THIRTY-THIRD

ANNUAL REPORT

OF THE

NATIONAL LABOR RELATIONS BOARD

FOR THE FISCAL YEAR

ENDED JUNE 30

1968

THIRTY-THIRD

ANNUAL REPORT

OF THE

NATIONAL LABOR RELATIONS BOARD

FOR THE FISCAL YEAR

ENDED JUNE 30

1968

UNITED STATES GOVERNMENT PRINTING OFFICE
WASHINGTON, D.C. • 1969

For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, D.C. 20402 - Price $1 (paper cover)

NATIONAL LABOR RELATIONS BOARD

Members of the Board

FRANK W. MCCULLOCH, *Chairman*

JOHN H. FANNING
HOWARD JENKINS, JR.
GERALD A. BROWN
SAM ZAGORIA

Chief Counsels to Board Members

ARTHUR LEFF

WILLIAM C. BAISINGER
HARRY M. LEET
RALPH WINKLER
MELVIN J. WELLES

OGDEN W. FIELDS, *Executive Secretary*
WILLIAM FELDESMAN, *Solicitor*
GEORGE BOKAT, *Chief Trial Examiner*
THOMAS W. MILLER, JR., *Director of Information*

Office of the General Counsel

ARNOLD ORDMAN, *General Counsel*

H. STEPHAN GORDON
Associate General Counsel
Division of Operations

DOMINICK L. MANOLI
Associate General Counsel
Division of Law

CLARENCE S. WRIGHT, *Director, Division of Administration*

LETTER OF TRANSMITTAL

NATIONAL LABOR RELATIONS BOARD,
Washington, D.C., January 3, 1969.

SIR: As provided in section 3(c) of the Labor Management Relations Act, 1947, I submit herewith the Thirty-third Annual Report of the National Labor Relations Board for the fiscal year ended June 30, 1968, 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.

TABLE OF CONTENTS

TABLES

CHARTS IN CHAPTER I

I

Operations in Fiscal Year 1968

1. Summary

The National Labor Relations Board in fiscal 1968 received 30,705 cases, almost double the 16,748 of a decade earlier. In 1968 there were 17,816 unfair labor practice cases, or 58 percent of the total. (See chart 1.) There were 12,307 representation petitions, or 40.1 percent. The remainder included union-shop deauthorization petitions (0.5 percent), amendments to certification petitions (0.6 percent), and unit clarification petitions (0.8 percent.)

These requests for NLRB service established a record. Another record was made by the Agency in its 1968 closing of 30,750 cases—17,777 involving unfair labor practices and 12,973 representation related cases. (Tables 7, 8, 9, and 10 give statistics on stage and method of closing, by type of case.)

Slightly more than 91.9 percent of the 17,777 unfair labor practice cases were closed by NLRB regional offices. These cases, closed without the necessity of formal decisions, included 26.4 percent settled or adjusted voluntarily by the parties; 35.1 percent withdrawn voluntarily by the charging parties; and 30.4 percent dismissed administratively. Also, 2.5 percent were disposed of by other means prior to Board adjudication. Thus, only 5.6 percent went to the Board as contested cases. (See chart 3.)

During the year the Agency conducted 7,931 secret-ballot elections of all types. About 78 percent of the elections were arranged by agreement of the parties as to appropriate unit and date and place of election. This is a measure of the acceptance by labor and management of the principle of secret-ballot elections in deciding representation questions.

The Agency continues its policy, of course, of furnishing its statistical data for studies of sources and causes of resistance to the Act and the adequacy of NLRB remedies to deal with the resistance.

Statistical tables on the Agency's activities in fiscal 1968 will be found in appendix A of this report, along with a glossary of terms used in the tables, and a subject index. An index of cases discussed in this report immediately precedes appendix A.

a. NLRB Administration

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

Board members are Chairman Frank McCulloch of Illinois, John H. Fanning of Rhode Island, Gerald A. Brown of California, Howard Jenkins, Jr., of Colorado, and Sam Zagoria of New Jersey. Arnold Ordman of Maryland is General Counsel.

Although the Act administered by the NLRB has become complex, a basic national policy remains the same. Section 1 of the Act concludes, as it has since 1935, as follows: "It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedem of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection."

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

The Act's unfair labor practice provisions place certain restrictions on actions of both employers and unions in their relations with employees, as well as with each other, and its election provisions provide mechanics for conducting and certifying results of representation elections to determine collective-bargaining wishes of employees, including balloting on petitions to decertify unions as bargaining agents as well as voting to determine whether a union shall continue to have the right to make a union-shop contract with an employer.

In handling unfair labor practice cases and elections, the Agency is concerned with the adjustment of labor disputes either by way of investigation and informal settlements 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 to the Act, Congress reaffirmed need for the Agency and increased the scope of its regulatory powers.

NLRB has no statutory independent power of enforcement of its orders but it may seek enforcement in the U.S. Courts of Appeals. Similarly parties aggrieved by the orders may seek judicial review.

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

For the conduct of its formal hearings in unfair labor practice cases, the NLRB employs trial examiners who hear and decide cases. Trial examiners' decisions may be appealed to the Board in the form of exceptions taken; if no exceptions are taken, under the statute the trial examiners' recommended orders become orders of the Board. Trial examiners are independent of NLRB supervision and are appointed from a roster compiled by the Civil Service Commission.

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

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

b. Case Activity Highlights

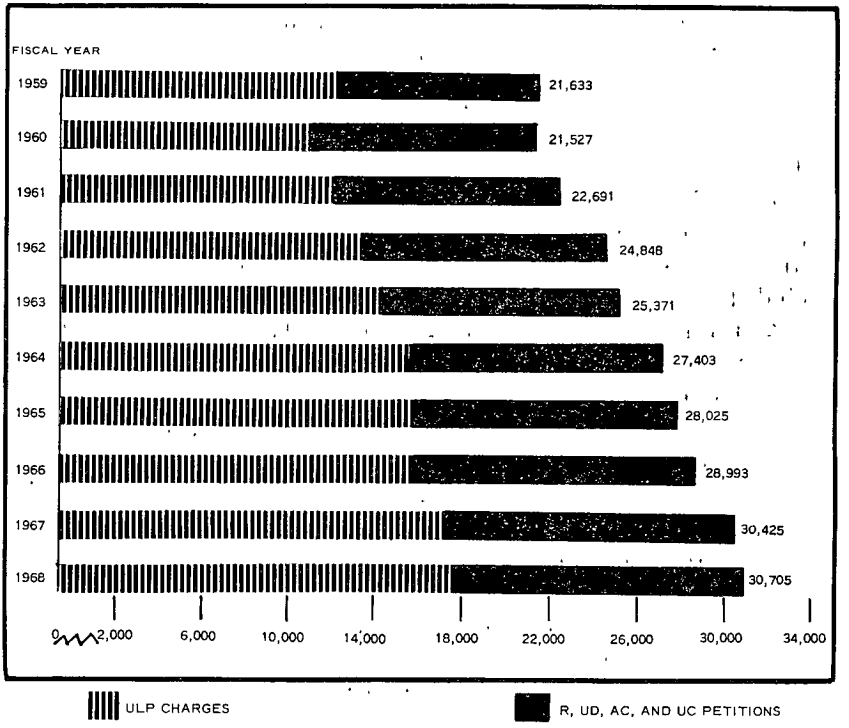
Employers, employees, and labor organizations, seeking adjustment of labor disputes and resolution of questions concerning employee representation, have boosted the NLRB caseload above the preceding year for the eighth consecutive time. Agency activity in fiscal 1968 included:

- Intake—a total of 30,705, of which 17,816 were unfair labor practice charges and 12,889 were representation petitions and related cases.
- Closed—a total of 30,750, where once again a record number, 17,777, involved unfair labor practices.
- Board decisions issued—1,033 unfair labor practice decisions and 2,869 representation decisions and rulings, the latter by Board and regional directors.
- General Counsel's office (and regional office personnel)
  —issued 2,004 formal complaints
  —closed 1,018 initial unfair labor practice hearings, including 41 hearings under section 10(k) of the Act.

- Regional directors issued 1,809 initial decisions in representation cases.
- Trial Examiners issued 943 initial decisions and an additional 45 on supplemental matters.
- A total of 4,697 unfair labor practice cases were settled or adjusted before issuance of trial examiners' decisions.
- Regional offices distributed $3,189,340 in backpay to 6,274 employees. Of the 3,107 employees offered reinstatement, 2,061 accepted.
- Personnel from the various regional offices sat as hearing officers at 2,167 representation hearings—1,971 initial hearings and 196 on objections and/or challenges.
- More than a half million employees cast ballots in NLRB-conducted elections.
- Appeals courts handed down 301 decisions related to enforcement and/or review of Board orders—85 percent affirmed the Board in whole or in part.

Chart 1

CASE INTAKE BY UNFAIR LABOR PRACTICE CHARGES AND REPRESENTATION PETITIONS



2. Operational Highlights

a. Unfair Labor Practices

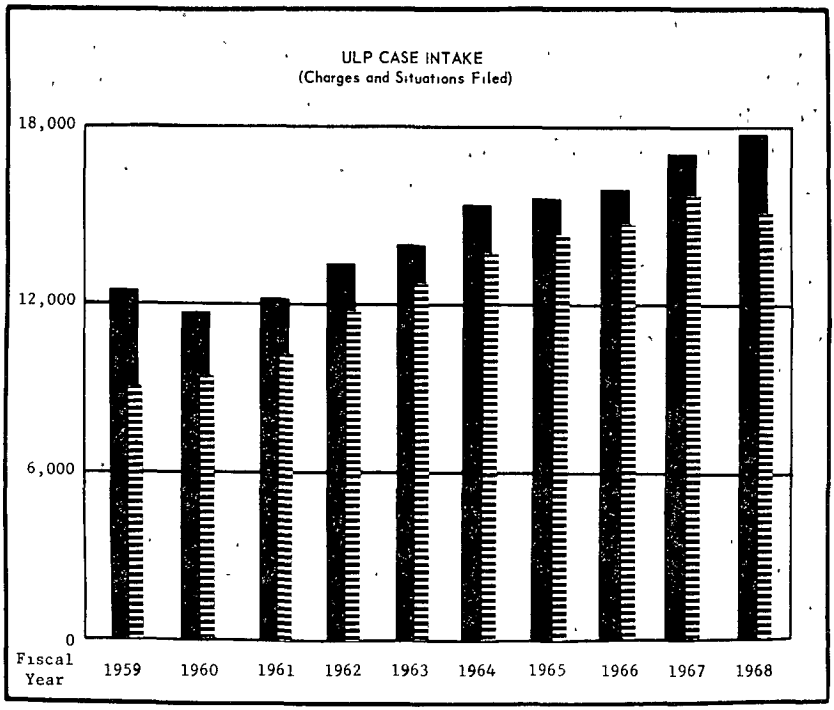
The record 17,816 unfair labor practice cases filed in fiscal 1968 exceeded the 17,040 of 1967 by 776 cases (5 percent) and about doubled those filed 10 years ago. In situations (in which related charges are counted as a single unit of work) there was a 5.4 percent increase over fiscal 1967. (See chart 2.)

Alleged violations of the Act by employers rose to 11,892 cases in 1968 from the 11,259 of 1967. Charges against unions rose to 5,846 in 1968 from the 5,747 of 1967.

There were 78 charges of violations of section 8(e) of the Act, the provision banning hot cargo agreements: 51 against unions and 27 against both unions and employers. (See tables 1 and 1A on cases received by the NLRB.)

As to charges against employers, 8,129, or 68.4 percent, alleged discrimination or illegal discharge of employees. The 4,097 refusal-to-

Chart 2



	1959	1960	1961	1962	1963	1964	1965	1966	1967	1968
CHARGES	12,239	11,357	12,132	13,479	14,166	15,620	15,900	15,933	17,040	17,816
SITUATIONS	9,046	9,114	10,592	11,877	12,719	13,978	14,423	14,539	15,499	15,28

348-205—69——2

bargain allegations were contained in about one-third of the charges. (See table 2.)

On charges against unions, those alleging illegal restraint and coercion of employees numbered 3,158 (187 above those of 1967), or 54 percent, as against the 52 percent of similar filings in 1967. Illegal secondary boycotts and jurisdictional disputes accounted for about one-third of the filings against unions, amounting to 1,873 charges, or 3 percent more than the 1,815 of 1967. Illegal union discrimination against employees was alleged in 1,625 charges, 3 percent below 1967. There were 416 charges of unions picketing illegally for recognition or for organizational purposes. In 1967 there were 528 such charges. (See table 2.)

Identifying the parties charging employer misconduct—unions led by filing 64 percent of charges against employers. Unions filed 7,555 charges; individuals filed 4,315 charges, or nearly 36 percent; and employers filed 22 charges against other employers.

As to the 7,555 charges against employers by unions, AFL-CIO submitted 5,524, Teamsters 1,447, other national unions 344, and local unaffiliated unions 240.

Nearly half the charges against unions were filed by individuals, 2,839 or 49 percent of the fiscal 1968 total of 5,846; employers filed 2,771 or 47 percent; and other unions filed the 236 remaining charges. Of the 78 hot cargo charges against unions under section 8(e) of the Act, 49 were filed by employers, 6 by individuals, and 23 by unions.

In the record 17,777 case closings of 1968, 91.9 percent were closed by NLRB regional offices, as compared to 91.7 percent in 1967 and 92.1 percent in 1966. In 1968, 26.4 percent of cases were settled or adjusted before issuance of trial examiner decisions. Withdrawal of cases by charging parties amounted to 35.1 percent and administrative decisions to 30.4 percent in 1968, while in 1967 the percentages were 37.7 and 26.7, respectively.

In processing unfair labor practice charges the number found to have merit following investigation is important to the evaluation of regional workload. Since fiscal 1958, when 20.7 percent of cases were found to have merit, this merit factor has risen steadily. It reached its highest level of 36.6 percent in fiscal 1966. In fiscal 1967 it was 36.2 percent; in fiscal 1968 it dropped to 34.7 percent. Thus, in the 3 years the merit factor has fluctuated from nearly 35 percent to nearly 37 percent.

In 1968 the merit factor in charges against employers was 34.2 percent as against 38 percent in 1967. In charges against unions the merit factor was 35.6 percent in fiscal 1968, while it was 32.8 percent in fiscal 1967.

Since 1962, as illustrated in chart 5, more than 50 percent of the merit charges have resulted in precomplaint settlements and adjustments, amounting to 58 percent in fiscal 1968.

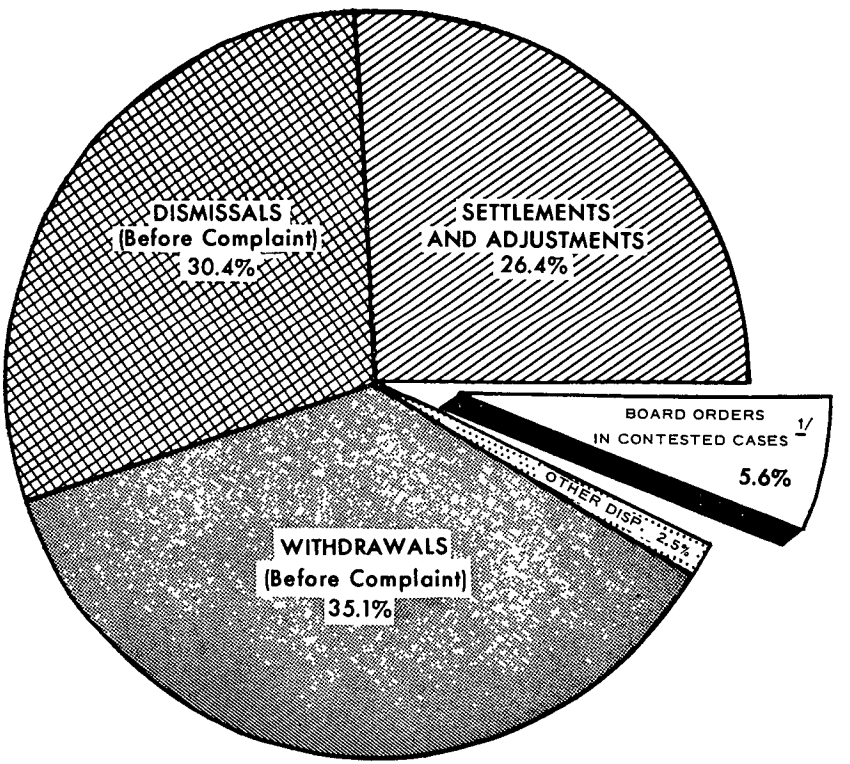
In 1968 there were 2,580 merit charges which caused issuance of complaints and 3,608 precomplaint settlements or adjustments. The two combined totaled 6,188, or 34.7 percent of the unfair labor practice cases. (See chart 5.)

Chart 3

DISPOSITION PATTERN FOR UNFAIR LABOR PRACTICE CASES

(BASED ON CASES CLOSED)

FISCAL YEAR 1968



1/ CONTESTED CASES REACHING BOARD MEMBERS FOR DECISIONS

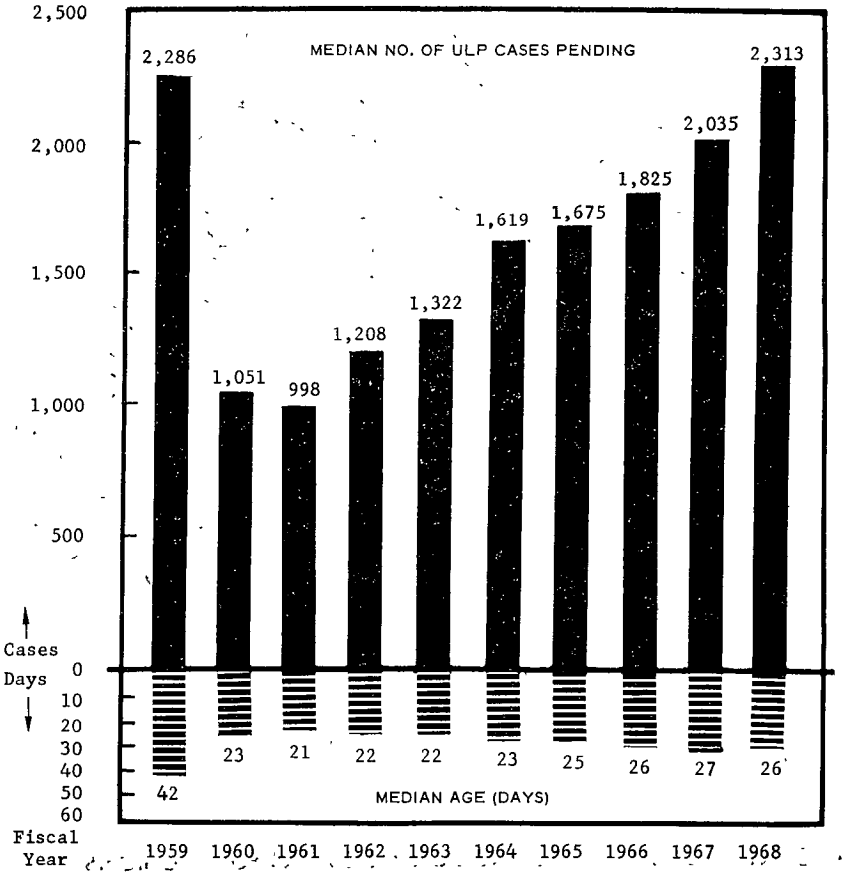
Complaints issued by regional offices totaled 2,004, about 3 percent more than the 1,945 issued in 1967. (See chart 6.) Of complaints issued, 81 percent were against employers, 15.9 percent against unions, and 3.1 percent against both employers and unions.

NLRB regional offices in fiscal 1968 processed cases from filing of charges to issuance of complaints in a median of 58 days, or 3 days less than in fiscal 1967. The 58 days included 15 days in which the parties had the opportunity to adjust a charge and remedy the violations without resort to formal NLRB processes. (See chart 6.)

Trial examiners conducted 977 initial hearings involving 1,399 cases during fiscal 1968, compared with 993 hearings involving 1,469

Chart 4

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



cases in fiscal 1967. (See chart 8 and table 3A.) Also, trial examiners conducted 31 additional hearings on supplemental matters.

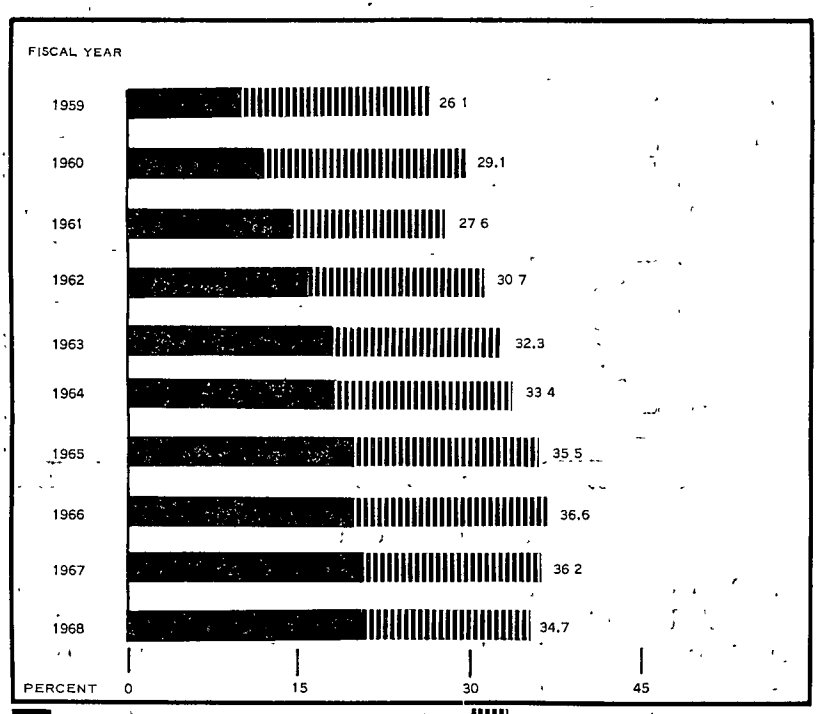
At the end of fiscal 1968 there were 7,377 unfair labor practice cases pending before the Agency, less than 1 percent above the 7,338 cases pending at the end of fiscal 1967.

NLRB in fiscal 1968 awarded backpay to 6,274 workers, amounting to a total of $3.2 million. The backpay awarded was just 2 percent less than in fiscal 1967. (See chart 9.) There were 1,726 cases involved in the distribution of backpay in 1968, while there were 1,641 such cases in 1967.

Employees in fiscal 1968 also received $38,660 in reimbursement for fees, dues, and fines as a result of charges filed with the Agency.

Chart 5

UNFAIR LABOR PRACTICE MERIT FACTOR

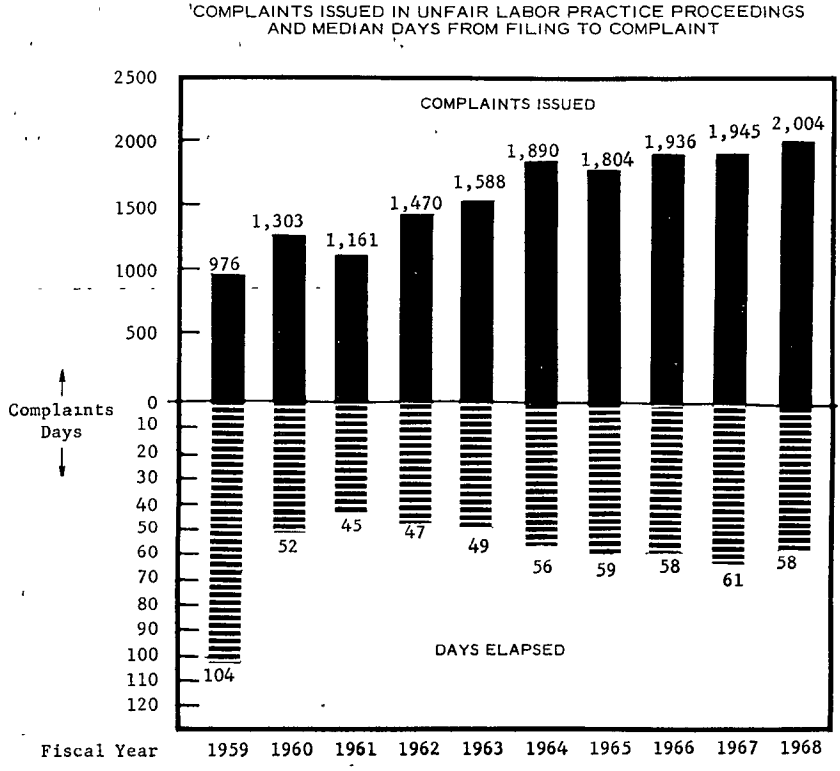


	1959	1960	1961	1962	1963	1964	1965	1966	1967	1968
PRECOMPLAINT SETTLEMENTS AND ADJUSTMENTS (%)	9.7	11.9	14.1	15.3	17.5	17.8	19.4	19.4	20.5	20.2
CASES IN WHICH COMPLAINTS ISSUED (%)	16.4	17.2	13.5	15.4	14.8	15.6	16.1	17.2	15.7	14.5
TOTAL MERIT FACTOR (%)	26.1	29.1	27.6	30.7	32.3	33.4	35.5	36.6	36.2	34.7

In 1,281 cases there were 3,107 employees offered job reinstatement, and 2,061, or 66 percent, accepted reinstatement. In fiscal 1967 about 80 percent of the employees offered reinstatement accepted.

Work stoppages ended in 296 of the cases closed. Collective bargaining was begun in 1,531 cases. (See table 4.)

Chart 6



b. Representation Cases

The NLRB in fiscal 1968 received 12,889 representation petitions. These included 11,540 collective-bargaining cases; 767 petitions for decertification; 152 union-shop deauthorization petitions; 194 petitions for amendment of certification; and 236 petitions for unit clarification. The total representation intake was about 4 percent, or 496 cases, below the 13,385 of fiscal 1967.

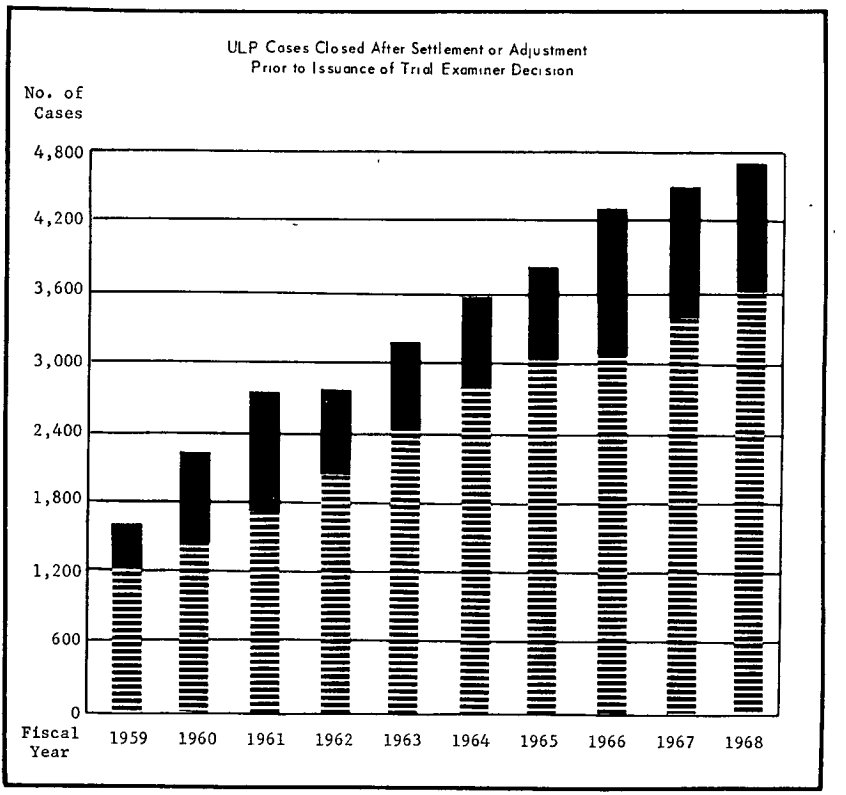
The total 12,973 cases closed in fiscal 1968 was 1 percent below the 13,134 closed in fiscal 1967. Cases closed in 1968 included 11,662 collective-bargaining petitions, 747 petitions for election to determine whether unions should be decertified, 143 petitions for employees to

decide whether unions should retain authority to make union-shop agreements with employers, and 421 unit clarification and amendment of certification petitions. (See chart 14 and tables 1 and 1B.)

Of the 12,552 representation and union-deauthorization cases closed, 8,123, or 65 percent, were closed after elections. There were 3,100 withdrawals, amounting to 25 percent, and 1,329 dismissals.

Chart 7

UNFAIR LABOR PRACTICE CASES SETTLED



Fiscal Year	Precomplaint	Postcomplaint	Total
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
1964	2,750	846	3,596
1965	3,003	821	3,824
1966	3,085	1,176	4,261
1967	3,390	1,072	4,462
1968	3,608	1,089	4,697

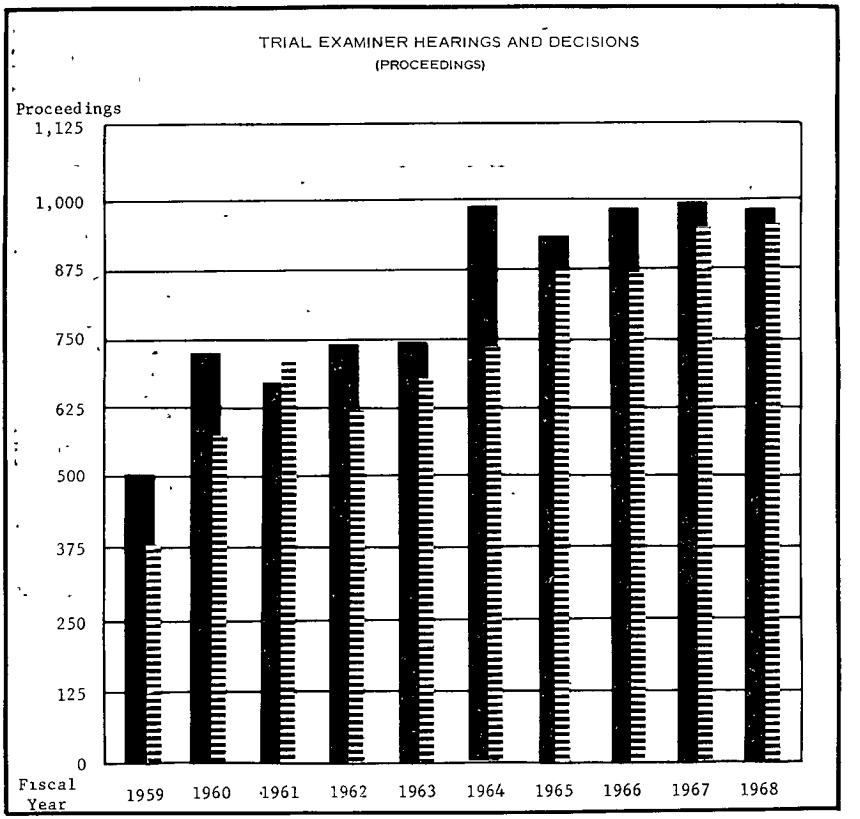
The bulk of the 8,123 cases closed after elections were by election agreements, 6,343 or 78 percent (also 78 percent in fiscal 1967).

Regional directors ordered elections following hearings in 1,645 cases, or 20 percent of those closed by elections: Seventeen cases resulted in expedited elections pursuant to the 8(b)(7)(C) provisions pertaining to picketing. Board elections in 118 cases, about 2 percent of election closures, followed appeals or transfers from regional offices. (See table 10.)

c. Elections

In fiscal 1968, 96 percent (7,618) of the 7,931 elections in cases closed were collective-bargaining elections. (See chart 12.) Also there were 239 elections conducted to determine whether incumbent unions would continue to represent the majority of employees and 74 elections

Chart 8



to determine whether unions would continue to have the authority to make union-shop agreements with employers.

Unions lost the right to make union-shop agreements in 40 of the 74 deauthorization elections, while they maintained the right in the 34 other elections, which covered 2,162 employees. (See table 12.)

By voluntary agreement of the parties involved, 6,200 stipulated and consent elections were conducted. These were 78 percent of the total elections, as compared with 77 percent in fiscal 1967. (See table 11.)

Unions won 4,495 representation elections in fiscal 1968. These were 57 percent of the total (7,857), a drop from the 59 percent of fiscal 1967. (See table 13.)

With fewer elections won by unions, fewer employees (506,772) exercised their right to vote. There was a decrease of 47,361 voters, or 9 percent below the previous year. For all kinds of elections the average number of employees voting per establishment was 64. About three-fourths of collective-bargaining elections each covered 59 or fewer employees. There was about the same average of 59 employees for the decertification elections. (See tables 11 and 17.)

In decertification elections, unions won in 83, lost in 156. Unions retained the right of representation of 10,750 employees in the 83 elections won. As to size of bargaining units involved, unions won in units averaging 130 employees and lost in units averaging 31 employees. (See table 13.)

The average number of employees per election on the question of union-shop deauthorization was 46 where deauthorization was voted, and 64 where authorization was continued. (See table 12.)

d. Decisions Issued

There were 943 decisions and recommended orders issued by trial examiners in fiscal 1968, a 1 percent increase over the 934 of fiscal 1967. (See chart 8.) In 1968 trial examiners also issued 24 backpay decisions (28 in 1967) and 21 supplemental decisions (19 in 1967). (See table 3A.)

The total of decisions issued by Board members and regional directors in 1968 fell slightly below 1967. During 1968, 3,902 decisions issued. (See chart 13.) These involved 4,653 unfair labor practice and representation cases. In addition, the Board and regional directors issued 205 decisions in 302 cases related to clarifications of employee bargaining units, amendments to union representation certifications, and union-shop deauthorization cases.

These made a grand total of 4,107 decisions issued by the Agency in 1968, a 6 percent drop from the 4,362 decisions issued in 1967. Of

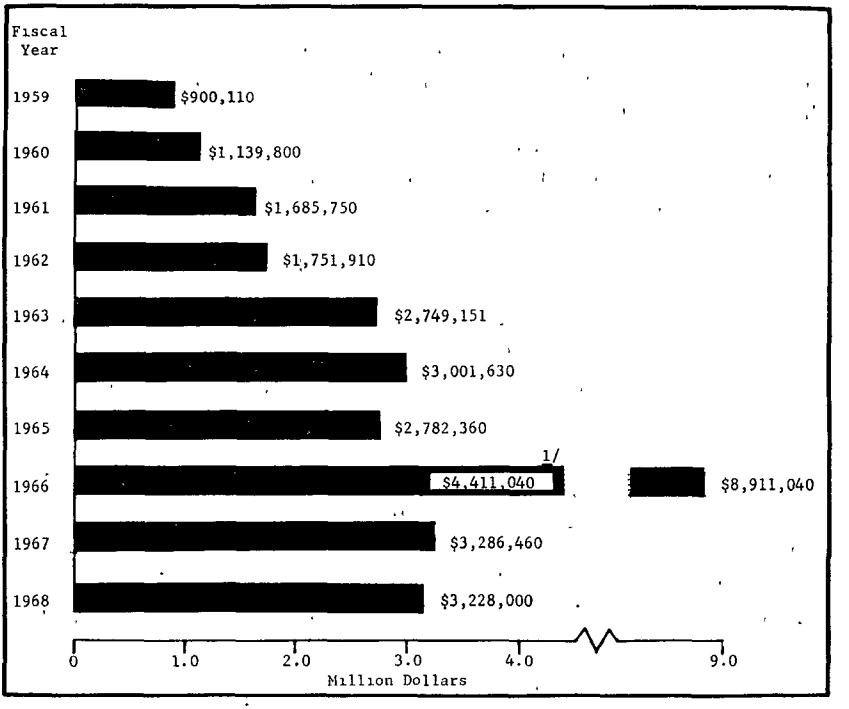
the 4,107 decisions, Board members issued 1,698 (160 less than the 1,858 of 1967) in 2,250 cases, while regional directors issued 2,409 (95 less than the 2,504 in 1967) in 2,705 cases.

In 1,221 of the 1,698 decisions by the Board, the parties contested the facts or application of the law. Contested Board decisions follow:

Total contested Board decisions issued	1,221
Unfair labor practice decisions (including those based on stipulated record)	738
Supplemental unfair labor practice decisions	25
Backpay decisions	14
Determinations in jurisdictional disputes	36
Representation decisions:	
After transfer by regional director for initial decision	112
After review of regional director's decision	31
Total representation decisions	143
Decisions on objections and challenges	248
Decisions as to clarification of bargaining units	12
Decisions as to amendments to certifications	5

Chart 9

AMOUNT OF BACKPAY RECEIVED BY DISCRIMINATEES



1/ 1966 - less the Kohler Case

The remaining 477 decisions were not contested before the Board.

Settlements and adjustments, withdrawals and dismissals (as shown by chart 3 and tables 7 and 7A) account for the relatively small number of contested unfair labor practice cases which reach the Board members, and the effectiveness of these processes in disposing of the vast bulk of charges filed with the Agency without need of extended litigation may be demonstrated by the following statistics.

Board decisions may cover a number of related cases. In 1968, the 721 initial contested unfair labor practice Board decisions encompassed 1,079 cases. Of the 1,079 cases ruled on, the Board found violations of the Act in 929, or 86 percent (in 1967 violations were found in 1,054 or 88 percent of the 1,192 contested cases).

Board rulings in contested cases concerning employers and unions follow:

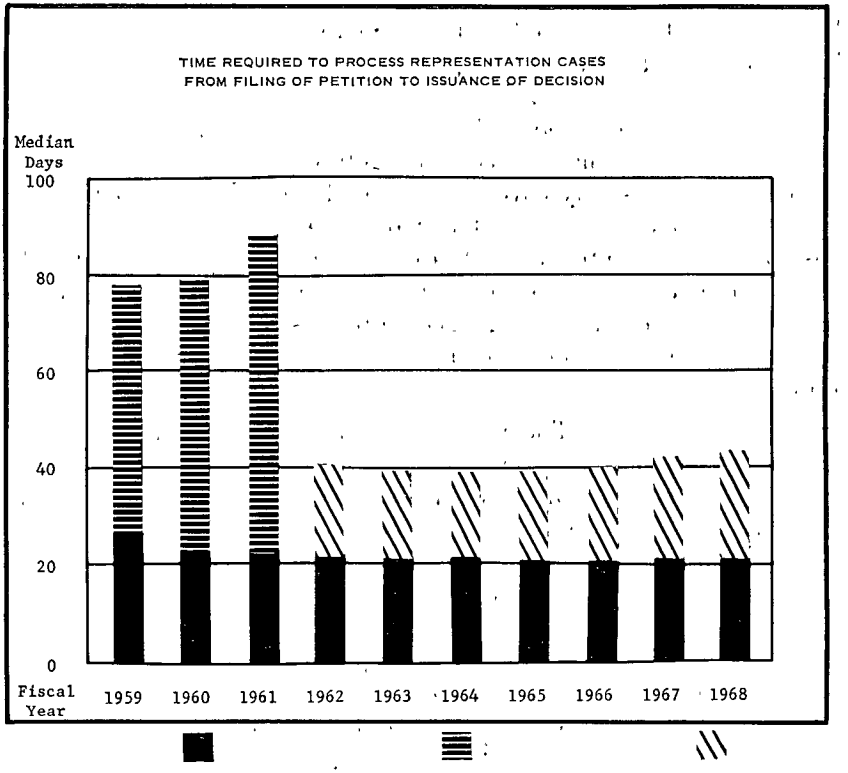
1. *Employers*—The Board handed down decisions in 914 contested unfair labor practice cases against employers during the year, or 8 percent of the 11,779 unfair labor practice cases against employers disposed of by the Agency in 1968. Of the 914 cases, violations were found in 792 (87 percent) as compared with 1967 when violations were found in 88 percent of 991 cases. Board remedies in the 792 cases included ordering employers, among other things, to reinstate 1,360 employees, with or without backpay; to give backpay without reinstatement to 98 employees; to cease illegal assistance to or domination of labor organizations in 23 cases; and to bargain collectively with employee representatives in 332 cases.

2. *Unions*—There were 165 decisions by the Board in contested unfair labor practice cases against unions. This was 2.8 percent of the 5,998 union cases closed in 1968. Of the 165 cases, 83 percent, or 137 cases, resulted in findings of violations. In 1967, 90 percent of 201 similar cases produced violations.

In remedying the unfair labor practices found in the 137 cases, the Board directives to unions included orders in 12 cases to cease picketing and to give 35 employees backpay. Unions and employers were held jointly liable for backpay for 25 of these employees.

At the end of fiscal 1968, there were 496 decisions pending issuance by the Board—352 dealing with unfair labor practices and 144 with employee representation questions. The total was a 1 percent increase over the 489 decisions pending at the beginning of the year. (See chart 11.)

Chart 10



FISCAL YEAR	FILING TO CLOSE OF HEARING	CLOSE OF HEARING TO BOARD DECISION	CLOSE OF HEARING TO REGIONAL DIRECTOR DECISION
1959	28	49	-
1960	24	54	-
1961	24	65	-
1962	23	-	18
1963	22	-	17
1964	22	-	17
1965	21	-	18
1966	21	-	19
1967	22	-	20
1968	22	-	22

e. Court Litigation

In fiscal 1968 the Agency had continued success in court litigation affecting NLRB-related cases.

Appeals courts handed down 301 decisions (57 more than in fiscal 1967). In the 301 decisions, the NLRB was affirmed in whole or in part in 85 percent, an increase over the 81 percent in 244 cases in fiscal 1967.

