453	1,176
Other transportation	11	2	4	5	165	151
Communication	74	44	7	23	8,049	7,293
Heat, light, power, water, and sanitary services	67	30	9	28	9,429	8,683
Services	385	157	89	139	21,204	16,970

[1] Source Standard Industrial Classification, Division of Statistical Standards, U S Bureau of the Budget, Washington 1957

Table 17.—Size of Units in Collective-Bargaining and Decertification Elections, Fiscal Year 1963

A. COLLECTIVE-BARGAINING ELECTIONS

Size of unit (number of employees)		Number of elections	Percent of total	Elections in which representation rights were won by—				Elections in which no representative was chosen	
Size	Number eligible to vote			AFL-CIO affiliates		Unaffiliated unions			
				Number	Percent	Number	Percent	Number	Percent
Total	489,365	6,871	100 0	2,565	100 0	1,487	100.0	2,819	100 0
1-9	9,368	1,607	23 4	553	21 6	484	32 5	570	20.2
10-19	20,274	1,455	21.2	554	21.6	364	24 5	537	19 1
20-29	20,569	857	12 5	327	12 7	173	11 6	357	12 7
30-39	18,594	544	7 9	208	8 1	97	6 5	239	8 5
40-49	18,997	430	6 2	173	6 8	77	5 2	180	6 4
50-59	16,121	298	4 3	124	4 8	36	2.4	138	4 9
60-69	14,409	224	3 3	96	3 8	29	1 9	99	3 5
70-79	11,221	151	2 2	60	2 3	30	2 0	61	2.2
80-89	11,380	135	2 0	50	2 0	22	1 5	63	2 2
90-99	10,754	114	1 7	36	1 4	19	1 3	59	2 1
100-149	45,176	371	5 4	164	6 4	41	2 8	166	5 9
150-199	34,517	200	2 9	65	2 5	32	2 2	103	3 7
200-299	49,515	204	3 0	77	3 0	28	1 9	99	3 5
300-399	29,844	87	1 3	22	.9	16	1 1	49	1 7
400-499	27,783	62	9	19	7	15	1 0	28	1 0
500-599	20,214	37	.5	13	.5	2	1	22	.8
600-799	24,763	37	5	12	5	4	3	21	.7
800-999	16,874	19	3	2	1	5	.3	12	.4
1,000-1,999	42,490	30	4	8	3	9	6	13	.5
2,000-2,999	12,649	5	1	1	(1)	3	2	1	(1)
3,000-3,999	3,337	1	(1)	0	.0	0	.0	1	(1)
4,000-4,999	4,695	1	(1)	0	.0	0	.0	1	(1)
5,000-9,999	8,400	1	(1)	0	0	1	.1	0	.0
10,000 and over	17,421	1	(1)	1	(1)	0	.0	0	.0

B DECERTIFICATION ELECTIONS

Total	13,256	225	100.0	43	100 0	17	100 0	165	100 0
1-9	360	65	28 9	1	2 3	3	17 6	61	37 0
10-19	648	48	21 3	4	9 3	4	23 5	40	24 3
20-29	698	30	13 3	5	11 6	2	11 8	23	13 9
30-39	344	10	4 5	5	11 6	0	0	5	3 0
40-49	663	15	6 7	4	9 3	1	5 9	10	6 1
50-59	338	6	2 7	1	2 3	1	5 9	4	2 4
60-69	198	3	1 3	2	4 7	0	0	1	.6
70-79	458	6	2 7	4	9 3	0	0	2	1 2
80-89	407	5	2.2	2	4 7	3	17.6	0	.0
90-99	94	1	4	0	0	1	5 9	0	0
100-149	2,194	18	8 0	6	14 0	2	11 8	10	6.1
150-199	890	5	2 2	2	4 7	0	0	3	1.8
200-299	1,943	8	3 6	5	11 6	0	0	3	1 8
300-399	712	2	.9	1	2 3	0	0	1	.6
400 and over	3,309	3	1 3	1	2 3	0	0	2	1.2