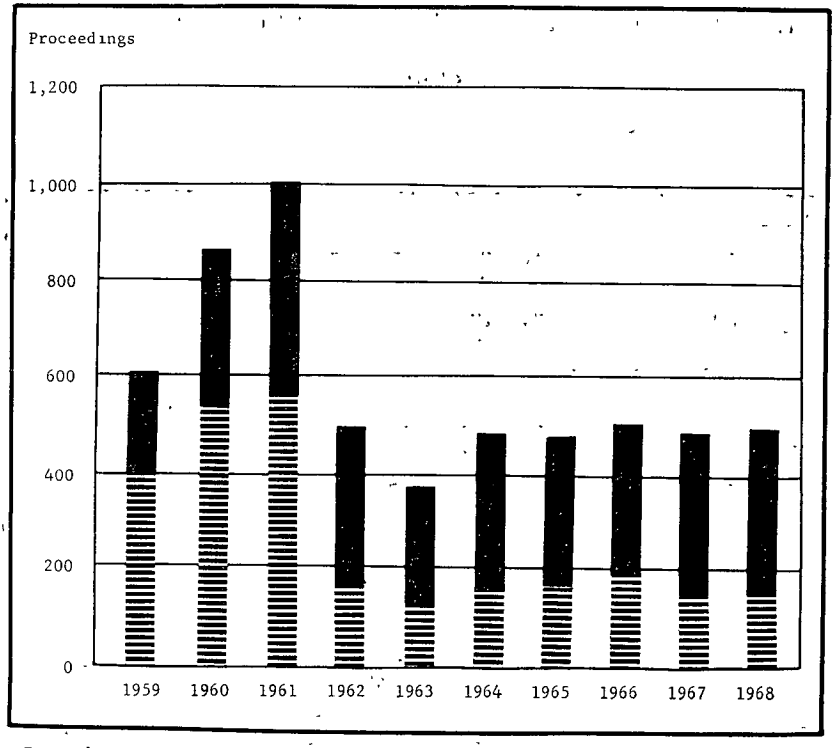
The following is a breakdown of circuit court rulings in 1968:

Total NLRB cases ruled on	301
Affirmed in full	177
Affirmed with modification	72
Remanded to NLRB	9
Partially affirmed and partially remanded	6
Set aside	37

In 18 contempt cases before the appeals courts, the respondent in one complied with the NLRB order after the contempt petition had been filed but before the court decision. In 13, the courts held respondents in contempt, and in 4 the courts denied agency petitions. (See tables 19 and 19A.)

Chart 11

BOARD CASE BACKLOG



Proceedings	1959	1960	1961	1962	1963	1964	1965	1966	1967	1968
C	210	330	460	323	256	344	336	323	343	352
R	399	522	549	165	122	142	148	190	146	144
Totals	609	852	1,009	488	378	486	484	513	489	496

The U.S. Supreme Court affirmed in full the three NLRB orders before it. In two other cases the NLRB appeared as *amicus curiae*. The position the NLRB supported was sustained in both cases. (See table 19.)

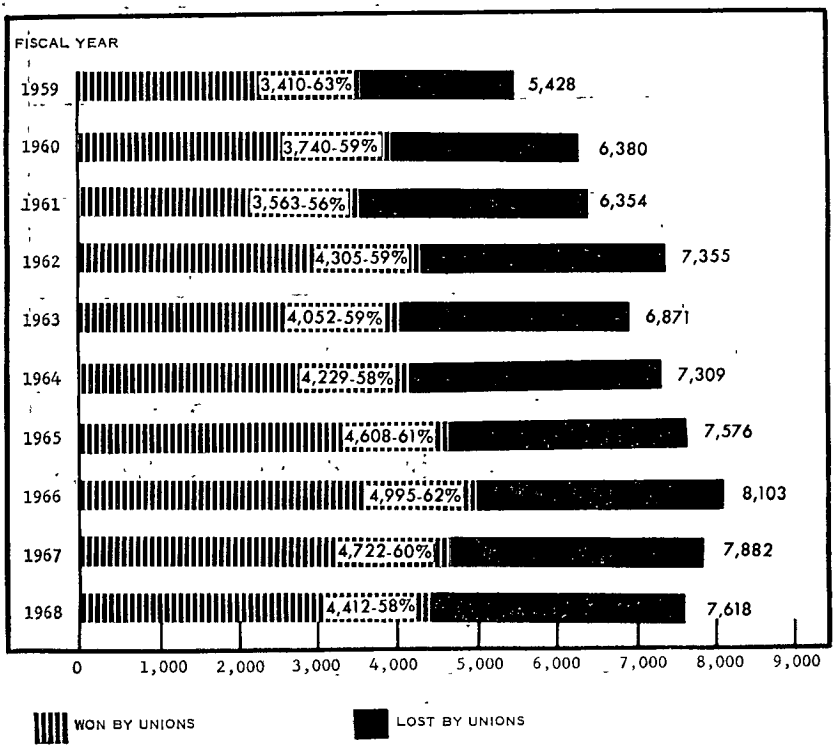
U.S. District Courts in 1968 granted 86 percent (88 percent in 1967) of contested cases litigated to final order on NLRB injunction requests filed pursuant to section 10 (j) and (l) of the Act. NLRB injunction activity during 1968 in the district courts showed:

Granted	64
Denied	10
Withdrawn	24
Dismissed	2
Settled or placed on courts' inactive docket	65
Awaiting action at the end of fiscal 1968	25

As to cases instituted in 1968, there were 181 NLRB-related injunction petitions filed with the district courts compared with the 180 of 1967. In 1968 the NLRB also filed nine petitions for injunctions in

Chart 12

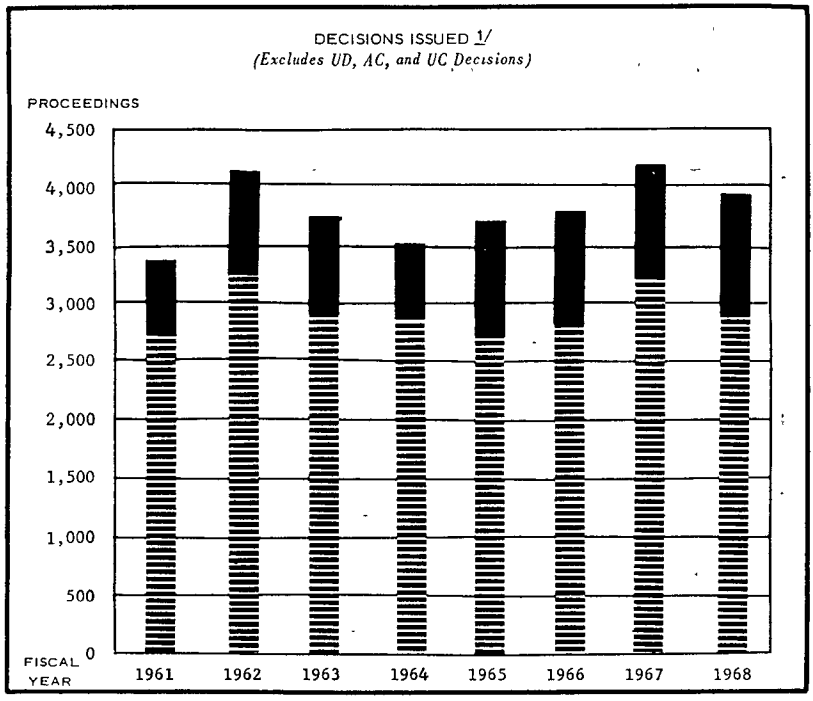
COLLECTIVE-BARGAINING ELECTIONS CLOSED



the courts of appeals pursuant to the provisions of the Act's section 10(e). The courts ruled on 11 petitions during the year—granting 2 and denying 9. (See table 20.)

During 1968 there were 34 additional cases, involving miscellaneous litigation decided by appellate and district courts, 30 (88 percent) of which upheld the NLRB's position. (See table 21.)

Chart 13



	1961	1962	1963	1964	1965	1966	1967	1968
C	655	903	854	776	1,000	991	1,023	1,033
R	2,718	3,211	2,857	2,812	2,707	2,769	3,155	2,869
TOTALS	3,373	4,114	3,711	3,588	3,707	3,760	4,178	3,902

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

f. Other Developments

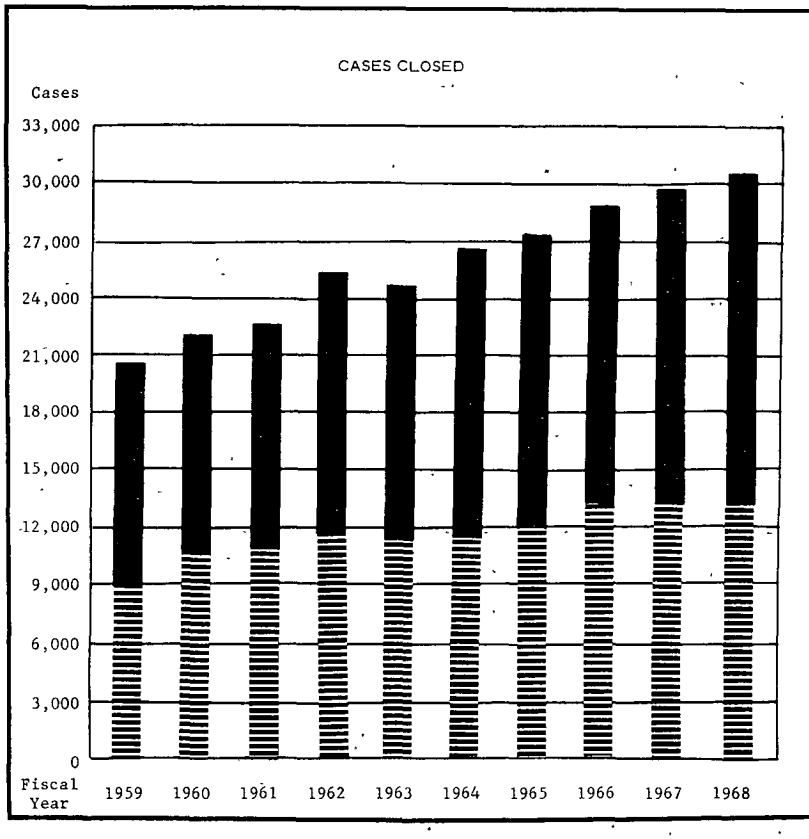
Arnold Ordman took his oath of office as NLRB General Counsel in July 1967 for a second 4-year term. He was sworn in by Judge Charles Fahy of the U.S. Court of Appeals for the District of Columbia.

Board representatives attended meetings in August of the Labor Law Section of the American Bar Association at Honolulu, Hawaii. Board Member Howard Jenkins, Jr., was the principal speaker at one

of the sessions. He urged labor lawyers to become "involved" in the attempts to find sensible solutions for the nation's most pressing social and economic problems. Board Member Jenkins and Associate General Counsel H. Stephan Gordon were speakers at the later Conference of the State Labor Relations Agencies.

In September, following the suggestion of an NLRB trial examiner, and after consultation with the American Bar Association's Labor Bar practitioners, it was decided that new emphasis would be placed on availability of prehearing conferences in unfair labor practice cases. The goal is shorter and improved trial hearings, with the hope that a byproduct will be more settlements of unfair labor practice cases.

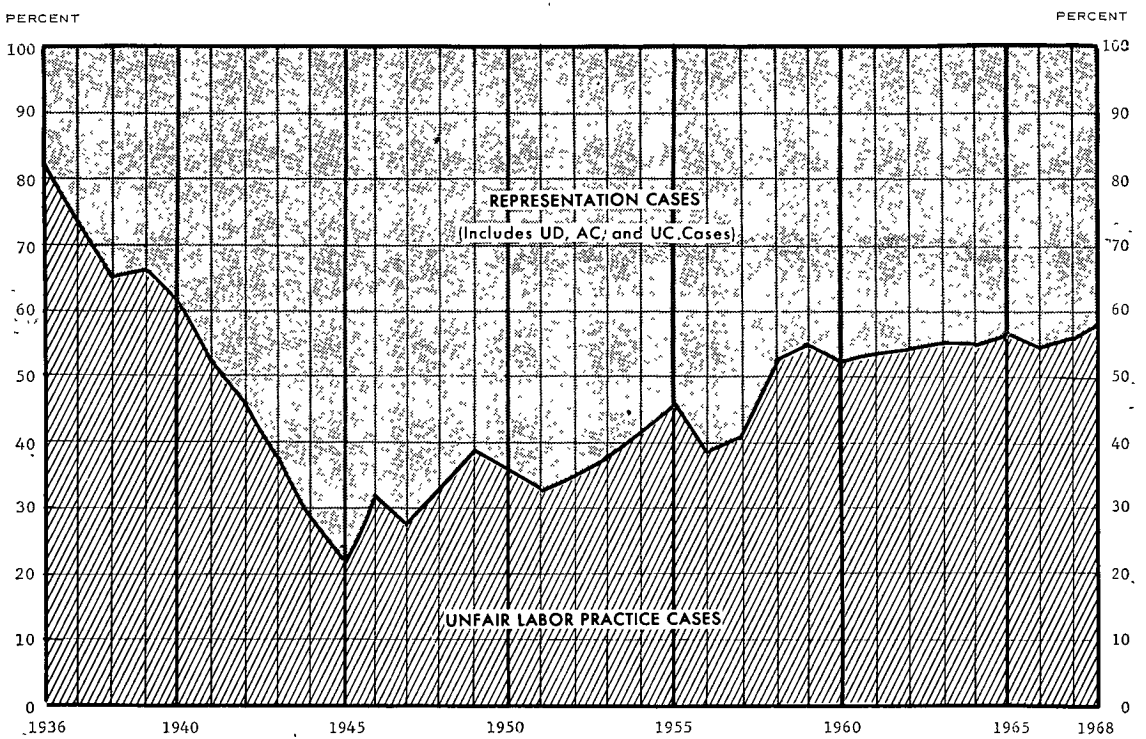
Chart 14



	1959	1960	1961	1962	1963	1964	1965	1966	1967	1968
C CASES	11,465	11,924	12,526	13,319	13,605	15,074	15,219	15,587	16,360	17,777
R, UD, AC, AND UC CASES	8,890	10,259	10,289	11,708	11,073	11,641	11,980	12,917	13,134	12,973
TOTALS	20,355	22,183	22,815	25,027	24,678	26,715	27,199	28,504	29,494	30,750

Chart 15

COMPARISON OF FILINGS OF UNFAIR LABOR PRACTICE CASES AND REPRESENTATION CASES



This graph shows the percentage division of the NLRB caseload between unfair labor practice cases and representation cases during fiscal years 1936-1968.

348-205—69——3

White House announcement in October 1967 of renomination of Board Member John H. Fanning projected his service into a third 5-year term, the longest service of any member in the Board's history. Mr. Fanning thus has received nominations from three Presidents. He took his oath of office in December.

Board members and the General Counsel in June 1968 met with officials of the Federal Mediation and Conciliation Service for a discussion of common problems and to share information on issues that arise before each of the agencies.

Board officials also met in June with a special committee of the National Academy of Arbitrators whose responsibility it is to confer with the Board on operating and legal problems that arise in disputes which are subject to arbitration and which may be subject to the National Labor Relations Act.

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 complex problems arising from the many factual patterns in the various cases reaching it. In some cases new developments in industrial relations, as presented by the factual situation, required the Board's accommodation of established principles to those developments. Chapter II on "Jurisdiction of the Board," chapter III on "Board Procedure," 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 some of the decisions establishing basic principles in certain areas.

a. Jurisdiction of the Board

Upon a reevaluation of the factors relevant to the impact upon commerce of the operations of proprietary hospitals, the Board in the *Butte Medical Properties* case [1] departed from its past discretionary policy established in *Flatbush General Hospital* [2] of declining jurisdiction over proprietary hospitals. It asserted jurisdiction over the employer hospital under a new standard established as applicable to such enterprises, of gross revenues of at least $250,000 per annum. In doing so the Board noted that payments for health protection and care from national health insurance companies and the Federal Government to proprietary hospitals have a considerable impact on interstate commerce, that proprietary hospitals make substantial out-of-

[1] *Butte Medical Properties, d/b/a Medical Center Hospital,* 168 NLRB No. 52, *infra,* p 29.

[2] 126 NLRB 144 (1960).

State purchases of services and supplies, that although "local" in that their patients and doctors come from nearby communities, they often recruit difficult-to-secure personnel from more extensive areas, and that State regulation of proprietary hospitals is extremely limited in scope and coverage in the sphere of labor relations. It concluded that the public interest would be served by making available the orderly and peaceful procedures of the Act in the hospital industry and, accordingly, asserted jurisdiction. In a companion case,[3] the Board applied the same reasoning in support of its conclusion that it will effectuate the purposes of the Act to assert jurisdiction over proprietary nursing homes providing skilled health care and convalescent services to patients, where the employer receives at least $100,000 in gross revenue per annum.

b. Representation Issues

Among the significant representation issues considered by the Board during the past year were the voting eligibility of the son of one of the principal owners of the employer-corporation and the appropriateness of a self-determination election to resolve a unit question where no question concerning representation was presented. In the *Scandia* case,[4] the Board held that the son of one of two corporate principals, each of whom owned 50 percent of the corporate stock, was ineligible to vote in an election in a unit of all employees at the corporation's retail stores, although he worked in one of the retail stores and enjoyed no special privileges by virtue of the family relationship. The Board found him ineligible to vote because within the "any individual employed by his parent" exclusion from the definition of "employee" in section 2(3) of the Act, and ineligible also as a matter of bargaining unit determination in which individuals whose interests are identified with management are excluded from the unit. On the matter of statutory exclusion, the Board noted that, in this circumstance, it was required to identify the actual employer and in doing so it could not give "controlling weight to the form in which the employer operates its business and disregards the underlying realities of business ownership and management on which the statutory objectives are predicated." Looking beyond the corporate form to the fundamentals of its existence, the Board found the two individuals actually owned and managed the corporation and, for all practical purposes, were the real employers of the employees. Since one of them was the father of the challenged voter, the Board found that employee was an "individual employed by his parent" and therefore ineligible to vote.

[3] *University Nursing Home*, 168 NLRB No. 53, *infra*, pp 29–30.
[4] *Foam Rubber City 2 of Fla., d/b/a Scandia*, 167 NLRB No. 81, *infra*, pp. 56–57.

The Board also reached the same conclusion as to a unit determination under section 9(b) of the Act, where its policy requires the exclusion of individuals whose interests are more clearly identified with those of management. Since under that criterion the children of the owner of a closely held corporation would be excluded, the Board announced that the criterion would also apply to exclude the children and spouse of individuals who have substantial stock interests in closely held corporations.

Utilizing "a new combination of long-established procedures, in order to put at rest a controversy that has admittedly been disturbing the relations of the parties for a number of years," the Board in the *Libbey-Owens-Ford Glass Company* case,[5] a unit clarification proceeding, directed self-determination elections among the employer's employees in two single-plant units represented separately by the same union to determine whether they wished to be represented as part of a multiplant unit together with the eight other plants of the employer then represented by the same union in a multiplant unit. The Board noted that it had long recognized that the preference of a group of employees may be a valid factor to be weighed in establishing an appropriate unit and, as an investigatory factfinding tool to determine that preference, has held self-determination elections in which the employees' vote determines whether they will be represented in a unit with another group of employees. Finding there was no question of the presumptive appropriateness of the employerwide units contemplated, and that the utilization of a self-determination election as "an investigatory factfinding tool" to determine employee preference was as vaild in a unit clarification proceeding as in one involving a question concerning representation, the Board also concluded that the decision to resolve a question of the unit for future bargaining through the procedures utilized was within its statutory competence.

c. Employer Discrimination in Employment

The test of a lockout's legality enunciated by the Supreme Court in *American Ship Building* [6]—whether it is inherently so prejudicial to union interests and so devoid of significant economic justification that no specific evidence of intent is required—was held by the Board in the *Darling* case [7] to be "properly applicable to situations involving a lockout of employees prior to an impasse in negotiations." Carefully evaluating "all the surrounding circumstances" of an employer's preimpasse lockout in support of its bargaining proposals, concluding

[5] 169 NLRB No. 2, *infra*, pp 57–58.
[6] *American Ship Building Co.* v. *NLRB*, 380 U.S. 300 (1965).
[7] *Darling and Co.*, 171 NLRB No. 95, *infra*, p. 8.

its desire to avoid deferral of a strike until its busy season, the Board found the strike was not unlawfully motivated. It further concluded that in view of the continued disagreement on a few key issues after extensive bargaining, the union's announced intention to strike at a time of its own choosing, and the past history of employee work stoppages at the plant, the lockout was neither inherently prejudicial to union interests nor devoid of significant economic justification.

The extent of the right of economic strikers to reinstatement, and the responsibility of employers to fully reinstate them, was considered by the Board in the *Laidlaw* case,[8] where it held that the right of an economic striker to reinstatement continues to exist so long as he has not abandoned the employ of the employer for other substantial and equivalent employment. In doing so it relied particularly on the principles set forth by the Supreme Court in *Fleetwood Trailer*[9] that a striker who is still an employee and available for work is entitled to full reinstatement unless there are legitimate and substantial business reasons for not offering to do so. The Board concluded that a striker remains an employee even though his application for reinstatement is rejected because at that particular moment he has been replaced, and, absent business justification, it is incumbent upon the employer to seek him out for reinstatement as positions for which he is qualified become vacant. In the Board's view, the failure of the employer to do so was so inherently destructive of employee rights, within the meaning of the *Fleetwood Trailer* and *Great Dane Trailer*[10] Supreme Court decisions, that no proof of specific antiunion motivation is required.

d. Bargaining Obligation

The obligation of a successor employer to bargain with the union representative of the employees of the former employer was further defined by the Board in two cases in which it emphasized that "[a]mong the central factors in a successorship question is the new employer's relationship to the old employer's work force." In *Thomas Cadillac*,[11] each of the two locations of a business whose employees were represented in a single multilocation unit by two unions jointly was taken over by different employers who continued the same business but neither of whom employed a significant number of the unit employees of the former employer. Concluding that the selection of unit employees for employment was in no way influenced by the union membership of the job applicant, the Board found the new employers "did

[8] *Laidlaw Corp*, 171 NLRB No 175, *infra*, p 83
[9] *N.L.R B.* v. *Fleetwood Trailer Co.*, 389 U S. 375 (1967).
[10] *N.L.R.B* v *Great Dane Trailers*, 388 U S 26 (1967).
[11] 170 NLRB No. 92, *infra*, p 104

not take over or succeed to [the] bargaining unit," and therefore had no obligation to bargain with the unions with respect to the employees formerly employed in the operations, or with respect to those they hired after taking over the business. The Board reached a similar conclusion in *Tallakson Ford*,[12] where, upon the advent of a new employer, the business remained substantially the same except for the composition of the bargaining unit. Finding that as a result of the nondiscriminatory selection of employees by the new employer a majority of the employees in the unit had not been employed, the Board held the new employer was "not a successor as to that unit" and was not obligated to bargain with the union.

e. Prohibited Picketing

The applicability of section 8(b)(2) of the Act to rectify abuses of a union's use of secondary pressures to affect the employment of nonunion employees received further consideration by the Board in one case.[13] The Board held that a union's picketing of a secondary employer general contractor to cause the removal of the nonunion employees of a subcontractor was not within the purview of section 8(b)(2) but is rather secondary activity which section 8(b)(4) was designed to regulate. Although the secondary employer was "an" employer whom the union was attempting to cause to engage in discrimination by ceasing to do business with another employer because of the nonunion membership of the latter's employees, the Board viewed such discrimination to be directed against the primary employer, rather than his employees, and therefore outside the prohibition of section 8(a)(3) and the interrelated employee protection aspects of section 8(b)(2). It emphasized that where a union seeks to cause "the" employer to discriminate against his employees (nonunion employees herein), whether the pressure be direct or indirect, a violation of section 8(b)(2) would be found. But the extent of control exerted by a general contractor over the employees of a subcontractor does not make him "the" employer of those employees nor negate the essential independence of the general contractors and subcontractors from one another.

Union picketing appeals to consumers found to be directed to a total boycott of secondary employers were held by the Board in *Honolulu Typographical*[14] to be violative of section 8(b)(4)(ii)(B). The Board concluded that the appeals were not protected under the doctrine of a limited consumer boycott privilege enunciated by the Supreme Court in

[12] 171 NLRB No. 67, *infra*, p. 104.

[13] *Local 447, United Assn. of Journeymen, etc., Plumbers (Malbaff Landscape Construction)*, 172 NLRB No. 7, *infra*, pp. 114–115.

[14] *Honolulu Typographical Union 37 (Hawaii Press)*, 167 NLRB No. 150, *infra*, pp 115–116.

Tree Fruits.[15] It found that due to the nature of the secondary employers' restaurant businesses, the picketing appeal to the public not to patronize the restaurants advertising in the struck newspaper published by the primary employer could not be likened to direct picketing against a primary employer at an expanded picketing site where his product is sold or his services utilized and the picketing is directed solely against such products or services. Since the union's activities were necessarily directed towards the institution of a consumer boycott of the entire establishments of the secondary employers, "its obvious aim was to cause a cessation of the secondary employers' dealings with the primary employer, not as a natural consequence of a falling consumer demand, but by force of the injury that would otherwise be inflicted on their businesses generally."

4. Financial Statement

The obligations and expenditures of the National Labor Relations Board for fiscal year ended June 30, 1968, are as follows:

Personnel compensation	$25,422,404
Personnel benefits	1,959,887
Travel and transportation of persons	1,422,232
Transportation of things	38,537
Rent, communications, and utilities	1,153,020
Printing and reproduction	596,484
Other services	954,356
Supplies and materials	323,201
Equipment	136,544
Subtotal obligations and expenditures [1]	32,006,665
Transferred to operating expenses, public building service (rent)	57,712
Total Agency	32,064,377

[1] Includes reimbursable obligations distributed as follows:

Personnel compensation	64,042
Personnel benefits	8,763
Travel and transportation of persons	28,480
Rent, communications, and utilities	2,362
Supplies and materials	193
Total obligations and expenditures	103,840

[15] *N.L.R.B.* v *Fruit & Vegetable Packers, Local 760* [*Tree Fruits Labor Rel. Com.*], 377 U.S. 58 (1964).

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 self-imposed jurisdictional standards prevailing on August 1, 1959.[4] Accordingly, before the Board takes cognizance of a case, it must first be established that it has legal or statutory jurisdiction; i.e., that the business operations involved "affect" commerce within the meaning of the Act. It must also appear that the business operations meet the Board's applicable jurisdictional standards.[5]

A. Enterprises Subject to Board Jurisdiction

During the report year the Board had occasion to further delineate the extent to which it would or would not assert jurisdiction over various enterprises in order to effectuate the policies of the Act. Among the decisions in which jurisdiction was asserted were those pertaining

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

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

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

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

to proprietary hospitals and nursing homes, enterprises providing services to exempt organizations, an airline engaged in intrastate commerce, and a food concessionaire at a racetrack.

1. Proprietary Hospitals and Nursing Homes

In the *Butte Medical Properties* case [6] the Board departed from its past discretionary policy established in *Flatbush General Hospital* [7] of declining jurisdiction over proprietary hospitals and asserted jurisdiction over the employer hospital under the new standard established as applicable to such enterprises, of gross revenues of at least $250,000 per annum. As reasons for its action the Board noted that payments for health protection and care from national health insurance companies and the Federal Government to proprietary hospitals have a considerable impact on interstate commerce, that proprietary hospitals make substantial out-of-State purchases of services and supplies, that, although "local" in that their patients and doctors come from nearby communities, they often recruit difficult-to-secure personnel from more extensive areas, and that State regulation of proprietary hospitals is extremely limited in scope and coverage in the sphere of labor relations. It concluded that the public interest would be served by making available the orderly and peaceful procedures of the Act in the hospital industry and, accordingly, asserted jurisdiction. In a companion case,[8] the Board applied the same reasoning in support of its conclusion that it will effectuate the purposes of the Act to assert jurisdiction over proprietary nursing homes providing skilled health care and convalescent services to patients, where the employer receives at least $100,000 in gross revenue per annum.

In a subsequent case [9] involving an employer rendering duct-cleaning services, the Board included as indirect outflow in the computation of business volume the value of services rendered by the employer to a proprietary hospital receiving gross revenues of over $2 million yearly. Considering the size of the hospital, the Board inferred that interstate insurance payments received by it were at least as great as those received by the hospital in *Butte*. Since the hospital had in addition purchased $22,000 in drugs and supplies from four drug companies, over at least two of which the Board had previously asserted jurisdiction, the Board found it reasonable to assume that the hospital was engaged in interstate commerce within the meaning of the Act and that therefore services rendered to it by the cleaning serv-

[6] *Butte Medical Properties, d/b/a Medical Center Hospital,* 168 NLRB No. 52.
[7] 126 NLRB 144 (1960).
[8] *University Nursing Home,* 168 NLRB No. 53.
[9] *A A A Air Duct Cleaning Co.,* 169 NLRB No. 137.

ices supplier constituted indirect outflow. It was noted, however, that if it were a question of jurisdiction directly over the hospital, the Board would not assert jurisdiction without a higher degree of proof as to its inclusion within the Board's jurisdiction.

2. Enterprises Providing Services to Exempt Organizations

It has been the Board's consistent policy to decline jurisdiction over enterprises whose activities it has found to be intimately related to the operations of employers exempt from jurisdiction under section 2(2) of the Act.[10] This year, in the *Herbert Harvey* case,[11] the Board was again confronted with the necessity for making such a determination in the context of reconsidering its initial assertion of jurisdiction in this case[12] in light of a court of appeals finding[13] that the World Bank[14] was a joint employer of the employees working in its building for an employer supplying it janitorial services under contract. Concluding that the Bank was an international organization over which the Board was precluded from exercising jurisdiction, the Board found, however, that the janitorial services contractor's operations were not so intimately related to those of the Bank that the contractor was not fully capable of bargaining effectively with the union. The contract between the parties contemplated an independent relationship by giving the employer primary responsibility over employees performing the services required, reserved no rights to the Bank to determine wages, hours, circumstances of employment or discharge or other conditions of employment, specified the employer as an independent contractor, and contained no limitation on the amount of wages to be paid employees. In addition, the rights of direction retained by the Bank under the contract and as revealed by the record were consistent with those which a service company would ordinarily permit to please its clients. Under these circumstances, the Board asserted jurisdiction over the service contractor, notwithstanding the joint employer status of the exempt organization.[15]

In the *Marianas* case[16] the Board declined jurisdiction over an employer which recruited alien contract workers for employment at the Naval Ship Repair Facility at Guam, pursuant to its labor supply

[10] See *Inter-County Blood Banks*, 165 NLRB No. 38 (1967); *Horn & Hardart Co*, 154 NLRB 1368 (1965).

[11] 171 NLRB No. 36

[12] 159 NLRB 254 (1966).

[13] *Herbert Harvey, Inc* v *N.L.R.B*, 385 F.2d 684 (C.A.D.C., 1967).

[14] The International Bank for Reconstruction and Development, located in Washington, D.C.

[15] See also *Richmond of New Jersey*, 168 NLRB No. 117, where the Board asserted jurisdiction over an employer maintenance company which supplied cleaning services to a nonprofit hospital over which it would not assert jurisdiction.

[16] *Marianas Stevedoring & Development Co*, 170 NLRB No. 148.

contract with the U.S. Navy. The employer entered into individual contracts with each employee and made initial determinations respecting the workers' skills and eligibility for promotion. In addition, the contract required the employer to provide housing and meals to the workers and to render various administrative services to them. However, because the employer had no responsibility for the work performed at the facility, and particularily since the Navy exercised complete and exclusive control over the employees in their work and during their tenure of employment, the Board found it would not effectuate the policies of the Act to assert jurisdiction over the employer.

3. Others

In *Air California* [17] the Board asserted jurisdiction over an intrastate airline, licensed by the State public utilities commission but not the CAB, which did not transport any mail for the U.S. Government, did not interchange tickets with any other airline, whose out-of-State charter flights comprised an estimated $\frac{1}{10}$ of 1 percent of its business, and which was listed in the "Official Airline Guide" as an "intra-State Carrier." Persuaded by a decision of the National Mediation Board involving almost identical facts that the employer was not a carrier subject to jurisdiction under the Railway Labor Act, the Board asserted jurisdiction over the airline as an employer whose operations clearly established the Board's legal jurisdiction and met the applicable standards for discretionary jurisdiction over local passenger transit systems. And in *Harry M. Stevens* [18] an advisory opinion, the Board stated that under the applicable retail standard it would assert jurisdiction over the employer's food concession at Yonker's Raceway in New York, an enterprise engaged in the racing industry over which the Board, as a matter of policy, does not assert jurisdiction. The Board concluded that the employer and its five wholly owned subsidiary corporations were a single employer for jurisdictional purposes, in view of their extensive interchange, on an intrastate and interstate basis, of goods, equipment, and employees between various racetrack concessions, as well as between racetrack concessions and nonracetrack concessions, and the unified and integrated basis upon which the labor relations of the employer and its subsidiaries with respect to racetrack employees were conducted. In addition, the Board noted that there had been no integration of the employer's activities at Yonkers into the main operations of the raceway, and that, while subject to New York State regulation, the employees were directly supervised by the employer itself, rather than being part and parcel of the racing as-

[17] 170 NLRB No. 1.
[18] 169 NLRB No 116.

sociation's operation at Yonkers.[19] Under these circumstances, the Board advised the parties it would assert jurisdiction, since a labor dispute arising from the employer's substantial and highly integrated interstate activity potentially could be of long duration and have a most significant impact on commerce.[20]

B. Enterprises Over Which Jurisdiction Was Declined

During the report year the Board declined jurisdiction in cases involving a bandleader-employer, the franchisee of a large convenience-store concern, and the United States Book Exchange. In *Marty Levitt*,[21] the employer-petitioner was a bandleader who performed "club dates," i.e., single engagements, such as a wedding, fashion show, or other social events, and who employed for these purposes a number of "sidemen." The Board rejected the union's contention that the employer's $1,500 of out-of-State purchases could be characterized as *de minimis* and thus found that it had statutory jurisdiction. Jurisdiction was declined, however, since the employer's gross volume of business was insufficient to meet either the retail or nonretail standard the Board found to be appropriate in this area. Acceptance of the petitioner's proposed new jurisdictional standard of $15,000 for the "club date" field, the Board noted, would involve it in thousands of economically insignificant disputes. In addition, the Board did not agree that jurisdiction should be asserted on a multiemployer basis. Since multiemployer bargaining is predicted upon the consent of the parties, the mere fact that the union, through its economic strength, is able to enforce demands uniformly against many bandleaders, does not mean it consents to bargaining in a multiemployer unit.

In another case,[22] the Board was called upon to determine whether a joint-employer relationship resulted from a franchise agreement between a large corporation and a convenience-type retail food store found by the Board to be an independent contractor. Since the franchise agreement granting control over labor relations to the franchised independent contractor had not been altered in practice, the Board held that the corporate franchisor and the franchisee were not joint employers of the employees involved but that the franchisee was the sole employer of the employees. In so holding, the Board rejected the contention that the contract's termination clause and provision limiting the employer's weekly draw reflected the corporation's control over

[19] Cf. *Pinkerton's Natl Detective Agency*, 114 NLRB 1363 (1955)

[20] Cf. *Hotel & Restaurant Employees, Local 348 (Resort Concessions)*, 148 NLRB 208 (1964).

[21] 171 NLRB No. 94.

[22] *Southland Corp, d/b/a Speedee 7-Eleven*, 170 NLRB No. 159.

labor relations,[23] and rejected the additional contention that the corporation's detailed price and policy recommendations reflected control over the store owner's means of operation, rendering the store owner an employee of the corporation. As the store's gross revenues did not meet the required retail standard, jurisdiction was declined over the franchised employer.

And, in *United States Book Exchange*,[24] the Board declined to assert jurisdiction over a nonprofit corporation engaged exclusively in the exchange of books and periodicals for the purpose of filling the various needs of libraries and institutions throughout the world. The employer derived substantial revenue from membership fees and service fees for handling and filling request orders for its member libraries, over half of which were associated with colleges and universities. Since its inception in 1948 the Exchange has been adjudged exempt from the Federal tax laws. In these circumstances, following its long-standing policy not to assert jurisdiction over nonprofit corporations whose activities are noncommercial in nature and intimately connected with the charitable purpose or educational activities of an institution [25] over which the Board would not assert jurisdiction, the Board regarded as inappropriate the assertion of jurisdiction over the employer, notwithstanding the fact that it was not an educational institution in a subdivision of any such institution, since it concluded from the facts before it that the employer was directly and exclusively engaged in the dissemination of knowledge and was an integral factor in the education system.[26]

[23] Cf *Thriftown, d/b/a Value Village*, 161 NLRB 603 (1966).

[24] 167 NLRB No. 149

[25] See *Trustees of Columbia University in the City of N Y.*, 97 NLRB 424 (1951); *Philadelphia Orchestra Assn*, 97 NLRB 548 (1951).

[26] Cf. *Lovelace Foundation for Medical Education & Research*, 165 NLRB No. 99 (1967).

III

Board Procedure

A. Objections to Unilateral Settlements

Consideration by the Board in *Farmers Cooperative Gin Assn.*[1] of objections made by a nonconsenting charging party to the terms of a settlement entered into by the General Counsel and the respondent as a basis for disposing of the charge allegations, gave the Board occasion to enunciate the principles and policies which guide it in evaluating such settlements. Noting that "the meticulous procedure followed prior to submission of the [objections] to the Board," together with its own findings, satisfied "all the requirements of due process and opportunity to be heard to which the Charging Party is entitled," [2] the Board pointed out that:

> The Board has long had the policy of encouraging settlements which effectuate the purposes of the Act. . . . In considering settlements, the Board must weigh such factors as the risks involved in protracted litigation which may be lost in whole or in part, the early restoration of industrial harmony by making concessions, and the conservation of the Board's resources. Moreover, the Board must evaluate the legal and factual merits disclosed by the administrative investigation to determine whether the allegations of violations in the complaint can be so clearly proved that no remedy, less than the maximum, can be accepted. In arriving at this decision, the discretion of the Board is recognized as broad.

In reviewing the objections in the light of those principles, the Board found that the complained of failure to require the reinstatement of two employees was because one was a supervisor whom the General Counsel, in his unreviewable authority under section 3(d) of the Act, had determined not to include in the unfair labor practice

[1] 168 NLRB No. 64.

[2] The procedures provided by sec 101 9 of the Board's Statements of Procedure, Series 8, as amended, were followed. The charging party was represented in the settlement conferences held at the regional office. When the proposed settlement agreement was submitted for the charging party's approval, it was informed of its right to object and advised of the 5-day period provided for the submission of objections The regional director considered the objections and, upon determining to recommend to the General Counsel approval of the agreement notwithstanding the objections, informed the charging party and explained his basis for doing so. The objections were renewed to the General Counsel, who, in informing the charging party of his approval of the agreement and his recommendation of its approval to the Board, similarily explained the resons for his action and informed the charging party of its opportunity to submit objections to the Board.

complaint and the other had engaged in misconduct warranting the respondent's refusal to reinstate him. As to the alleged inadequacy of the backpay amounts provided, the Board concluded that the risks of litigation and certainty of delay in payment were such as to render the amount proposed "reasonable in all the circumstances." The objection that the charging party was entitled to a court decree in another case against the respondent then pending review in a court of appeals was rejected as a matter not within the Board's jurisdiction, and the objection that denial of a hearing precluded the opportunity to justify additional make-whole remedies was overruled, since in the Board's view the settlement provided substantial and effective remedies in full under current Board law for all aspects of the refusal to bargain allegations of the complaint. Concluding therefore that the "objections are lacking in merit and constitute no basis for rejecting the settlement agreement," the Board further found that the provisions of the settlement adequately remedy the violations alleged and it would effectuate the purposes of the Act to adopt the terms of the settlement.

B. Relitigation of Representation Case Issues

During the course of the report year the Board in the *Stanley Air Tools* case,[3] following the construction of section 102.67(f) of the Board's Rules and Regulations set forth by the District of Columbia Circuit Court of Appeals in its decision in *Sagamore Shirt*,[4] permitted an employer to relitigate in an unfair labor practice proceeding the supervisory status of two employees although their status had been previously resolved in a representation proceeding. In doing so, the Board noted that the applicability of the bar to relitigation set forth in section 102.67(f), which precludes litigation in a later related unfair labor practice proceeding of issues which were or could have been raised in a prior representation proceeding, depends upon the nature of the issue the party seeks to relitigate. It emphasized that where a certification is issued in a representation proceeding and an attempt is made to relitigate the validity of the certification in a subsequent unfair labor practice proceeding involving a refusal to bargain, the proceeding is related within the meaning of section 102.67(f) and further litigation will be barred. However, in addition to determining the relationship of the two proceedings involved in order to rule on the relitigability of specific issues, it was also deemed necessary to ascertain whether the specific issue raised for relitigation was one which had been fully litigated in the representation proceeding.

[3] 171 NLRB No 48.

[4] *N.L.R.B* v. *Sagamore Shirt Co., d/b/a Spruce Pine Mfg. Co*, 365 F 2d 898 (1966), Thirty-first Annual Report (1966), pp. 129–130.

Relitigation was therefore permitted under these standards in the *Stanley Air Tools* case, since the unfair labor practice issue of the supervisory status of the employees for the purpose of determining the employer's responsibility for their conduct, differed significantly from the representation proceeding issue of their supervisory status for the purpose of determining eligibility to vote. However, relitigation was not permitted in the *Allied Food Distributors* case [5] where the unfair labor practice issue of whether a question concerning representation existed at the time the employer executed a renewal contract with the union, the maintenance and enforcement of which was alleged to be prohibited assistance, was no different than the fully litigated issue in the representation proceeding where the regional director had held that the renewal contract could not act as a bar to a representation proceeding because it had been signed at a time when a question concerning representation existed.

C. Reinstatement of Charge After Dismissal

The circumstances under which, consistent with the time limitation of section 10(b),[6] a charge of unfair labor practices which has been dismissed by the General Counsel may be reinstated by him upon reconsideration of his decision to dismiss was an issue in two Board decisions during the report year. In *Swift Service Stores* [7] an employer was charged with violating section 8(a)(3) and (1) by refusing to pay his employees their usual Christmas bonus in December 1965, because of a 1-day work stoppage in April 1965. The charge was filed in January 1966, and in March the regional director refused to issue a complaint. The union's appeal of the regional director's decision was denied by the General Counsel in August 1966, on the ground that the alleged unfair labor practice occurred in April 1965, the time the employees engaged in the work stoppage and the time the employees were notified that they would not receive a Christmas bonus for that year, rather than in December, the time when the bonuses were actually withheld, so that the charges were therefore barred by section 10(b). Sixteen days after denial of the appeal the union filed a motion for reconsideration, and in February 1967 the motion was granted and the appeal sustained. A complaint issued alleging that the withholding of the bonus payments from employees in December 1965 violated section 8(a)(3) and (1) of the Act.

[5] 169 NLRB No. 110.

[6] Sec. 10(b) provides, *inter alia*, "That no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made. . . ."

[7] 169 NLRB No. 33.

The Board, finding that the violation occurred in December 1965, at the time of the actual withholding of the bonus, rather than in April, concluded that neither the regional director's refusal to issue a complaint nor the General Counsel's initial ruling sustaining that action on appeal had the immediate and automatic effect of extinguishing the vitality of the charge. The Board, affirming the General Counsel's power to entertain motions for reconsideration filed within a reasonable time after the ruling, on the ground that "[T]he power to reconsider is inherent in the power to decide," concluded that the union's motion, filed only 16 days after the denial of appeal, was made within a reasonable time. Therefore, the Board concluded that as the January 1966 unfair labor practice charge was timely filed in the first instance and was never extinguished, there was no 10(b) bar to the complaint.

In the other case [8] a charge was filed in January 1965 alleging unfair labor practices in November 1964. In May, the regional director refused to issue a complaint on the charges, a timely appeal was denied by the General Counsel in September, and a motion for reconsideration denied in October 1965. On January 26, 1966, more than 3 months after the denial of the first motion for reconsideration, the union filed a second motion for reconsideration with the General Counsel based solely on the asserted relevance of statements made by the employer in court briefs submitted in connection with a contract action under section 301 of the Act. In June 1966, the General Counsel reversed his original ruling and remanded the case to the regional director with instructions to issue the complaint.

In dismissing the complaint in its entirety without reaching the merits of the unfair labor practices alleged, the Board recognized that "[s]ome flexibility of procedure is necessary to achieve the ends of justice under the Act and to afford parties full opportunity for submission of all evidence and arguments." However, it also stressed the importance to the administration of the Act that "procedural remedies be deemed exhausted at some point and a case closed." Upon consideration of all the circumstances, the Board concluded that "the General Counsel's rejection of the first motion for reconsideration was dispositive of this proceeding and, in any event, that it will not effectuate the policies of the Act to proceed further in this matter."

[8] *Forrest Industries,* 168 NLRB No. 98.

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 barginging.[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 or on behalf of the employees, or by an employer who has been confronted with a claim for recognition from an individual or a labor organization. Incident to its authority to conduct elections, the Board has the power to determine the unit of employees appropriate for collective bargaining,[3] and formally to certify a collective-bargaining representative 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 who have been previously certified, or who are being currently recognized by the employer. Decertification petitions may be filed by employees, by individuals other than management representatives, or by labor organizations acting on behalf of employees.

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

A. Existence of Questions Concerning Representation

Section 9(c)(1) empowers the Board to direct an election and certify the results thereof, provided the record of an appropriate

[1] Secs 8(a)(5) and 9(a).
[2] Sec 9(c)(1).
[3] Sec. 9(b).

hearing before the Board [4] shows that a question of representation exists. However, petitions filed under the circumstances described in the first proviso to section 8(b) (7) (C) are specifically exempted from these requirements.[5]

The investigation of a petition for a representation election must establish a proper basis [6] for a finding of the existence of a question concerning representation. During the year the Board considered this issue in the context of two cases involving "legitimate management action merging categories of employees historically represented by different labor organizations into a single operation in which these employees will work side by side, in similar job classifications and performing like functions." [7] In *National Carloading* [8] the Board held that the consolidation of the employer's freight-handling operations at a single location created a question concerning the representation of the clerical employees previously at that location as well as of the clerical employees represented by another union who were transferred to that location as part of the consolidation. As in a prior decision [9] involving the dockworkers affected by the same consolidation of operations, the Board found the consolidation resulted in the equivalent of a new operation. It noted that to find the transferred clerical employees to be an accretion to the other clerical unit would be inconsistent with that prior decision, wherein the Board had also rejected the contention that the transferred clericals should, together with the transferred dockworkers, be considered an accretion to the systemwide mixed unit of clericals and dockworkers of the employer represented by the union incumbent at the surviving location. In directing an election in an overall office clerical unit, the Board found it

> . . . plain that neither group of affected employees is sufficiently predominant to remove any real question as to the overall choice of a representative. In these circumstances, statutory policies will not be effectuated if, through application of ordinary principles of accretion, a bargaining agent is imposed on either segment of the newly integrated operation. Rather, it is our opinion that influences disruptive to industrial peace and a harmonious bargaining relationship will be eliminated only if the conflicting representation claims are resolved through the processes of a Board-conducted election.

---

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

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

[6] The ultimate finding of the existence of a representation question depends further on the presence or absence of certain factors, *viz,* qualification of the proposed bargaining agent; bars to a present election, such as contract or prior determinations, and the appropriateness of the proposed bargaining unit. These factors are discussed in subsequent sections of this report.

[7] *Natl. Carloading Corp.,* 167 NLRB No. 116.

[8] *Ibid.*

[9] *Panda Terminals,* 161 NLRB 1215, Thirty-second Annual Report (1967), p. 61.

Under similar circumstances in the *General Electric* [10] case the Board [11] directed an election among warehouse employees at the employer's new facility where the operations of separate facilities engaged in parallel functions respecting the employer's operations in the appliance industry had been relocated and consolidated. Finding upon consideration of the resulting personnel and employment condition changes, including new rates and classifications for many employees, changes in supervision, and the need for increased familiarity by employees with equipment due to the consolidation of different product lines, that the new facility was the amalgam of two separate facilities and a totally new operation,[12] the Board noted that it was again concerned with "conflicting claims for representation after merger into a single overall unit of two separate appropriate units historically represented by different unions, with neither group of employees being sufficiently predominant to remove any real question as to the overall choice of a representative." Under these circumstances, a question of representation was found to exist and, accordingly, an election was directed.[13]

B. Bars to Conducting an Election

1. Contract as Bar

There are situations, however, where the Board, in the interest of promoting the stability of labor relations, will conclude that circumstances appropriately preclude the raising of a question concerning representation. In this regard, the Board has adhered to a policy of not directing an election among employees currently covered by a valid collective-bargaining agreement, except under certain circumstances. The question whether a present election is barred by an outstanding contract is determined in accordance with the Board's contract-bar rules. Generally, these rules require that to operate as a bar a contract must be in writing, properly executed, and binding on the parties; that it must be of definite duration and in effect for no

[10] 170 NLRB No. 153.

[11] Chairman McCulloch and Members Fanning, Jenkins, and Zagoria for the majority. Member Brown, dissenting, would, for the reasons in *National Carloading,* direct an election, but since in his opinion the contracts but for the merger would bar a petition, the election would be for the limited purpose of determining the identity of the representative of the warehouse unit, and he would therefore eliminate from the ballot the "or neither" designation, see *supra,* p 39

[12] See *General Extrusion Co.,* 121 NLRB 1165 (1958), Twenty-fourth Annual Report (1959), pp. 21–22

[13] In a companion case, *General Electric Co ,* 170 NLRB No. 154, the Board, Chairman McCulloch and Members Fanning, Jenkins, and Zagoria for the majority, for similar reasons directed an election among servicemen at the consolidated facility Member Brown, dissenting, would delete the "or neither" choice from the ballot for the reasons stated in his dissenting opinion in *General Electric Co ,* 170 NLRB No. 153

more than a "reasonable period"; and that it must also contain substantive terms and conditions of employment which in turn must be consistent with the policies of the Act.

As the period during the contract term when a petition may be timely filed is calculated in relation to the expiration date of the contract,[14] the Board's contract-bar rules do not permit the parties to avoid this filing period by executing an amendment or new contract term which prematurely extends the date of expiration of that contract.[15] In the event of such premature extension, the new contract will not bar an election, except where it has been executed at a time when the existing contract would not have constituted such a bar due to the operation of one of the Board's other contract-bar requirements.[16] A question of premature extension was considered by the Board in *St. Louis Cordage Mills*,[17] where the employer and uncumbent union contended that a contract for an extended term executed during the term of the prior contract was a bar to a petition since a discriminatory seniority provision in the old contract would have rendered it ineffective as a bar. The Board disagreed, finding that the provision, which granted seniority to "males" and "females," respectively, "on those jobs traditionally held" by them, was not shown to be discriminatory on its face. In the Board's view it could not be determined in the absence of extrinsic evidence, which is inadmissible in a representation proceeding to establish the unlawful nature of such a provision,[18] that sex was not a bona fide qualification for the jobs covered by the seniority clause. Accordingly, as the petition was timely filed with respect to the old contract, and as the amendment to the contract was a premature extention, an election was directed.[19]

In another case,[20] all the contracts between the parties over a 14-year period, including the current one asserted as a bar to a petition, contained union-security and holiday pay clauses which in an unfair labor practice proceeding had been found to be illegal as violative of 8(a)(1).[21] The Board held that the mere presence of such illegal

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

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

[16] Other exceptions exist where the contract is executed (1) during the 60-day insulated period preceding the terminal date of the old contract, or (2) after the terminal date of the old contract if notice by one of the parties forestalled its automatic renewal or it contains no renewal provision

[17] 168 NLRB No. 135.

[18] See *Paragon Products Corp*, 134 NLRB 662 (1961).

[19] Chairman McCulloch and Member Fanning for the majority. Member Zagoria, concurring, viewed the provision as discriminatory on its face, but did not agree with the rule of *DeLuxe Metal* "which permits an incumbent union to remove an illegal clause, at the same time extend the contract beyond the open period and use this contract as a bar to an election."

[20] *Tom's Monarch Laundry & Cleaning Co*, 168 NLRB No. 39.

[21] *Tom's Monarch Laundry & Cleaning Co.*, 161 NLRB 740 (1966).

clauses, without more, did not so taint the parties' bargaining history as to eliminate it as a factor in determining the scope of the appropriate unit. Accordingly, without passing on the question of whether the contract with the illegal clauses was a bar, the Board dismissed the petition on the sole ground that the requested unit of employees at a single establishment was not appropriate, since it was not coextensive with the established multiemployer unit in which the employer wished to continue to bargain.[22]

In the *Firestone* case,[23] however, the Board concluded that a contract extended in midterm to cover certain additional maintenance job classifications formerly occupied by employees of a separate employer performing the work for the main employer was nevertheless effective to bar a petition for a unit of employees in those added classifications. The petition was filed by the union which had represented the employees of the separate employer when performing the maintenance work. For the past several years under the provisions of its contracts with the union representing its production and maintenance employees, the employer, while continuing to subcontract a substantial portion of its maintenance work, had negotiated wage rates for all new classifications of maintenance employees thereafter hired, and included them in the production and maintenance unit. However, having determined to perform all its own maintenance, the employer terminated the subcontract and hired additional maintenance employees to perform the work previously subcontracted. It also entered into a memorandum agreement with the incumbent union supplementing the existing contract to cover the new job classifications. The hiring of the additional employees more than doubled the total number of maintenance employees, but less than half the new hires had previously worked for the subcontractor.

As a result of this change, all the maintenance employees thereafter worked under similar conditions, were subject to the supervision of individuals known as multicraft supervisors, and spent 95 percent of their time in production areas. Under these circumstances, the Board viewed the recently hired maintenance employees as an accretion to the existing production and maintenance unit and therefore held the current contract, as supplemented by the memorandum agreement, a bar to the petition. It concluded that any community of interest the em-

[22] The Board noted, however, that it will not necessarily reach this same conclusion in all cases where, as here, there is an absence of a finding of illegal practices resulting from the offensive clauses and the absence of an order requiring the employer to withhold recognition of the incumbent union until it is certified, since whether bargaining history is so tainted by unfair labor practices as to remove it as a factor in determining the appropriateness of a requested unit is a question to be resolved by examination of the facts and circumstances of each case. See *American Broadcasting Co.*, 134 NLRB 1458 (1961).

[23] *Firestone Synthetic Fibers Co.*, 171 NLRB No. 133

ployees formerly employed by the subcontractor enjoyed by virtue of their separate bargaining history before being employed by the employer was insufficient to outweigh the broader community of interest they thereafter shared with the employer's other maintenance employees and with the production and maintenance employees generally.

2. Recognition as Bar

In several cases during the year, the Board had occasion to apply its rule in *Keller Plastics Eastern*,[24] which recognizes that the parties to a bargaining relationship established as a result of voluntary recognition of a bargaining representative must be afforded a reasonable time for bargaining and the execution of a contract, just as they are afforded in situations involving certifications, Board orders, and settlement agreements. The requirement that to constitute a bar such recognition must not have been granted at a time when organizing campaigns were being conducted by more than one union, was emphasized by the Board in one case.[25] There the employer, relying on the union's representation as to the authenticity of the signatures on the designation cards, granted it recognition several days after its claim of majority status and request to bargain. On the day recognition was granted, another union filed a petition with the Board, supported by a showing of interest of cards from two-thirds of the unit employees. In the Board's view the strong card showing made it clear that there was an active campaign by the second union prior to the grant of recognition and that a question of employee choice existed when recognition was extended. Having thus concluded that both unions were engaged in organizational campaigns prior to the grant of recognition, the Board held that the recognition agreement could not be considered a bar.[26]

The requirement that to constitute a bar recognition must be based upon a previously demonstrated showing of majority was relied on by the Board in another case,[27] where the employer extended recognition to the union without at any time taking a check of authorization cards. Several months later, however, prior to the execution of any contract, the employer questioned the union's majority status by filing a representation petition with the Board. The Board rejected the union's contention that under the principle of *Keller Plastics* it was entitled to a reasonable time after its recognition to negotiate a contract and

[24] 157 NLRB 583 (1966), Thirty-first Annual Report (1966), pp. 86–87.
[25] *Superior Furniture Mfg. Co.*, 167 NLRB No. 40.
[26] See *Sound Contractors Assn*, 162 NLRB 364 (1966), Thirty-second Annual Report (1967), pp. 45–46.
[27] *Josephine Furniture Co*, 172 NLRB No. 22.

therefore an election was barred. Finding that recognition had been granted without a previously demonstrated showing of majority,[28] the Board directed an election.

C. Units Appropriate for Bargaining

1. Craft and Traditional Department Units

During the past fiscal year the Board considered a number of cases requiring application to a wide variety of factual patterns of the policy explicated in *Mallinckrodt Chemical Works* and *E. I. Dupont de Nemours & Co.*[29] of evaluating "all considerations relevant to an informed decision" in determining the appropriateness of severance of a craft or traditional department unit or the initial establishment of such a separate unit.

a. Initial Establishment

In *Dundee Cement Co.*[30] separate units of electrical maintenance and mechanical maintenance employees in a new highly automated bulk cement manufacturing plant were sought as craft units. The Board found each of the requested units inappropriate as not constituting a true craft group, since neither group of employees were required to be journeymen in a particular craft, nor were they required to exercise the gamut of skills of any craft. The maintenance employees worked primarily on troubleshooting assignments and did not have the training or equipment necessary to make major repairs. Moreover, they often worked in close conjunction with and under the same supervision as the laborers, and their maintenance functions were highly integrated with the automated cement manufacturing process. Consequently, the Board concluded that they did not constitute a readily identifiable group of craft or maintenance department employees with a distinct community of interest apart from other employees.[31]

In two other cases involving requests for the initial establishment of craft bargaining units, the Board directed self-determination elections. In *Fremont Hotel*[32] a separate unit of slot machine mechanics

[28] *Sound Contractors Assn., supra,* fn. 26.

[29] 162 NLRB 387 (1966) and 162 NLRB 413 (1966), respectively, see Thirty-second Annual Report (1967), pp. 49–55.

[30] 170 NLRB No. 66.

[31] Chairman McCulloch and Members Brown and Jenkins for the majority. Member Fanning, dissenting, would find the separate maintenance units appropriate, as the maintenance employees had their own supervisors, and as in his view they were not integrated with production employees, since the production process was automated.

[32] 168 NLRB No. 23.

at a gambling casino was found appropriate. Noting that the standards for initial establishment of a craft unit were not necessarily the same as the standards required for severance of such a unit from an established overall unit, and that the slot machine mechanics were not mentioned in the existing contract covering other casino employees, whereas all other classifications of employees were specifically mentioned, the Board relied on the existence of a 4-year training program for slot machine mechanics, the requirement of substantial experience and ability in mechanical fields to qualify for the training program, the separate supervision of the mechanics, the absence of any interchange between the mechanics, who were the only employees to work on slot machines, and other employees, and the fact that the mechanics were the highest paid employees in the casino as indicating that the mechanics were skilled craftsmen and could constitute a separate unit. In *International Paper Co.*[33] self-determination elections were directed in three separate units of maintenance employees within a new plant engaged in a technologically modern, integrated liner board manufacturing operation. The employees in the powerplant were found to be a functionally distinct group, in view of their separate supervision, separate line of job progression, lack of interchange of job function with other employees, and minimal contact (limited to giving advisory service in the use of steam and receiving assistance in firefighting) with other employees. The instrument electricians were found to be an identifiable group of skilled employees, since they were required to be journeymen or have comparable experience as instrument mechanics or electricians, received additional training in both fields after employment, worked in a separate area of the shop under separate supervision, and used special tools and the employer had set up an apprenticeship program for them—the only group to have such a program. Finally, the pipefitters and welders, who were also found to be identifiable groups of skilled employees, were allowed to combine in a single unit, since they spent most of their time working together, and neither group worked in the main shop. The Board noted that, while welders, because they do not possess strong craft identify, are not normally permitted to form a separate unit, except in the aerospace industry,[34] the welders in this case, because of their journeyman status and common supervision and hours of employment, clearly shared a closer community of interest with the maintenance employees than with the production employees.

[33] 171 NLRB No. 89.

[34] *North American Aviation,* 162 NLRB 1267 (1967).

b. Severance From Established Unit

In a number of cases involving requests for the separate representation of a craft or departmental group represented as part of a larger unit, the Board, after weighing the interests of the craft employees in separate representation against the interests of stability in maintenance of the existing broader unit, denied severance.

Several of such cases involved maintenance department employees. In *Rayonier* [35] the Board, upon reconsideration of a case remanded by the Court of Appeals for the Fifth Circuit,[36] reversed its prior decision —made before *Mallinckrodt*—which had permitted severance of powerhouse employees from the existing plantwide unit at a cellulose manufacturing plant. Upon the basis of its findings assessed under the standards of *Mallinckrodt*, that the manufacturing process required continuous and highly unified functions involving all departments and used most of the steam generated by the powerhouse employees; all employees had similar hours of work and comparable job qualifications, training, and skill and received similar wages and benefits; employees were transferred to the powerhouse from other departments, and employees in other departments provided a substantial amount of vacation and sickness relief in the powerhouse; and the different departments, although having separate immediate supervision, were under overall general supervision, the Board concluded that the community of interests between the powerhouse employees and the other employees in the unit, resulting from a 25-year bargaining history, outweighed the separate group interests of the former. Under these circumstances, severance was denied.

In *Mobil Oil Corp.*[37] severance of powerhouse employees from an overall unit encompassing 15 of an oil company's terminals in one State (only 1 of which employed powerhouse employees) was denied. While the petitioning union traditionally represented separate powerhouse units in other industries, the pattern of bargaining at installations engaged in the storage and distribution of petroleum products had been in terminalwide units and the powerhouse employees in this case had been part of such a broader unit for over 20 years. Moreover, the stationary engineers, although required to have licenses and to be separately supervised in technical matters, shared common supervision with other employees in other respects; there was considerable interchange between powerhouse employees and other bulk plant helpers; and the powerhouse employees did not always remain in the

[35] 170 NLRB No. 96.

[36] *Rayonier Inc.* v. *N L R B*, 380 F 2d 187 (1967), setting aside and remanding 158 NLRB 176 (1966) for further consideration in the light of the Board's intervening decision in *Mallinckrodt*.

[37] 169 NLRB No. 35.

powerhouse but often moved through operations outside the powerhouse in the course of their duties, where they were assisted by employees not normally assigned to the powerhouse. In view of these factors and the high degree of integration between the powerhouse function and the storage and distribution operations of the terminal, the separate interests of the powerhouse employees were found to be merged into the broader community of interest shared by all terminal employees so as to render inappropriate a separate powerhouse department unit.[38]

In *Wah Chang Albany Corp.*[39] severance of all maintenance employees from an overall unit at a plant which produced exotic metals from raw ores in a continuous-flow operation was also denied. Although many maintenance employees were journeymen and did skilled repair or installation work, most of them spent the majority of their time in production areas, where they were often supervised by production supervisors; their work was an integral part of the continuous flow of the production processes. Moreover, production employees sometimes did maintenance work, and there were frequent transfers of employees between the production and maintenance departments; all employees shared the same working conditions and fringe benefits; and the maintenance employees were not a homogeneous group of skilled craftsmen, but a group possessing varying degrees of assorted skills. Finally, the maintenance employees were found to have been adequately represented in the overall unit, having more than their share of members on the negotiating committee and receiving the highest job classifications and the highest pay in the overall unit.

And in *General Foods Corp.*[40], a union already representing boilerhouse employees as a separate unit sought to sever the remaining maintenance employees from an overall unit at a plant where food products were processed in a highly integrated and mechanized continuous-flow system. The Board found that the work of these maintenance employees, who spent most of their time in production areas, although production employees also sometimes performed maintenance work there, received the same fringe benefits and used the same facilities as production employees, was an integral part of the continuous flow of the production processes, and that the maintenance employees were

[38] Chairman McCulloch and Members Brown, Jenkins, and Zagoria, for the majority, stressed that this decision did not imply that powerhouse units were inherently or presumptively inappropriate and could never be severed. Member Fanning, dissenting, pointed out that the Board had long granted severance to powerhouse units. In his view, the record did not establish common supervision or frequent interchange between powerhouse employees and other employees, and the absence of labor strife and the higher wages and separate seniority for powerhouse employees did not necessarily show that they had been adequately represented in the overall unit.

[39] 171 NLRB No. 47.

[40] 166 NLRB No. 126

neither a distinct, homogeneous group of skilled craftsmen nor a functionally distinct department, but a group possessing varying degrees of assorted skills. They had been adequately represented in the overall unit; their wages were higher than those of production employees, and almost as high as those of the more highly skilled boilerhouse employees; they were favored in layoff situations; and they were specifically represented by a maintenance employee in bargaining negotiations and had their own steward for purposes of contract administration. Moreover, bargaining at the employer's other plants, and in the food processing industry in the area, was generally in production and maintenance units. In view of all these factors, the Board concluded that it would not effectuate the purposes of the Act to permit severance and disrupt the overall unit in which bargaining had taken place for 16 years. Nor could the maintenance employees appropriately be combined with the boilerhouse employees, whom the Board had previously found to be a separate and homogeneous group.[41]

Severance of maintenance electricians and electronic instrument repair and maintenance men from a production and maintenance unit engaged in the manufacture of electric motor controls and electronic components was sought in another case.[42] The Board found that, while these employees were craftsmen of the type traditionally represented by the petitioning union, the employer's production was heavily dependent on the proper functioning of production equipment over which these employees had primary responsibility. The employees had to spend most of their time working in production areas, in close contact with production employees, and received work orders and directions from production supervisors. Their special interests had been adequately represented in the overall unit, they had participated actively in the incumbent union's affairs, and the union had formed a Skilled Trades Committee to focus special attention on the needs of skilled employees and regularly obtained special wage increases for skilled employees to correct any existing inequities. Accordingly, the Board concluded that the separate community of interest which the maintenance electricians and instrument men enjoyed by reason of their skills and training had been largely submerged in the broader community of interests which they shared with production and maintenance employees, and that the benefits achieved by maintaining the production and maintenance unit, which had brought almost 30 years of uninterrupted stability in labor relations for over 5,000 employees, outweighed the interest of the 100 maintenance electricians and instrument maintenance men in separate representation.

[41] *General Foods Corp.*, 110 NLRB 265 (1954).
[42] *Allen-Bradley Co.*, 168 NLRB No. 4.

In three other cases decided during the year, severance of toolroom employees from production and maintenance units was sought. In *Buddy L Corp.*[43] the Board granted severance, finding that the toolroom employees' work was not an integral part of the employer's toy manufacturing process, since those employees were separately supervised and spent little time in production areas, and the employer purchased dies and molds from outside sources and sent many of them to outside shops for repair. Moreover, the toolroom employees had clearly retained their separate identity while included in a broader unit and had been excluded from the general wage increase given to other employees in the most recent contract. In the Board's view,[44] denying separate representation would not promote stability in labor relations, but it might actually bring about instability. In another case,[45] however, the toolroom employees, although admittedly constituting a skilled craft group, were not allowed to sever from a production and maintenance unit engaged in the manufacture of automotive parts. The toolroom employees were found to be a vital cog in the continuity of the production process, since, unlike the employees in *Buddy L*, they made and repaired the dies necessary to the employer's production process. Moreover, unlike the toolroom employees in *Buddy L*, these employees had been adequately represented by the incumbent union; although constituting only 10 percent of the union's membership, they had regularly held high offices in it and had had four of the nine members of the most recent bargaining committee. They had maintained their positions as the highest paid employees and had obtained a contractual clause protecting them against layoffs due to subcontracting. Consequently, the Board found it inappropriate to disrupt the overall unit which had a 25-year history of collective bargaining without work stoppages. Similarly, in *Square D Co.*,[46] severance of toolroom employees from a production and maintenance unit engaged in the manufacture of electrical circuit breakers was denied. The toolroom employees' repair and maintenance work was vital to the production process, and priorities in assignment of repair work were determined by production requirements. Moreover, there was substantial interchange between toolroom personnel and other employees with transfers of employees to and from the toolroom, and toolroom and non-toolroom employees frequently used each other's equipment. The toolroom employees had been adequately represented in the overall unit for 13 years, having substantial representation on the nego-

[43] 167 NLRB No 113.

[44] Members Jenkins and Zagoria for majority. Member Fanning, concurring, deemed the failure of the incumbent union to adequately represent the toolroom employees a sufficient ground for granting severance.

[45] *Trico Products Corp*, 169 NLRB No. 58.

[46] 169 NLRB No. 140.

tiating committee and receiving higher wages than other employees, while sharing similar fringe benefits, privileges, and working conditions, so that the separate community of interest which they shared by reason of their skills and training had been largely submerged in the broader community of interest which they shared with production and maintenance employees.

In *Lear-Siegler*[47] severance was sought of separate units of employees engaged in the building of test equipment, of tool-and-die makers, and of six groups of maintenance employees in a plant engaged in the manufacture of highly sophisticated precision instruments and electronic equipment, much of which was produced under Federal Government contracts for use in defense and aerospace programs. The Board found that all employees in the plant performed a variety of functions, regardless of their job classifications, and that the employees sought to be severed worked with production personnel and enjoyed similar fringe benefits and working conditions. Moreover, many of the groups sought lacked craft identity, and the work of all was intimately related to the total production process. The employees in question were found to have been adequately represented by the incumbent union in that they had had substantial representation on its bargaining committee and had received higher wages than most other employees. Consequently, the Board found any separate community of interest which the skilled employees might enjoy had been largely integrated into the broader community of interest which they shared with production and maintenance employees as a result of their close association in the overall unit for 16 years, and the proposed fragmentation of the overall unit was found to be inappropriate.

c. Withdrawal of Craft Units From Multicraft Bargaining

In two cases this report year the Board had occasion to consider the circumstances under which a craft union, which had historically participated in the representation of an employer's or group of employers' employees through a multiunion council representative, may withdraw from participation in such multiunion bargaining in order to individually represent as a separate unit certain craft employees presently with the historical unit. In both *American Pipe and Construction Co.*[48] and *United Metal Trades Assn.*,[49] the union petitioning for separate representation of a craft unit to be severed from the historical unit relied on *The Evening News* case[50] to support its contention that it

[47] 170 NLRB No. 114.
[48] 169 NLRB No. 138.
[49] 172 NLRB No. 52.
[50] 154 NLRB 1494 (1965), enfd. 372 F 2d 569 (C A 6), see Thirty-first Annual Report (1966), pp. 89–91.

had a right to withdraw from its respective multiunion bargaining units in the same manner and to the same extent as an employer or union may withdraw from bargaining in a multiemployer unit.[51] The Board, however, considered *Evening News* inapposite to what in its view was the essential issue; namely, whether the unit sought by each union was appropriate. Finding the requested separate units inappropriate, the Board dismissed both petitions. In doing so it noted that the craft employees sought to be withdrawn from their respective multiunion bargaining units shared a close community of interest with other employees in such units, as a result of which the interests to be served by the maintenance of stability in the existing units outweighed the interests to be served by permitting a change in the mode of representation of the requested craft employees.[52]

2. Single- and Multiple-Location Units

The appropriateness of a unit of employees at a single location in a retail store chain or other multiple-location enterprise was in issue in several cases decided during the year, including *Capital Bakers*.[53] There the Board concluded that under circumstances where the employer not only produced goods but also distributed them at both the wholesale and the retail level, the principles set forth in *Sav-On Drugs* [54] and related cases were applicable and warranted a finding that a unit of sales and sales-related employees at one of the employer's five bakery plants was appropriate. In the Board's view, the degree of functional integration between the various plants was not sufficient to negate the identity of the single plant nor to overcome the presumptive appropriateness of the single-plant unit. The local plant managers possessed considerable autonomy, each plant produced its products independently, and the driver-salesmen at the plant in question had different wage rates and worked a different number of days per week than did those in other plants. Furthermore, the Board noted, the plant where the employees worked was geographically separated from the other plants, and there was little employee interchange between them. Also, in *Bowman Transportation*,[55] a unit limited to one terminal of

[51] It is well established that an employer who has bargained in a multiemployer relationship may effectively withdraw therefrom if he does so in an unequivocal manner and at an appropriate time depending on the contract term and pendency of negotiations. In *Evening News, supra,* the Board extended this principle to allow unions to withdrawn from multiemployer bargaining under the same conditions as employers.

[52] The Board noted in the *American Pipe* case that although craft severance issues were not directly raised in these cases, in *Mallinckrodt Chemical Works,* 162 NLRB 387 (1966), and in other craft severance cases, the Board has balanced the respective interests of the group sought to be served against the interests of the larger group.

[53] 168 NLRB No. 119.

[54] 138 NLRB 1032 (1962), Twenty-eighth Annual Report (1962), pp 51–52.

[55] 166 NLRB No. 111.

a common carrier engaged in transporting freight by truck was found appropriate. While overall company policy was established centrally and wages, working conditions, and job classifications were uniform at all terminals, the manager of each terminal was responsible for its day-to-day operation, and there were few employee transfers between terminals. Although in *Capital Bakers* the Board had previously found the single-plant unit appropriate in a case involving the same employer, the employer in *Bowman* relied on prior Board decisions [56] and bargaining history based upon the appropriateness of a systemwide unit of its employees. In concluding that there was no relevant bargaining history sufficiently recent to be controlling, the Board noted that the two certifications of a representative in a systemwide unit with the resultant negotiations and contracts, as well as another election directed in such a unit, were in each instance the result of proceedings in which the unit had been stipulated by the parties and were therefore not binding on the Board. It further pointed out that there had been no designated representative for more than 3 years and no contractual relationship for 2 years before that.

In two other cases single-location units were found inappropriate. In *Horn & Hardart Co.*[57] the petitioning union sought a unit limited to the employees in 1 of the employer's 40 restaurants in a metropolitan area. The employer already had a contract with another union covering the entire chain of restaurants. In view of the geographic cohesion of the restaurants, the high degree of integration of the chain's operations, the lack of autonomy of the separate restaurants, the frequent interchange of employees between the restaurant in question and others in the chain, especially an automat located in the same shopping center, and the interest of the incumbent union in a chainwide unit, the unit limited to a single restaurant was found inappropriate. In the other case [58] similar factors led the Board to hold that separate units of employees at each of the employer's theatres were inappropriate, and that an election should be directed in a unit encompassing all of the theatres. In so finding, the Board rejected the employer's contention that the multiemployer bargaining history with respect to some of its employees precluded the establishment of single-employer units. Since the employees covered by the multiemployer bargaining belonged to craft or special interest groups, the multiemployer bargaining history was not controlling with respect to the scope of the unit sought in the instant case, which constituted the employer's main force of employees.

[56] *Bowman Transportation,* 142 NLRB 1093 (1963).
[57] 170 NLRB No. 110.
[58] *Pacific Drive-In Theatres Corp.,* 167 NLRB No. 88.

In *Bisese & Console* [59] a unit limited to the drivers and warehousemen of one of three companies at a single location was requested. The three companies were found by the Board to constitute a single employer, notwithstanding that each produced different products, and a unit comprising all the employees of the three was viewed by the Board as clearly appropriate. However, in view of the separate supervision of employees engaged in each of the operations, the lack of employee interchange, and the fact that each company performed separate and distinct functions, the Board also found that a unit limited to the drivers and warehousemen of the one company could also be appropriate. However, in directing an election, the Board included in the unit two clerks employed by one of the other companies and the drivers of the third company, in view of the close operational and functional relationship between their work and that of the first company's employees.

3. Hotel Employee Units

Two cases decided during the year involved application of the principles set forth in *Holiday Inn Restaurant*,[60] where the Board announced that in hotel industry unit cases it would "consider each case on the facts peculiar to it in order to decide wherein lies the true community of interest among particular employees" in a hotel, rather than require an overall unit in every case. In one of the cases,[61] the Board held that a unit of the hotel's manual operating personnel was appropriate notwithstanding the exclusion of clerical employees. The Board stated that although hotel clerical personnel are operating employees, this generic classification is only one factor to be considered in determining unit composition. In this instance the Board found a number of factors supporting the appropriateness of a separate unit of manual employees. The manual employees had a different mode of payment as well as separate supervision, wore different uniforms, and performed mostly physical services, while the employees being excluded from the unit had primarily clerical duties. Moreover, the clerical employees sometimes gave the manual employees routine directions. In effect, the Board concluded, the manual operating employees were the employer's "blue collar" force and the clerical employees constituted its "white collar" force. Having previously granted separate units of "blue collar" employees in apartment houses,[62] the Board found it

[59] 167 NLRB No 56

[60] 160 NLRB 927, 930 (1960), Thirty-second Annual Report (1967), p. 57

[61] *Regency Hyatt House*, 171 NLRB No. 172

[62] See *Shannon & Luchs*, 162 NLRB 1381 (1967), Thirty-second Annual Report (1967), p 58; *Shannon & Luchs and DPA Associates*, 166 NLRB No 123 (1967); cf. *Denver Athletic Club*, 164 NLRB No 90 (1967).

logical to permit similar units in hotels. The Board also noted that most collective-bargaining contracts in the hotel industry excluded clerical employees, and that it had permitted such exclusion where bargaining practice in an area [63] or bargaining history at a particular hotel [64] established a pattern of excluding clerical employees, or where the parties agreed to exclude them.[65]

In *Hotel Westward Ho* [66] a unit limited to the hotel's kitchen employees was found appropriate by the Board, notwithstanding the integration of the employer's guest service activities, since the kitchen employees were separately supervised, had special skills, rarely came into contact with the public, and experienced little interchange with other hotel employees. The feasibility of a separate unit was also indicated by the facts that this hotel, and others in the area, had long bargained separately with a unit limited to steamroom employees, and the Board had previously held a separate unit of kitchen employees at a restaurant appropriate.[67]

4. Delicatessen Employees Unit

The Board's unit policies respecting delicatessen department employees at retail grocery stores were also further delineated in a number of cases in which the Board considered the extent to which delicatessen employees shared a community of interest with various other employees at the stores, particularly grocery employees and meat department employees, two groups the Board has traditionally found, in appropriate circumstances, to constitute separate units.[68] In *Ideal Super Markets* [69] the union, which represented in a single unit the meat department employees at two of the employer's stores, sought to represent the delicatessen department employees at those stores either in a single unit or as an addition to the existing meat department unit. It did not, however, seek to represent any other unrepresented employees at either store. In considering the appropriateness of the requested unit, the Board noted that the delicatessen employees did not slice meat as did the meat department employees, they prepared all their foods from packaged products, they wore different uniforms than the meat department employees, and their work stations were not

[63] *Columbus Plaza Motor Hotel,* 148 NLRB 1053 (1964); *LaRonde Bar & Restaurant,* 145 NLRB 270 (1963). Twenty-ninth Annual Report, p. 56

[64] *Mariemont Inn,* 145 NLRB 79 (1963); *Water Tower Inn,* 139 NLRB 842 (1962)

[65] *Arlington Hotel Co.,* 126 NLRB 400, 404 (1960). Twenty-fifth Annual Report, p. 42

[66] 171 NLRB No. 173

[67] *Toffenetti Restaurant Co.,* 133 NLRB 640 (1961)

[68] See *Priced-Less Discount Foods, d/b/a Payless,* 157 NLRB 1143 (1966), Thirty-first Annual Report (1966), p. 51, *American Stores Co.,* 80 NLRB 126 (1948); *Mock Road Super Duper,* 156 NLRB 983 (1966). Thirty-first Annual Report (1966).

[69] 171 NLRB No. 1.

located near the meat department. The Board found that, on the other hand, there was extensive interchange of the delicatessen employees with bakery employees, and, at one store, the bakery and delicatessen departments were behind contiguous counters. Furthermore, the delicatessen and bakery employees were found to share a close community of interest with the other unrepresented employees at the store, in that they exercised similar skills, received the same fringe benefits, and worked like hours under the same overall supervision. Under these circumstances, the Board held that to carve out a unit of delicatessen employees from the other unrepresented employees would constitute an artifical or arbitrary grouping and therefore dismissed the petition.[70]

Upon similar considerations, the petitioners' request for a self-determination election was also denied.

In another case[71] involving a request for unit clarification, rival unions, one the representative of the employer's multistore nongrocery employee unit and the other the representative of its multistore meat department unit, each sought representation of delicatessen employees at the employer's two new stores. Each claimed the employees as an accretion to its existing unit on the basis of its contract. The petitioner, in addition to representing the nongrocery unit, also represented the grocery employees in he employer's stores in a separate multistore unit, but did not seek inclusion of the delicatessen employees in that unit. The Board found that although the delicatessen employees handled and sliced meats, they could not appropriately be included in a unit with meat department employees, since, among other things, they lacked the training and knowledge of the meat department employees in the identification and cutting of the great variety of meats. Moreover, they were supervised separately from meat department employees, and, although they experienced extensive employee interchange with other employees in the store, they had little contact with employees in the meat department. Concluding that the delicatessen employees' community of interest lay with the grocery department employees, the Board also denied the petitioner's request that the employees be included in its nongrocery unit. Although inclusion in the grocery unit would thus have been appropriate, the Board declined to so clarify that unit, since evidence that the delicatessen departments were staffed at the time petitioner was granted recognition in that unit indicated that a self-determination election might be required.[72]

[70] See, e g , *Cupples Co* , 127 NLRB 1457 (1960).
[71] *Unishops of Clarkins*, 171 NLRB No. 170.
[72] See, generally, Thirty-first Annual Report (1966), pp 50–51.

Delicatessen department employees were included in a grocery employees' unit by the Board in another case,[73] notwithstanding that in the employer's only other store with a delicatessen department the employees were included in the meat department unit as a matter of interunion jurisdictional agreement. Although the Board recognized that food for sale in the delicatessen department was ordered by the meat department manager, that the delicatessen department received some of its food directly from the meat department, and that the delicatessen department's inventory was kept separately, it concluded that on the record as a whole the duties of the delicatessen department employees were more akin to those of the store's grocery, dairy, and bakery employees. Factors relied on, among others, were that the delicatessen employees neither possessed nor were required to possess skills of journeymen meatcutters, unlike meat department employees they served the public directly as did bakery employees and had employee interchange with bakery employees, they were under different supervision from meat department employees, and their predominant contacts were with employees who were part of the grocery employees unit. The Board accordingly clarified the certified grocery employees unit to include the delicatessen employees.

5. Voting Eligibility

The composition of a bargaining unit may be further defined in some instances through determination of the voting eligibility of individual employees whose entitlement to vote in the election is challenged because of special circumstances concerning them.

Among such issues considered by the Board during the past year was the voting eligibility of the son of one of the principal owners of the employer-corporation. In the *Scandia* case [74] the Board held that the son of one of two corporate principals, each of whom owned 50 percent of the corporate stock, was ineligible to vote in an election in a unit of all employees at the employer's retail stores. Although the son was an employee of the corporate employer working in one of the retail stores and enjoyed no special privileges by virtue of the family relationship, the Board found him ineligible to vote as being within the "any individual employed by his parent" exclusion from the definition of "employee" in section 2(3) of the Act, and also as a matter of bargaining unit determination in which individuals whose interests are identified with management are excluded from the unit.

On the matter of statutory exclusion, the Board noted that in this circumstance, as in numerous others, it was required to identify the

[73] *Seaway Food Town*, 171 NLRB No 107.
[74] *Foam Rubber City #2 of Fla., d/b/a Scandia*, 167 NLRB No. 81.

actual employer—"the one who possesses actual authority and concomitant responsibility to determine labor policy and bargain collectively with the employees' representative in an appropriate unit"—and that in doing so it could not give "controlling weight to the form in which the employer operates its business and disregard[s] the underlying realities of business ownership and management on which the statutory objectives are predicated." Looking beyond the corporate form to the fundamentals of its existence, the Board found the two individuals actually owned and managed the corporation and, for all practical purposes, were the real employers of the employees. Since one of them was the father of the challenged voter, the Board found that employee was an "individual employed by his parent" and therefore ineligible to vote.