[1] Less than one-tenth of 1 percent

Table 18.—Injunction Litigation Under Sec. 10(j) and (l), Fiscal Year 1963

Proceedings	Number of cases instituted	Number of applications granted	Number of applications denied	Cases settled, withdrawn, dismissed, inactive, pending, etc
Under sec 10(j)				
(a) Against unions	7	3		4 settled
(b) Against employers	7	4	2	1 dismissed
(c) Against union and employer	1			1 withdrawn
Under sec 10(l)	215	70	6	69 settled 8 withdrawn 2 dismissed 58 alleged illegal activity suspended 10 pending
Total [1]	230	77	8	153

[1] These data do not add across, because they include 8 injunctions pending at the beginning of fiscal year 1963

Table 19.—Litigation for Enforcement or Review of Board Orders, July 1, 1962–June 30, 1963; and July 5, 1935–June 30, 1963

	July 1, 1962–June 30, 1963		July 5, 1935–June 30, 1963	
	Number	Percent	Number	Percent
Cases decided by U S courts of appeals	198	100 0	2,475	100 0
Board orders enforced in full	113	57 1	1,425	57 6
Board orders enforced with modification	34	17 2	493	19 9
Remanded to Board	7	3 5	94	3 8
Board orders partially enforced and partially remanded	7	3 5	30	1 2
Board orders set aside	37	18 7	433	17 5
Cases decided by U S Supreme Court	4	100 0	146	100 0
Board orders enforced in full	3	75 0	91	62 3
Board orders enforced with modification	0	0	13	8 9
Board orders set aside	1	25 0	25	17 1
Remanded to Board	0	0	3	2 1
Remanded to court of appeals	0	0	11	7 5
Board's request for remand or modification of enforcement order denied	0	0	1	7
Contempt case remanded to court of appeals	0	0	1	7
Contempt cases enforced	0	0	1	7

Table 20.—Record of 10(l) and 10(j) Injunctions Litigated During Fiscal Year 1963