The Board also concluded that, in any event, it would reach the same result in determining the appropriate unit in accordance with section 9(b) of the Act. It pointed out that in implementing its obligation under that section it excludes individuals whose interests are more closely identified with those of management and, under that standard, excludes children of the principals of closely held corporations. The Board therefore announced that it would modify that policy to also exclude the children and spouses of individuals who have substantial stock interests in closely held corporations.[75]

6. Unit Clarification and Decertification Issues

Among the issues in unit clarification and decertification of representative cases considered by the Board during the report period were several requiring resolution of the scope of statutory restrictions upon the Board's unit determination authority. Utilizing "a new combination of long-established procedures, in order to put at rest a controversy that has admittedly been disturbing the relations of the parties for a number of years," the Board in the *Libbey-Owens-Ford Glass Co.* case,[76] a unit clarification proceeding, directed self-determination elections among the employer's employees in two single-plant units represented separately by the same union to determine whether they wished to be represented as part of a multiplant unit together with the eight other plants of the employer then represented by the same union in a multiplant unit. In doing so, the Board noted that it had long recognized that the preference of a group of employees may be a valid factor to be weighed in establishing an appropriate unit, and, as an in-

[75] *Adam D Goettl & Cust Goettl, d/b/a Intl Metal Products Co*, 107 NLRB 65 (1953), and *American Steel Buck Corp*, 107 NLRB 554 (1953), were overruled to the extent inconsistent

[76] 169 NLRB No. 2

vestigatory factfinding tool to determine that preference, it has held self-determination elections in which the preference expressed by the employees' vote determines whether they will be represented in a unit with another group of employees. Finding there was no question of the presumptive appropriateness of the employerwide units contemplated or of the union's representative status at any of the plants, the Board determined that the utilization of a self-determination election as "an investigatory factfinding tool" to determine employee preference was as valid in a unit clarification proceeding as in one involving a question concerning representation. The Board also concluded that it was within its statutory competence in determining the appropriate unit for bargaining to resolve a question of the unit for future bargaining, and the election procedures utilized were an appropriate means for considering the wishes of the employees in doing so.[77]

In another case,[78] the Board clarified a mixed unit of professional and nonprofessional employees which had been certified in 1946, by providing for the inclusion therein of certain additional nonprofessional employees whose unit status was disputed by rival unions. In so doing, the Board rejected the contentions that section 9(b)(1) of the Act precluded its action and that the professional employees in the existing unit must first be afforded a self-determination election.[79] In the Board's view, the enactment of section 9(b)(1) did not bar the parties to an earlier established bagaining relationship in a mixed unit of professional and nonprofessional employees from continuing to maintain that relationship on the same unit basis.[80] The sole operative effect of section 9(b)(1), the Board noted, is to preclude the Board from taking any action that would create such a mixed unit, without first affording the professionals involved a self-determination election. Since the clarification consisted of no more than including in a preexisting unit employees in categories identical to the categories of nonprofessional employees already in the unit, the Board neither affected any of the rights accorded by the statute to professionals in the unit nor acted contrary to the prohibition of section 9(b)(1).

In *Fischer-New Center Co.*,[81] where there had been no Board certifi-

[77] Chairman McCulloch and Members Brown and Zagoria for the majority. Members Fanning and Jenkins, dissenting on this issue, were of the view that there is no statutory authority for the Board to conduct an election except with reference to the existence of a question concerning representation, and that established principles do not provide a basis for resolving a question concerning the unit for future bargaining without affecting existing contracts and without reference to a representation issue.

[78] *A. O. Smith Corp.*, 166 NLRB No. 98.

[79] Sec. 9(b)(1) provides in pertinent part that the Board shall not decide that a combined unit of professional and nonprofessional employees is appropriate "unless a majority of such professional employees vote for inclusion in such unit."

[80] See *Retail Clerks Union No 324 (Vincent Drugs No 3)*, 144 NLRB 1247 (1963), Twenty-ninth Annual Report (1964), p 51

[81] 170 NLRB No. 104.

cation of the union which was the currently recognized representative of a mixed unit of guards and nonguards, and where a decertification petition was filed on behalf of only those employees in the unit who were guards within the meaning of the statute, the Board carved out an exception to its general rule that it will not direct a decertification election where the petition seeks to raise a question concerning representation with respect to only a part of an existing unit.[82] The unit was one which the Board, under section 9(b)(3), could not establish as appropriate for collective bargaining.[83] Since dismissal of the petition on the ground that only the contract unit was appropriate for decertification would in effect constitute the Board's affirmance of the appropriateness of the mixed unit, the Board viewed the statutory requirement in section 9(b)(3) as making necessary the departure from its general rule.

D. Conduct of Representation Elections

Section 9(c)(1) of the Act provides that if, upon a petition filed, 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. 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 timely objections to the election with the regional director under whose supervision it was held. In that event, the regional director may, as the situation warrants, either make an administrative investigation of the objections or hold a formal hearing to develop a record as the basis for decision. If the election was held pursuant to a consent-election agreement authorizing a determination by the regional director, the regional director will then issue a decision on the objections which is final.[84] If the election was held pursuant to a consent agreement authorizing a determination by the Board, the regional director will then issue a report on objections which is then

[82] See, e g . *Campbell Soup Co* , 111 NLRB 234 (1955).

[83] Sec. 9(b)(3) of the Act provides in pertinent part "That the Board shall not . . . (3) decide that any unit is appropriate for such purposes if it includes, together with other employees, any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises . . . "

[84] Rules and Regulations, sec 102 62(a)

subject to exceptions by the parties and decision by the Board.[85] However if the election was one directed by the Board,[86] the regional director may either (1) make a report on the objections, subject to exceptions within the decision to be made by the Board, or (2) dispose of the issues by issuing a decision, which is then subject to limited review by the Board.[87]

1. Conduct Affecting Elections

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

a. Preelection Benefits

In two cases decided during the report year, the Board was called upon to rule upon objections that benefits granted by the union to the employees prior to the election were cause for setting aside the election. In *Wagner Electric Corp.*[88] the Board set aside an election where the union had offered free group life insurance coverage to those prospective voters in an election who joined the union. The Board viewed the offer as akin to an employer's grant of wage increases in anticipation of a representation election in that it subjected the donees to a constraint to vote for the donor. In distinguishing the situation of a waiver of initiation fees, the Board reasoned that when there is a waiver of initiation fees, a customary practice in organizational campaigns, there is no enhancement of the employees' economic position, but merely an avoidance of a possible future liability. In contrast, the gift of immediate life insurance coverage, a most unusual practice, is a tangible economic benefit. In the other case [89] the Board held that a union impaired employees' free choice by presenting gift certificates for turkeys not only to all employees and their wives who

[85] Rules and Regulations, secs 102 62(b), 102 69(c).
[86] Rules and Regulations, secs 102 62, 102 67
[87] Rules and Regulations, secs 102 69(c), 102 69(a)
[88] 167 NLRB No 75
[89] *General Cable Corp*, 170 NLRB No. 172

attended a preelection meeting, but also to all prospective voters who did not attend. The Board concluded that the presentation of gift certificates to the employees who did not attend the meeting clearly revealed that the gifts were not presented to encourage attendance at the meeting, but rather were made as an inducement to support the union.

Other election objection cases involved the handling by the employer of wage increases for employees voting in the election. In *Oxco Brush Div. of Vistrom Corp.*[90] the Board was faced with the question of whether or not an employer's preelection announcement that he was adopting a new policy of paying all employees, regardless of seniority, premium pay for holiday work so interfered with the election as to warrant setting it aside. While recognizing the fact that the announcement was not made until after the election petition was filed and the election scheduled, and at a time when the election was only 3 weeks away, the Board relied on the fact that it was undisputed that the new policy, which applied to all other plants of the employer as well, was actually made final long before the employer had any indication of union interest in the plant. Moreover, the announcement itself made no mention of the union or pending election, but was confined to a description of the change in holiday pay.

In another case of alleged employer interference with a fair election,[91] the employer deferred annual wage increases for employees concerned with an upcoming NLRB election, because of an expressed fear that such a wage increase might constitute an unfair labor practice under the circumstances. The Board found that the employer's action did not interfere with the election because his campaign statements made clear that whether or not the employees were represented by a union, he planned to continue the established practice of adjusting wage rates in early April of each year in accordance with his annual wage survey, in order to bring them into line with the prevailing wages in the area. The employer also made clear that the sole purpose of postponing the wage adjustments was to avoid the appearance of interference with the employees' free choice in any election which might be directed. The wage increases were in fact, put into effect retroactively, immediately after the election.

b. Election Propaganda

In determining whether an election should be set aside because a party in its campaign propaganda has exceeded permissible bounds, the Board balances the right of the employees to a free and informed

[90] 171 NLRB No. 70.
[91] *UARCO*, 169 NLRB No 162.

choice of a bargaining representative and the rights of the parties to wage a free and vigorous campaign with all the normal tools of legitimate electioneering. Consequently, it has held that an election will be set aside where there has been a misrepresentation, or campaign trickery, which involves a substantial departure from the truth, but will not be set aside on the basis of propaganda, where the message to be conveyed was merely inartistically or vaguely worded, or subject to different interpretations.[92] This criterion was applied by the Board to a number of cases decided during the report period, of which the following are representative.

(1) *Campaign Atmosphere*

In two of the cases the Board was called upon to decide whether an employer's preelection statements created an atmosphere which precluded employees from exercising a free choice on the question of representation by a union. In *Pinkerton's Nat. Detective Agency*[93] the employer sent out a series of preelection letters to employees which referred to (1) losses of business suffered by the employer during a period when the union represented employees of the employer in another city, a situation attributed by the employer to the fact that "many of our clients lacked faith in unionized guards (and) they canceled our contract," (2) a strike by the union in another State resulting in a total loss of the employer's business in that State, and (3) the pendency of a libel action against the union in United States District Court, in which the employer was "hopeful of a big judgment against the union," which might require special assessments by the union from its members. The Board, in finding that the election atmosphere created by these statements was not such that the employees were precluded from exercising a free choice, noted that none of the statements implied that the employer was going to take any action in retaliation against his employees for their organizational activities, or if they selected the union. It viewed the statements as temperate and factually accurate reports of events that had occurred, which were relevant to the election issues, and which the employer "had every right to call to the attention of the employees."

In the similar factual pattern of *Worzalla Publishing*[94] an employer's preelection statements to his employees informed them that they could no longer discuss their gripes with him directly if a union won representative status, that the union could get nothing more than the employer was willing to give, that the employer had always given valuable advice and assistance to employees, and that the employees'

[92] *Hollywood Ceramics Co*, 140 NLRB 221 (1962), Twenty-eighth Annual Report (1963), p 57

[93] 169 NLRB No 81

[94] *Worzalla Publishing Co*, *d/b/a Natl. Bookbinding Co.*, 171 NLRB No 34

best interests lay in the union's defeat. As in *Pinkerton's*, the Board found that the statements did not so cloud the free election atmosphere as to warrant setting aside the election. It found rather that the statements were opinions, predictions of events that might occur, and a review of benefits provided by the employer in the past, which were relevant to the election issues and could not be viewed as generating an atmosphere of fear and economic loss were the union to be selected.

(2) *Material Misrepresentation*

It is well settled that the Board may set aside elections in cases where there was a material misrepresentation made at a time and under circumstances which prevent the other party from making an effective reply so that the misrepresentation may reasonably be expected to have a significant impact on the election.[95] In *Western Electric Co.*[96] one of two unions participating in a representation election passed out a handbill on the day before the election stating that employees in another plant, represented by the opposing union in the election, were not given overtime pay for working on weekends. The latter union learned of the handbill after distribution had started, and prepared and circulated a handbill in which it denied the truth of the statement about the weekend pay. Finding that the original handbill contained a substantial and material misrepresentation, the Board concluded that the union which was possibly harmed by the misrepresentation did not have an adequate opportunity to reply. Although recognizing that, under similar facts, it had found a period of as little as 2 days ample opportunity to reply to a misrepresentation of wage rates at one of an employer's plants,[97] the Board was not willing, in all of the circumstances of the case, and particularly considering the seriousness of the misrepresentation, to find that the less than a 1-day period was sufficient time for the other union to reply. It found no reason for reaching a different conclusion because of the abortive attempt to reply and circulate a handbill denying the misrepresentation. A similar situation was present in *Zarn, Inc.*,[98] where the union, 3 days before the election, wrote a letter to the employer, which it also posted in the employer's plant and distributed to employees, in which it misrepresented benefits obtained by the union in contracts with another employer having plants in several other States. There had been no prior mention of these contracts in the preelection campaign. In finding that the employer did not have ample opportunity to check into the union's statements and reply, the Board considered the number of contracts involved by the statements, the

[95] Footnote 92
[96] 172 NLRB No. 59.
[97] *General Electric Co., Specialty Control Dept.*, 162 NLRB 912 (1967).
[98] 170 NLRB No. 130.

absence of any relationship with the other employer, and the geographical separation of the employer from the other employer's various plants and concluded that the employer's failure to visit or telephone the other plants did not evidence a lack of proper diligence. In the Board's view, because of the timing of the letter among other circumstances there was not time for the employer "to obtain copies of the contracts and make an effective reply before the election," wherefore the election was set aside and a new one directed.[99] In another decision [1] where a union-circulated handbill which overstated by 7½ cents the wage increase in a contract between an employer association and the union, the Board found that the misrepresentation was insubstantial and formed an insufficient basis for setting aside the election.

York Furniture Corp.[2] posed the problem of whether or not an employer letter, mailed to employees 4 days before the election and which stated that the union was about to raise dues, had such an impact as to warrant setting aside the election. The Board concluded that the statement, even if untrue, did not warrant setting aside the election. It noted that the statement was one based not on the employer's own knowledge but rather on hearsay. Whether or not a dues increase was in the offing was a matter within the knowledge of the union, and it was reasonable to suppose that the employees would have inquired of the union itself as to the matter, had ample opportunity to do so, and could have reasonably evaluated the statement concerning a planned dues increase as campaign propaganda. In another case [3] in which the Board concluded that employees could evaluate the accuracy of a union's preelection statement, objected to as a misrepresentation, the Board found the union's statement that another employer's plant employees having union representation had better wages and benefits than they presently had was capable of evaluation by the employees as a "self-serving, puffing statement" which was isolated in the context of the entire campaign and did not warrant setting aside the election. The Board took note of the fact that the possibility of exaggeration of monetary values of contract fringe benefits is not critical, since it is common knowledge that in publicizing collective-bargaining agreements, different values are placed by different parties on the benefits included in it.

(3) *Threats of the Effect of Unionization*

Three cases in which the Board considered whether or not employers interfered with the conduct of representation elections concerned situ-

[99] The union's similar misrepresentations of another contract in a handbill distributed shortly before the election were also found objectionable because of the employer's lack of opportunity to effectively reply.

[1] *Shaffer Bayport–Div. of Shaffer Tool Works,* 170 NLRB No. 171.

[2] 170 NLRB No 169

[3] *Southern Foods,* 171 NLRB No. 131.

ations where the employers assertedly threatened, either expressly or impliedly, employees concerning the course of events should the union be designated their representative. In *Howmet Corp.*[4] the employer waged an aggressive campaign against the union by distributing pamphlets and letters and by making speeches which assertedly, *in toto*, were keyed to threats that the employer would refuse to bargain with the union if it won representative status, that it might bargain so as to decrease benefits, and that the only real result of unionization would be a strike with unfavorable consequences for the employees. In overruling this objection, the Board concluded that the campaign literature did not disclose any expressed or implied promise of benefit or threat of reprisal, but was essentially "a reminder that there can be disadvantages to union representation and that it would be wise for the employees to give heed to the disadvantages as well as the advantages in making their choice." The Board found there was no indication in any of the campaign propaganda that the employer would not honor his statutory duty to bargain.[5]

In another decision in which the Board found that an employer did not assert in preelection campaigning that he would not bargain with the union if it won representative status,[6] it also found no evidence that the employes said that the union must strike to gain reasonable demands, but only that he had said he had no intention of yielding to strike pressure by the union. The Board emphasized that it would not "agree that an employer's expressed views on the possible economic disadvantages flowing from strikes is irrelevant to a reasoned choice." In concluding that the employer had not exceeded permissible bounds, the Board noted that the employer's evaluation of the costs of unionism not only could not be equated to a threat that unionism would result in a loss of benefits, but that there was no showing of untrue, grossly exaggerated, or materially misrepresentative statements on the part of the employer, and the union had time to answer the propaganda and in fact did answer in an equally vigorous manner.[7]

In a third case, *Ripley Shoe Products Co.*,[8] the Board concluded that the employer's campaign references to the union's unsuccessful

[4] 171 NLRB No. 18.

[5] Chairman McCulloch and Member Fanning for the majority. Member Brown, dissenting, would find the employer's words were united in such a fashion as to contain implicit and clear threats of economic loss and created an atmosphere of fear interfering with the election.

[6] *Allied Egry Business Systems*, 169 NLRB No 60

[7] Chairman McCulloch and Member Fanning for the majority Member Brown, dissenting, noted that threats "are no more permissible because couched in terms of predictions, analysis of other parties intentions, or expressions of opinions," and would find the propaganda excessive because of its dominant theme of the futility of representation and its harmful consequences.

[8] 171 NLRB No 153.

strike at the employer's sister plant and the attendant violence and property damage did not interfere with the election, where the union was apprised, well in advance of the election, that the strike were being raised by the employer as a campaign issue. The Board found that the union had ample time to defend itself against the charge that it was a "strike happy union," and an employer-circulated leaflet was merely a factually accurate account of the union's strike record and was not aimed at impressing upon the employees the futility of selecting the union.[9]

c. Electioneering At or Near the Polls

It is the province of the Board to safeguard its elections from conduct which inhibits the free choice of the voters, and the Board is especially zealous in preventing intrusions upon the actual conduct of its elections. In furtherance of this responsibility the Board prohibits electioneering at or near the polls, and the Board's election notices specifically enjoin such conduct. In several cases decided during the report year, the Board had occasion to explain and apply this prohibition. In *Milchem, Inc.*,[10] the Board set aside an election where a union representative conversed for several minutes with employees inside the polling area waiting in line to vote. The union representative testified that his remarks to the employees concerned the "weather and like topics," and no other evidence was introduced regarding the nature of the conversations. The Board, reversing prior decisions holding that, absent a showing of coercion, conversations in a polling area were not grounds for setting aside an election,[11] enunciated a blanket prohibition against conversations between a party and voters in the polling area. The prohibition applied to all parties and their representatives, with the sanction that such conversations, upon proper objection, would be deemed prejudicial without investigation into the content of the remarks. The Board stated:

> Careful consideration of the problem now convinces us that the potential for distraction, last minute electioneering or pressure, and unfair advantage from prolonged conversations between representatives of any party to the election and voters waiting to cast ballots is of sufficient concern to warrant a strict rule against such conduct, without inquiry into the nature of the conversations. The final minutes before an employee casts his vote should be his own, as free from interference as possible. Furthermore, the standard here applied insurers that no party gains a last minute advantage over the other, and at the same time deprives neither party of any important access to the ear of the voter. The difficulties of recapturing with any precision the nature of the remarks made in the charged atmosphere of a polling place are self-evident, and to

[9] Members Jenkins and Zagoria for the majority. Member Brown dissented for the reasons set forth in his dissent in *Allied Egry Business Systems, supra,* fn 6.

[10] 170 NLRB No. 46.

[11] *Houston Shell and Concrete Div., McDonough Co.*, 118 NLRB 1511 (1957).

require an examination into the substance and effect of the conversations seems unduly burdensome and, in this situation, unnecessary. Finally, a blanket prohibition against such conversations is easily understood and simply applied.

In *Star Expansion* [12] the Board addressed itself to a situation where the electioneering occurred at the entrance to the polls. The Board agent had designated a 50-foot "no electioneering area" around the polls. A union agent, after being admonished by the Board agent for electioneering within the restricted area near the entrance to the polls and instructed to leave, continued electioneering at the entrance. The Board, in finding that those electioneering activities had a persuasive or coercive effect upon the voters and required setting aside the election, viewed "such conduct by one acting as an agent for a party as a serious breach of our rule against electioneering at or near the polls, and, in the circumstances, sufficient to warrant the inference that it interfered with the free choice of the voters."

d. The Ballot and the Ballot Box

Section 9(c)(1) of the Act requires all Board elections to be conducted by secret ballot. However, it has been the longstanding policy of the Board that an individual should not be denied his right to vote because of the occurrence of the rare circumstances where preservation of the secrecy of a ballot is procedurally impossible. In *Triple J. Variety Drug Co.*[13] the Board adhered to this policy in a self-determination election where it directed that the ballot of the single professional employee be opened and counted to determine whether he desired to be represented in the unit with nonprofessional employees also voting at that time. The counting of the ballot would necessarily reveal his vote.[14]

In three cases decided during the fiscal year the Board was called upon to rule on objections to an election based on the failure to use foreign language ballots for employees who did not speak English. In *Fibre Leather* [15] 15 to 20 of the 86 employees were Portuguese-speaking and could not read English. The notices of the election and ballots were issued only in English, and the addition of special bilingual observers to aid the voters proved ineffective as they were not utilized by the voters. The Board held that the conditions under which the election was conducted were not "such as to assure the effective and informed ex-

[12] *Star Expansion Industries Corp.*, 170 NLRB No. 47.

[13] 168 NLRB No. 140.

[14] Members Fanning, Brown, and Jenkins for the majority. Member Zagoria, dissenting, would set aside the election because of the lack of secrecy and would utilize a procedure where the professional employee would cast separate ballots on the unit inclusion and representation issues, with the latter treated as a challenged ballot to be opened only if the former showed the employee had voted for inclusion in the unit with the other employees and only after it had first been mixed with the other representation-issue ballots.

[15] *Fibre Leather Mfg. Corp.*, 167 NLRB No. 51.

pression by all the employees of their true desire." In ordering a second election, the Board directed that both the notices of election and ballots be bilingual. Relying on *Fibre Leather*, the respondents in *Thomas A. Nelson d/b/a Trio Metal Cap Co.*[16] and *Marriott In-Flite Services*,[17] in defense to refusal-to-bargain charges, asserted that the underlying certifications were invalid because foreign language ballots were not used. The Board rejected this defense and distinguished both cases from *Fibre-Leather*, as, although the ballots were only in English, the notices of election in each case were not only in English, but also in the foreign languages spoken by the employees. *Marriott* was further distinguished in that sample English ballots, in the same form as the ballots used in the election, were attached to the foreign language notices of election. The Board also held that it was within the Regional Directors' discretion to refuse to issue foreign language ballots when some employees used English ballots, since "secrecy of the ballot is, to a degree, violated whenever a block of votes, by reason of language, can be identified when counted."

The Board through its entire history has gone to great lengths to establish and maintain the highest standards possible to avoid any taint of the balloting process; and where a situation exists, which, from its very nature, casts a doubt or cloud over the integrity of the ballot box itself, the practice has been, without hesitation, to set aside the election. In accord with this policy the Board set aside the election in *Austill Waxed Paper*[18] where the Board agent left an unsealed ballot box wholly unattended for from 2 to 5 minutes. In *Anchor Coupling Co.*,[19] where the Board agent was also temporarily absent from the polling place, the Board did not set aside the election since the observers certified they were continually present and no irregularities occurred.

In *Polymers, Inc.*,[20] the Board rejected the employer's assertion that an election should be set aside because, during the course of a multi-session election, the Board agent did not meet the standards set out in Board procedural manuals in sealing the ballot box between sessions. The employer contended that any deviation from these standards required the Board to set aside the election. The Board, in considering this contention, stated,

> The Board is mindful of the fact that because of the great variety of conditions in which elections may be conducted, the suggested procedures cannot always in practice be met to the letter. Furthermore, it has always seemed clear to the

[16] 168 NLRB No 105 Members Fanning, Brown, and Zagoria. Member Brown found it unnecessary to distinguish *Fibre Leather*, in which he did not participate.
[17] 171 NLRB No. 102
[18] 169 NLRB No. 169
[19] 171 NLRB No 156.
[20] 170 NLRB No. 33.

Board that many alternative methods of conducting elections, although not in precise conformity with the guidelines, nonetheless are capable of securing the the Board's ultimate goals of fairness, accuracy, and free choice. Deviation from procedures suggested . . ., therefore, is not deemed in and of itself a determinative factor in our appraisal of whether an election has been improperly conducted. Instead, our decisions in this area are based upon an analysis of whether, on facts presented in each case, the election has been carried out in a manner which assured the secrecy and security of the balloting.

e. Other Aspects

In the *Wallace Murray* case [21] the Board held that the circulation of an antiunion petition did not require setting aside an election, since the employer had not assisted in or encouraged such circulation. While the employer's supervisors had not opposed the circulation of the petition, they had refused to allow circulation on company time. Nor did the employer's action in giving the employee who initiated the petition a list of employees' names and addresses constitute encouragement or assistance. The employer had already given the union such a list, in accordance with the Board's *Excelsior* rule,[22] and, in view of *Excelsior's* emphasis on an informed electorate, it was not unreasonable for the employer to assume that an employee circulating an antiunion petition was equally entitled to the list.

In *Overland Hauling* [23] the Board set aside an election where the employer had posted the official Notice of Election in such a way that the section entitled "Rights of Employees" was not visible to the employes. Pointing out that this section had been adopted to alert employees of their rights under the Act and to warn unions and management alike against conduct impeding fair and free elections, the Board called the employer's action in concealing it "a patent attempt to minimize the effect of the Board's Notice," which denied employees access to information deemed necessary to the conduct of an election and thus interfered with the laboratory conditions essential for a free expression of preference by the employees.

In one case decided during the year [24] the union distributed a series of pictures showing how a Board election was conducted. One of the pictures showed a Board ballot marked "X" in the "yes" box. While the Board has held that it will "not permit the reproduction of any document purporting to be a copy of the Board's official ballot, other than one completely unaltered in form and content and clearly marked sample on its face," [25] the Board held that the ballot here, which was

[21] 170 NLRB No 63
[22] *Excelsior Underwear*, 156 NLRB 1236 (1966)
[23] 168 NLRB No 115
[24] *Rett Electronics*, 169 NLRB No. 168
[25] *Allied Electric Products*, 109 NLRB 1270, 1272 (1954).

much smaller than the actual ballot, did not set forth the question which the actual ballot put to the voters, was part of a series of pictures stressing secrecy of the ballot and freedom of choice, was not a reproduction of an official Board ballot, and did not convey to employees the impression that the Board recommended a particular choice. Accordingly, the Board refused to set aside the election.

The Board in another case [26] declined to depart from the provision of section 102.70(d) of its Rules and Regulations, which provided that there shall be no runoff election and the results of a first election will be certified where in that election each of two competing unions had received the same number of votes and no votes were cast against representation. The question concerning representation was therefore resolved by the vote.[27]

[26] *Tullahoma Concrete Pipe Co.*, 168 NLRB No 78.

[27] Members Fanning, Jenkins, and Zagoria for the majority Member Brown, dissenting, finds the result at variance with basic statutory purposes that employees are to be protected in their right to designate a representative and, in the situation where all eligible employees have voted for representation, would permit a single runoff to break a tie vote.

V

Unfair Labor Practices

The Board is empowered under section 10(a) of the Act "to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce." In general section 8 prohibits an employer or a union or their agents from engaging in certain specified types of activity which Congress has designated as unfair labor practices. The Board, however, may not act to prevent or remedy such activities until a charge of an unfair labor practice has been filed with it. Such charges may be filed by an employer, an employee, a labor organization, or any other person irrespective of any interest he might have in the matter. They are filed with the regional office of the Board in the area where the alleged unfair labor practice occurred.

This chapter deals with decisions of the Board during the 1967 fiscal year which involved novel questions or set precedents which may be of substantial importance in the future administration of the Act.

A. Employer Interference With Employee Rights

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

1. Employer Polls of Employees

The permissible scope of employer polls of employees was considered by the Board in two cases in which the employer sought to use the results of polls to establish objective considerations upon which to determine whether an incumbent union's continued majority status

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

should be challenged. In order for the results of employee polls to constitute an objective consideration effective for this purpose, the polls must be administered so as to be free of coercion, restraint, and interference violative of section 8(a)(1). Since the Board's ruling in *Struksnes*,[2] holding that such polls must be by secret ballot, had not issued at the time the polls in the cases were conducted, their validity was adjudged by the then applicable standards of *Blue Flash Express*,[3] under which the lawfulness of the poll was to be determined "on the record as a whole."

In *H. P. Wasson & Co.*[4] an interviewer from an independent research firm was sent to the employees' homes, without advance warning or explanation, accompanied by a court reporter who recorded employee answers to the question: "Do you or don't you want the Union at the warehouse?" Although the interviewer was instructed to inform the employees that their answers would not be identified by name to the employer, and that no reprisal would be taken, the Board found that even if such instructions were followed, the manner in which the poll was taken was coercive. In its view the overall impression created by the unusual timing and procedure, the unknown questioners hired by the employer, the requirement of making a quick response concerning union allegiance which would, plainly, be taken down and preserved for some purpose, and the lack of warning or acknowledgment from the respondent that it would be sponsoring such a poll could not readily be dispelled with certainty by a few words of reassurance, even if given.

In another case [5] the Board held lawful an employee poll taken by the employer in order to verify employee dissatisfaction with the union's representation where the dissatisfaction had previously been made known to the employer by a number of circumstances, including statements by employees to their foremen. The employees were assembled without prior notice and individually brought into the plant conference room, where, in the presence of the employer's personnel administrator and a judge of the local juvenile court, they were asked whether they wished the union to continue representing them, and a tally of the answers was made. The employees were told that no reprisals would be taken, that they could decline to answer, and that questions could be asked. If the employee showed any discomfort regarding the presence of the judge, he was introduced as an impartial observer to see that there were no threats of coercion.

[2] *Struksnes Construction Co*, 165 NLRB No 102, see Thirty-second Annual Report (1967), pp 81–82

[3] 109 NLRB 591 (1954).

[4] 170 NLRB No. 3

[5] *Lilliston Implement Co*, 171 NLRB No 19.

Under these circumstances, the Board held the polling lawful, as it complied with the conditions laid down in *Blue Flash*, the applicable case.

2. Limitations Upon Union Insignia, Literature, and Fund Solicitation

The Board in determining whether employees' section 7 rights have been infringed upon must frequently strike a balance between the employees' right to engage in activity designed for mutual aid and protection, and the employer's right to establish plant rules consistent with his property rights and in support of discipline and plant safety. In the *Standard Oil* case [6] the Board upheld the validity of the employer's requirement that employees not apply union decals to their safety hats. At the time of the asserted unfair labor practice, at least 23 different hat markings were in use at the employer's refinery by its own employees, employees of contractors, and visitors. They were of different colors and bore distinctive markings to permit ready identification of the wearer by status or function. The Board concluded the employer had well-founded and legitimate identification objectives and safety reasons for its prohibition of the use of decals on the hats since the decals might render the required helmet markings less clear. Among other considerations, it was noted that employees could easily be distinguished from nonemployees and the company's trained firefighting force could recognize those capable of performing various tasks in emergencies of potentially great harm to the plant and the community. The Board also noted that the limitation was the only one the company imposed on the wearing of union insignia, and employees were at no time disturbed in their use of union emblems on toolboxes, lunchboxes, or uniforms.

In two other decisions, the Board dealt with employer actions requiring the removal of union literature from toolboxes. In one,[7] the Board held lawful the employer's insistence that an employee remove from his toolbox a union notice announcing a picnic. The employer had informed the employee that the proper place for the notice was the employee bulletin board and not the toolbox where others would stop and read the notices; it had made a bulletin board available for use and had not threatened discipline or discharge if the notice was not removed. In the other case,[8] the Board held that the employer violated 8(a)(1) by prohibiting the affixing of prounion literature on employee toolboxes pursuant to its no-distribution, no-soliciation rule, under

[6] *Standard Oil Co of Calif., Western Operations*, 168 NLRB No 28.
[7] *Merchants Fast Motor Lines*, 171 NLRB No 177.
[8] *Halliburton Co*, 168 NLRB No. 149.

circumstances where the posted articles were not interfering with production or plant discipline, the employer had denied the use of its bulletin board for posting the article, and there was evidence that the no-distribution rule had been discriminatorily applied.

In two other cases decided during the past year, the Board ruled on whether the involved employers validly curtailed nonemployee distributions at a plant entrance, and union solicitation on plant premises of funds for striking California grape pickers. In *Monogram Models* [9] the union distributed literature at a plant entrance which was on property of the employer subject to an easement for purposes of public highway. Finding that the distribution did not interfere with the public use of the easement or transgress any rights of the abutting landowner, the Board held that the employer violated section 8(a)(1) by its action in interfering with that distribution, requesting local police to remove the union agents, threatening the agents with arrest, and standing in full view of employees entering and leaving the plant while awaiting the arrival of the police. And in the *General Electric* case [10] the employer prohibited the incumbent union from soliciting funds at the employer's main gate for nonemployee striking grape pickers in California while advising the union that it could make collections for this purpose at the plant's street gates located at the public street perimeter. The employer's action was pursuant to its restrictions barring in-plant solicitation on working time and collection of money on company property, at any time, without prior approval. Although the employer had never approved solicitation of any kind at the main gate, there was no evidence indicating that such a request had ever been made, or that collections there had ever before been attempted. In addition, in application of its restrictions on solicitation, the employer had allowed several charitable organizations to make collections on the plant premises and partly during working hours, as well as allowed collections for the purchase of gifts to honor fellow employees. Rejecting the employer's contention that activity aimed at benefiting employees excluded from the Act is not "mutual aid" within the guarantee of section 7, the Board found that the union had "no reasonable alternative means available to it" to make the collection and that a balancing of the parties' respective interests compelled a conclusion that the main gate collection was unlawfully prohibited.

3. Right to Union Representation

The circumstances under which an employer must accord an employee union representation while meeting with him concerning mat-

[9] 170 NLRB No 84
[10] 169 NLRB No. 155.

ters which may result in disciplinary action, were considered by the Board in two cases. In *Texaco, Inc.*,[11] an employee suspended without pay by his foreman, allegedly for stealing company property, was invited to attend a meeting called by management where he would have an opportunity to defend himself. The employer rejected both the employee's request, and that of the recognized union, that the union be allowed to represent him. At the meeting, after questioning, the employee was given a statement to sign conceding his guilt and received a further short suspension without pay. The Board found that the meeting was not simply an investigation of the events surrounding some alleged theft about which the employee was asked to give evidence, but was called for the purpose of concluding the company's case against the employee in order to provide a record to support disciplinary action if appropriate. It found that the employer was thereby clearly seeking to deal directly with the employee concerning matters affecting his terms and conditions of employment, and held that the employer's refusal of the employee's request for union representation interfered with and restrained him in the exercise of his rights guaranteed by section 7 of the Act.[12]

However, under the circumstances in *Jacobe-Pearson Ford*,[13] the Board distinguished *Texaco* on its facts in holding that the employer breached no statutory obligation in denying union representation to an employee at what was merely to be a factfinding meeting concerning the reasons for his refusal of a job assignment. No definite adverse action was taken against the employee, and the company had expressed its willingness to explain and bargain with the union concerning any disciplinary decision which might subsequently be made. The Board found that, on the record as a whole, "[t]he 'potential' for disciplinary action was remote and the purpose of the meeting essentially for the gathering of information."

4. Discharge for Engaging in Protected Activity

The rights guaranteed to employees by section 7, include the right "to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection." Several cases decided during the past fiscal year further clarified the range of concerted activities protected by section 7.

[11] 168 NLRB No 49

[12] Although finding that sec 9(a), which provides in part that an employee has the right to present a grievance directly to his employer and have it adjusted without intervention of the bargaining representative, providing that the bargaining representative has been given the opportunity to be present at such adjustment, was inapplicable to this case, the Board noted that this factor did not dispose of the 8(a)(5) issue herein, and that the company's action in bypassing the union did in fact also constitute a separate violation of sec 8(a)(5) of the Act.

[13] 172 NLRB No. 84

a. Work Stoppages

It is now fairly clear that a single, spontaneous work stoppage by employees over conditions of employment, absent unusual circumstances, is protected by section 7, and discharging employees for engaging in such activity violates section 8(a)(1).[14] However, partial work stoppages or slowdowns, or recurrent or intermittent unannounced stoppages, are usually unprotected. Three decisions during the year delineated this distinction in varying factual situations.

In *Leprino Cheese Mfg. Co.*[15] six employees engaged in cheese making walked out on Christmas Day when they learned that they would have to work most of the day, instead of the half-day earlier announced, and were refused any extra compensation for the holiday work. Their subsequent discharge was held by the Board to be in violation of section 8(a)(1). The Board noted that there was no reason for the employer to expect a recurrence of the work stoppage, since the nature of the employees' protest was such that the walkout clearly was not likely to be repeated, and a continuing strike would not be a practical method of achieving the employees' limited demand. In *First National Bank of Omaha*,[16] five employees operating check processing machines walked out together after working 9 hours, following their earlier protest over excessive overtime work. This walkout also was held by the Board to be protected, there being no evidence that the employees intended to continuously or recurrently stop working after 9 hours every day, and the employer discharged the employees without seeking to determine whether the walkout would be repeated in the future. In each of these cases, the Board also rejected the employer's claim of economic justification for the discharges from the effect of the walkout on the work then being done. In *Leprino*, the fact that the walkout resulted in a lower quality in some of the employer's product was held not to render the walkout unprotected. The Board noted that, while a work stoppage deliberately timed to create a hazard of aggravated injury to persons or premises has been held unprotected,[17] a stoppage resulting from a legitimate grievance does not lose its protection merely because it may incidentally injure the quality of some of the employer's product. Similarly, in *First National Bank of Omaha*, the Board noted that, while the possibility that a sudden work stoppage which disrupts the employer's business might in some circumstances have justified a lockout, it does not justify retaliation against the strikers in the form of discharge.

---

[14] *N L R B* v *Washington Aluminum Co*, 370 U S 9 (1962)
[15] 170 NLRB No. 81
[16] 171 NLRB No 152
[17] *N.L.R B.* v. *Marshall Car Wheel and Foundry Co*, 218 F 2d 409 (C A 5).

In the third case,[18] the employees in one production department stopped working when the employer refused to explain to them why he had cut wages in that department while raising them in other departments. The Board held that the work stoppage was clearly protected by section 7, since the wage cut which it was designed to protest was unlawful as unilaterally imposed. The Board further held, however, that even if the walkout were assumed to have been unprotected, the discharge of the employees nevertheless violated section 8(a)(1). It found that the employer's subsequent willingness to reinstate the employees on an individual basis, and his history of hostility to unions, indicated that he discharged the employees because their activity was concerted, rather than because it was unprotected and that the latter assertion was, in fact, pretextual.

Another case [19] involved Board resolution of the protected nature of a strike by a minority of unit employees without the authorization of the international union which was certified as their bargaining representative, and which subsequently held the strike to be unauthorized. The strike, in protest of the not unlawful discharge of an employee, was supported by the local union which actually functioned as the employees' bargaining representative, was initially authorized by the international union's field representatives, and was immediately ended when the international union classified the strike as unauthorized. However, the employer fired the strikers immediately, before the international union had ruled on the strike and ordered the strikers to return to work. Although minority strikes in criticism of the certified union or in opposition to its policies have been held to be unprotected,[20] the Board found that the strike initially had both the express and implied consent of the union representatives on the scene. The Board was of the view that under these circumstances the strike was not unprotected merely because it was a minority strike and held that the employer violated section 8(a)(1) by discharging the strikers.

b. Refusal To Cross Picket Lines

While a refusal by employees to cross a primary picket line at the premises of another employer is protected by section 7, a discharge for such refusal does not always violate section 8(a)(1). The employees' right to engage in that form of protected concerted activity must be balanced against the employer's corresponding right to continue to operate his business.[21] In two cases decided during the year, the Board

[18] *Baltimore Luggage Co*, 171 NLRB No 191.

[19] *Shop Rite Foods*, 171 NLRB No 196

[20] See, e.g, *N.L.R.B.* v *R C Can Co*, 328 F 2d 974 (C A 5), *Plasti-Line* v *N L R B*, 278 F.2d 482 (C.A. 6); *N.L.R.B* v *Draper Corp*, 145 F 2d 199 (C.A 4).

[21] *Redwing Carriers*, 137 NLRB 1545 (1962), affirmed *sub nom. Teamsters, Chauffeurs & Helpers Local 79* v. *N.L.R.B*, 325 F 2d 1011 (C A D C), cert. denied 377 U S 905, see Twenty-ninth Annual Report (1964), p. 115.

was required to weigh these competing interests. In *Thurston Motor Lines* [22] one employee was discharged for refusing to cross a picket line to make a scheduled delivery, and a second employee was discharged when he refused to substitute for the first employee and make the delivery. The Board held that the discharge of the first employee was lawful, since the delivery he refused to make was a task regularly assigned to him, and the employer could reasonably fear repeated interruptions of its regular operation if the employee were not replaced. However, the discharge of the second employee, who refused to substitute for the first, was held to be a violation of section 8(a)(1). The Board concluded that since a supervisor had already made the delivery in question, there was no current business need to hire a replacement or to discharge the employee who refused to serve as a substitute.

In the other case [23] the discharge of two employees for refusing to cross a primary picket line to complete a construction project was held to be a violation of section 8(a)(1). The Board found that at the time of the discharges there were no replacements for the discharged employees available for hire, the employer had no other crew of its own available to perform the required work, and completion of the work in question was not urgent but could be scheduled at a later time and in fact was not completed until after the picket line was removed. The Board concluded therefore that the discharges were not necessary to continue the efficient operation of the employer's business. The fact that the discharges were demanded by the employer's principal customer, upon whose premises the work was to be performed, was held to be immaterial. The Board noted that it is well settled that an employer has a duty to resist pressure to discharge its employees for unlawful reasons and cannot escape responsibility for the consequences of its failure to discharge that duty.[24]

B. 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." [25] The section provides, however, that an employer may permit employees to confer with him during working hours without loss of time or pay.

Two cases decided during the year involved the application of the Board's *Midwest Piping* doctrine,[26] which holds that an employer faced with conflicting claims of two or more rival unions which give

[22] 166 NLRB No 101

[23] *Swain & Morris Construction Co*, 168 NLRB No 147

[24] *Ref-Chem Co*, 153 NLRB 488 (1965), Thirtieth Annual Report (1965), p 64

[25] Sec 8(a)(1) contemplates a "labor organization" as defined in sec 2(5)

[26] *Midwest Piping & Supply Co*, 63 NLRB 1060 (1945)

rise to a real question concerning representation violates section 8(a) (2) and (1) if he recognizes or enters into a contract with one of those unions before its majority status has been finally determined under the special procedure provided by the Act. In *G & H Towing Co.*[27] the employer and the incumbent union extended their contract, without change, until after a scheduled election, and later made further extensions pending resolution of the rival union's objections to the election which blocked the certification of the victorious incumbent. Distinguishing *Shea Chemical Corp.*,[28] where the Board had found a violation of section 8(a) (2) and (1) when the employer negotiated a complete collective-bargaining contract with an incumbent union while a claim by a rival union was pending, the Board held that the extensions of the existing contract did not violate section 8(a) (2) and (1). There had been no changes in contractual terms, nor was there any evidence that the employer and the incumbent union had engaged in any bargaining. They had done no more than preserve the contractual status quo pending resolution of the representation question. Holding such action to be lawful, the Board noted, was entirely consistent with the decision in *Shea Chemical*, where the Board had specifically stated that the employer need not "give an undue advantage to the rival union by refusing to permit the incumbent union to continue administering its contract." [29]

In the other case[30] the execution of a new agreement, containing various improvements in employee benefits, while a decertification petition was pending, was held to be a violation of section 8(a) (2) and (1). The employer had engaged in extensive unfair labor practices aimed at continuing the incumbent union as the employees' representative, and, after the first election was not determinative, had frustrated a rerun second election in the decertification proceeding by refusing to furnish a list of employees' names and addresses.[31] It was therefore required to withdraw recognition from the incumbent union, even though the union's claim to continued status as majority representative had not then been rejected in the decertification proceeding.