Case No.	Name of complainant	Name of union	Disposition of injunctions		
			Granted	Denied	Pending
	10(l)				
	8(b)(4)(A)				
22-CC-174	Associated Contractors of Essex County	Carpenters of Essex County and Vicinity		X	
21-CC-524	E. J. Gund Associates, Inc.	Bakery Workers, Local 37	X		
	8(b)(4)(B)				
01-CC-368	Anopolsky & Sons, Inc.	Teamsters, Local 559*	X		
19-CC-212	Billings Contractors Council	Bridge Structural Iron Local 167.			X
26-CC-61	Braswell Freight Lines, Inc.	Teamsters, Local 667*	X		
15-CC-181	Brownfield Electric, Inc.	Electrical Workers, IBEW, Local 861.	X		
10-CC-510	Brown Transport Corp.	Teamsters, Local 728*	X		
22-CC-191	William J. Burns Detective Agency, Inc	Teamsters, Local 254*	X		
01-CC-360	Williams, Burt P.	Brewery Workers, Local 8	X		
16-CC-141	Byrne, Thomas S, Inc.	Painters, Local 1905	X		
36-CC-096	Cascade Employers Association	Teamsters, Local 324		X	
12-CC-260	Center Plumbing & Heating Co	Plumbers, Local 519	X		
13-CC-320	Chicago & Illinois Midland Railway Co.	Marine Engineers, Local 25	X		
03-CC-179	Colony Liquor Distributors	Teamsters, Local 445	X		
13-CC-350	Continental Grain Co.	Seafarers, Local 418	X		
12-CC-258	Dade Sound & Controls	Electrical Workers, IBEW, Local 349	X		
22-CC-176	Dierick Vending Co, Inc.	Teamsters, Local 575*	X		
01-CC-359	J C. Driscoll Transportation Co.	Teamsters, Local 25*	X		
15-CC-163	Evans Cooperage Co.	Steelworkers, Union	X		
03-CC-175	Fairway Forms, Inc.	Teamsters, Local 584 and 182*	X		
12-CC-253	Florida Weather, Inc.	Sheet Metal Workers, Local 435	X		
21-CC-568	Golding & Jones, Inc.	Painters, Local 1232	X		
04-CC-245	Haddon Craftsmen, Inc.	Printing Pressmen, Local 119	X		
02-CC-770	Sid Harvey Westchester Corp.	Teamsters, Local 456*	X		
12-CC-263	L & M Electric Co, Inc.	Electrical Workers, IBEW, Local 861	X		
22-CC-185	J A LaRocca Bros.	Electrical Workers, IUE, Local 164		X	
02-CC-751	Maffucci Storage Corp.	Teamsters, Local 814*		X	
15-CC-154	Olin Mathieson Chemical Corp	Pulp, Sulphite Workers, Local 806	X		
02-CC-744	Joseph J. Meyer Bros.	Teamsters, Local 814*	X		
12-CC-252	National Aeronautics and Space Administration	Carpenters, Local 1510	X		
19-CC-209	Northwestern Construction of Wash	Plumbers, Local 44			X
04-CC-216	Tim O'Connell & Sons	Building & Construction Trades Council	X		
02-CC-800	Old Dutch Farms, Inc.	Teamsters, Local 584*			X
22-CC-183	Henry Rosenfeld, Inc, et al.	Ladies Garment Workers, Local 102.	X		
07-CC-221	National Dairy Products Corp	Retail Wholesale Employees, Local 83	X		
08-CC-166	S. Simon Construction Co, et al	Electrical Workers, IBEW, Local 38	X		
06-CC-292	Bryan H Spaite & Son.	Building & Construction, Trades Council	X		
11-CC-30	Standard Fruit & Steamship Co	ILA, Locals, 1422 and 1771	X		
02-CC-779	Summit Construction Co.	Sheet Metal Workers, Local 28	X		
11-CC-31	United Fruit Co.	ILA, Local 1422	X		
14-CC-209	United Nuclear Corp.	Independent Union of Chemical Workers *	X		
01-CC-364	University Cleaning Corp.	Building Service Employees, Local 254	X		
02-CC-761	Ward Baking Co.	Bakery Workers, Local 50	X		
08-CC-181	E Wells Electrical Construction Co	Electrical Workers, IBEW, Local 38			X

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Table 20.—Record of 10(l) and 10(j) Injunctions Litigated During Fiscal Year 1963—Continued