C. Employer 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

[27] 168 NLRB No 82

[28] 121 NLRB 1027 (1958).

[29] Id at 1029.

[30] *Midtown Service Co.*, 171 NLRB No 161

[31] Under the doctrine of *Excelsior Underwear*, 156 NLRB 1236 (1966), the first election was set aside and the rerun election indefinitely postponed, because of the employer's refusal to furnish the list of names and addresses.

condition of employment" for the purpose of encouraging or discouraging membership in any labor organization.[32]

1. Bargaining Lockouts

The holding of the Supreme Court in the *American Ship Building* case [33] that a lockout after bargaining impasse,[34] in support of a legitimate bargaining position, is not illegal, was applied by the Board in a number of instances. In *United States Sugar Corp.*[35] the Board held an employer's lockout of its employees, after an impasse was reached in bargaining, was privileged under the *American Ship Building* rationale and therefore not violative of section 8(a) (3) and (1). An impasse in bargaining was found to have been reached when, after good-faith bargaining, each party took the position that it could make no further concession without the other party moving first. The employer's subsequent shutdown of operations "until an agreement has been negotiated," although concededly for the purpose of exerting economic pressure upon the union to arrive at an agreement satisfactory to the employer, was found by the Board to be clearly lawful, in view of the impasse. To similar effect was the decision in the *Ruberoid Co.* case,[36] in which the employer, after an impasse was reached in good-faith bargaining, locked out employees at one of its two plants in order to pressure the union into accepting its proposals before expiration of the contract at its other plant would enable the union to strike both plants and shut off all production. As the lockout occurred after impasse and was in support of the employer's legitimate bargaining position, the Board held the action to be lawful.

In *Delhi-Taylor Refining* [37] a purchaser-employer locked out its employees after impasse in bargaining negotiations with the union representing the employees, one issue of which was the employer's insistence that laboratory and warehouse employees, historically in the bargaining unit, be excluded. Although the Board found that the employer's insistence upon the exclusion of the laboratory and warehouse employees was violative of section 8(a) (5), it concluded that the lockout, clearly designed to compel acceptance of the employer's otherwise legitimate bargaining proposals, was not thereby rendered unlawful within the meaning of *American Ship Building.* The Board found that

[32] However, the union-security provisions of sec 8(a)(3) and 8(f) create exceptions to this blanket prohibition which permit an employer to make an agreement with a labor organization requiring union membership as a condition of employment, subject to certain limitations.

[33] *American Ship Building* v *N L R B*, 380 U S 300

[34] See Thirty-second Annual Report (1967), pp. 91–94.

[35] 169 NLRB No 4

[36] 167 NLRB No 144

[37] *Delhi-Taylor Refining Div, Hess Oil*, 167 NLRB No 8.

the employer did not aim to frustrate collective bargaining by seeking exclusion of the laboratory and warehouse employees, nor did it fail to accept the proposed agreements simply on the ground that they did not include a provision excluding those employees from the unit. It noted also that the union did not reject the employer's terms simply because of the inclusion of that provision. Under these circumstances, the Board concluded that the employer's position on the inclusion or exclusion of the laboratory and warehouse employees "did not contribute to the impasse," did not materially motivate the employer in locking out the employees, and therefore did not impugn the legality of the employer's lockout objectives.

The test of a lockout's legality enunciated by the Supreme Court in *American Ship Building*—whether it is inherently so prejudicial to union interests and so devoid of significant economic justification that no specific evidence of intent is required—was held by the Board in the *Darling & Co.* case[38] to be "properly applicable to situations involving a lockout of employees prior to an impasse in negotiations." Carefully evaluating "all the surrounding circumstances" of an employer's preimpasse lockout in support of its bargaining proposals, including its desire to avoid deferral of a strike until its busy season, the Board found the strike was not unlawfully motivated.[39] It noted that:

> The absence of an impasse is one of the surrounding circumstances, but it does not necessarily require a conclusion that the lockout was unlawful on that ground alone. While the finding of an impasse in negotiations may be a factor supporting a determination that a particular lockout is lawful, the absence of an impasse does not of itself make a lockout unlawful any more than the mere existence of an impasse automatically renders a lockout lawful

The Board further concluded that in view of the continued disagreement on a few key issues after extensive bargaining, the union's announced intention to strike at a time of its own choosing, and the past history of employee work stoppages at the plant, the lockout was neither inherently prejudicial to union interests nor devoid of significant economic justification.

2. Refusal To Employ or Reinstate

During the course of the report year several cases presented issues concerning an employer's action in refusing to employ or reemploy certain groups of employees. In *Tristate Maintenance Corp.*[40] the

[38] 171 NLRB No. 95.

[39] Chairman McCulloch and Members Fanning, Jenkins, and Zagoria for the majority. Member Brown, dissenting, would find that since there was no fear of imminent strike action and the parties were not at a bargaining impasse, the lockout was inherently prejudicial to employee rights and therefore violative of the Act

[40] 167 NLRB No 140.

employer, a janitorial service contractor who was successful bidder on a service contract renewal, refused to employ his predecessor's employees as a group, contrary to the established practice in the building services industry. In considering whether the refusal to hire the employees as a group was motivated by a desire to avoid bargaining with the union, the Board concluded that such unlawful motivation was evidenced by the employer's union antipathy expressed at the time of negotiations with owners of the building he was to service, his advertising for a work force larger than that needed despite assurances that he would use the predecessor's employees, and his lack of diligence in providing the majority of his predecessor's employees an opportunity to apply for a position on his work force, while at the same time actually seeking out a few of the highly skilled employees. The Board found that the employer, aware that by following customary industry practice and hiring the employees as a group he would have been a successor employer with the attendant obligation of recognizing and bargaining with the union, refused to follow that practice in order to avoid that obligation thereby violating section 8(a)(3) of the Act. In another case, *Flambeau Plastics*,[41] the employer refused to reinstate unfair labor practice strikers upon their application contending that the applications were conditioned upon his remedying certain alleged unfair labor practices. Three months after commencement of an unfair labor practice strike the employer withdrew recognition from the union on the ground that he doubted its continued majority status. Thereafter, each striker sent an identical "application for reinstatement" to the employer, in which each expressed his desire to return, subject to the understanding that the employer would continue to recognize and commence bargaining with the union. In holding that the employer's rejection of the reinstatement applications because of their alleged conditional nature was not a violation of section 8(a)(3) of the Act, the Board reiterated its policy that unfair labor practice strikers are entitled to reinstatement upon unconditional application therefore, but that, subject to certain exceptions not relevant in *Flambeau*, it is not unlawful for an employer to reject requests for reinstatement which are conditioned upon the employer's agreement to remedy unfair labor practices which caused the strike or prolonged it. The Board also noted that although the employer was unwilling to accept the condition, he expressed willingness to reinstate the strikers and to leave the determination of the validity of his conduct to the processes of the Act.[42]

[41] 172 NLRB No. 33

[42] Chairman McCulloch and Members Fanning, Jenkins, and Zagoria for the majority Member Brown, dissenting, would find the requests unconditional, as requiring only restoration of the situation which existed when the strike began and to which the employees were entitled to be restored

Another aspect of the scope of the responsibility of employers to reinstate economic strikers, and the extent of their entitlement to reinstatement, was considered by the Board in the *Laidlaw Corp.* case,[43] where the strikers' jobs had been filled by replacements when they made unconditional offers to return to work. A number of vacancies occurred thereafter, but the employer refused to hire the strikers, contending that their employment status had been terminated when there were no jobs available at the time of their application for reinstatement. One striker was offered reinstatement, but only as a new employee, without his seniority and vacation rights. Meanwhile, the employer advertised for, and hired, a number of new employees to fill vacancies. The Board held that an economic striker is entitled to reinstatement so long as he has not abandoned the employ of the employer for other substantial and equivalent employment. In doing so it relied particularly on the principles set forth by the Supreme Court in *Fleetwood Trailer*,[44] that a striker who is still an employee and available for work is entitled to full reinstatement unless there are legitimate and substantial business reasons for the employer not offering reinstatement.[45] The Board concluded that a striker remains an employee even though his application for reinstatement is rejected because at that particular moment he has been replaced, and, absent business justification, it is incumbent upon the employer to seek him out for reinstatement as positions for which he is qualified become vacant. In the Board's view, the failure of the employer to do so was inherently destructive of employee rights, within the meaning of the *Fleetwood Trailer* and *Great Dane Trailer*[46] Supreme Court decisions, and no proof of specific antiunion motivation is required.

3. Other Forms of Discrimination

Among the other cases involving allegedly prohibited discrimination considered by the Board during the course of the report year, was one requiring determination, in the light of the Supreme Court's decision in *Darlington Manufacturing Co.*,[47] of whether an employer's closing of one of his six shops constituted a violation of section 8(a) (3) and (5). *Darlington* requires that in order to find an 8(a) (3) violation the closing be "motivated by a purpose to chill unionism in any of the remaining plants of the single employer and if the employer may rea-

[43] 171 NLRB No. 175

[44] *N L R B.* v *Fleetwood Trailer Co*, 389 U.S 375, *infra*, pp. 133–134.

[45] The Board overruled its prior decisions in *Brown & Root*, 132 NLRB 486 (1961); *Atlas Storage Division*, 112 NLRB 1175 (1955); and *Bartlett-Collins Co.*, 110 NLRB 395 (1954), to the extent that they were inconsistent with this holding

[46] *N.L R B* v. *Great Dane Trailers*, 388 U.S 26, Thirty-second Annual Report (1967), p 136

[47] 380 U S 263, Thirtieth Annual Report (1965), p 121.

sonably have foreseen that such closing would likely have that effect." The Board found that the evidence in *Motor Repair* [48] did not support a finding that the employer by closing one of his repair shops was motivated by a desire to chill unionism at his other repair shops. Thus, there was no evidence of contemporaneous union activity at the other shops, or that the union's organization of the closed shop was a first step, or was believed by the employer to be a first step, of an effort to organize all of the shops. Moreover, there was nothing in the record to indicate that the employees of the other shops, the closest 245 miles away, generally were aware of the union campaign at the closed shop prior to its closing, or that such employees would, in the normal course of events, become aware of the reason for the closing through conversations with employees or supervisors at the other shops. The Board, while noting that some of the evidence of employer conduct may well have warranted an inference that an *effect* of the closing was to discourage employees of the other plants from engaging in union activities, found that that conduct did not, without more, warrant the inference that the employer closed the plant with the *purpose* of discouraging the employees from engaging in such activities.

In *S. H. Lynch* [49] the Board was faced with the question of whether or not a striking deliveryman was discriminated against when during the strike his employer made changes in his route at the request of a customer. When the employer's driver-salesmen went out on strike, one of his customers asked him to change the driver servicing him because he was not satisfied with him and wanted a new driver, although in fact he requested the change to avoid delivery interruptions because of the strike. In accordance with his established business policy, the employer assigned a different driver to service that customer. As a result, the former driver, while retaining his salary standard, upon returning from the strike lost the commissions derived from that customer's account. The Board, in dismissing the complaint against both the employer and the customer, found that the customer did not and could not have changed the route assignment and, therefore, did not violate the Act. At the same time, finding no knowledge on the employer's part of the real reason for the customer's request, the Board found that the employer acted only in accordance with established business practices. On the facts of the case, the Board concluded that it could not ascribe to the employer either an actual or a presumed intent to discriminate against the driver for having participated in the strike.

In another case [50] involving an allegation of discriminatory discharge, the employer discharged an employee after she had picketed

[48] 168 NLRB No. 148.
[49] 167 NLRB No. 70
[50] *Sears, Roebuck & Co*, 168 NLRB No 126

his store (one in a nationwide chain) on her off-duty hours and distributed handbills advocating a boycott to protest the employer's alleged antiunion attitude. The Board, relying on *Edir's*,[51] found the employee's actions to be within the protection of the Act and the discharge to be unlawful, inasmuch as the boycott itself, which arose from a labor dispute, was not unlawful, while at the same time it could not have been said that the appeals contained in the picket signs and handbills failed to provide a nexus between the labor dispute and the public reaction requested.

In *Darling & Co.*[52] the employer, upon closing down for purely economic reasons, paid severance pay to all employees except production employees, whose prior lockout by the employer was the subject of an unfair labor practice proceeding pending before the Board, and made payment to the production employees contingent upon the outcome of that proceeding. The Board, in finding violations of section 8(a) (1), (3), and (4), concluded that the employer, by adopting a severance pay program in which payment of severance pay to a portion of the employees turned on the outcome of an unfair labor practice proceeding concerning their rights, appeared to give no consideration to the fact that the cost of any litigation might be borne as a general operating expense for the entire plant. In singling out the production employees as the only group to bear the prospect of a denial of severance pay benefits should the employer incur a financial liability for backpay, the employer plainly fastened on the production employees the entire burden for having resorted to the Board for the vindication of the rights which the Act guarantees. Concluding that the production employees had a right to be treated as other employees, including equal consideration for severance pay, the Board found the employer's conduct "inherently destructive" of important employee rights.

The Board in another case [53] ruled that the contemplation of Board assistance is the necessary first step in instituting Board proceedings and, as such, must come under the Act's safeguards for employees seeking the assistance of such proceedings. The employer, through a supervisor, had promised premium pay to employees for working on an upcoming holiday weekend. In answer to employee questions when the pay was not forthcoming, that supervisor stated that he had erroneously interpreted company policy. When the employees discussed what action could be taken, one of them suggested they seek Board assistance to obtain the promised pay, and a petition to that effect was circulated among all of the employees. Upon confirmation that there would be no premium pay, the employee who first sug-

[51] *Edir, Inc., d/b/a Wolfie's*, 159 NLRB 686 (1966), Thirty-first Annual Report (1966), p 72

[52] 170 NLRB No. 127.

[53] *Hoover Design Corp.*, 167 NLRB No 62.

gested seeking Board assistance stated his intent to do so, whereupon he was denounced by the employer as a troublemaker and discharged.

The Board noted that the employees' attempt to collect the unpaid compensation was a concerted activity protected by section 7 and the employer knew that holiday pay was the subject matter behind the employees' activities. The Board concluded that the discharge of the employee not only violated section 8(a)(1) of the Act, but also section 8(a)(4), since it occurred as a result of the employee's decision to seek Board Assistance on behalf of himself and others, and such contemplated recourse to the Board's procedures is protected by the Act.

The Board has long recognized that employer involvement in union meetings poses special dangers to a nascent organizing drive. In reiterating this view in *Corriveau & Routhier Cement Block*,[54] the Board found that an employer violated section 8(a)(3) by discharging two employees active during a preelection campaign on the grounds that they engaged in "misconduct" at a union meeting. During the course of the campaign, the two employees told fellow employees in attendance at union organizational meetings that if they did not vote for the union, they would "see them down the road." The employer then discharged the two employees on the basis of such alleged "misconduct." In finding the discharges unlawful, the Board stated that:

> As in the case of picket lines during legitimate, lawful strikes the protection afforded employees who participate in union meetings would be unduly jeopardized if any and all "misconduct" were automatically to constitute grounds for employee discharge, for employers have no immediate, direct interest in how this protected right is exercised. Meaningful protection in this situation must require that relatively minor incidents of misconduct, such as name-calling or somewhat ambiguous or veiled threats, do not remove the Act's protection from the perpetrator, or suffice to legitimize his discharge. [Footnote omitted]

Here, the employer admittedly discharged the two employees for their conduct at an organizational meeting held away from company premises. Not only was there no specific showing of impaired on-the-job efficiency, but the Board also found the conduct itself was plainly not of such an egregious nature as to forfeit the section 7 protection accorded employees who attend and participate in union meetings.

D. The Bargaining Obligation

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.

---

[54] 171 NLRB No. 113.

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.[55]

1. Demands for Initial Recognition

The Board has long held that an employer may decline to recognize and bargain with a labor organization upon its demand for initial recognition and may insist upon proof of the union's majority status through Board election procedures if the refusal is motivated by a good-faith doubt as to the union's majority status. Where, however, the empolyer's refusal is motivated by a rejection of the collective-bargaining principle or a desire to gain time within which to undermine the union and dissipate its majority, the employer's refusal is found violative of section 8(a)(5) and (1) of the Act. During the course of the report year, the Board reaffirmed these principles in a number of cases, among which was *Fabricators, Inc.*[56] There the employer declined the union's request for recognition because of an expressed doubt of the union's majority, but consented to an election which the union lost. The Board found that employer threats of serious reprisals and interrogation of employees vitiated the results of the election. It also found that the commission of unfair labor practices both before and after the refusal to extend recognition established the employer's "unlawful motivation" in refusing to recognize the union. As the record also established that the union had majority support at the time of its demand, and its "subsequent diminution of support" was found to be attributable to the employer's unlawful conduct, the employer was ordered to remedy its statutory violations of section 8(a)(1) and of section 8(a)(5) by bargaining, upon request, with the union.

It is equally clear that in cases involving such a refusal to extend recognition, the General Counsel has the burden of affirmatively establishing the employer's "bad faith" in declining to recognize and bargain with the union.[57] Among the cases turning upon that allocation of the burden of proof was *J. C. Penney*,[58] where the Board

[55] As defined by sec 8(d) of the Act, the statutory duty to bargain includes the duty of the respective parties "to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party." However, "such obligation does not compel either party to agree to a proposal or require the making of a concession."

[56] 168 NLRB No. 21

[57] *John P Serpa*, 155 NLRB 99 (1965), Thirty-first Annual Report (1966), pp 80–83.

[58] 172 NLRB No 82.

concluded that the employer's illegal conduct, limited to statements of two supervisors, "was not so flagrant as to vitiate its good faith in questioning the union's majority, or necessarily have had the object of destroying the union's majority status." The Board accordingly dismissed the refusal-to-bargain allegation.[59] In another case in which the employer's expressed doubt as to the union's majority status was held not to have been impugned,[60] the Board concluded that although the employer in extensive letters to employees had in a few instances made coercive statements, his refusal to recognize the union which held authorization cards from a majority of employees was not unlawful, since under the circumstances the coercive letter probably had little impact and there was no evidence that the employer was thereby rejecting the collective-bargaining principle or attempting to gain time in which to undermine the union's support. The Board noted that the employer established that, as a result of long experience with organizational attempts, it had concluded that authorization cards were not always reliable as indicators of employee desires and had therefore adopted a policy of not treating with cards as a basis for resolving majority status questions. Moreover, the Board considered the fact that the employer agreed to a consent election without undue delay, which was also consonant with a good-faith doubt of the union's majority.

Among the cases where a lack of good-faith doubt was held to have been established, and an unlawful refusal to bargain found, was one [61] where the union in its request for recognition also requested the employer to consent to a Board election. Although the employer consented to an election, the Board did not interpret the union letter as extending an unconditional choice and absolving the employer from its statutory bargaining obligation. Finding that the employer committed extensive violations of section 8(a) (1) and (3), the Board concluded that in consenting to the election, as well as in its other actions, the employer was motivated by a rejection of the collective-bargaining principle and a desire to gain time in which to undermine the union, thereby violating section 8(a) (5).

2. Validity of Authorization Card Designations

During the course of the report year, the Board in *Levi Strauss* [62] restated "in accord with previously adopted Board principles" the

[59] Members Fanning, Jenkins, and Zagoria. Member Jenkins adhered to his separate views in *Aaron Bros. Co.*, 158 NLRB 1077 (1966), where he viewed the test as one of "bad faith" in refusing to recognize rather than one of "good-faith doubt." Member Zagoria would find no bargaining order warranted since the employer's conduct did not adversely affect the union's ability to participate in an election.

[60] *Dowell Div. of Dow Chemical Co.*, 171 NLRB No. 125.

[61] *Falls Dodge*, 171 NLRB No. 200.

[62] 172 NLRB No. 57.

reason for its view that where authorization cards used by a union in support of its claim of majority status expressly authorize the union to bargain for employees, oral representations made by the union in soliciting signatures, to the effect that a purpose in signing the cards is to obtain an election, do not invalidate the cards in the absence of a showing that the election aim was represented as the sole purpose of the cards. In that case the Board upheld the validity of authorization cards unambiguous on their face and held that election-purpose statements by union organizers while soliciting the cards did not invalidate them. The Board noted that in basic purpose there is no essential difference between cards that are needed for a showing of interest to gain an election and cards that must be used to support a majority-designation showing in an 8(a)(5) complaint proceeding, since the requisite showing in each instance "must be by cards stating the employees' wish to be *represented* by a *particular labor organization* . . . ." It stated:

> The Board's experience shows that in nearly all organizational situations unions expect to, and do, proceed via the election route in their effort to gain representation rights, and that they obtain designation cards with the thought of using them primarily to make the showing of interest required for the processing of a representation petition. It is therefore only to be expected that there will be considerable talk during an organization campaign of a contemplated representation proceeding and of the need for sufficient authorization cards for that purpose; indeed it would be surprising if no such mention was made It is in the exceptional and relatively infrequent situations, most of them of the *Joy Silk* character, when an employer by his unfair labor practices has made a fair election impossible, that unions with a card majority resort to 8(a)(5) complaint proceedings in an effort to establish their right to representation—in fact, that avenue is normally closed to unions unless substantial independent unfair labor practices have occurred We perceive no valid reason for refusing in a complaint proceeding to accord the usual probative value to unambiguous authorization cards simply because, at the time it still thought it might have a fair election, a union may have stressed the election use of the cards rather than the alternative use to which they were later put . . . . Absent some other disability, their use, or proposed use, to secure an election does not alter their essential character as union designations. To hold that emphasis upon an election purpose during an organizational campaign is alone sufficient to impair the validity of unambiguous authorization cards when they are subsequently sought to be used in an 8(a)(5) proceeding occasioned by an employer's election interference would only allow an employer to profit from his own unfair labor practices and thereby frustrate statutory policy. [Footnotes omitted]

In two other cases [63] decided during the report year involving representations in the course of card solicitation which assertedly affected their reliability, the employees signing the cards had been told that "everyone else," or "practically everyone" of the other employees had signed, when in fact the solicited employees were among the first to sign. In holding statements of that type to be "immaterial in deter-

[63] *G & A Truck Lines*, 168 NLRB No 106, and *Boyer Bros*, 170 NLRB No. 119.

mining the validity of authorization cards, even when signed in reliance thereon," the Board viewed such statements as "harmless sales-talk or puffing," which do not operate to overcome the effect of the employees' overt action in signing.

3. Withdrawal of Recognition From Incumbent Union

The circumstances under which an employer may withdraw recognition from an incumbent union because of his doubt of the union's continued majority status were considered by the Board in several cases. In *Convair*[65] the employer, asserting a doubt of the certified incumbent union's current majority status, withdrew recognition from it upon expiration of the contract until the union's majority status was again established through the Board's election procedures. Assessing the employer's actions under established legal standards requiring that to be lawful such a doubt must not be raised in the context of anti-union activities and must be supported by objective considerations,[66] the Board concluded that he did not thereby violate section 8(a)(5) of the statute. The Board noted that the composition of the certified unit's complement had undergone drastic changes in the 3 years since the last election. Not only had the overall complement been substantially reduced, but there had been placed within the unit, as replacements for departing personnel, substantial numbers of employees from a similarly constituted but unrepresented unit at a nearby employer-operated facility, where the same union had been overwhelmingly rejected in an election conducted simultaneously with that conducted in the certified unit. The Board concluded that those circumstances, all tending toward a possible diminution of union support, when considered by the employer in the light of his awareness that the contracts did not require union membership, checkoff authorizations had decreased to only about 26 percent of the employee complement, and the union conceded to the employer that only 30 percent of the employees were members, were sufficient to give rise to a reasonable doubt concerning the union's majority status. Finding also that the employer had not engaged in any unfair labor practices or other actions either before or after raising the majority issue which were inconsistent with its having raised that issue in good faith, the Board dismissed the complaint.

In another case[67] requiring application of those standards, the employer withdrew recognition from the incumbent unions upon an

[65] *Convair Div. of General Dynamics Corp*, 169 NLRB No. 26.

[66] *Celanese Corp.*, 95 NLRB 664, 672–673 (1951); *U.S. Gypsum Co*, 157 NLRB 652 (1966), Thirty-first Annual Report (1966), p 60

[67] *United Aircraft Corp.*, 168 NLRB No. 66.

asserted doubt of majority status supported solely by the fact that only a small minority of employees were paying dues, a circumstance unchanged over the past several years. In finding that single factor inadequate as an objective consideration to provide reasonable grounds for doubting the union's majority support, the Board pointed out that the employer's asserted doubt had to be considered in the context of all the circumstances, among others the fact that during the period that the dues situation had existed and been known to the employer, he had continued to negotiate and execute contracts with the unions, thereby conceding their majority status. It noted also that while in the absence of a union-security provision from the contract, the employees did not have to pay dues as a condition of employment, the employees had nevertheless indicated their tacit agreement with the unions' representational activities by utilization of their services, as in processing individual grievances. The Board therefore held the employer violated section 8 (a) (5) by withdrawing recognition from and refusing to bargain with the unions.

Although the execution of a contract with a union also raises a presumption of the majority status of that union,[68] the Board, in the *Ace-Doran* case [69] where the employer withdrew recognition for the contractual unions, made clear that in order to raise such a presumption to support an 8(a) (5) violation, the contract must be complete and adequately define the union in which majority status is asserted. There the Board found that neither the contracts executed by the truck transport employer with local unions having jurisdiction over several of its numerous terminals, nor evidence concerning the employer's membership in an employer association having contractual relationship with the international union permitted determination of whether the appropriate unit was single terminal, employerwide, or multiemployer. Holding that the presumption of majority status cannot attach to a contract if in fact the boundaries of the unit in which a majority must exist are not defined, the Board concluded that, in the absence of other evidence of majority status, no violation of section 8(a) (5) had been established. The Board also found that the practice under the agreements made it clear that the parties did not intend them to be effective collective-bargaining agreements, but rather regarded them as arrangements to permit the employer to checkoff dues and make health, welfare, and pension payments for union members only. The acquiescence of the union in the employer's failure to enforce the union-security provision of the agreements or to pay health and welfare contributions for all employees,[70] as ostensibly provided by the "contracts," made it clear

[68] See *Shamrock Dairy*, 124 NLRB 494 (1959).

[69] *Ace-Doran Hauling & Rigging Co*, 171 NLRB No 88

[70] The Board found no 8(a)(3) violation by these checkoffs, since all payments were deducted from employee earnings and were not contributions made by the employer from its own funds

that the parties did not believe that they were in a true collective-bargaining relationship.

4. Employer Withdrawal From Multiemployer Bargaining

Under established Board precedent, an employer's withdrawal from multiemployer negotiations after bargaining has commenced is effective only if acquiesced in by the union involved or if justified by unusual circumstances.[71] Two cases decided by the Board during the past year dealt with circumstances justifying an untimely withdrawal, while in another the Board considered whether, under the circumstances, suspension from a multiemployer unit after bargaining had begun was tantamount to an untimely withdrawal.

In *U.S. Lingerie*,[72] the Board held that the employer's untimely withdrawal from associationwide bargaining was justified under circumstances where it followed a series of events marking the employer's financial decline and efforts to revive its business. These events included the filing of a petition in bankruptcy by the employer, an unsuccessful attempt to obtain work as a contractor through the union, and, finally, an agreement with the creditors' committee established pursuant to the petition providing that the employer could relocate in another area if a substantial sum were deposited in a special account. Although the union did not receive notice of the court decree confirming the agreement and ordering the employer to comply with it, it was well aware of the employer's financial difficulties, of the filing of the bankruptcy petition, and of a plan of arrangement submitted thereunder. The employer, on the other hand, did not learn that negotiations between the employer association of which it was a member and the union had commenced until several days after court confirmation of its proposed move. It then inquired as to how it could resign from the association. Under these circumstances, the Board held the withdrawal justified, even if untimely. In reaching this conclusion, it particularly noted that withdrawal was for the purpose of relocating; that the employer had unsuccessfully sought help from the union; that the employer was a debtor in possession under the supervision of the court; and that its "intention to relocate . . . raised issues inherently more amenable to resolution through collective bargaining confined to the parties immediately involved in the dispute than through collective bargaining carried on on an associationwide basis."

And, in *Spun-Jee Corporation*,[73] a case on remand from the court of appeals, the Board, under somewhat similar circumstances, also

[71] See, e g , *Retail Associations*, 120 NLRB 388 (1958) ; *Sheridan Creations*, 148 NLRB 1503 (1964), enfd. 357 F 2d 245 (C A 2, 1966).

[72] 170 NLRB No. 77.

[73] 171 NLRB No. 64.

viewed economic necessity as a factor to be considered in justifying the employers' withdrawal from association bargaining after negotiations had begun. There, the employers advised the union, which was well aware of the industry's poor financial condition, that their own economic distress was such that without the special consideration which they sought—continuance of their own operations under the existing contract regardless of association bargaining—they could not continue to operate their business in the New York area. To such requests, the union consistently stated that the employers must accept the contract that eventually would be reached with the association. The court of appeals [74] in remanding the case [75] had held that the employers had not unlawfully failed to bargain concerning removal of their operations, since it found that the union had waived its right to bargain over such matters when, fully apprised of the employers' intention to relocate, it waited several months before requesting bargaining. In light of this finding, and in view of all the circumstances of the case, "including the evident economic hardship inherent in Respondents' continuance in business in the New York area," the Board concluded the withdrawal from the association, although untimely, was justified.

An employer's suspension from a multiemployer association was found by the Board in another case [76] to be equivalent to an untimely withdrawal in violation of section 8(a)(5), notwithstanding the involuntary form of the separation. Suspension was occasioned by the employer's association dues delinquency, but the principal reason for the employer having continued to withhold its dues even after suspension was its desire to avoid paying the far more substantial sum it would have been required to contribute to the health and welfare funds under the association contract with the union. Accordingly, since the rule against untimely withdrawal is designed to prevent disruption of the multiemployer group via a race for bargaining leverage through voluntary separation, the Board concluded that there was no reason under these circumstances to withhold application of the rule merely because of the involuntary form of the separation.

5. Subjects for Bargaining

Both the employer and the statutory representative of an appropriate employee unit must bargain as to all matters pertaining to "wages, hours, and other terms and conditions of employment." [77] These are mandatory subjects of bargaining. In other matters which are lawful,

[74] *N L R B* v. *Spun-Jee Corp*, 385 F 2d 379 (C A 2), as amended Dec 7, 1967
[75] *Spun-Jee Corp*, 152 NLRB 943 (1965), Thirtieth Annual Report (1965), p 115.
[76] *Mor Paskesz*, 171 NLRB No 20.
[77] Sec 8(d) of the Act.

bargaining is permissible though not mandatory. But insistence on inclusion in a contract of clauses dealing with matters outside the category of mandatory bargaining subjects as a condition of bargaining or agreement on mandatory matters, constitutes an unlawful refusal to bargain. During the year the Board issued a number of decisions of significance to the determination of the bargainable nature and scope of bargaining required on certain issues. Among those decisions were cases involving management decisions to subcontract, to terminate or relocate a portion of its operations, to change methods of operation, and to bar former employees from the plant premises.

Under the Board's *Fibreboard* doctrine,[78] an employer is obligated to bargain with the union representing its employees about a decision to subcontract unit work, as well as about the effect of the decision on employees in the unit. However, unilateral subcontracting has been found unlawful only where it "involved a departure from previously established operating practices, effected a change in conditions of employment, or resulted in a significant impairment of job tenure, employment security, or reasonably anticipated work opportunities for those in the bargaining unit."[79] Consistent with that standard, the Board in *Shell Oil Co.*[80] dismissed a complaint upon determining that the General Counsel had failed to make out a *prima facie* case that the employer had increased its subcontracting of maintenance work after a strike, or that such subcontracting had resulted in significant detriment to unit employees. The Board found the record did not show that there were more layoffs or more man hours of work subcontracted after the strike than before, or that additional types of maintenance work were being subcontracted for the first time. It noted that although the number of employees in the bargaining unit had steadily declined for a number of years, the cause of this erosion appeared to be technological change, rather than the subcontracting, and most layoffs had occurred before and during, not after, the strike.[81]

In another case[82] the Board found that an employer did not violate section 8(a) (5) and (1) of the Act by transferring accounting work performed by office clericals from a plant where a union had recently been certified as the representative of the office clerical employees, to its home office where a central accounting system was being implemented. The Board found that the decision to transfer the work, made

[78] See Twenty-eighth Annual Report (1963), pp 80–81; Thirtieth Annual Report (1965), pp 72–77, 118–119; Thirty-first Annual Report (1966), pp 92–93.

[79] *Westinghouse Electric Corp. (Mansfield Plant)*, 150 NLRB 1574, 1576 (1965), Thirtieth Annual Report (1965), pp. 73–74.

[80] 166 NLRB No. 128.

[81] Chairman McCulloch and Members Fanning, Jenkins, and Zagoria for the majority. Member Brown, dissenting, would hold that the record established a *prima facie* case of increased subcontracting and significant detriment to unit employees.

[82] *Keller Industries*, 170 NLRB No. 197.

before the advent of the union, was economically motivated and that the employer had notified the union of its plans before the union was certified. The Board concluded that under these circumstances the employer was not obligated to bargain about the decision to transfer the work, although it was obligated to bargain concerning the possible modification of its decision. Although the Board found that the employer had not refused to consider possible modification, it found that the employer had violated section 8(a) (5) and (1) of the Act by refusing to furnish the union with reports of cost and feasibility studies relating to establishment of the central accounting system.

The question of whether an employer's unilateral action in leasing a television studio on its premises, without notice to the union until after the terms were settled, was a violation of the employer's bargaining obligation under *Fibreboard* because its effect was to cause the layoff of some unit employees and the transfer of others, was presented the Board in *Desilu Productions.*[83] The loss of work for unit employees occurred when the lessee decided to furnish its own janitorial services, rather than utilize the unit employees who had been performing them. The Board in dismissing the complaint noted that it was not clear that the employer, when it signed the lease, was aware that the lessee intended to provide its own janitorial employees. It found that the employer had demonstrated its good faith by carrying out the provisions of its contract with the union with respect to seniority and severance pay in the event of a sale of the premises, and had rehired the laid-off janitorial employees, on a seniority basis, when jobs became available at its other facilities. In view of these factors, the absence of union animus on the part of the employer, and the fact that the union was mainly concerned with protecting the contractual rights of the laid-off employees, the Board concluded that, even if the employer could be held responsible for the loss of unit work and thus found to have technically violated section 8(a) (5) by failing to notify the union in advance of its decisions which caused that loss, no remedial order would be warranted.

It is now settled that an employer who permanently closes part of his business is obligated to bargain with the representative of the employees affected by the closing about the decision to close, as well as about the effect of such decision on the employees.[84] Accordingly, in *Draper Mfg. Co.*,[85] the Board, upon finding that two related companies, one of which sold institutional linens, draperies, furniture, and related merchandise, and the other manufactured and installed draperies,

[83] 166 NLRB No. 117.

[84] See, e.g., *Ozark Trailers, Inc.*, 161 NLRB 561 (1966), Thirty-second Annual Report (1966), pp. 110–111.

[85] 170 NLRB No. 199.

making direct delivery to and installation for the first company's customers, constituted a single employer, held that the economically motivated closing of the drapery manufacturing company without notice to or bargaining with the union violated section 8(a) (5) and (1) of the Act. On the other hand, in *Guardian Glass Co.*,[86] the Board held that the employer did not violate the Act by closing a newly acquired plant when the union refused the employer's request to modify its unexpired contract with the employer's predecessor. The Board concluded that the shutdown was clearly motivated by economic considerations: the plant was losing money, the company was close to bankruptcy, and production difficulties were aggravated by inefficient equipment. Although noting that the employer had warned the union that rejection of its proposals would necessitate closing the plant, the Board found that the employer, who had immediately recognized the union upon purchasing the plant, had bargained in good faith and attempted to reach an agreement with the union through negotiations which were continued for 3 months following the shutdown. Since the employer had bargained in good faith, and the union's intransigent position was responsible for an impasse in bargaining reached before the shutdown, the Board held the employer had fulfilled its duty to bargain about its decision to close the plant, and such closing therefore did not violate the Act.

Another case decided during the year[87] raised the question whether an employer is obligated to bargain with a union over the termination of jobs and employees resulting from its decision to reorganize its operations. The employer, a freight trucking company, unilaterally instituted changes in the method of handling inbound and outbound freight, thereby eliminating inefficiency and reducing its high operating costs, but terminating the jobs of about one-third of the employees in the unit. The Board concluded that this unilateral nature of the action violated section 8(a) (5) and (1) of the Act, notwithstanding its concededly nondiscriminatory motivation. In so holding the Board stated:

> We note that the Respondent did not merely lay employees off temporarily because of a transient dip in business or other factors beyond the Respondent's control. On the contrary, it severed their existing regular employment status as a permanent matter (though not foreclosing some possible later employment on a casual or irregular basis). Although the reason for the Respondent's action may be beyond question in that it was designed to eliminate existing inefficiency, we further note that the work practices had become established as an integral part of the terms and conditions of employment, and were matters entirely within the Respondent's control. The changes thus cannot be properly viewed as merely a result or consequence of the ordinary course of business.

[86] 172 NLRB No. 49.
[87] *Dixie Ohio Express Co.*, 167 NLRB No. 72.

The Board emphasized that it was not holding that an employer may not eliminate existing inefficiency in its business operations without "securing the *consent* of the Union" but only that, although the employer had the right to determine the need for a reorganization of its operations along more efficient lines "the Act imposed upon it the obligation to notify the Union of its reorganization plan and to afford the Union an opportunity to negotiate concerning changes in the plan itself, the manner and timing of the implementation of the plan, and the effects of the changes on employees whose jobs were to be eliminated." [88] The Board deemed it inappropriate to order the employer to resume its inefficient practices or to bargain with the union concerning their resumption. The changes had been made for purely economic reasons, and, unlike the situation in *Fibreboard*, where the Board ordered the employer to resume the maintenance operations which it had subcontracted, here the work had not been transferred to any other group of employees, nor had any new employees been hired to perform the work of the terminated employees. Since the employer had later bargained with the union concerning the effect of the changes upon the employees, it was ordered to pay them backpay from the date of their termination to the date of the bargaining, and to cease and desist from unilaterally instituting operational changes significantly impairing the terms, conditions, or tenure of employment of any of its employees.

In *Shell Oil Co.*[89] the Board considered the bargainable nature of the employer's action in maintaining a "bar list" of ex-employees and other persons who were not allowed to enter its refinery, either to work for the employer or for any subcontractor performing work on the premises. This list contained the names of all employees who had been discharged for cause, or who had quit after doing unsatisfactory work. Although noting that the "bar list" was concededly neither discriminatory in nature nor discriminatorily applied, the Board held that it was a mandatory subject of bargaining to the extent that the employer, upon the request of the union representing a craft unit of its employees, was obligated to disclose the names of members of that craft on the list, and to bargain concerning the criteria for and their application in placing employees on the list and taking them off. It found the list was not merely one of persons whose employment had terminated, but actually had a significant effect upon the future employment prospects of the former employees whose names were on the list, as without access to the employer's premises they could not work

[88] Chairman McCulloch and Members Fanning, Brown, and Zagoria for the majority Member Jenkins, dissenting, viewed the changes as merely minor changes in work procedures, concerning which the employer satisfied its statutory obligation by bargaining about the effects of the changes on the employees.

[89] 167 NLRB No. 32.

for contractors performing work on the premises. Moreover, the existence of the list affected present employees, since the criteria for the placement of a former employee on the list were framed in terms of his conduct or work during his term of employment. Consequently, the Board held that the employer violated section 8(a) (5) and (1) of the Act by failing to bargain with the union about the list or to furnish relevant information concerning it.

6. Duty To Furnish Information

The statutory duty of an employer to bargain in good faith includes the duty to supply to the bargaining representative information which is "relevant and necessary" to the intelligent performance of its collective-bargaining and contract administration functions.[90] In one aspect, this duty imposes upon an employer who claims to be financially unable to meet a union's wage proposal the obligation to furnish data to substantiate that claim.[91] In enforcing that obligation in *Stanley Building Specialties Co.*,[92] the Board held that an employer violated section 8(a) (5) and (1) of the Act when it refused to produce company financial statements to support its claim that it could not pay higher wages than it was offering and remain competitive in the area. Finding that claim under the circumstances, in effect, a plea of inability to pay, the Board viewed the financial information requested by the union as relevant to this claim, particularly since the employer, in letters and a speech, divulged to the employees in an argumentative fashion without documentation the information it was refusing to document for the union.

Two other cases decided during the year involved refusals by employers to supply the bargaining representative with information requested as relevant to the processing of grievances. In one,[93] where the union requested the evaluation data from timestudies made of jobs placed within the employer's incentive wage program, the employer declined to furnish information other than the work standard and the job description which its contract with the union expressly required it to furnish. In holding the employer violated section 8(a) (5) and (1) of the Act by refusing to furnish the requested information, the Board found the information to be clearly relevant to the union's effective representation of the employees in the administration of the incentive wage program of the contract. It concluded that the failure of the contract expressly to include this information among that desig-

[90] See, e g, *Curtiss-Wright Corp*, 145 NLRB 152 (1963), enfd 347 F 2d 61 (C A 3), Twenty-ninth Annual Report (1964), p. 76, Thirtieth Annual Report (1965), p. 136.
[91] *N L.R.B.* v *Truitt Mfg Co*, 351 U S. 149.
[92] 166 NLRB No 110
[93] *Univis, Inc*, 169 NLRB No 18

nated to be furnished did not establish a waiver of the union's right to receive it—a right that was statutory, rather than contractual, and could be waived only by clear and unmistakable language.[94] In the other case [95] the Board held that the employer did not violate the Act by refusing to furnish the union with the reasons for its discharge of a probationary employee. The Board noted that although the collective-bargaining contract required the employer to furnish the union with the reasons for its discharge of any employee whose discharge was subject to arbitration, it limited arbitration to employees who had completed their probationary period and provided that, during the probationary period, employees were subject to dismissal at the sole discretion of the employer. By these provisions, the Board concluded, the union had waived its right to bargain about or submit the discharge of probationary employees to arbitration, or to be furnished with information concerning the discharge.

7. Bargaining Conduct

In a number of cases during the year, the Board was required to evaluate a wide variety of situations involving the attitudes, conduct, and positions of the parties to bargaining negotiations against the "good-faith" standard of section 8(d).[96] In the course of resolving the issues of those cases the Board gave further definition to the scope of conduct permitted and required by that standard.

In one such case [97] in which the Board concluded that the union's bargaining conduct, when viewed in its entirety, failed to comply with the statutory requirement of good faith, and thus violated section 8(b)(3) of the Act, the conduct which in the Board's view established the union's desire to avoid, rather than arrive at, an agreement, consisted of dilatory tactics including substitution of a six-man bargaining committee for a single bargaining agent; severe limitations upon the time, duration, and frequency of bargaining meetings; an unjustifiable suspension of bargaining for a 2-week period; and constant delay from the union's refusal to state a position on any contract proposal without consulting its attorney. The Board also noted

[94] Members Jenkins and Zagoria for the majority Member Brown, dissenting, would defer to the aribtration procedure of the contract for resolution of the dispute In his view, permitting a party to refuse to use the settlement machinery to which it had agreed was inconsistent with the national labor policy

[95] *Boston Mutual Life Insurance Co*, 170 NLRB No 188

[96] Sec 8(d) defines the obligation to "bargain collectively," imposed by sec 8(a)(5) and 8(b)(3), as follows: "For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession . . ."

[97] *Local 525, Plumbers (Reynolds Electrical & Engineering Co)*, 171 NLRB No 176

the union's refusal to initial agreed-upon clauses or to make responsive counterproposals, its insistence on a nonunit provision for supervisory medical examinations and a no-strike clause with an unlawfully broad exemption for refusals to cross picket lines, and its failure to reply to letters from the employer requesting a resumption of negotiations. On the other hand, in *Webster Outdoor Advertising Co.*,[98] the Board found that the employer, who had concededly bargained in good faith prior to a strike, did not violate section 8(a) (5) and (1) by its bargaining conduct and unilateral changes in working conditions after the strike began. The Board found that the employer's furnishing of work clothing to the strikers' replacements was consistent with its agreement during negotiations with the union to supply work clothes to employees if and when they were required, and that the payment of a hurricane bonus to employees who helped to protect the employer's property from an impending hurricane, although a departure from past practice, was not unlawful, since the employer had never previously been confronted with a shortage of trained personnel in an emergency. The hiring of a new employee at a higher wage rate than had been paid to a striker who had performed similar work was also held not to be an unlawful unilateral change, since the new employee was not hired as the replacement for that striker. Although the employer declined the union's request to examine payroll records, for the purpose of determining whether replacements were being paid higher wages than had been paid to striking employees, unless it received assurances the replacements, thus identified, would not be harassed, the Board found this conditional refusal was not unlawful, since the request for assurances was justified as replacements had, in fact, been harassed, threatened, and assaulted by strikers. In the Board's view the employer's refusal to make concessions after the strike began could not, standing alone, be regarded as evidence of bad faith, nor did the totality of the employer's conduct indicate that it bargained in bad faith. It met with the union at regular intervals, submitted serious proposals, and reached agreement on some issues. The Board found no foreclosing of issues, dilatory maneuvers, or other unlawful conduct customarily associated with "surface bargaining" and consequently held the employer's continued insistence upon its proposals after the strike began was no more unlawful than its insistence on the same proposals before the strike.[99]

[98] 170 NLRB No. 144

[99] Chairman McCulloch and Member Jenkins for the majority. Member Brown, dissenting, would find that the totality of the employer's conduct indicated that its bargaining was in bad faith

In another case,[1] the Board found that the union initially proposed an area standard contract which contained terms dealing with nonmandatory subjects of bargaining which the employer, while agreeing to the mandatory proposals of the contract, rejected to the extent they were not mandatory terms. The union then proposed alternatively a much greater wage increase than the initial contract, elimination of a no-strike clause and grievance and arbitration procedures, and a prohibition against transfer of employees to its jurisdiction from the jurisdiction of other local unions. When these proposals were rejected, the union struck. The Board concluded that the union's counterproposals were so extreme as to preclude a reasonable expectation of acceptance, and that the making of such proposals, as well as the union's action in calling the strike and refusing to meet further with the employer, although no impasse in bargaining had been reached, indicated the union's intention not to deviate from its original contract proposal. Since that contract included provisions on nonmandatory subjects of bargaining, the Board held that the union's undifferentiated insistence upon that contract violated section 8(b)(3).[2]

8. Contract Waiver of Bargaining Rights

The statutory right of employees to bargain collectively, through representatives of their own choosing, concerning "wages, hours, and other terms and conditions of employment" may be waived voluntarily pursuant to an agreement reached after genuine collective bargaining. However, such a waiver, like any other waiver of statutory rights, must be clearly and unmistakably established and is not lightly to be inferred.[3] In one case in which the Board found an effective waiver,[4] the union requested permission to conduct independent timestudies of one portion of the employer's operations to determine whether a grievance concerning the employer's changes in the applicable incentive rates and standards should be carried to arbitration. The Board found that during negotiations for a contract some years earlier, the union had sought a clause authorizing such independent timestudies, but had finally agreed instead to a provision for the selection and training of an employee as a union timestudy steward and the same timestudy provision had been included in every subsequent contract without any effort at modification by the union. It concluded

[1] *Southern Calif. Pipe Trades District Council No. 16 (Aero Plumbing Co.)*, 167 NLRB No. 143.

[2] Since one of the demands was that the employer appoint an employer association as its agent for the purpose of collective bargaining and the adjustment of grievances, the Board found that the union's insistence on this demand also violated sec. 8(b)(1)(B) of the Act.

[3] See Twenty-ninth Annual Report (1964), pp. 78–79, Thirtieth Annual Report (1965), pp. 77–78.

[4] *Wrought Washer Mfg. Co.*, 171 NLRB No. 85.

that the union had thereby compromised its contract demand and waived any right to have an outsider make a timestudy, and therefore the employer did not violate section 8(a) (5) and (1) of the Act by refusing to allow such independent timestudies.

No such waiver by contract was found in another case [5] where, although the contract contained an unusually broad waiver of bargaining-rights clause, and the employer's unilateral action in changing certain employee classifications and pay rates to reflect a change in methods and equipment was arguably permitted under provisions of the contract dealing with technological change, the contract also provided that the establishment or change of incentive plans would always be by agreement of the parties. In limiting the import of the general waiver clause the Board stressed that "even when a 'waiver' is expressed in a contract in such broad, sweeping terms . . . it must appear from an evaluation of . . . negotiations that the particular matter [in issue] was fully discussed or consciously explored and the union consciously yielded or clearly and unmistakably waived its interest in the matter." [6] Having found that the waiver provision did not authorize the employer's unilateral changes in method and equipment and his reclassification of employee positions from incentive to hourly rated, and that the contract specifically required agreement by the parties before such changes, the Board concluded that the employer's innovations were radical changes as to which the contract clearly entitled the union to have an opportunity to bargain. The availability of a grievance procedure, culminating in arbitration, did not, in the Board's opinion, preclude the union from exercising its right to bargain about the changes, nor did it justify a refusal by the Board to decide the merits of the case. The controversy had been fully litigated, was not beyond the Board's competence to resolve, and would have a continuing impact on the bargaining relationship as long as it remainded unresolved.[7] Accordingly, the Board found that the employer violated section 8(a) (5) and (1) by unilaterally changing the methods of operation and compensation.

A waiver of bargaining rights for an indefinite period of time has been held to be subject to unilateral amendment or termination after a reasonable time and after giving the statutory 60 days' notice.[8] In *Federal Cartridge Corp.*[9] the Board was required to determine whether under the circumstances a reasonable time had passed so that a union

[5] *Unit Drop Forge Div Eaton, Yale & Towne,* 171 NLRB No. 73

[6] Quoting *Rockwell-Standard Corp*, 166 NLRB No. 23 (1967).

[7] Chairman McCulloch and Members Fanning and Jenkins for the majority. Members Brown and Zagoria, dissenting, would defer to the contractual grievance arbitration procedure, since the parties themselves had voluntarily established this procedure, and the instant case involved only a dispute over substantive contract interpretation

[8] See *Lion Oil Co.*, 109 NLRB 680 (1954), affd. 352 U S. 282

[9] 172 NLRB No. 14.

could demand to negotiate over a matter previously waived. The union representing the employer's office employees had waived its right to bargain for pension for those employees in return for their coverage by a pension plan to which the employer contributed on behalf of its production and machinist employees, who were represented by another union, the waiver to continue so long as the employer had production and machinist employees for whom it was obliged to contribute to the pension fund under its agreement with that other union. The collective-bargaining contract itself, however, was for a term of 1 year and automatically renewable absent written notice of intention to terminate or amend given at least 60 days prior to the anniversary date.

Within a year after the contracts were signed, the number of office employees represented by the union increased dramatically due to an increase in Government procurement. Contending that because many of the office employees would probably not remain employed long enough to became eligible for benefits under the pension plan, a windfall to the plan would result, the union sought to discuss pensions when negotiations in a new agreement again took place. Without deciding whether the pension waiver was for a fixed period or for an indefinite period of time, the Board noted that, if the pension waiver were for a fixed period the expiration of which has not yet occurred, there would clearly be no violation. It assumed, however, for purposes of decision that the waiver was an agreement of indefinite duration vulnerable to amendment or termination after reasonable time and appropriate notice, but concluded that it had not yet existed for a reasonable time. It was, in effect, a limited delegation of the bargaining function by the office employees union to the other union under which changes negotiated in the existing plan would also inure to the benefit of the office employees, and was the consideration given by the office employees union to obtain for the employees it represented coverage under the pension plan. Nor did the Board view the twentyfold expansion of the unit as indicating that the waiver agreement had existed for more than a reasonable period of time, since the unit could contract as quickly as it had expanded.[10] Accordingly, the Board held that the union was still bound by the waiver agreement, and the employer did not violate section 8(a) (5) and (1) by refusing to bargain with the union concerning pensions.

[10] Chairman McCulloch and Members Jenkins and Zagoria for the majority. Member Brown, dissenting, would find that, with the expiration date of the basic agreement between the union and the employer approaching, a reasonable time for the waiver had elapsed; since all other terms and conditions of employment were open for renegotiations, the pension plan should likewise be open for renegotiation. Moreover, the drastic change in the size of the unit was, in his view, relevant in determining that the period of time was reasonable in this case.

9. Successor Employer's Obligation To Bargain

The extent of the obligation of a successor employer to bargain with the union representative of the employees of the former employer was considered by the Board in several cases. In two of the cases the Board emphasized that "[a]mong the central factors in a successorship question is the new employer's relationship to the old employer's work force." In *Thomas Cadillac*,[11] each of the two locations of a business whose employees were represented in a single multilocation unit by two unions jointly was taken over by different employers who continued the same business at the same location. However, neither of them employed a significant number of the unit employees of the former employer, nor did the new supervisory heirarchy established bear much resemblance to that which formerly existed. Concluding that the selection of unit employees for employment was made on the basis of skill and ability and was in no way influenced by the union membership of the job applicant, the Board found the new employers "did not take over or succeed to [the] bargaining unit." It therefore held they had no obligation to bargain with the unions with respect to the employees formerly employed in the operations, or with respect to those they hired after taking over the business.[12] The Board reached a similar conclusion in *Tallakson Ford*,[13] where, upon the advent of a new employer, the business remained substantially the same except for the composition of the bargaining unit. Finding that as a result of the nondiscriminatory selection of employees by the new employer a majority of the employees in the unit had not been employed, the Board held the new employer was "not a successor as to that unit and was not obligated to bargain with the Union, which concededly did not enjoy majority status."

In two cases decided during the year the successorship issue was presented in the context of an employer's absorption into his existing operations of a similar operation obtained from another employer who thereby disposed of only a portion of his business. In *Northwest Galvanizing* [14] an employer engaged solely in galvanizing work purchased the galvanizing equipment and operation of an unrelated employer, engaged in an overall metal manufacturing operation, under terms allowing him to use the equipment in place for not more than 1 year until his new plant was completed, but obligating

[11] 170 NLRB No. 92.

[12] Chairman McCulloch and Members Fanning and Zagoria for the majority. Member Jenkins, concurring, in an opinion with which Member Fanning agreed, would also have found no successorship, but would have relied on the totality of evidence, including the difference in day-to-day operations and the fact that the agreements and operation of the former employer were tied to its nationwide automobile manufacturing and sales operation

[13] 171 NLRB No. 67.

[14] 168 NLRB No. 6.

him to employ the seller's galvanizing shop employees and to complete his pending orders. The purchaser coordinated the operation of the facility with his own until the galvanizing equipment and employees could be moved, as they were 7 months later, but declined to recognize the union which represented the galvanizing shop employees as part of a plantwide unit of the seller's employees, or to be bound by the current contract covering the shop employees. The Board found that, in the circumstances, there was not such a substantial continuity in the identity of the employing enterprise as to constitute the purchaser a successor employer bound to recognize and bargain with the incumbent union. In reaching this conclusion, the Board noted that proportionately the shop employees composed only 10 percent of the seller's employees and only 25 percent of those of the purchaser. It found that the employer "did not purchase a business, but purchased for addition to its already existing business the equipment utilized as a small part of the [seller's] overall . . . operation," and that the equipment purchase was part of a long-term expansion program in which the seller's premises were temporarily utilized. Noting that its holding did not mean that bargaining liability would attach only when the purchase encompassed the entire business of a seller, the Board emphasized that "to find successorship supporting a bargaining obligation, the totality of the circumstances must warrant a finding that the purchase-sale transaction was merely a change in the ownership of an existing and continuing business operation."

In another case [15] an employer, providing logistic and technical data services for a NASA installation, contracted to provide a quick-copy duplicating service then being operated under a short-term contract with a printing services firm. In finding that the contract employer was not a successor to the printing services firm, and therefore not obligated to bargain with the union certified to separately represent that firm's employees performing the quick-copy duplicating work, the Board concluded that when the employer took over the performance of the quick-copy service "it resulted in a different type of employing enterprise." The Board reached this conclusion upon consideration of the fact that the smaller quick-copy operation having in effect been absorbed into the employer's larger one, since the new employer operated under a quality-of-performance compensation rather than flat-fee contract, performed a far wider range of services, employed many more employees, and performed the quick-copy operation with a minority of the printing firm's former employees who were a minority doing that type of work.

[15] *Federal Electronic Corp.*, 167 NLRB No 63

10. Strike as Violation of Bargaining Obligation

The circumstances under which a union's resort to primary strike action as a bargaining tactic may constitute a violation of its obligation to bargain in good faith with that employer on behalf of the employees it represents were considered by the Board in three cases decided during the report year. One case [16] presented the question of whether a union, which called a strike in support of its bargaining position for a new contract after the expiration of the old contract but less than 60 days after the employer had given notice of a desire to terminate the contract and negotiate a new one, thereby failed to comply with the notice and waiting period requirement of section 8(d) of the Act [17] and thus refused to bargain in violation of section 8(b)(3). Upon consideration of the legislative history and intent of the section, and "the true nature and role of the collective-bargaining agreement in maintaining and sustaining a collective-bargaining relationship," the Board concluded that the contract continued "in effect" within the intent of the 8(d)(4) prohibition on strikes during the 60-day period after the giving of the required notice. The Board viewed the parties' exchange of bargaining proposals prior to the contract's termination as a recognition and assertion of their continuing mutual obligation to maintain their collective-bargaining relationship governed by an agreed-upon contract, rather than a continuing test of relative strength. It noted that the bargaining proposals of the parties sought renegotiation of only certain of the contract provisions and held that "[c]learly the remaining provisions continued to have force and effect as the 'common law of the plant' and as the relevant measure by which to determine" whether terms of employment were being maintained until changes were duly negotiated. Construing section 8(d)(4), therefore, as requiring the parties to maintain their contracts in effect beyond the "expiration date," if such is necessary to achieve compliance with the 60-day notice provision,

---

[16] *Carpenters District Council of Denver & Vicinity (Rocky Mountain Prestress)*, 172 NLRB No. 87

[17] Section 8(d) of the Act, to the extent pertinent here, provides: " . . where there is in effect a collective-bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall *terminate* or *modify* such contract, unless the party desiring such termination or modification—

"(1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;

* * * * * * *

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

the Board concluded that since the union struck within that 60-day period, its strike was in violation of section 8(b)(3) of the Act.

The legality under section 8(b)(3) of a strike over a grievable issue without first having exhausted the grievance procedure of a contract containing an express no-strike clause was considered by the Board in two other cases. In *Iron Workers Local 708*[18] the Board held the union strike over a delayed payday grievance while the grievance was being handled under the contract procedures was not a violation of the statute, notwithstanding it was in violation of the no-strike provision of the contract and no notice under section 8(d) had been given. Although noting that the strike action was unprotected and the employees striking could have been disciplined by the employer with impunity, the Board concluded that the union's action did not constitute a failure to bargain in good faith interdicted by section 8(b)(3).[19] A similar conclusion was reached in another case[20] where the union struck in support of its position on a pay grievance but in violation of the express no-strike clause of its agreement. The Board, in finding no lack of good faith within the scope of section 8(b)(3), noted that the strike occurred only after the grievance committees at the first and second levels of the grievance procedure had deadlocked on the issue, and there was a reasonable doubt as to whether a further stage of the grievance procedure would consider the issue.

E. Union Interference With Employee Rights and Employment

1. Discrimination in Referral and Employment

Collective-bargaining provisions establishing a referral preference for qualified employees in relation to their prior experience, or which seek to establish nondiscriminatory bases for the determination of seniority in the event of business mergers or acquisitions, are not in and of themselves unlawful when administered nondiscriminatorily. However, in *Houston Maritime Association*[21] the Board found that although a maritime union's "freeze" policy precluding further hiring hall registrations due to an excess of qualified registrants did "not itself indicate whether a racially discriminatory factor [was] intrinsi-

[18] *Iron Workers Local Union No. 708, Bridge, Structural etc (Clark Construction Co.)*, 169 NLRB No. 152

[19] Chairman McCulloch and Members Fanning, Brown, and Jenkins. Chairman McCulloch concurred in the result since the union did engage in good-faith bargaining over the grievance, but noted that he might have reached a different result were the union employing the strike "as a substitute for bargaining rather than as a weapon in support of its bargaining position."

[20] *Teamsters Local No. 741, IBT (Los Angeles-Seattle Motor Express)*, 170 NLRB No. 13

[21] 168 NLRB No. 83

cally built into its implementation," the policy's racially discriminatory impact was "plainly revealed" upon consideration of the union's prior conduct in excluding Negroes from registration with and referral from the hiring hall. It found that the "freeze" policy effectively created a pool of white employees as a preferred class for employment, and served to maintain and continue a preferential hiring arrangement based upon racially discrimatory employment experience as a qualification. The union's rejection of Negro applicants' applications for registration for referral was therefore found to constitute discrimination in job opportunities on the basis of race and a breach of the union's duty of fair representation in violation of section 8(b) (1) (A) and (2). The employer members of the association were similarly found to have violated section 8(a) (1) and (3) by having participated in the pattern of unlawful referral conduct.[22]

The union's failure to apply valid contract provisions providing for the merger of seniority lists upon purchase of one company by another was called into question in one case.[23] The employees of the acquired company were not covered by a contract, but the contract with the union representing the employees of the acquiring company called for a dovetailing of the employee rosters in accordance with seniority rights without differentiating as to the source, contract or otherwise, of the seniority rights. Upon preparation of the seniority list of the consolidated operation, the union caused the employee from the purchased company to be placed at the bottom of the seniority list, rather than in the better position he would have from dovetailing the lists. Although finding that seniority was not a term or condition of work at the acquired company, the Board concluded that the union's action was motivated by the fact that the employee had not theretofore been represented by a labor organization, rather than because of any notion of the absence of seniority rights. It therefore held the union had violated section 8(b) (1) (A) by causing the employee to be placed at the bottom of the roster, and section 8(b) (2) by entering into an oral agreement with the employer to do so.

2. Refusal To Process Grievances

A union's duty of fair representation does not require it to process every grievance to arbitration. However, if the union refuses to process a grievance, not because of its evaluation on the basis of valid criteria of the merits of doing so, but in retribution because the employee involved has engaged in activity protected by section 7, the refusal may

[22] Members Brown, Jenkins, and Zagoria. Member Zagoria, finding violations of section 8(b) (1) (A) and 8(a) (1), deemed it unnecessary to consider whether section 8(b) (2) or 8(a) (3) was also violated.

[23] *Teamsters Freight Local No. 480, IBT (Potter Freight Lines)*, 167 NLRB No. 135.

violate section 8(b)(1)(A) of the Act. Board consideration of such a situation was required in two cases decided during the past fiscal year, one of which was *Port Drum Co.*[24] There an employee who had resigned from the union was summarily discharged, after 16 years of satisfactory work, as the result of a dispute over an error in his paycheck. The union refused to arbitrate a grievance over the discharge, notwithstanding that, as the Board noted, the grievance might well have been meritorious, since other employees had not been discharged for more serious offenses. The Board found that the union's agents had openly expressed their objection to arbitrating a case for a nonmember and had failed to investigate the facts of this case to determine whether the grievance was meritorious. Instead, they had induced the union's executive board to take the unprecedented step of overruling the decision of the union membership to take the case to arbitration. Consequently, the Board unanimously concluded that the refusal to arbitrate was not in good faith, but was motivated by the employee's nonmembership in the union, and thus violated section 8(b)(1)(A).[25]

In the other case [26] the employee was discharged for refusing to obey an order which he thought was in violation of the collective-bargaining agreement. At a union meeting prior to his discharge, the employee had vehemently criticized the union's business manager for supporting the employer's requirement that certain employees work overtime, to which the business manager had reacted violently, threatening to "get rid" of the employee. When the employee was discharged, the business manager refused to press the grievance, calling him an "instigator." In view of the business manager's threats and his active effort at that time to secure the reinstatement of another discharged employee, the Board concluded that the union had refused to press the grievance, not because it was doomed to failure, but in retaliation for the employee's criticism of the business manager. Finding that the employee's expression of his opinion at a union meeting was protected by section 7 of the Act, the Board held the union's refusal to press his grievance because of those statements violated section 8(b)(1)(A).[27]

---

[24] 170 NLRB No 51

[25] Member Jenkins would also find the union violated section 8(b)(2), an issue the majority found it unnecessary to decide.

[26] *Local 485, IUE (Automotive Plating Corp.)*, 170 NLRB No. 121.

[27] In this case and *Port Drum*, the Board, as a remedy, ordered the union in each case to process the employee's grievance, taking it, if necessary, to arbitration, but declined to attempt to determine what damages, if any, the employee had suffered as a result of the union's unlawful action It viewed any such damages as being caused in the first instance by the employer's action in discharging the employee, and it was not clear what would be the result of arbitration However, the Board retained jurisdiction in both cases, to determine what remedial provisions would be necessary if arbitration proved inadequate.

3. Dues Obligation

The Act permits employers or labor organizations to make union-security agreements within the limits of section 8(a)(3).[28] However, under the second proviso to section 8(a)(3) employees may not be discriminated against under the terms of such an agreement, except for failure "to tender the periodic dues and the initiation fees uniformly required" as a condition of union membership. During the past year, the Board considered several cases in which a union's efforts to cause an employer to discharge an employee because of his failure to satisfy the claimed dues obligation were alleged as violations of section 8(b)(1)(A) and (2) of the Act.

It is well settled that a union may not invoke a union-security clause to demand the discharge of an employee because he failed to pay dues during a period when he was not obligated to do so by a valid union-security clause.[29] That principle was applied by the Board in several cases, among them one [30] in which the union demanded that a former member holding a withdrawal card deposit it with the union and pay dues during his first month of employment under a valid union-security clause. When the employee failed to do so within the first 30 days of his employment, the union invoked provisions of its constitution under which his membership was canceled, and then demanded that he pay a reinstatement fee to regain membership in good standing. Upon his refusal to pay the fee, the union requested and obtained his discharge, notwithstanding his timely tender of dues for his second month of employment. The Board concluded that the employee's membership was canceled and the reinstatement fee imposed only because the employee had refused to pay dues during the first month

[28] The limits are set forth in the provisos to section 8(a)(3) which read as follows: "*Provided*, That nothing in this Act, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in section 8(a) of this Act as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 9(a), in the appropriate collective-bargaining unit covered by such agreement when made, and (ii) unless following an election held as provided in section 9(e) within one year preceding the effective date of such agreement, the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement: *Provided further*, That no employer shall justify any discrimination against an employee for non-membership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership."

[29] Eg, *Spector Freight System*, 123 NLRB 43 (1959), enfd 273 F 2d 272 (C A 8), cert denied 362 U S 962

[30] *Intl Brotherhood of Boilermakers, Local No 338 (Eidal Intl Div Southwest Factories)*, 166 NLRB No. 93

of his employment, although under the union-security clause he had no obligation to do so. Consequently, the Board held the union's application of the union-security clause was to obtain the discharge of the employee for not paying a reinstatement fee imposed because of the employee's refusal to pay dues for a period during which he had no dues obligation, and therefore was a violation of section 8(b) (1) (A) and (2) of the Act.[31]

Similar principles were involved in another case [32] in which a local union, comprised of a "mother local" and a separate branch having a much lower initiation fee, suspended a member of the branch for failing to pay dues while he was employed by a company which had no union-security agreement. Under the union's constitution, a member suspended for nonpayment of dues was required to pay all back dues owed and a reinstatement fee to regain membership in good standing, except that under a "reduced structure" the repayment was limited to a maximum equal to the initiation fee of the mother local. When the employee began working for a company which had a union-security agreement with the union, the union refused his payment of an amount equal to the initiation fee for the branch local, and demanded payment of a levy equal to the initiation fee of the mother local in settlement of his back dues. When the employee refused to pay more than the branch initiation fee, the union, by threatening to picket, caused the employer to suspend the employee. The Board found that the amount sought by the union was not a reinstatement fee, but was the maximum amount of indebtedness for back dues which the union would seek to collect from a suspended member. It therefore concluded that the union, in seeking to condition the employee's employment upon the payment of the levy, and causing him to lose some work, was attempting to use the union-security agreement to compel payment of back dues which arose during a period when the employee was not required to maintain union membership, and thereby violated section 8(b) (1) (A) and (2) of the Act.

Although a union member who fails to pay his dues may be discharged pursuant to a valid union-security agreement, in one case [33] the Board considered a situation where a union, having made a valid request for discharge of two employees for failure to meet their dues obligation, permitted them to keep their jobs after they had paid their back dues, a reinstatement fee, and a fine. The Board found that the

[31] Chairman McCulloch and Member Jenkins for the majority. Member Brown, dissenting, viewed the case as involving only the enforcement of a lawful reinstatement fee, since the union abandoned its demand for the first month's dues before it sought to invoke the reinstatement fee obligation.

[32] *Intl Union of Operating Engineers, Local 139 (Camosy Construction Co)*, 172 NLRB No 12

[33] *Assn. of Western Pulp & Paper Workers, Local 28 (Fibreboard Paper Products Corp)* 170 NLRB No 8

imposition of a fine was a condition of continued employment in this instance and its imposition violated section 8(b) (1) (A) and (2). Rejecting the union's contention that, since the employees could have been discharged, the imposition of a fine was a reduction of the penalty and should be permitted, the Board held that the union-shop proviso to section 8(a) (3), while authorizing the discharge of employees for nonpayment of dues, did not permit the union to demand the imposition of any penalty short of discharge. In the Board's view, since fines are unrelated to the employment status, the assessment of a fine is not a lesser penalty than that authorized by the Act, but an additional penalty. It pointed out that if the employees had been discharged, the union could not have conditioned their reemployment on payment of the fines, and, by the same logic, it could not condition retention of employment status on payment of the fines.

In another case [34] a union, in addition to collecting regular periodic dues, incorporated into its regular dues schedule a previously established assessment per hours worked called "working" dues, which was used to support a credit union and a building program. In holding that the "working" dues were assessments and not "periodic dues" within the meaning of section 8(a) (3), and that the union violated section 8(b) (1) (A) by threatening to cause the discharge of employees who refused to pay them, the Board noted that the "periodic dues" which the proviso to section 8(a) (3) permits unions to establish as a condition of employment were limited to dues designed to contribute to the cost of a union in its capacity as a collective-bargaining agent. It found the "working" dues to be clearly earmarked for purposes not encompassed in the union's duties as a collective-bargaining agent as evidenced by the fact that the money collected did not even go into the union's treasury; the portion allocated to the credit union was credited to the account of the member who paid it, if he was a member of the credit union, while for the portion of their "working" dues contributed to the building program, the members eventually received certificates, redeemable when the building program was completed.

The Board has held that reinstatement fees imposed on former members seeking to rejoin a union are "initiation fees" within the meaning of the proviso to section 8(a) (3), and that the imposition of such fees be uniformly required as a condition of acquiring membership does not prohibit the imposition of reinstatement fees greater than the initiation fees charged to new members, as long as the difference is based on a reasonable classification which is not discriminatory.[35] In one case [36]

[34] *Local 959, IBT (RCA Service Co.)*, 167 NLRB No. 148.

[35] See, e g, *Food Machinery & Chemical Corp.*, 99 NLRB 1430 (1952), Seventeenth Annual Report (1952), p 188.

[36] *Metal Workers' Alliance (TRW Metals Div, TRW)*, 172 NLRB No 34.

employees who left the bargaining unit to accept supervisory or other salaried positions with the same employer, and later returned to bargaining unit jobs, were required to pay reinstatement fees, in relation to the length of time they were outside the unit, ranging from 10 to 30 times the nominal initiation fee. The establishment of this reinstatement fee was found not to be motivated by a desire to penalize employees for not remaining union members when they were not required to do so, since the union's constitution made employees in positions outside the bargaining unit ineligible for membership. The Board also concluded that the differentiation in fees was based upon a reasonable nondiscriminatory classification, although it applied only to employees who returned to the bargaining unit from nonunit jobs with the same employer, and not to employees who left the employer's employ altogether and later returned. The Board pointed out that employees returning to the bargaining unit from nonunit jobs with the same employer not only regained the unit seniority which they had accumulated while previously employed in the bargaining unit, but also immediately received other valuable contract rights and benefits which new employees would receive only after fulfilling certain probationary requirements. Accordingly, the Board held the union did not violate section 8(b) (1) (A) and (2) by requiring the payment of the reinstatement fees and threatening to invoke its valid union-security agreement to secure the discharge of employees unless they paid such fees.[37]

Another case [38] involved union enforcement of a contract provision that employees, who returned to the bargaining unit after having been promoted to supervisory positions, would retain their unit seniority and would also receive seniority credit for any period of time while employed in supervisory positions during which they continued payments to the union in an amount equivalent to union dues. The Board held that, since the supervisors became employees for purposes of the Act when they returned to the bargaining unit, their seniority, like any other condition of employment, could not validly be based on the length of union membership or payment of union dues. The Board noted that the payment required was not a reinstatement fee or a service fee, since it had to be made at a time when the employees were not in the bargaining unit and were not represented by the union. Since the contract clause conditioned former supervisors' seniority rights on payment of union dues while outside the bargaining unit, the Board held that the

[37] Chairman McCulloch and Members Fanning, Brown, and Jenkins for the majority Member Zagoria, dissenting, viewed the reinstatement fees imposed as not ancillary to a valid union-security agreement, but as an unlawful condition to the restoration of unit seniority. He viewed the classification as unreasonable, as it applied only to employees who were employed by the employer in nonunit jobs, and noted that payment was due immediately and not after the 30-day grace period provided by section 8(a)(3).

[38] *United Steelworkers, Local 1070 (Columbia Steel & Shafting Co.)*, 171 NLRB No 126.

union violated section 8(b) (1) (A) and (2) by maintaining the contract provision and by enforcing it to affect adversely the seniority of a former supervisor.[39]

4. Picketing To Affect Employment

The applicability of section 8(b) (1) (A) and (2) of the Act to rectify abuses of a union's use of primary or secondary pressures to affect the employment of nonunion employees received further consideration by the Board in several cases. In one[40] involving union picketing of the primary employer, while at work on the premises of a secondary employer, to obtain the removal of certain out-of-town employees in order that local members would have greater employment opportunities, the Board held the action to be violative of section 8(b) (1) (A) and (2). In another case,[41] however, the Board held that a union's picketing of a secondary employer general contractor to cause the removal of the nonunion employees of a primary subcontractor was not within the purview of section 8(b) (2) but rather was secondary activity which section 8(b) (4) was designed to regulate. Although the secondary employer was "an" employer whom the union was attempting to cause to engage in discrimination by ceasing to do business with another employer because of the nonunion membership of the latter's employees, the Board viewed the discrimination sought by the picketing union as not being directed against the employees of the primary employer but rather against the primary employer itself. The Board held such employer discrimination against employer to be outside the prohibition of section 8(a) (3) and the interrelated employee protection aspects of section 8(b) (2). It emphasized that where a union seeks to cause "the" employer to discriminate against his employees (nonunion employees in this instance), whether the pressure be direct or indirect, a violation of section 8(b) (2) would be found. But the extent of control exerted by a general contractor over the employees of a subcontractor does not make him "the"

[39] Chairman McCulloch and Members Brown and Zagoria for the majority. Members Fanning and Jenkins, dissenting, viewed the payment as a voluntary service fee for an employment benefit to which the supervisors were not otherwise entitled, and would find it not to be discriminatory since available to all who chose to take advantage of it

[40] *Brotherhood of Painters, Decorators & Paperhangers, Local 130 (Perfection Painting & Dry Wall)*, 170 NLRB No. 123.

[41] *Local 447, United Assn. of Journeymen & Apprentices of the Plumbing & Pipefitting Industry (Malbaff Landscape Construction)*, 172 NLRB No 7.

employer of these employees nor negate the essential independence of the general contractors and subcontractors from one another.[42]

F. 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).

1. Prohibited Consumer Picketing

The Board has recognized that the legality of consumer picketing must be evaluated not in terms of the proviso to section 8(b)(4) exempting from the prohibition of that section of ". . . publicity, other than picketing" but in terms of whether it imposes on the secondary employer pressures condemned by section 8(b)(4)(ii)(B). Union picketing appeals to consumers found to be directed to a total boycott of secondary employers were held by the Board in several cases to be violative of that section. Under the circumstances in *Honolulu Typographical*[43] the Board concluded that the union picketing there was not protected under the doctrine of a limited consumer boycott privilege enunciated by the Supreme Court in *Tree Fruits*.[44] It found that due to the nature of the picketed employers' restaurant businesses, the picketing appeal to the public not to patronize the restaurants, because they advertised in the struck newspaper published by the primary employer, could not be likened to direct picketing against a primary employer at an expanded picketing site where his product is sold or his services utilized, and the picketing is directed solely against such products or services. Since the union's activities were necessarily directed towards the institution of a consumer boycott of the entire operations of the secondary employers, the Board found "its obvious

[42] Members Fanning, Brown, Jenkins, and Zagoria for the majority The holding of *Northern California Chapter, Associated General Contractors,* 119 NLRB 1026 (1957), enfd. *sub nom. Operating Engineers Local 3* v. *N L.R.B ,* 266 F 2d 905 (C.A.D.C.), cert denied 361 U.S. 834, was reversed to the extent inconsistent. Chairman McCulloch, dissenting, would adhere to the view that the question of legal responsibility under the Act for discrimination against an employee cannot turn on whether there is an employer-employee relationship between the employer discriminated against and the employer who causes the discrimination.

[43] *Honolulu Typographical Union 37 (Hawaii Press Newspapers),* 167 NLRB No 150

[44] *N.L R B* v. *Fruit & Vegetable Packers, Local 760,* 377 U S. 58, Twenty-ninth Annual Report (1964), p. 106.

aim was to cause a cessation of the secondary employer's dealings with the primary employer, not as a natural consequence of falling consumer demand, but by force of the injury that would otherwise be inflicted on their businesses generally." [45]

Other cases in which ostensible consumer picketing of a product of the primary employer at the site of its use by other employers also resulted in findings by the Board that the picketing had a cease-doing-business objective prohibited by section 8(b)(4)(B), included the *American Bread* case,[46] where members of a union on strike at a bakery picketed restaurants using the bread with signs notifying consumers that that bread was sold by the restaurants. The Board found that the bread was utilized by the restaurants only to serve as an integral part of the meals dispensed to customers, and therefore lost its identity as a foodstuff to be selected by the patrons of the restaurants. Concluding that the picketing under these circumstances was in reality an effort by the union to induce customers not to eat in the restaurants in order to force the restaurants to cease buying the primary employer's bread, the Board held the picketing violative of section 8(b)(4)(ii)(B). Similar conclusions were reached in another case [47] where the union picketed at the entrances to home construction real estate projects with signs notifying the public that the cabinets being installed in the homes were not made by members of the union. The Board found that the cabinets referred to were installed as a standard item in the houses and were not a product subject to selection by the purchaser of the house. It held that the picketing as conducted constituted an appeal to prospective customers to boycott the builder's houses generally as a means of coercing him not to buy the objectionable cabinets and was therefore violative of section 8(b)(4)(ii)(B), under the standards enunciated in *Tree Fruits*.

2. Other Aspects

The recurrent issues in 8(b)(4)(B) cases of the identification of the primary employer through the right-of-control test,[48] and the circumstances under which otherwise valid common-situs picketing may be found to have a cease-doing-business objective based upon accompanying statements made away from the situs of the

[45] Chairman McCulloch and Members Fanning, Brown, and Zagoria for the majority. Member Jenkins, dissenting, viewed the advertising service rendered the restaurants as a "product" of the newspaper, lawfully subject to peaceful publicity picketing at the site of its use; namely, the business establishments of the advertisers.

[46] *Teamsters, Chauffeurs, Helpers & Taxicab Drivers, Local 327 (American Bread Co.)*, 170 NLRB No. 19.

[47] *Twin City Carpenters District Council (Red Wing Wood Products)*, 167 NLRB No. 151.

[48] See, e.g., *Intl. Longshoremen's Assn (Board of Harbor Commissioners)*, 137 NLRB 1178 (1962), Twenty-eighth Annual Report (1963), p. 93.

picketing,[49] were again presented for Board consideration this year. In *Pipe Fitters Local 120* [50] the Board found that a union's threat to a contractor that its members would not install certain equipment if piping assembly work were performed at the manufacturer's plant rather than on the jobsite as provided in its contract, constituted restraint and coercion of the contractor within the meaning of section 8(b)(4)(ii). In holding that in certain respects the threats had a cease-doing-business objective violative of section 8(b)(4)(B), the Board distinguished between that piping assembly specified by the building owner as requiring factory assembly, and that which the contractor could accomplish as he might determine, either by factory assembly or by jobsite fabrication. As to the former, specified in the construction contract to be factory installed, the Board concluded that the contractor, not having control over the method of performance of the work, was a neutral and the building owner, having such control, was the primary employer wherefore the threat to the contractor was secondary activity with a cease-doing-business objective. As to the piping assembly, over which the contractor exercises control of the method of performance, however, the Board found the threat to be primary in nature, inasmuch as its objective was to preserve for the contractor's employees unit work to which they had a contract claim which was asserted against the other party to the contract [51] who had the right to control the method of performance.

Sheet Metal Workers, Local 284,[52] presented the Board with the question of whether a union which violated section 8(b)(7)(A) by picketing the jobsites of a roofing contractor who had a labor agreement with another union, thereby also violated section 8(b)(4)(B). In concluding that the union did not violate that section, the Board noted that the picketing conformed in all respects with the common-situs-picketing standard enunciated in the *Moore Dry Dock* case.[53] Upon an appraisal of the picketing in the context of accompanying statements made away from the situs of the picketing, it concluded that such statements were insufficient under the circumstances to warrant a conclusion of a secondary objective. The Board pointed out that all other contractors in the locale were aware of the dispute between the picketing union and the union representing the roofing contractor's employees, that the dispute was occasioned by wage rate differ-

[49] See, e g , *Intl Brotherhood of Electrical Workers, Local 11 (L G Electric Contractors)*, 154 NLRB 766 (1965), Thirty-first Annual Report (1966), p 106

[50] *Pipe Fitters Local 120, United Assn. of Journeymen & Apprentices of Plumbing & Pipe Fitting Industry (Mechanical Contractors' Association of Cleveland)*, 168 NLRB No. 138.

[51] Chairman McCulloch and Members Fanning, Jenkins, and Zagoria for the majority. Member Brown, dissenting in part, would find no violation, since in his view the right of control was not the determinative factor and at no time did the union seek to contact any other employer to have it cease doing business with the contractor.

[52] *Sheet Metal Workers Intl. Assn , Local 284 (Quality Roofing Co.)*, 169 NLRB No. 130.

[53] 92 NLRB 54.

ences under their respective contracts, and that the conversations between the union's representative and the other employers were initiated by the employers' inquiries. As the union responses to those queries merely indicated its intention to engage only in primary picketing directed at the roofing contractor's business operations, the Board [54] found that it had not been established that the union had engaged in secondary activity.

G. Jurisdictional Dispute Determinations

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 adjudged, 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.[55]

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

The representative cases which follow are among those in which the Board was called upon to make affirmative work assignments to resolve jurisdictional disputes. Of particular interest was one case in which the Board deferred to a voluntary method of adjusting the dis-

[54] Members Jenkins and Zagoria for the majority. Member Fanning, concurring, found it unnecessary to consider the effect of the union's oral statements on the legality of its otherwise valid picketing Chairman McCulloch, dissenting, would have found violations of section 8(b)(4)(i) and (ii)(B).

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

pute ultimately agreed to by the parties, and another in which a prominent factor in the Board's determination was the fact that employees represented by one of the claiming unions involved had previously performed identical work.