Case No	Name of complainant	Name of union	Disposition of injunctions		
			Granted	Denied	Pending
01-CC-340	Wiggin Terminals, Inc	ILA, Local 800	X		
11-CC-32	Wilmington Shipping Co, et al	ILA, Local 1807 and 1426	X		
	8(b)(4)(D)				
01-CD-74	Aberthaw Construction Co	Bricklayers, Locals 3 and 9	X		
04-CD-86	Bell Telephone Co of Pa	Engineers, Operating Local 542	X		
01-CD-73	Charlesbank Apartments, Inc	Bricklayers, Local 3 et al	X		
02-CD-267	Great A & P Tea Co	Bookbinders, Local 199	X		
23-CD-63	Shelton W Greer Co, Inc	Sheetmetal Workers, Local 54	X		
02-CD-255	New York Times Co	Newspaper & Mail Deliverers' Union *	X		
07-CD-79	Port Huron Sulphite & Paper Co.	Building & Construction Trades Council	X		
20-CD-92	Puget Sound Tug & Barge Co	Longshoremen & Warehousemen Local 6 *	X		
16-CD-23	Southwestern Floor Co	Painters, Local 1905			X
21-CD-134	Matt J Zaich Construction Co	Plumbers, Local 761	X		
	8(b)(7)(A)				
14-CP-32	Jerseyville Retail Merchants Association	Building & Construction Trades Council	X		
02-CP-193	Star Corrugated Box Co	Teamsters, Local 27*	X		
	8(b)(7)(B)				
03-CP-44	Colony Liquor Distributors	Teamsters, Local 445*	X		
09-CP-24	Desrosiers Bros Coal	Mine Workers, Distributors 17 *			X
13-CP-62	Phil-Maid, Inc	Teamsters, Local 743*	X		
	8(b)(7)(C)				
03-CP-39	E A Drake, Inc	Plumbers, Local 273	X		
06-CP-25	Fish Engineering & Construction	Engineers, Operating, Local 66	X		
17-CP-22	Foor Engineering Co	Engineers, Operating, Local 513 et al	X		
10-CP-34	Grundy Mining Co	Mine Workers, District 19, et al *	X		
04-CP-43	I Kaplan, Inc	Meatcutters, Local 375	X		
03-CP-43	Latham Construction Co	Hod Carriers, Local 452	X		
17-CP-26	Nationwide Downtowner Motor Inns	Hotel & Restaurant Employees, Local 19 et al	X		
06-CP-30	Bryan H Spaite & Son	Building & Construction Trades Council	X		
	8(e)				
20-CE-10	California Association of Employers	Teamsters, Local 38 et al *	X		
21-CE-28	Superior Souvenir Book Co	Building Service Employees, Local 399			X
13-CE-16	Threlfall Construction Co	Hod Carriers, Local 464 et al			X
	8(b)(4)(A) & (B)				
09-CC-315	Cardinal Industries	Carpenters, et al		X	
03-CC-213	Lumber Yard Employees, Local 1150 et al	Teamsters, Local 294*		X	
21-CC-583	B R Schedell Contractor, Inc	Engineers, Operating, Local 12	X		
	8(b)(4)(B) & (D)				
02-CC-791 02-CD-265	Automatic Sealing Service Co	Bookbinders, Local 119			X
12-CC-244 12-CD-42	Blount Bros Construction Co	Engineers, Operating, Local 673 et al	X		
06-CC-285 06-CD-139	Christoff Masonry	Bricklayers, Local 11 et al	X		
23-CC-116 23-CD-58	Samuels Glass Co	Bridge, Structural Iron Workers, Local 66	X		
02-CC-764 02-CD-256	United States Trucking Corp	Teamsters, Local 282*	X		

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Table 20.—Record of 10(l) and 10(j) Injunctions Litigated During Fiscal Year 1963—Continued

Case No	Name of complainant	Name of union	Disposition of injunctions		
			Granted	Denied	Pending
	8(b)(4)(B) & 7(C)				
10-CC-512 10-CP-31	Huntsville Contractors Association	Electrical Workers, IBEW, Local 558	X		
	8(b)(4)(C) & 7(A)				
05-CC-203 05-CP-22	Westinghouse Electric Corp	Electrical Workers, IBEW, Local 1805	X		
	10(j)				
	8(a)(1)(3)				
12-CA-2602	Steel Workers	Tiffany Tile Corp	X		
05-CA-2207	Textile Workers Union of America.	Vinton Weaving Co		X	
	8(a)(1)(5)				
15-CA-2248	Engineers, Operating	Manning, Maxwell & Moore, Inc	X		
	8(a)(1)(3) & (5)				
09-CA-2773	Steel Workers	Gas Appliance Supply Corp et al	X		
24-CA-1633	Insular Labor Organization (ILO) *	Sealand Service, Inc et al	X		
	8(a)(1)(2)(3) & (5)				
13-CA-5192	Brewery Workers	Continental Distilling Sales Co		X	
	8(b)(3)				
11-CB-138	Standard Fruit & Steamship Co	ILA, Local 1422	X		
15-CB-613	Standard Fruit & Steamship Co	ILA, Locals 1800 et al	X		
11-CB-139	United Fruit Co	ILA, Local 1422	X		

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