In the *Delta* case[56] the Board deferred to voluntary means of adjustment agreed to by the parties, when one of the disputing unions, the National Marine Engineers Beneficial Association, notified all the parties concerned that it would comply with a final decision under the AFL–CIO Internal Disputes Plan. It agreed to remove all apprentice engineers it had placed aboard the employer's vessels and not place them back on the vessels. MEBA, which represented the employer's licensed engineers, had placed the unlicensed apprentices aboard the vessels in accordance with an agreement with the employer providing for their training. Seafarers International Union, after unsuccessfully appealing to the employer that such placement was a breach of its contract under which it represented all the employer's unlicensed personnel, picketed the vessels and brought its claim before the disputes board. The disputes board agreed with SIU that the placement of apprentices interfered with that union's established collective-bargaining relationship with the employer. When the case came before it, the Board, noting MEBA's acquiescence in the decision and the steps already taken to comply, agreed that in view of MEBA's acquiescence in the AFL–CIO decision, it had in effect withdrawn its claim, and there was no longer any dispute before the Board for adjudication. The notice of hearing was accordingly quashed.

In another case[57] the Board held that work involving the display of bread and bakery products delivered to the employer's retail supermarkets from its own bakeries should be awarded to the truck-drivers making the deliveries, rather than to clerks at the store. The award was based upon the drivers' prior experience and recognized skill in displaying those products, and the fact that the grant to the drivers of such work allowed them to substitute it for similar work they had previously performed as part of their duties when they were employed by independent bakeries. In relying on these considerations, the Board noted that several of the factors that it frequently considers, such as area practice, contracts, and assignments by the employer, were not helpful in determining the dispute, as they were evenly balanced in favor of each union. Viewing the record in this light, the relevant facts were that prior to 1965 independent bakeries had supplied the employer's bakery products, and the drivers employed by these bakeries had arranged the displays of such products in the store at the point of

[56] *Seafarers' Intl. Union of North America (Delta Steamship Lines)*, 172 NLRB No 70.
[57] *Bakery Wagon Drivers & Salesmen Local 432 (Lucky Stores)*, 171 NLRB No. 141.

sale. Also, when the employer started its own, or "captive," bakeries and hired drivers to make deliveries, it agreed with their union that the drivers would do the display work in question. The employer was satisfied with the work as subsequently performed, but discontinued this arrangement after an arbitration award under the clerks' contract awarded the work to the clerks.

Although the Board recognized that the "sales function"—anticipating the frequency with which display items needed replacement—which had been performed by drivers for independent bakeries had been eliminated in the "captive" bakery situation as a result of which this determination became the responsibility of the store manager, the Board nevertheless concluded that the display work required skills better possessed by the drivers. It based this on the employer's testimony that the method of displaying the products was a factor in sales success, clerks had not performed the work as ably as drivers, and drivers performed the work satisfactorily as a result of their prior experience.[58]

Affirmative awards to the "claiming" union were also made by the Board in several other cases. In one such case [59] work on a forklift and crane used in the operation of transporting stored newsprint to the trucks of a customer newspaper loading on the dock at the employer's wharf facility was the subject of a dispute between the employer's permanent drivers originally assigned to the work and dockworkers normally hired by the employer on a temporary basis for the purpose of loading and unloading railcars. In awarding the work to the drivers, the Board rejected the dockworkers' contention that an arbitration award under the dockworkers' contract, the practice at the wharf, and the fact that dockworkers traditionally performed work on docks, required an award to the dockworkers, since these factors were equally balanced by others in favor of the drivers. In support of the drivers' claim, the Board noted that, in view of the rapid delivery demands of the customer, the work could be done more efficiently by the permanent employees. Significant also was the fact that the drivers had been assigned the transport job involved when previously performed in a different manner. In addition, as the employer testified, some drivers would be permanently displaced if the award went to the dockworkers. The Board found the drivers' claim clearly superior and, accordingly,

[58] Chairman McCulloch and Members Fanning and Zagoria for the majority. Member Brown, dissenting, would award the work to the clerks because of what he regarded as an accommodation historically developed between the unions which granted all in-store work not involving a sales promotion function as part of the delivery employee's duties to the clerks In addition, he regarded the area practice factor as decisively in favor of the clerks and would accord little significance to the substitution of function factor, in view of the employer's testimony that drivers would not be laid off if the in-store work were awarded to the clerks

[59] *General Truck Drivers, Local 270 (W. L Richeson & Sons)*, 166 NLRB No 115.

awarded the work to them. Another case [60] in which the preservation of existing jobs was an important consideration in making an affirmative work assignment involved a dispute between photoengravers engaged in making original printing plates and electrotypers making duplicate plates, with respect to the operation of equipment used for the processing of a new type of plate. In awarding the work to the electrotypers, who originally were assiged the disputed work and struck to retain it, the Board noted that conditions in the printing industry had resulted in full employment for the employer's photoengravers and a declining number of jobs for its eletrotypers. Also supporting the electrotypers' claim were the factors that the machines had been installed much closer to the electrotypers' work area, the electrotypers performed the work to the satisfaction of the employer, who desired no change, and the Board was "persuaded . . . that the Employer is not thereby required to hire additional photoengraving employees and at the same time is able to preserve the existing jobs of the electrotypers." [61]

And in the *Zia Company* case,[62] the Board awarded work involving the replacement of pipelines supporting a unique steam generating system to pipefitters rather than engineers, inasmuch as it agreed with the argument of the former group that the work was " capital" work which had been "traditionally performed" by pipefitters. The original pipework in the system had been done by the pipefitters, and it had been contemplated then that certain lines would subsequently need replacement. At the time of replacement the employer halted the operation of the system. Inasmuch as the system was not in operation when the disputed work was being done, the Board discounted the employer's rationale for its choice of the engineers which was that they were on the job operating the machines and pipefitters would have to be called in. These factors, the Board found, supported the argument that the work was in the nature of a replacement or rebuilding of a piping system (i.e., capital work) rather than the routine maintenance traditionally performed by engineers. Since the record also showed, and the engineers did not seriously dispute, that pipefitters had similarly been assigned to perform work of a "capital" nature on a related system, the Board awarded the work to the pipefitters.

H. Recognitional Picketing

Section 8(b)(7) of the Act makes it an unfair labor practice for a labor organization, in specified situations, to picket or threaten to

[60] *Intl. Stereotypers' & Electrotypers' Union, Local 68 (Engraving Service Co)*, 167 NLRB No. 137.

[61] See *Amalgamated Lithographers, Local 33 (Standard Register Co)*, 148 NLRB 650, 655 (1964) ; *Denver Photo-Engravers Union 18*, 144 NLRB 1408, 1412–13 (1963).

[62] *United Assn. of Journeymen & Apprentices, Local 412 (Zia Co)*, 168 NLRB No. 69.

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 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 thirty days from the commencement of such picketing." This last subparagraph (C) has two provisos: the first provides that if a timely petition is filed, the representation proceeding shall be conducted on an expedited basis; the second provides, however, that picketing for informational purposes as set forth therein 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.[63]

The Board has long held that picketing aimed at persuading an employer to meet area standards, without requiring recognition or an agreement, is lawful.[64] During the year the Board had occasion to consider whether an express disclaimer of a recognitional object will insulate a union against an 8(b)(7) charge where the union insisted that area standards may be met only if the employer grants benefits equivalent to those received by employees under the union's contracts with other employers. In the *Retail Clerks* case,[65] the Board held such a demand beyond the legitimate scope of the area standards exception and, accordingly, that the union's picketing in support of the demand violated section 8(b)(7). Although disclaiming a recognitional object, the union, at the time of its area standards demand, provided the employer with copies of its area contracts, stating that it did so only for informational purposes. But the employer assumed—and justifiably said the Board, in view of the union's limited explanation of its demand—that with the exception of the recognition and union-security clauses, stricken from the contract, the demand embraced a grant

[63] The second proviso to section 8(b)(7)(C) states, "That nothing in this subparagraph (C) shall be construed to prohibit any picketing or other publicity 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, 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."

[64] *Houston Bldg. & Construction Trades Council (Claude Everett Construction Co.)*, 136 NLRB 321 (1962). See Twenty-seventh Annual Report (1962), pp. 185–186.

[65] *Retail Clerks Intl Assn, Local 899 (State-Mart)*, 166 NLRB No 92

to the employees of benefits equivalent to those in the area contracts. In the Board's view, the rationale behind the area standards exception, i.e., allowing a union to preserve area gains by picketing in order to force the unorganized employer to raise its costs so as to eliminate an otherwise existing competitive advantage, does not sanction demands which clearly disregard the costs to the employer of providing employee benefits. For to the extent that such demands are unnecessary to protect the union's interest in maintaining its gains, the union is attempting to bargain for employees it does not represent by dictating the benefits they should receive. Further, the Board held that the union also violated section 8(b)(7) because, by demanding equivalent benefits, and then not being specific as to the scope of those benefits, the union was defining its demands in terms of the general benefits, cost as well as noncost, in the area contracts. It thus was in reality undertaking to impose contract conditions upon the employer and, to that extent, was undertaking to bargain. Also, in view of the fact that the union knew that the only economically feasible way for the employer to grant equivalent benefits was for it to become party signatory to the area contract, the Board held that the disclaimer of a recognitional object was a mere pretext designed to conceal the union's true and unlawful objective of contract adoption.[66]

In another case,[67] the Board was similarly confronted with picketing in support of demands purportedly for area standards, which was found to be designed to achieve the union's real objective of contract adoption. Writing to the employer that the latter's failure to meet area standards posed a threat to the "wages and conditions" of the union's members, the union enclosed copies of its area contracts. The letter explained that the contracts were evidence of prevailing standards and that picketing would take place if the employer failed to adhere to the standards, but disclaimed collective-bargaining relationship with the employer. When pressed for an explanation, the union replied only that the letter was self-explanatory. Under these circumstances, and considering also the union's lack of interest in ascertaining from the employer whether the latter's employment conditions did, or did not, meet area standards, the Board concluded that the union's true object in picketing was to require the employer to maintain the identical terms and benefits as defined in its contracts with other employers in the area. Since such a requirement clearly reflects a purpose to impose a bargaining relationship, the Board held the picketing in support of that objective violative of section 8(b)(7).

[66] Chairman McCulloch and Member Brown for the majority. Member Fanning, concurring, found it unnecessary to decide whether the disclaimers of a recognitional or bargaining object were pretextual and, accordingly, did not rely on the contract adoption theory.

[67] *Local Joint Executive Board (Holiday Inn of Las Vegas)*, 169 NLRB No 102.

In the *Tropicana Lodge* case[68] the Board considered whether separate rounds of picketing interrupted by a 2-week hiatus could be combined to constitute picketing beyond "a reasonable period of time not to exceed thirty days from the commencement of such picketing," prohibited by section 8(b)(7)(C). The first round of picketing, although recognitional, was informational and permissible by virtue of the second proviso to section 8(b)(7)(C),[69] and the latter round of picketing, although having a recognitional objective and not within the proviso, did not continue for more than 30 days. In the Board's view, regardless of the fact that the union sought recognition during both periods, the wholly lawful character of the initial period of picketing insulated it from any unlawful taint that the subsequent picketing might otherwise have imparted. Therefore, since the "reasonable period" did not begin to run until the first day of the second round of picketing, and the picketing did not last beyond the 30-day limit, after which it would be proscribed as unlawful in section 8(b)(7)(C), the Board dismissed the complaint.

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

During the past fiscal year the Board had occasion to determine whether various contract clauses came within the purview of section 8(e). The standard for evaluation of such clauses had been only recently clarified by the Supreme Court in *National Woodwork Manufacturers*,[70] where the court held that section 8(e) does not prohibit agreements made between an employee representative and the primary employer to preserve for the employees work traditionally done by them and that in assessing the legality of a challenged clause "[t]he

[68] *Culinary Workers, Local 62 (Tropicana Lodge)*, 172 NLRB No. 68.

[69] See fn 63, *supra*

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

touchstone is whether the agreement or its maintenance is addressed to the labor relations of the contracting employer *vis-a-vis* his own employees." [71] In companion cases [72] involving sister locals of the pipefitters union, the Board, in a decision on remand from the Eighth Circuit Court of Appeals to rule on the lawfulness under section 8(e) of fabrication clauses requiring certain pipe fabrication on boilers to be done on the jobsite or in the shop of an employer in the multiemployer bargaining unit bound by the agreement, held the clause and its enforcement did not violate the Act. In applying the guidelines established in *National Woodwork*, the Board found that the fabrication clauses applied only to work performed by employees of employers in the multiemployer unit covered by the contract, the fabrication work had traditionally been done by unit employees, the increased utilization of boilers with factory installed piping had a direct impact on the amount of work available to the employees in the unit, and "the Union's sole objective in obtaining agreement to the fabrication clause was to preserve and to reacquire such work for the unit employees of the contracting employers." Finding no evidence that a tactical object of the clause was the package boiler manufacturers or any other secondary employers, the Board concluded that the fabrication clause was "a primary work-preservation clause" outside the scope of section 8(e).

In another decision[73] the Board upheld the validity of a clause in a contract between a retail clerks union and an association of retail store owners which required that all work and services connected with in-store handling or selling of merchandise be done by unit employees. The work protected by the clause had traditionally been performed by the unit employees, and the negotiation of the clause was prompted by a concern for protection of the existing work and practices. The Board found no evidence that the clerks, in enforcing the clause to prevent deliverymen from placing nonfood items on display shelves, sought to further a dispute with those nonunit employees or to control the employment practices of distributors who sold merchandise to the retail stores. It concluded that "the Clerks was simply enforcing a claim against employers with whom it was in contractual relationship, designed to benefit and protect the job opportunities of the employees covered by the contract." While recognizing that the working conditions of other employees may have been affected by the Clerks insistence upon observance of the contract, the Board did not find it to be more than "the incidental result of a lawful effort."

[71] *Id.* at 645.

[72] *United Assn. Pipe Fitters Local 455 (American Boiler Manufacturers Assn.)*, 167 NLRB No 79, and *United Assn. Pipe Fitters Local 539 (American Boiler Manufacturers Assn)*, 167 NLRB No. 80.

[73] *Retail Clerks' Union, Local 648 (Brentwood Markets)*, 171 NLRB No. 142 .

In three decisions involving locals of the Sheet Metal Workers International Association the Board ruled that alleged work-preservation clauses were violative of section 8(e) in that they were really aimed at requiring the primary employers to deal only with suppliers having a union contract, or paying union wages and displaying the union label on their material. In two of the cases [74] the Board ruled unlawful similar contract clauses appearing in the contracts which required employer-signatories to purchase specific items for installation only from manufacturers paying wage levels meeting union standards for the manufacture of the item. The Board, which found in each case that the clause could not have been viewed as a lawful unit protection clause, since the production of the items listed was neither traditional unit work nor fairly claimable as unit work, concluded that the underlying purpose of the clause was to require that the employers abandon their former practice of purchasing the listed items on the open market, and to require that henceforth they purchase only from suppliers paying wage scales of the union. Viewing the clauses as designed to control the employment practices of employers who did business with the employer-signatories and to aid and assist union members generally, the Board rejected the contention that the clause was a lawful standards-preservation clause, since it permitted the purchase of items manufactured at "production" wage rates which were lower than the "building and construction" wage rates which would apply if the employer manufactured them under the wage rates of his own contract.

In *Sheet Metal Workers* [75] where the Board has similarly found the contract clause limiting the purchase of specified items to those manufactured at wage levels comparable to the union's to be violative of section 8(e), the Board considered whether another clause in the agreement—a union-label clause under which the employer agreed to give preference to union made materials and products—was sought to be maintained by the union in a manner violative of section 8(e). The Board found that the union business agent, in assisting an employer to comply with the wage-level-for-purchased-materials clause, instructed him to choose his supplier out of the "Green Book," which was the directory of producers of materials authorized to use the union label. The directory had been promulgated pursuant to the union-label clause but did not identify the wage levels paid by the producers. Noting that the use of the directory under these circumstances could have no bearing on the selection of a producer paying the required wage

[74] *Sheet Metal Workers Union, Local 216 (Sheet Metal, Heating & Air Conditioning Contractors)*, 172 NLRB No. 6, and *Local 26, Sheet Metal Workers' Intl. Assn.' (Reno Employers Council)*, 168 NLRB No. 118. See also *Sheet Metal Workers Intl. Assn. Local 150 (Associated Pipe & Fittings Manufacturers)*, 170 NLRB No. 116.

[75] *Sheet Metal Workers Intl. Assn. Local 150 (Associated Pipe & Fittings Manufacturers), supra.*

level, the Board concluded that the thrust of the business agent's action was the maintenance and enforcement of the union-label provision of the contract. As it clearly appeared that the use of the union label was designed to achieve organizational objectives, and thus relate to union conditions generally, rather than the working conditions of the unit employees, the Board held the union violated section 8(e) in its maintenance and enforcement of the union-label clause.

J. Remedial Order Provisions

During the report year, the Board was confronted in a number of cases with the task of designing a remedy appropriate to the circumstances presented by the violations found and capable of effectuating the purposes of the Act. Of particular interest among them are cases further articulating the criteria to be applied in computing backpay due discriminatees, cases in which bargaining orders were found to be appropriate to remedy unfair labor practices preventing a fair election, and cases involving remedies for violations of the bargaining obligation.

1. Reinstatement and Backpay Provisions

It is well settled that the purpose of a reinstatement or backpay order is "restoration of the situation, as nearly as possible, to that which would have obtained but for the illegal discrimination." [76] In *American Mfg. Co.*[77] the Board reconsidered its policy [78] of tolling backpay during periods when a discriminatee was unable to work because of injuries or illness, regardless of the cause of the disability.[79] It concluded that, while the existing policy was proper in cases involving infections and organic infirmities, where the causes of such illnesses could not be determined, a different result was warranted where the disability was caused by an industrial accident occurring in the course of interim employment. It therefore held that since, in such cases, the discriminatee's inability to work was due to events which would not have occurred or to environmental factors which would not have been present absent the unlawful discrimination, the disability could be attributed to the discrimination and backpay should be awarded for the period of disability.[80] The Board also concluded

[76] *Phelps Dodge Corp.* v. *N L.R.B.*, 313 U.S. 177, 194

[77] 167 NLRB No. 71.

[78] See, e.g, *Melrose Processing Co*, 151 NLRB 1352 (1965), enfd. 351 F.2d 693 (C.A. 8). Cf. *Charles T. Reynolds Box Co.*, 155 NLRB 384 (1965).

[79] The Board's policy did not toll backpay in cases such as *Moss Planing Mill*, 110 NLRB 933 (1954), where the disability was caused by the respondent's assault on the discriminatee.

[80] The Board overruled its contrary decisions such as *Melrose Processing Co., supra*, fn. 78.

that if the discriminatee received workmen's compensation payments during this period, such payments would be treated as interim earnings, deductible from backpay, to the extent that they represented a payment for lost wages, since failure to deduct this portion of the award would result in double payment to the discriminatee. However, any portion of the award which represented reparation for physical damage suffered would not be regarded as interim earnings, since it was unrelated to wages earned.

Applying its new policy to the facts of the instant case, the Board concluded that the discriminatee was entitled to backpay for the period of his disability. Since the discriminatee's interim work involved hazards not present in his job with the respondent employer, and the injury which occurred was closely related to the nature of the interim employment, it was unlikely that the injury would have occurred absent the discriminatory discharge, and the disability could therefore be attributed to the discrimination. Upon similar reasoning, the Board in *M.F.A. Milling Co.*[81] awarded an employee backpay for a period of disability resulting from a work-connected aggravation of existing back trouble, since such aggravation would not have occurred had not the employer, with knowledge of the employee's physical handicap, discriminatorily transferred him to a job requiring heavy lifting, thereby increasing the risk of injury.

In another case [82] the Board considered the adequacy of the search for work by a discriminatee who was out of work for almost 2 years and made a number of attempts to secure alternative employment, but made no specific attempts during one 9-month period and another period of about 4 months. The Board concluded that the discriminatee was entitled to backpay for the entire 2-year period, since she had made recurrent even though fruitless efforts to find employment throughout the period. In the Board's view, the reasonableness of her search for employment had to be determined by considering the backpay period as a whole, rather than by treating each quarter separately. If her efforts to seek new employment were otherwise reasonable, she was not required in each quarter to make clearly futile job applications to protect her claim of backpay for that quarter. Since the discriminatee was an elderly woman, and there were few employment opportunities in her area open to women with her skills and experience, her search for employment was found to be reasonable and adequate.

In *Heinrich Motors* [83] the employer sought to subpena a Board agent in a backpay hearing to show that a discriminatee prior to the offer of reinstatement by the employer had told the agent that he did

[81] 170 NLRB No. 111.
[82] *Cornwell Co.*, 171 NLRB No. 43.
[83] 166 NLRB No. 88.

not desire reinstatement. The Board held that the subpena was properly revoked, since the evidence sought was irrelevant to the issues in the case, such as willful loss of earnings. Noting that reinstatement is based on the remedial scheme in case of discriminatory discharge, the Board held that an offer of reinstatement was required, even if it may be declined, in order to demonstrate to employees that their rights would be vindicated. Further, the Board did not regard such a statement by a discriminatee, made before the offer of reinstatement, as indicating an unequivocal waiver of, or resolve not to accept, reinstatement. It was only an answer to a hypothetical question made before an offer of reinstatement, and could have been made in the heat of the discriminatee's dissatisfaction with his treatment by the employer and might reflect only a momentary state of mind which was subject to change.[84]

2. Bargaining Orders To Remedy 8(a)(1) Conduct

In several of the cases decided during the year, the Board issued bargaining orders to remedy an employer's unfair labor practices which were found to have destroyed the union's majority and made a fair election impossible, or to have reflected a rejection of the collective-bargaining principle. In one case[85] the employer, after four of its six employees had resolved to continue supporting the union despite the employer's efforts to get them to select one of their group to speak for them, treated the employees to a banquet 2 days before a scheduled election, and there announced new benefits which were soon to be put into effect. The employer's other employees, who were not involved in the election, were notified of the benefits by mail. The union lost the election. The Board found that the foregoing conduct violated section 8(a)(1) of the Act and the employer's refusal to recognize and bargain with the union was in bad faith and violative of section 8(a)(1) and (5). In rejecting the employer's contention that a bargaining order should not issue and that the only appropriate method of resolving the representation issue was to hold another election, the Board stated:

> Respondent, however, is hardly in a position to complain that the Union's majority was not proved by the preferred method of a Board election, for it is Respondent's own intentional misconduct, in the form of unfair labor practices aimed at dissipating employee support of the Union, which we have found invalidated the election process. Moreover, in such circumstances an order to bargain is an appropriate remedy for Respondent's aforesaid independent unfair labor practice violations of Section 8(a)(1), which led to the Union's loss of majority. To deny such an order to bargain in the face of such 8(a)(1) conduct would thwart the employees' wishes not only as expressed by their signing

[84] In so holding, the Board overruled its prior decision in *English Freight Co*, 67 NLRB 643 (1946), to the extent inconsistent.

[85] *Frito-Lay*, 169 NLRB No. 115.

of union cards, but also as reaffirmed at a subsequent meeting and reported to Manager Bova, who accepted the report without questioning the Union's majority. We note that a very considerable period of time may have to elapse before we are able, with help from the courts, to expunge the effects of Respondent's unfair labor practices and hold a fair election. To withhold a bargaining order pending such a new election, which may again be interfered with by Respondent, is essentially to leave these coerced employees without an adequate remedy. Finally, we note that Congress did not limit an employer's bargaining obligation to unions which have won elections. All of these considerations compel the conclusion that a remedial order to bargain is required.

In another case,[86] where the Board found that an employer had violated section 8(a)(1) of the Act by polling its employees and creating an impression of surveillance after refusing the union's demand for recognition and bargaining, the Board noted that in a previous case involving the same employees[87] it had found that similar conduct by the employer, while violative of section 8(a)(1), was not of such a character as to indicate that the employer's refusal to bargain was in bad faith and thus in violation of section 8(a)(5) and (1). In finding in the instant case, however, that the refusal was in bad faith and violative of section 8(a)(5) and (1), the Board also noted that the instant case was the ninth one in less than 4 years in which the employer had been found to have committed similar violations of the Act. In the Board's view, the facts that the unlawful conduct had occurred at several of the employer's retail stores, that all of the employer's employees received a monthly company publication which on occasion had been utilized to comment adversely upon union organization campaigns, and that the company's president and vice president had actively participated in the unlawful conduct in several of the cases made it clear that the employer had the same labor relations policy—a policy of opposition to collective bargaining—at all of its stores. The inevitable effect of this pattern of conduct was found to be the aggravation of the impact of any one unlawful act, especially when the same conduct which had previously been found unlawful was repeated at the same store and to many of the same employees. Consequently, the Board found that the employer's conduct was amplified by and should be evaluated in the context of its prior unlawful acts. When so evaluated the conduct was found to be designed solely to avoid the employer's collective-bargaining obligation, thus violating section 8(a)(5) and (1) of the Act, and appropriately to be remedied by a bargaining order.

[86] *Heck's, Inc*, 171 NLRB No. 112.
[87] *Heck's, Inc.*, 159 NLRB 1151 (1966), enfd. 387 F.2d 65 (C.A. 4).

3. Remedies for Violations of the Bargaining Obligations

In a number of cases decided during the year, the Board concluded that the customary bargaining order, without more, would be insufficient to remedy the employer's violations of section 8(a)(5) of the Act and adopted additional remedial provisions. In one case [88] the employer, after the union was certified as the employees' collective-bargaining representative, "deliberately pursued a course of conduct designed to frustrate bargaining and make all negotiations a fruitless waste of time." As a result, the employees on the union's negotiating committee, who had sacrificed wages by taking time out from work to attend the bargaining sessions, did not receive the compensatory benefit of good-faith bargaining. The Board concluded that since the employer had never had any intention of bargaining in good faith, it had deliberately deprived these employees of their wages as well as of the anticipated benefits of good-faith bargaining. Accordingly, to make the employees whole, the employer was ordered to reimburse them for wages lost while attending the past negotiating sessions.[89] However, this reimbursement was not to be required for future negotiating sessions, unless it should later be determined that the employer continued to engage in bad-faith bargaining.

In the *Garwin* case,[90] where the employer had surreptitiously moved its operations from New York City to Miami to avoid dealing with the union, the Board, on remand from the Court of Appeals for the District of Columbia Circuit, reconsidered its remedial order in light of the court's refusal to enforce the order provision requiring the employer to bargain with the union for the employees at the new location, irrespective of whether the union represented a majority of those employees. The Board noted that the provision had been designed to deprive the employer of the fruits of its unfair labor practices by preventing it from achieving its primary illegal objective, an unorganized plant, but that the court had held that this objective did not justify depriving the employees at the new plant of their right to choose their own bargaining agent. As alternative means of limiting the employer's benefits from its unfair labor practices and restoring the union's contact with the employees, the Board deemed it necessary to give the employees at the new plant an opportunity to organize in an atmosphere free of the fears which the employer's prior unlawful conduct would inevitably generate in employees considering organiza-

[88] *M.F.A. Milling Co., supra,* fn. 81.

[89] In view of the aggravated nature of the employer's conduct, the Board (Member Fanning, dissenting on this point) also ordered the employer to mail copies of the notice to all employees.

[90] *Garwin Corp.,* 169 NLRB No. 154, on remand pursuant to 374 F.2d, 295, enfg. in part and denying enforcement in part 153 NLRB 664 (1965).

tion. Accordingly, the Board ordered the employer to furnish the union with the names and addresses of all its employees at the new plant and to keep the list current for a year; [91] to grant the union and its representatives reasonable access to company bulletin boards for a year; to permit employees to have access to union organizers on plant parking lots and plant approaches during nonworking hours; and to bargain with the union if a majority of the employees at the new plant designated it as their representative.

In another case, remanded by the Court of Appeals for the District of Columbia Circuit [92] for the Board to consider its authority to require a counterproposal or a concession as a remedy for bad-faith bargaining, the court had concluded that, since the employer had twice been found to have violated section 8(a)(5) by bargaining in bad faith, an order that it bargain in good faith might well be insufficient to protect the employees' right to bargain collectively. It suggested that the employer, whose refusal to agree to a dues-checkoff provision had been found to constitute bad-faith bargaining, could be ordered to grant a checkoff in return for a reasonable concession by the union on another issue, or, in an appropriate case, simply to grant a checkoff. The Board, noting that the employer had no business reason for refusing to grant the checkoff, and had opposed it only to frustrate agreement with the union, was of the view that permitting the employer to insist on a reasonable concession by the union in return for the checkoff would imply that the employer was being ordered to surrender a position which it had legitimately maintained, rather than a position which it had taken to prevent the reaching of an agreement. Accordingly, the Board ordered the employer to grant a checkoff provision to the union.

---

[91] The Board distinguished *Textile Workers Union [J. P. Stevens]* v *N L R B*, 388 F.2d 896 (C.A. 2), discussed *infra*, p. 163, where the court denied enforcement of a similar order, since here, as a result of the employer's unlawful move, few, if any, union adherents would be employed at the new location. In a "runaway shop" situation, the Board pointed out, the unfair labor practices could not be remedied merely by dissipating the fear which they had generated; the order issued here was necessary to diminish the employer's opportunity to profit from its unlawful refusal to bargain at the original location.

[92] *H. K. Porter Co.*, 172 NLRB No. 72, on remand pursuant to 389 F.2d 295, modifying 363 F.2d 272, which enfd. 153 NLRB 1370 (1965). The court's decision is discussed *infra*, p. 164.

VI

Supreme Court Rulings

During fiscal year 1968, the Supreme Court decided three cases involving review of Board orders. One case involved the validity of a Board finding that an employer violated section 8(a) (3) and (1) of the Act by refusing to reemploy economic strikers because their jobs were temporarily unavailable on the day they first applied for reinstatement. Another considered the question of whether an insurance company's debit agents were employees protected by the Act or independent contractors excluded from its coverage. The third concerned the legality of a union's expulsion of a member for failing to exhaust his internal union remedies before filing unfair labor practice charges with the Board. The Board was upheld in all three cases. In addition, the Board participated as *amicus curiae* in two cases. One involved the question of whether a State could properly deny unemployment insurance to persons simply because they had filed unfair labor practice charges against their former employer with the Board, while the other concerned the power of a State court to enjoin as a trespass peaceful picketing in a shopping center open to the public.

A. The Right of Strikers to Reinstatement

In the *Fleetwood Trailer* case,[1] the Court affirmed the Board's holding that an employer, who did not reinstate unreplaced economic strikers when they first requested reinstatement because jobs were temporarily unavailable due to curtailed production, caused by the strike, violated section 8(a) (3) and (1) when, upon increasing production, it hired new employees for jobs which the strikers were qualified to fill. The Court pointed out that, under section 2(3) of the Act,[2] strikers remain employees. An employer's refusal to reinstate strikers thus necessarily discourages employees from exercising their rights to organize and to strike guaranteed by the Act. Accordingly, unless the employer can show that his action was due to "legitimate

[1] *N L R B.* v. *Fleetwood Trailer Co*, 389 U S 375, reversing 366 F.2d 126 (C.A. 9), and enfg 153 NLRB 425. Justice Fortas wrote the opinion for the Court. Justice Harlan wrote a concurring opinion, in which Justice Stewart joined

[2] Sec. 2(3) of the Act provides, in relevant part, that "The term 'employee' . . . shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment . . . "

348-205—69——10

and substantial business justifications," [3] he is guilty of an unfair labor practice. The Court found that no such showing had been made here. Although the employer had no need for their services on the date when they first applied for work, the returning strikers continued to make known their availability and desire for reinstatement, and at all times the employer intended to resume full production and to fill their jobs. The "basic right to jobs," the Court concluded, "cannot depend upon job availability as of the moment when the applications are filed."

B. Employee Status of Insurance Agents

In the *United Insurance* case,[4] the Court sustained the Board's finding that an insurance company's debit agents were employees protected by the statute, rather than independent contractors expressly exempted from the Act,[5] and that the insurance company thus violated section 8(a)(5) by refusing to recognize the union which had been certified as the debit agents' bargaining representative. Reviewing the legislative history of the statutory provision excluding independent contractors from the coverage of the Act, the Court concluded that its purpose was to make certain that general agency principles would be applied in determining the employee status of an individual.[6] Under common law agency principles, the Court noted, "all of the incidents of the relationship must be assessed and weighed with no one factor being decisive." In this case, the Court found that the Board had examined all the facts and had concluded that under general agency principles the debit agents were employees, and that the Board's decision represented, at least, a "choice between two fairly conflicting views." In these circumstances, the reviewing court was required to enforce the Board's order, even though it would have made a different choice had the matter been before it *de novo*.

[3] Citing *N.L.R.B.* v. *Great Dane Trailers*, 388 U.S. 26, 34, Thirty-second Annual Report (1967), pp. 136–137.

[4] *N.L.R.B.* v. *United Insurance Co.*, 390 U.S. 254, reversing 371 F.2d 316 (C.A. 7), Thirty-second Annual Report (1967), p. 145, and enfg. 154 NLRB 38.

[5] Sec. 2(3) of the Act provides, in relevant part, that "The term 'employee' shall include any employee . . . but shall not include . . . any individual having the status of an independent contractor . . . ."

[6] The Court noted that the statutory provision was designed to overrule *N.L.R.B.* v. *Hearst Publications*, 322 U.S. 111 (1944), which upheld the Board's finding that certain individuals were employees, even though they would have been considered independent contractors under common law principles

C. Expulsion of Union Member For Filing Unfair Labor Practice Charges

In the *Marine Workers* case,[7] the Court sustained the Board's conclusion that a union violated section 8(b)(1)(A)[8] by expelling a member for filing an unfair labor practice charge against the union with the Board without first having exhausted his intraunion remedies. The Court pointed out that, while section 7 of the Act does not specifically guarantee the right to file charges with the Board,[9] the initial charge filed by the employee alleged that the union had caused the employer to discriminate against him for engaging in protected activity; the initial charge was thus "within the ambit of § 7." The Court distinguished its decision in *Allis-Chalmers*,[10] which held that section 8(b)(1)(A) did not prevent a union from fining members for crossing a lawful picket line, on the ground that the power to fine or expel a strikebreaker was essential to a union and hence clearly within the area of "legitimate internal affairs." "But where a union rule penalizes a member for filing an unfair labor practice charge with the Board, other considerations of public policy come into play." The Board cannot initiate its own proceedings; implemenation of the Act is dependent upon the initiative of individual persons. "A healthy interplay of the forces governed and protected by the Act means that there should be as great a freedom to ask the Board for relief as there is to petition any other department of government for a redress of grievances. Any coercion used to discourage, retard, or defeat that access is beyond the legitimate interests of a labor organization."

The Court also rejected the contention that the proviso to section 101(a)(4) of the Labor-Management Reporting and Disclosure Act of 1959[11] authorized the union's action. Reviewing the legislative

---

[7] *N.L.R.B.* v. *Industrial Union of Marine & Shipbuilding Workers* [*U S. Lines Co*], 391 U.S. 418, reversing 379 F.2d 702 (C.A. 3), Thirty-second Annual Report (1967), p 164, and enfg 159 NLRB 1065 Justice Douglas wrote the opinion for the Court. Justice Harlan wrote a concurring opinion. Justice Stewart dissented.

[8] Sec. 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 the rights guaranteed in section 7; *Provided,* That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein . . . ."

[9] Sec. 7 provides that "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities . . . ."

[10] *N.L.R.B* v. *Allis-Chalmers Mfg Co*, 388 U S. 175, Thirty-second Annual Report (1967), p. 138.

[11] 29 U S C. sec. 411(a)(4): "No labor organization shall limit the right of any member thereof to institute an action in any court or in a proceeding before any administrative agency . . . *Provided,* That any such member may be required to exhaust reasonable hearing procedures (but not to exceed a four-month lapse of time) within such organization, before instituting legal or administrative proceedings . . "

history of the proviso, the Court concluded that it was not intended to empower unions to discipline members for failing to exhaust intra-union remedies, but only to permit judicial or administrative tribunals to stay their hands for a reasonable period while the aggrieved member sought relief within the union.

D. Cases in Which the Board Participated as *Amicus Curiae*

In the *Nash* case,[12] a State law denying unemployment compensation to any individual unemployed due to a labor dispute was interpreted so as to disqualify a person merely for filing charges with the Board alleging that the termination of his employment was an unfair labor practice. The Court, in agreement with the Board, held that the law as so construed conflicted with the National Labor Relations Act. As in *Marine Workers*, the Court stressed the need for freedom of individuals from coercion against filing charges with the Board and ruled that States, like employers and unions, are forbidden to impede resort to Board processes. The Court concluded that the State law here, by forcing a person who filed charges with the Board to surrender his right to unemployment compensation and risk financial ruin if the litigation were protracted, would seriously discourage resort to the Board and thereby frustrate the purposes of the Act.

In the *Logan Valley Plaza* case,[13] the Board contended that a union's peaceful picketing in a shopping center open to the public was arguably protected by section 7, or prohibited by section 8(b) of the Act, and that, consequently, under the preemption principles announced in *Garmon*,[14] the State court was without jurisdiction to enjoin the picketing. The Supreme Court did not pass on the preemption issue, but held that the State court injunction violated the guarantee of free speech incorporated in the 14th amendment. The Court noted that the injunction was predicated solely on "respondents' claimed absolute right under state law to prohibit any use of their property by others without their consent." Repeating what it had said in *Marsh* v. *Alabama*,[15] the Court said: "Ownership does not always mean absolute dominion. The more an owner, for his own advantage, opens up his property for use by the public in general, the more do his rights become circumscribed by the statutory and constitutional rights of those who use it."

---

[12] *Nash* v. *Florida Industrial Commission*, 389 U.S 235.

[13] *Amalgamated Food Employees Union Local 590* v. *Logan Valley Plaza*, 391 U.S. 308 Justice Marshall wrote the opinion for the Court. Justice Douglas wrote a concurring opinion. Justices Black, Harlan, and White wrote separate dissenting opinions.

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

[15] 326 U.S. 501. In this case, the Court held that a ban on the distribution of religious literature in a company town violated the first amendment.

VII

Enforcement Litigation

Board orders in unfair labor practice proceedings were the subjects of judicial review by the courts of appeals in 301 court decisions issued during fiscal 1968.[1] Some of the more important issues decided by the respective courts are discussed in this chapter.

A. Court and Board Procedure

1. Standing as "Person Aggrieved"

Under section 10(f) of the Act, judicial review of a Board order may be obtained only by a "person aggrieved" by such order. In one case [2] a corporation sought court review of a Board order directed against its wholly owned subsidiary. The Sixth Circuit dismissed the petition, holding that the parent corporation was not a person aggrieved within the meaning of the statute since it was not an "officer, agent, successor, or assign" of the subsidiary, who would be subject to the Board's order and hence "aggrieved" by it. The court found its sole interest to be that of a stockholder and, in the court's view, this interest would be adequately represented for purposes of an appropriate review proceeding by the subsidiary, whose conduct of the litigation the parent corporation could control.

2. Availability of Witnesses' Statements

A number of cases decided by the courts involved issues concerning the circumstances under which statements of the General Counsel's witnesses are to be made available in Board proceedings for purposes of cross-examination. In one case [3] the Fifth Circuit held that section 102.118 of the Board's Rules and Regulations [4] would be arbitrary and invalid insofar as it made written statements of a witness available

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

[2] *Pepsico, Inc* v *N L R B.*, 382 F 2d 265

[3] *N L.R B.* v *Safway Steel Scaffolds Co*, 383 F 2d 273.

[4] Sec. 102 118 reads in pertinent part as follows: *"Provided,* That after a witness called by the general counsel has testified in a hearing upon a complaint under section 10(c) of the act, the respondent may move for the production of any statement of such witness in possession of the general counsel, if such statement has been reduced to writing and signed or otherwise approved or adopted by the witness Such motion shall be granted by the trial examiner If the general counsel declines to furnish the statement, the testimony of the witness shall be stricken . . . ."

only if they were signed or otherwise approved by the witness. The court pointed out that the Jencks Act,[5] which concededly applies to Board proceedings,[6] requires production also of written accounts of interviews between the Government witness and a Government agent if the writing is a "contemporaneous" and "substantially verbatim" recording or transcription of the interview. It held that the Board could not adopt regulations failing to provide for the availability of statements which would be producible under the Jencks Act. In this case, however, the court held that the failure to produce notes taken by a Board attorney while he was interviewing a person subsequently called as a witness was harmless error, since the Board's findings were supported by substantial evidence even without the testimony of the witness.

On the other hand, in the *Borden* case,[7] the Fifth Circuit held that it was an error to refuse to produce an affidavit which a witness called in one case had given a Board agent and signed during the investigation of a prior unrelated proceeding. The court pointed out that, while the Jencks Act required production of a witness' statements only when they related to the subject matter of the witness' direct testimony, section 102.118 of the Board Rules contained no such limitation, and its literal construction was controlling in this case.[8] Again, however, the error was found to be harmless, as the Board's findings were supported by substantial evidence without the testimony of the witness in question.

In another case,[9] the Tenth Circuit held that the Board properly denied the company's request that the General Counsel disclose any and all evidence inconsistent with the evidence presented by the General Counsel in making his case before the Board. The court held that the requirements of the Jencks Act and of section 102.118 of the Board Rules had been satisfied in this case, and rejected the company's contention that the Supreme Court's decision in *Brady* v. *Maryland*[10] required the blanket disclosure sought here. While *Brady* had held that it was a denial of due process for the prosecution in a criminal case deliberately to suppress evidence material to either the issue of guilt or the issue of punishment, it "did not declare that a prosecutor must, on demand, comb his file for bits and pieces of evidence which conceivably could be favorable to the defense," as the respondent was, in the court's view, contending here.

[5] 18 U.S.C. Sec. 3500.

[6] *Ra-Rich Mfg. Corp.*, 121 NLRB 700 (1958).

[7] *N L R.B.* v. *Borden Co.*, 392 F.2d 412.

[8] After the decisions in *Safway* and *Borden* the Board amended section 102.118 to conform to the Jencks Act with respect to the issues involved in those two cases. See 33 F.R. 9819, July 8, 1968.

[9] *North American Rockwell Corp.* v. *N.L R.B.*, 389 F.2d 866.

[10] 373 U.S. 83.

B. Representation Proceeding Issues

In some of the cases reaching the courts after proceedings under section 8(a)(5), the enforcement of bargaining orders was resisted on the basis of asserted errors by the Board in representation proceedings antecedent to the unfair labor practice proceeding. Among these were cases involving contentions that the Board had erred in its determination of the unit appropriate for bargaining in denying an evidentiary hearing on objections to an election and in its ruling on issues pertaining to preelection propaganda.

1. Unit Determinations

In general, the courts continued to affirm Board unit determinations as within the broad area of the Board's discretion. Thus, in *Banco Credito*,[11] the First Circuit refused to disturb the Board's determination that employees at 1 of the bank's 29 branch establishments constituted an appropriate unit by themselves, notwithstanding various factors urged by the employer in favor of a systemwide unit of all branches located throughout the island of Puerto Rico. The court noted the branch manager's real, although limited, authority as to matters of immediate importance to employees, the remoteness—almost 40 miles—of the branch from the principal office, and the nearly complete absence of personnel interchange between the branch and other parts of the bank's system. Distinguishing the *Purity Food* case,[12] the court pointed out that its decision in that case does not stand for the proposition that central policymaking in a chain precludes a determination that a unit comprising less than all locations in the chain is appropriate. Nor is there inconsistency, stated the court, in the fact that the Board designated 13 branches located in one metropolitan area as another appropriate unit.[13]

However, in another case,[14] the Fifth Circuit set aside the Board's finding that a grouping of two of the employer's eight cafeterias constituted an appropriate unit. Distinguishing the *Banco Credito* case and finding the factual situation nearly identical with that in *Purity Food*, *supra*, the court disagreed with the Board's evaluation of the degree of autonomy of each cafeteria, noting that the independence of the cafeterias "amounts to no more than a few miles of physical separation and the consequent division of a few ministerial responsibilities." The court concluded that, since the labor policy is centrally

[11] *Banco Credito y Ahorro Ponceno* v *N.L.R.B.*, 390 F.2d 110, cert. denied 393 U.S. 832.
[12] *N.L.R.B.* v. *Purity Food Stores*, 376 F.2d 497, cert. denied 389 U.S. 959, see Thirty-second Annual Report (1967), p. 144.
[13] Citing *N.L.R.B.* v. *Frisch's Big Boy, Ill-Mar*, 356 F.2d 895 (C.A. 7), see Thirty-first Annual Report (1966), pp. 132–133.
[14] *N.L.R.B.* v. *Davis Cafeteria*, 396 F.2d 18.

determined for the cafeteria chain and the managers of each cafeteria do not have authority to decide questions which would be subjects of collective bargaining, the two-cafeteria unit was inappropriate.

2. Circumstances Requiring an Evidentiary Hearing on Postelection Issues

Judicial decisions have long recognized that the Board is not required in every instance to hold an evidentiary hearing to resolve issues raised by objections to election conduct and challenges to ballots.[15] The Board's Rules and Regulations[16] authorize resolution of objections and challenges upon the basis of an administrative investigation unless "substantial and material factual issues exist which can be resolved only after a hearing." Among the court cases involving the propriety of resolving objections and challenges without an evidentiary hearing was *Difco Laboratories*,[17] where the Sixth Circuit evaluated the circumstances to consider whether an evidentiary hearing was required under the standard of the Board's rule. The employer had requested review by the Board, "for the reasons stated in its Objections to Conduct of Election," of alleged errors made by the regional director in upholding the validity of the representation election. The objections were found by the court to be merely conclusory statements. The court pointed out that the employer itself was responsible for not obtaining Board hearing and review since it had neither submitted supporting evidence nor raised material issues. Although the regional director had offered the parties an opportunity to submit relevant evidence, the employer's "request for review made no reference at all to the evidence upon which the employer relied or to the manner in which the employer regarded the Regional Director as having erred." The court concluded that, in view of the employer's failure to supply such references, it had not been prejudiced by the Board's disposition of the case without an evidentiary hearing.

The Seventh Circuit reached a contrary result, however, in a case[18] which involved a Board decision in a representation case extending the certification period of the union beyond 1 year from the date of certification. The Board dismissed a decertification petition filed more than a year after certification, because it concluded that the employer had unlawfully withheld wage information from the certified union during 5 months of the certification year and thus deprived the union of the opportunity to bargain for a full certification year. The employer contended that the Board erred in failing to hold an evidentiary hear-

[15] See cases discussed in Thirty-first Annual Report (1966), pp. 130–132, Thirty-second Annual Report (1967), pp. 146–148.

[16] Sec. 102.69(c).

[17] *N.L.R.B.* v. *Difco Laboratories*, 389 F.2d 663, cert. denied 393 U.S. 828.

[18] *N.L.R.B.* v. *Gebhardt-Vogel Tanning Co.*, 389 F.2d 71.

ing with respect to the issues raised in the decertification proceeding and in extending the certification year. The court, in finding merit in these contentions, observed that no record evidence was developed to support the Board's finding that the employer had unlawfully delayed in furnishing wage information for a period of 5 months during the certification year. In the court's view "an employer is entitled to a hearing when charged with misconduct which, if proven, would justify the Board in extending the certification year."

3. Election Propaganda

Among the cases of interest involving the assertion that union preelection propaganda had exceeded permissible limits, and therefore improperly affected the outcome of the election, were two cases in the Fourth Circuit and one in the First Circuit. In *Baltimore Luggage Co.*[19] the Fourth Circuit affirmed the Board's finding that the "racially oriented" preelection appeals to the predominantly Negro employees, made by representatives of the NAACP on behalf of the union emphasizing the economic and social opportunities to be achieved through "the civil rights movement" which was equated with the labor movement and union representation, did not invalidate the election. Applying the standard of the *Sewell* case [20] which it had approved in its prior decision in *Schapiro & Whitehouse*,[21] the court found that the racial statements were temperate in tone, germane to the election issues, and factually correct. In the court's view, the propaganda simply constituted an appeal for solidarity through the union in order to obtain for the Negro employees the equality which has long been denied to Negroes generally, and "far from diminishing the sobriety of the election, this propaganda material may have substantially increased the possibility of a rational, well-informed electorate." In another case,[22] however, the court disagreed with the Board's action in declining to set aside an election because some of the union's preelection propaganda had likened the employer to Hitler. In the court's view, the statement "interjected into the election one of the most sordid episodes of modern history, with all of its overtones of religious persecution" and "was of a highly inflammatory nature and was manifestly not germane to the issues at stake in the election."

Other cases,[23] consolidated for decision by the First Circuit, presented for court review the propriety of the Board's findings in two

[19] *N.L.R.B.* v. *Baltimore Luggage Co.*, 387 F.2d 744.
[20] *Sewell Mfg. Co.*, 138 NLRB 66, Twenty-eighth Annual Report (1963), pp 58–59.
[21] *N.L.R.B.* v. *Schapiro & Whitehouse*, 356 F.2d 675 (C.A. 4), Thirty-first Annual Report (1966), p 133
[22] *Schneider Mills* v *N.L.R.B.*, 390 F 2d 375 (C A 4).
[23] *N.L.R.B.* v. *A. G. Pollard Co.*, 393 F.2d 239.

cases that the preelection propaganda complained of was capable of adequate evaluation by the employees and under the circumstances was not such as to induce reliance by the employees in voting in the election. A union representative told the employees the night before the election that the employer was planning to discharge a number of union adherents if the union lost the election. The representative offered no basis for his assertion of the employer's plans, nor was there any reason for the employees to suppose that he had access to the employer's inner councils. The court agreed with the Board that the employees were capable of evaluating the statement and were not induced to rely on it. On the other hand the court disagreed with the Board's identical finding with respect to preelection statements made to the employees in Connecticut by the leading nonprofessional union organizer employed at the company's Boston office. He told them that an unsuccessful organizational campaign at Boston 5 years earlier had resulted in the discharge of a number of union supporters. The court viewed the report of the employer's past conduct not as a mere prophecy but as an assertion of a material fact by one in a position to know, which could be readily believed by the employees who were not themselves capable of evaluating the statements. In the court's view "in judging the effect of a misrepresentation the test cannot be whether the speaker in fact had special knowledge, but must be whether the listeners would believe that he had."

C. Employer Interference With Employee Rights

Courts of appeals decisions during fiscal 1968 also included a number concerning employer actions viewed by the Board as constituting prohibited interference with employees' rights protected by section 7 of the Act. Of particular interest were decisions involving the relevance of the availability of alternate means of union communication with the employees to the circumstances of employer enforcement of no-solicitation rules, the coercive nature of employer preelection statements to employees, discharges of employees for statements to their employers, and employer solicitation of employee signatures for election petition showing-of-interest purpose.

1. No-distribution Rules

The Board, with court approval, has adhered to the view that an employer, in the absence of special circumstances showing that a rule is necessary to maintain production or discipline, may not promulgate and enforce a rule prohibiting union solicitation by an employee out-

side of working hours, even though on nonworking areas of company property. Such a rule is presumed to be an unreasonable impediment to self-organization and therefore an interference with protected employee rights. Applying this standard, the Fifth Circuit in *Republic Aluminum*[24] affirmed the Board's holding that the employer violated the Act in enforcing a rule which prohibited entry to its property without permission, to discipline employees distributing union literature during nonworking time on its parking lot. In rejecting the employer's contention that its application of the no-solicitation rule under these circumstances could be invalidated only upon a showing that the union had no available alternative means of communication with the employees, the court held that the General Counsel has the burden of showing that there were insufficient alternative means of communication only when it has been shown, as was not done in the instant case, that special circumstances make the rule necessary to maintain production or discipline.

Upon similar reasoning, the District of Columbia Circuit affirmed the Board's holding that an employer's no-solicitation rules, which generally prohibited solicitation on company premises and also prohibited "solicitation of union membership, dues, or funds during working time," infringed upon the employees' statutory rights.[25] The court agreed with the Board that the record established that the rule prohibiting union solicitation on company time was promulgated not for legitimate employer interest in maintaining production or discipline, but for discouraging union activity. Noting the employer's contention that its no-solicitation rules did not interfere with the ability of the union to communicate with employees, the court stated that, when determining the validity of a no-solication rule "the availability [to employees] of other avenues of communication is generally irrelevant," in the absence of the employer's showing the necessity of such a rule in order to maintain production or discipline.

2. Statements to Employees

It is well established that an employer violates section 8(a)(1) of the statute by threatening to close its plant if a union wins a representation election. The threat need not be direct, as an employer's "prediction" of untoward economic events may constitute an illegal threat under circumstances where he has it within his power to make the prediction come true. In *Kolmar Laboratories*[26] the Seventh Circuit sustained the Board's finding that the employer violated section 8(a)(1)

[24] *Republic Aluminum Co* v. *N.L.R.B.*, 394 F.2d 405.
[25] *United Steelworkers* v. *N.L.R.B.* [*Luxaire*], 393 F.2d 661.
[26] *N.L.R.B.* v. *Kolmar Laboratories*, 387 F.2d 833.

by its letters, poster, and speeches to the employees which emphasized the theme that the employer's economic position at its plant was extremely precarious and its reasons for continuing the operations were sentimental rather than economic, that any impairment in its competitive position would compel it to close the plant and transfer its operations elsewhere, and that the introduction of a union at the plant would impair its competitive position. The court agreed that the likely understood import of the employer's statements was that if the union won, plant closure was a foregone conclusion.

The same circuit in another case,[27] however, set aside the Board's finding that letters sent by the employer to the employees during an organizational campaign contained indirect threats of economic reprisal. The court concluded that employer statements about the potential effects upon its customers of increasing costs which would result from granting union demands for increased wages and other benefits, and the consequences of a strike called if the employer refused to meet union demands, were under the circumstances predictions or opinions within the protection of section 8(c) of the Act. It viewed the contested letters sent the employees, in which the employer cited past experiences with the union in its other plants, not as a subtle suggestion that the employer would seek to thwart unionization by visiting economic disadvantage upon his employees, but rather that such consequences might result from unionization itself.

Similarly, in *Golub Corp.*[28] the Second Circuit viewed the employer's "predictions," in letters and a speech to employees, that loss of work, harder work assignments, greater rigidity in personnel relationships, or even a plant closure might result from unionization, as within the protective ambit of section 8(c). Contrary to the Board, the court found nothing in the employer's statements that could reasonably be interpreted as a threat against the employees in retaliation for their union adherence. The court read the communications as stating that the employer would take those steps solely from economic necessity and with regret. In reaching its conclusion, the court also drew upon the fact that the employer induged in no other conduct alleged to be violative of section 8(a)(1), thus finding inapplicable the principle that "words and conduct may be so intertwined as to be considered a single coercive act."[29]

3. Discharges for Statements to Employers

The Fifth Circuit reached differing results in two cases it considered during the past year involving the issue of whether the employer

[27] *P. R. Mallory & Co.* v. *N.L.R.B.*, 389 F.2d 704.
[28] *N L R.B.* v *Golub Corp.*, 388 F.2d 921.
[29] Quoting NLRB Thirteenth Annual Report (1948), pp. 49–50.

violated the statute by discharging an employee because of statements made by him to the employer. In *Boaz Spinning*[30] the court reversed the Board's finding that the employer violated the Act by discharging an employee who, at an assembly of employees before which the employer spoke against the union but permitted no employee rebuttal, insisted on speaking for the union and in the course of his comment likened the employer to Communist dictator Castro. Rejecting the Board's view that the statement was spontaneous and made in a moment of emotional stress, the court concluded that, as found by the trial examiner, the remark was deliberately and defiantly made and, in context, provided ample grounds for discharge. On the other hand, in *Leece-Neville*,[31] the court sustained the Board's finding of a violation where an employee was discharged for expressing prounion sentiments at an employee assembly after the employer had spoken against the union. The employee, who was granted permission to speak, accompanied his remarks with a pounding on the desk and a shaking of his finger in the employer's face. The court, distinguishing *Boaz Spinning*, concluded that the employee's short remarks, which were directed to the employer although the employees could hear them, constituted "nothing more than a rather heated response between protagonists in the heat of a union campaign" and did not exceed the limits of protected activity.

4. Solicitation of Signatures for Showing of Interest

In the *Serv-Air* case [32] the Tenth Circuit affirmed the Board's finding that the employer, through its supervisors, interfered with employee rights protected by the statute by soliciting employee signatures on a petition for a Board-supervised representation election. The Board had found that two supervisors signed and helped circulate a petition requesting that an election be conducted by the Board. The court agreed that in the context of the employer's union animus and a variety of other unfair labor practices, the employer engaged in an unlawful attempt to force a premature election at a time when the impact of its hostile campaign would be the greatest.

D. Employer Assistance to Labor Organizations

During the report year a number of Board decisions finding an employer had rendered a labor organization support and assistance proscribed by section 8(a)(2) were reviewed by courts of appeals. In the

[30] *Boaz Spinning Co.* v *N L R B*, 395 F 2d 512
[31] *N.L.R B* v. *Leece-Neville Co*, 396 F.2d 773.
[32] *Serv-Air, Inc.* v. *N.L R B*, 395 F 2d 557, cert. denied 393 U.S. 840.

Hughes & Hatcher case [33] the Sixth Circuit upheld the Board's conclusion that the employer had violated section 8(a) (2) and (1) by assisting and supporting a union under circumstances which deprived employees of their right to bargain through a representative "of their own choosing." [34] The employer, capitulating to economic pressures utilized by the union in support of its organizational drive, had agreed with the union to expedite settlement of the issues. Thereafter it threatened its employees with unemployment if they failed to join the union, concealed from the employees certain material facts bearing on their decision whether to select the union as their bargaining representative, spoke to assembled employees in the union's behalf, and selected certain employees to solicit union authorization cards on company property and time.

In two other cases with remarkably similar facts, the court considered the Board's determination that employer conduct to assist and control the actions of an employees' committee ostensibly representing the employee "aided, assisted, interfered with and dominated" a labor organization. In *H & H Plastics* [35] the court, in upholding the Board, rejected the employer's contention that the assistance it gave the employees' committee was merely a courtesy and cooperation rather than unlawful interference or domination. On the other hand, in *Federal-Mogul* [36] the court reversed the Board's finding that the employer's conduct when viewed in its totality constituted proscribed assistance and support. The court, observing that "managerial cooperation with a labor organization which does not have the effect of inhibiting self-organization and free collective bargaining is encouraged under the Act," held that, although the employees' committee, as that in *H & H Plastics*, was a weak labor organization having no constitution, by-laws, or independent financial support and although the employer similarly provided for monthly committee meetings, prepared minutes, and paid employees for time spent in negotiations, the committee nevertheless continued to be an effective advocate of employee rights. The court pointed out that, unlike *H & H Plastics*, the committee effectively represented the employees in an "arms' length, give-and-take manner" throughout negotiations with the employer, and that it was common industrial practice for an employer to provide for regularly scheduled committee meetings, to prepare minutes, and to pay employees for time spent in negotiations. In the court's view the relationship between the employer and the employees' committee presented not unlawful domination or assistance but "an excellent example of cooperative efforts between labor and management."

---

[33] *Hughes & Hatcher & its Wholly Owned Subsidiary, Oppenheim's* v *N.L.R.B.*, 393 F 2d 557.

[34] NLRA, Sec. 1.

[35] *N.L.R.B.* v. *H & H Plastics Mfg. Co.*, 389 F.2d 678 (C A. 6).

[36] *Federal-Mogul Corp.* v. *N L R.B.*, 394 F.2d 915 (C.A. 6).

E. Employer Discrimination in the Employment Relationship

Many of the cases reviewed by courts of appeals involved issues of employer actions found to be discrimination motivated by union activity on the part of the employees and therefore violative of section 8 (a) (3) of the Act. In one such case decided during the year,[37] the District of Columbia Circuit affirmed the Board's rationale and dismissal of a complaint [38] against a newspaper publisher, member of a multiemployer association, involving the legality of its lockout of unit employees found to have been taken in defense of the multiemployer bargaining unit's common interests in maintaining "the integrity of commonly-bargained no-strike clauses." A refusal of union members, contrary to their contractual "no-strike" obligation, to cross a picket line established by another union at the plant of the other member of the multiemployer unit, had resulted in that employer's decision to suspend publication of its newspaper. In the court's view, the instant employer was not motivated by antiunion bias in also suspending operations, but only locked out its employees in order to carry out its commitment to the other member of the multiemployer unit to preserve "the sanctity of undertaking in jointly bargained contracts to which it was a party." [39]

In *Darlington* [40] the court upheld the Board's findings on the basic issues of whether the employer closed one of its mills for the "purpose of chilling unionism in any of its remaining mills and if the employer could have reasonably foreseen that such closing would likely have had that effect." [41] The court concluded that the Board's finding that a single employer controlled the closed mill and other mills which were continued in operation satisfied the elements of "interest" and "relationship" required as a predicate to proof of a violation. The court also found substantial evidentiary support for the Board's finding that the closing was motivated by a desire to chill unionism at the other plants and, therefore, affirmed the Board's finding that section 8(a) (3) was violated by the mill closing.

---

[37] *News Union of Baltimore* v. *N.L.R.B.*, 393 F.2d 673.

[38] Citing *Evening News Assn*, 166 NLRB No 6 (1967), Thirty-second Annual Report (1967), p. 92.

[39] Citing *New York Mailers' Union No 6, ITU [Publishers' Assn of N Y C]* v. *N L R B.*, 327 F 2d 292 (C A. 2), Twenty-ninth Annual Report (1964), p. 116.

[40] *Darlington Mfg. Co.* v. *N.L R B.*, 397 F.2d 760 (C.A. 4).

[41] The issues were those defined by the Supreme Court in remanding the case to the Board. *Textile Workers Union* v. *Darlington Mfg Co*, 380 U S. 263, reversing and remanding 325 F 2d 682 (C A. 4). See Twenty-ninth Annual Report (1964), p. 117; Thirtieth Annual Report (1965), pp. 121–122.

F. The Bargaining Obligation

1. The Validity of Authorization Cards

In a number of cases decided during fiscal 1968, the courts of appeals considered questions relating to the validity of union authorization cards; i.e., whether the cards were valid authorizations to the unions to represent the particular employee and thus serve to establish the union's status as majority representative.[42] Several of these cases dealt with the applicability to the particular situation of the Board's decision in *Cumberland Shoe*,[43] in which the Board held that where the cards are unambiguous on their face, the employees' overt action in signing the cards would not be nullified unless they had been told that an election was the only purpose of the cards. In *Preston Products* [44] the District of Columbia Circuit affirmed a Board finding that the employer violated 8(a)(5) by refusing to bargain upon proper demand with the union having authorization cards from a majority of the employees. In approving the Board's application of the rule of the *Cumberland Shoe* decision to issues in the case, the court noted that that decision "does not articulate an absolute rule, but rather a useful and well founded rule of thumb." Finding no evidence of such a "gross misrepresentation" as to the purpose of the card being limited to obtaining an election as to invalidate the card as a free designation of the union as bargaining agent, the court sustained the Board's reliance on the authorization cards as a means of establishing the union's majority status. The First Circuit similarly affirmed a Board finding that the authorization cards from a majority of employees established a union's majority status, where there had been no misrepresentations in securing the signatures on the cards.[45] The court noted that although it would be going too far "to say that a misrepresentation cannot ever vitiate a card when it is not proffered as a sole reason for signing," "fairly strong evidence of misrepresentation" is required to invalidate a card. This requirement of "fairly strong evidence" was not, in the court's view, met in the instant case by "vacillating testimony of employees" given almost a year after the organizational campaign.

In *Dayco Corp.*[46] the Sixth Circuit considered the applicability of the *Cumberland Shoe* "only-for-an-election" standard to the question of the validity of dual-purpose authorization cards; i.e., cards which authorize the union to act as the collective-bargaining representative of the employee and to seek an election. In concluding that several

[42] See also cases discussed in Thirty-second Annual Report (1967), pp. 154–156.
[43] 144 NLRB 1268 (1963), enfd. 351 F.2d 917 (C.A. 6).
[44] *UAW [Preston Products Co.]* v. *N.L.R.B.*, 392 F 2d 801, cert. denied 392 U.S. 906.
[45] *N.L.R.B.* v. *Southbridge Sheet Metal Works*, 380 F.2d 851.
[46] *Dayco Corp. v. N.L.R.B.*, 382 F.2d 577.

cards were not valid and, accordingly, that the union did not have majority status, the court held the cards were invalidated when the solicitor told several employees that their signatures were necessary "in order to get an election" and also made other statements concerning an election. While affirming the general applicability of *Cumberland Shoe*, the court emphasized that when dual-purpose cards are involved, failure to inform employees that the authorization cards can result in recognition without an election "takes on greater significance. . . ." To validate such cards, the representations made to employees should reflect their dual purpose of securing representation with or without an election. The same circuit, in *Swan Super Cleaners*,[47] rejected four authorization cards found by the Board to be valid designations. The court explained that its language in *Cumberland* did not require strict adherence to the "sole" or "only" representation aspect of the rule, and went on to state:

> We think it right now to say that we do not consider that we have announced a rule that only where the solicitor of a card actually employs the specified words "this card is for the *sole* and *only* purpose of having an election" will a card be invalidated We did not intend such a narrow and mechanical rule We believe that whatever the style or actual words of the solicitation, if it is clearly calculated to create in the mind of the one solicited a belief that the *only purpose of the card is to obtain an election*, an invalidation of such card does not offend our *Cumberland* rule.

Issues of misunderstanding and misrepresentation affecting the validity of authorization cards were present also in *Crawford Manufacturing*,[48] where the Fourth Circuit, reversing the Board, invalidated unambiguous authorization cards upon finding that numerous references by union solicitors as to the probability of an election created confusion in the minds of employees as to whether the cards were only for the purpose stated on their face or for the additional purpose of securing a representation election. In rejecting a mechanical adherence "to the literal phrasing of the cards," the court noted that "such literalism subordinates what really counts: the actual understanding of the signers." And in two cases decided by the Fifth Circuit, that court found that even unambiguous single-purpose cards could not be considered valid in the context of solicitation talk of obtaining an election. In *Lake Butler Apparel*[49] the court noted that one employee testified that she signed the card simply as a favor to the solicitor so an election might be held, and six others testified that they executed cards in anticipation of obtaining an election and on the representation that they could vote for or against the union. The court held that once authorization cards are challenged because of misrepre-

[47] *N L R B.* v. *Swan Super Cleaners*, 384 F.2d 609.
[48] *Crawford Mfg. Co.* v. *N L.R B*, 386 F 2d 367, cert denied 390 U S. 1028.
[49] *N.L.R.B.* v. *Lake Butler Apparel Co*, 392 F.2d 76.

sentation in their procurement, and proof is offered which substantiates the challenges, the General Counsel has the burden of showing that the subjective intent to authorize union representation was not vitiated by the misrepresentation. Finding that the General Counsel had failed to carry that burden, the court declined to count the cards in question toward the union's majority. In *Southland Paint* [50] the court concluded that authorization cards making no mention of an election, but solicited with the explanation that a purpose of the cards was to obtain an election, were tantamount to dual-purpose cards and should be treated as such in determining their validity. The court emphasized that the "effect of signing must be considered within the context of the solicitation, otherwise it would be too easy for a union to circumvent employee freedom of choice by saying one thing and doing another when dealing with relatively unsophisticated employees." It held that the Board had applied the wrong legal standard in failing to consider the subjective intent of the signers in determining whether the cards were valid proof of the union's majority status. Applying this legal standard to the factual findings of the Board, the court held the Board should have invalidated a number of cards because of the signer's understanding from the solicitations that the cards would be used for an election. As the number of cards invalidated was sufficient to destroy the union's majority, the court denied enforcement of the bargaining order.

2. Reliability of Authorization Cards

In addition to the decisions dealing with the validity of particular authorization cards, several court decisions in the Fourth Circuit raised questions concerning the reliability of authorization cards generally as indicators of union support. In the *Logan Packing* case [51] the court held that an employer was justified in refusing to bargain with a union which based its claim to represent a majority of his employees solely on possession of authorization cards signed by a majority of the employees, and that such a refusal does not constitute a violation of section 8(a)(5) of the Act. Although the court affirmed the Board's findings that certain employer actions designed to undermine the union were violative of section 8(a)(1), it found no violation of section 8(a)(5), holding that authorization cards are inherently unreliable due to the many possibilities of abuse in their solicitation, and that an employer's good-faith doubt of the union's majority status

[50] *N L R B* v. *Southland Paint Co*, 394 F 2d 717.
[51] *N.L R B* v. *S S. Logan Packing Co*, 386 F.2d 562.

may be based solely on the fact that cards are asserted to establish the majority. The court expressed the view that:

> It would be difficult to imagine a more unreliable method of ascertaining the real wishes of employees than a "card check," unless it were an employer's request for an open show of hands.
>
> * * * * * * *
>
> An employer could not help but doubt the results of a card check as an indication of the wishes of employees. . . . Unless the employer is extraordinarily gullible and unimaginative, he will at least suspect unreliability in the cards and their signatures. If he has no honest doubt of the union's claim of support by a majority of the employees, it will be because of other evidence known to him, not because of the card check.[52]

As a second premise for its refusal to enforce the Board's bargaining order, the court concluded that in the 1947 amendments to section 9(c) of the Act Congress, by prohibiting Board certification of a union except after an election, intended to make a Board election the sole method by which a union could establish its majority status. This view that the 1947 amendments served to impose restrictions upon the powers of the Board to fashion appropriate remedies for violations of the Act was rejected by the Second Circuit [53] and by the Sixth Circuit [54] in later decisions.

Subsequently, the Fourth Circuit, relying on the rationale of its *Logan* decision, denied enforcement of Board bargaining orders based upon authorization card majorities in other cases, including three decided the same day.[55] It explained its reason for doing so, which was the same in all three cases, as follows: [56]

> In recent cases we have had occasion to point out that authorization cards are such unreliable indicators of the desires of the employees that an employer confronted with a demand for recognition based solely upon them is justified in withholding recognition pending the result of a certification election. The reasoning elaborated in those decisions applies with equal force here, and we decline enforcement of that portion of the Board's order requiring respondent to bargain with the union. [Footnote omitted.]

3. Bargaining Conduct

The good-faith nature of the conduct of employers and unions during bargaining negotiations was subjected to scrutiny by courts of

---

[52] Where such other evidence was available, the court was willing to enforce a bargaining order; thus, in *N L R B* v *Schon Stevenson & Co*, 386 F 2d 551, decided on the same day as *Logan*, a bargaining order was enforced, because the employer had polled his employees, and the poll confirmed the union's claim to majority status, thereby negating any claim of a good-faith doubt

[53] *N.L.R B* v. *United Mineral & Chemical Corp*, 391 F.2d 829.

[54] *N.L R.B.* v. *Atco-Surgical Supports*, 394 F.2d 659.

[55] *N L R.B.* v. *Gissell Packing Co*, 398 F 2d 336; *N L R B* v *Heck's, Inc*, 398 F.2d 337 *General Steel Products* v. *N L.R B*, 398 F.2d 339.

[56] *N L.R.B* v. *Gissel Packing Co*, *supra* The Board's petition for certiorari on the three cases has been granted, 393 U.S. 997.

appeals in several cases decided during the year. Among them was *Roanoke Iron & Bridge Works*,[57] where the District of Columbia Circuit, sustaining the Board, found that an employer, who equated a union dues checkoff provision with union survival, violated 8(a)(5) when he refused to agree to a checkoff provision, since the refusal was motivated by his belief that he would thereby cause the union to suffer and eventually lose majority support among the employees. The court approved the Board's legal premise—that "if a party at the bargaining table espouses a position for the purpose of destroying or even crippling the other party to the negotiations, he has not bargained in good faith as required by the Act." The bad faith of the employer was found to be evidenced by its antiunion campaign literature identifying refusal to check off with undermining of the union's position, its earlier action in granting a checkoff to a favored local union, the lack of reliance on inconvenience or other business purpose, and a blanket refusal to consider any of the numerous alternative methods suggested by the union. And in *Ben Cutler*[58] the Second Circuit affirmed the Board's finding that a union local did not violate its good-faith bargaining obligation under section 8(b)(3) when, during the course of bargaining negotiations with a bandleader-employer, it amended its bylaws to specify higher wage scales and to establish a new welfare fund plan as minimum conditions under which its members would work. Although the union's action was taken unilaterally and without consultation with the employer, the court distinguished *N.L.R.B.* v. *Katz*,[59] where the Supreme Court held that an employer violated section 8(a)(5) when, during the course of negotiations, he unilaterally granted his employees wage increases and improved fringe benefits, on the grounds that in *Katz* the employer had the power to effect the changes without the consent of the union, while in the case at bar the new terms could not have gone into effect until accepted by the employer. In agreement with the Board, therefore, the court viewed the union's action as the formulation of no more than demands, the acceptance or rejection of which would depend on the relative bargaining power of the parties. The fact that the union was in a position of economic power greatly exceeding that of the bandleader did not change the inherent lawfulness of its action.

4. Subjects for Bargaining

The subject matter embraced by the phrase "wages, hours, and other terms and conditions of employment," as it is set forth in section 8(d) of the Act to describe the matters subject to collective-bar-

[57] *United Steelworkers* v. *N.L.R.B.*, 390 F.2d 846, cert. denied 391 U.S. 904.
[58] *Ben Cutler* v. *N.L.R.B.*, 395 F.2d 287.
[59] 369 U.S. 736 (1962).

gaining determination, received further definition in some of the court decisions issued during the report year. In *Westinghouse Electric* [60] the Fourth Circuit, upon rehearing *en banc*, reversed both the Board and the prior decision of a panel of its own court in ruling that increases in food prices established by an independent caterer operating a cafeteria in the employer's plant were not mandatory subjects of bargaining, and that the employer did not violate section 8(a)(5) by refusing to bargain with the union over such increases. Noting that under the statute the determination of which decisions are mandatory bargaining subjects must depend upon whether a given subject has a significant or material relationship to terms and conditions of employment, the court expressed the view that the question of the cafeteria prices did "not even remotely involve any question of job security or any other issue which employees could traditionally consider 'vital'" nor was it shown to be bargainable as a matter of "widespread industrial practice." In finding no duty to bargain on the part of the employer, even to the extent of the Board's view of the obligation as requiring bargaining only on specific request, the court rejected, as without evidentiary support, the Board's premise that the employees, due to lack of nearby dining facilities, were captive customers of the onsite cafeterias.

Holding that the statutory language of section 8(d) is "sufficiently broad to include safety rules and practices which are undoubtedly conditions of employment," the Fifth Circuit affirmed a Board finding to that effect in *Gulf Power*.[61] Although agreeing with the public utility employer that there may be areas where the company obligations to the public are paramount under State laws and may not properly be the subject of an agreement with the union, the court noted that both parties by their actions in the past had clearly indicated that they considered safety rules and practices a bargainable issue by including several pertinent provisions in their existing contract.

Other cases of significance involved the bargainability of employers' unilateral decisions concerning changes in insurance coverage and a supplemental compensation plan. In *Scam Instrument* [62] the Seventh Circuit, affirming a Board ruling, found that an employer violated section 8(a)(5) by unilaterally adding a "nonduplicating" clause to the insurance coverage of the existing bargaining agreement, with a resulting modification of the plan's benefit payment schedule. Rejecting the employer's contention that the double insurance coverage accruing to certain employees under the agreement

[60] *Westinghouse Electric Corp* v. *N.L.R.B.*, 387 F.2d 542
[61] *N.L.R.B.* v. *Gulf Power Co.*, 384 F.2d 822
[62] *N.L.R.B.* v. *Scam Instrument Corp.*, 394 F.2d 884, cert. denied 393 U.S. 980.

was not a "bargained-for" benefit, the court found the insurance benefits to be "frozen as a term or condition of employment for the contract period involved absent mutual consent of the contracting parties to their alteration or qualification, or compliance with the provisions of Section 8(d)."

Although the employers' longtime practice of awarding supplemental compensation to its employees was never made part of a written contract, in *Leeds & Northrup*[63] the Third Circuit affirmed the Board's finding that the employer violated section 8(a)(5) by unilaterally changing the formula under which the supplementary compensation was computed. The employer attempted to justify his action by raising the "common-law of the shop," alleging that control over the formula for computation of the compensation was a matter of historical practice even as was the plan itself, since there was no requirement in previous contracts about the union's role in either matter. The court approved the Board's rejection of this argument upon its finding that there was no implied agreement that the formula was a management prerogative, nor had there been a waiver by the union of its right to bargain on the issue, but to the contrary, the company's proposal on one occasion to abolish the plan had been a factor in the contract terms ultimately agreed upon.

5. Other Aspects

Other aspects of the bargaining obligation considered by the courts included the minimum period of bargaining which must be accorded a voluntarily recognized union representative and the obligation to continue bargaining with a representative whose initial certification was technically defective. In *Universal Gear*[64] the Sixth Circuit sustained a Board finding that an employer violated section 8(a)(5) by withdrawing recognition from a union within a year of the time it was originally granted voluntary recognition on the basis of an authorization card showing. The employer had withdrawn recognition upon a professed good-faith doubt of the union's majority status after an employee filed a second decertification petition within 1 year of recognition. The court agreed with the Board that, absent unusual circumstances, the employer must bargain with the union for a period of at least 1 year, even though it was not certified, since there was no question but that it was lawfully designated as bargaining representative and the interests of stability in labor relations require that at least for a reasonable period of time the parties can rely on the continuing representative status of a lawfully recognized union.

[63] *Leeds & Northrup Co* v *N.L.R.B.*, 391 F.2d 874.

[64] *N.L.R.B.* v. *Universal Gear Service Corp.*, 394 F.2d 396, see Thirty-first Annual Report (1966), p. 87.

In *International Telephone & Telegraph* [65] the union had been certified by the Board following an election in which professional employees were not provided a separate election on inclusion in a mixed unit with nonprofessional employees as required by section 9(b)(1) of the Act. After 13 years of continuous bargaining in this mixed unit, the employer withdrew recognition and refused to bargain with the union, relying on the asserted invalidity of the 13-year-old certification. Noting that the mixed unit was established several years prior to the certification, and that contracts continued to be negotiated in the unit subsequent to the Supreme Court decision in *Leedom* v. *Kyne* [66] which clearly established the illegality of the Board policy applied in the election procedures leading to the certification, the Third Circuit affirmed the Board's finding that by engaging in this conduct without questioning the composition of the unit the parties had expressed their consent to a mixed bargaining unit. The court held that as the prohibition of section 9(b)(1) only affects Board action, and the parties are free to consensually agree to such a mixed unit, in the circumstances of the case the consensual agreement of the parties had supplanted the certification as the basis for the unit and the employer was obligated to recognize and bargain with the union in that unit. Its failure to do so was therefore found to be a violation of section 8(a)(5) of the Act.

G. Enforcement of Internal Union Rules

Several decisions by courts of appeals during the year involved review of Board decisions further defining the scope of the proviso to section 8(b)(1)(A) of the Act, which provides that the prohibition by that section of union interference with employees' rights "shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein." In one case [67] the Third Circuit upheld the Board's decision that a union had violated the Act by expelling a member because he had caused another employee, who was not a union member, to file with the Board unfair labor practice charges alleging improper union behavior. Distinguishing a previous decision in which it had upheld a union's expulsion of a member for filing charges with the Board before attempting to exhaust internal union remedies [68] because of the limited

[65] *International Telephone & Telegraph Corp* v *N L R B*, 382 F 2d 366 (C A 3), cert. denied 389 U S. 1039, see Thirty-first Annual Report (1966), p. 88.

[66] *Leedom* v *William Kyne*, 358 U S 184 (1958), Twenty-fourth Annual Report (1959), p 114

[67] *Philadelphia Moving Picture Machine Operators' Union, Local 307, I A T S E [Velio Iacobucci]* v *N L R B*, 382 F 2d 598.

[68] *Industrial Union of Marine & Shipbuilding Workers* v *N L R B*, 379 F 2d 702 This decision was subsequently reversed by the Supreme Court, 391 U S 418 See discussion on pp 135–136 *supra*

impact of the union's action, the court pointed out that the instant disciplinary action rather "tended to discourage similar complaints under any circumstances." The court agreed with the Board that a union could not take action which would absolutely prohibit the filing of unfair labor practice charges alleging interference with rights guaranteed by section 7, and that the proviso to section 8(b)(1)(A) did not protect the expulsion of a member under those circumstances, which necessarily tended to frustrate enforcement of the Act. And in the *Glasser* case,[69] the Second Circuit affirmed Board dismissal of charges that a union had violated section 8(b)(1)(A) and (2) by maintaining and enforcing bylaws which prohibited its members from playing with musicians who were not union members, and by the intraunion filing and processing of charges that employer-members had violated the bylaws. The court held that enforcement of the bylaws against members who were not employers was protected by the proviso to section 8(b)(1)(A) and that the mere processing and consideration of charges, subsequently dismissed, against employer-members, in the absence of any attempt to enforce a penalty imposed pursuant to a decision sustaining a charge, was not an unlawful attempt to cause them to discriminate.

The Board's holding that a union did not violate section 8(b)(1)(A) by fining members for reporting to the employer and receiving payment for production at a rate in excess of a ceiling imposed by the union, which required the employees to "bank" such excesses and report them for payment later when they produced less than the ceiling, was sustained by the court in the *Scofield* case.[70] The court stressed the broad interpretation to be given to the proviso to section 8(b)(1)(A), and noted that the Supreme Court, in *Allis-Chalmers*,[71] had held that the proviso permitted internal union discipline through reasonable fines as well as expulsion, and that a union's internal rules should not be struck down if they served a legitimate purpose. The piecework production ceilings were found to have a "rational basis" and to be "reasonably calculated to preserve a permissible end" as they prevented jealousies, dissension, the loss of jobs of less productive employees, and the lowering of piecework rates, all of which might result if some employees were induced by piecework rates in increase their production too much. ". . . [T]he Union's imposition of these fines was not arbitrary and . . . the rules themselves are grounded on a long-standing policy and cannot be deemed invalid or unenforceable on their face." The court concluded that since the union could validly

[69] *Glasser* v *N.L.R.B.*, 395 F 2d 401

[70] *Scofield* v *N.L.R.B.*, 393 F 2d 49 (C A 7).

[71] *Allis-Chalmers Mfg. Co.* v *N.L.R.B.*, 388 U.S. 175, Thirty-second Annual Report (1967), p. 138.

impose ceilings through collective bargaining, it could enforce by an internal disciplinary rule ceilings established by collective bargaining, although the employer could require the union to bargain over a demand that it give up the rule.[72]

H. Prohibited Boycotts and Boycott Agreements

1. Reserved Gate Picketing at a Construction Site

During the period two courts had occasion to deal with precisely the same question arising from similar controversies involving the picketing of construction site entrances reserved for the use of employees of neutral employers. In *Nashville Building Trades* [73] the Sixth Circuit affirmed the Board's holding that a union violated section 8(b)(4)(B) by picketing, in furtherance of a primary dispute with a general contractor, entrances reserved at the construction site for employees of two subcontractors. The court in finding unlawful activity noted that ever since the secondary boycott provisions were enacted the building trades unions have argued that where there is a dispute with the general contractor on a construction project picketing of all subcontractors should be permitted. It agreed with the Board that this contention was rejected by the Supreme Court in the *Denver Building Trades* case [74] and that the "normal operations" test of the *General Electric* [75] and *Carrier* [76] cases, i.e., whether the work being performed is related to the normal operations of the struck employer, was inapplicable.

In the other case [77] the Fifth Circuit also agreed that the question of the illegality of reserved gate picketing in the construction industry was "authoritatively" answered in the *Denver Building Trades* case. The court, rejecting the contention that *General Electric* and *Carrier* had *sub silentio* overruled *Denver Building Trades*, found that neutral subcontractors whose employees used a reserved gate at a filtration plant were entitled to protection from a union's picketing aimed at the general contractor. Finding then that the tests established for common situs picketing in the *Moore Dry Dock* case [78] were applicable, the

[72] The employees' petition to the Supreme Court for writ of certiorari was granted, 393 U.S. 821.

[73] *Reynolds* v. *Nashville Building & Construction Trades Council* [*Markwell & Hartz*], 383 F.2d 562.

[74] *N.L.R.B.* v. *Denver Building & Construction Trades Council* [*Gould & Preisner*], 341 U.S. 675.

[75] *Local 761, Electrical Workers* v. *N.L.R.B.*, 366 U.S. 667, Twenty-sixth Annual Report (1961), pp. 157–158.

[76] *United Steelworkers* v. *N.L.R.B.*, 376 U.S. 492, Twenty-ninth Annual Report (1964), pp. 107–108.

[77] *Markwell and Hartz* v. *N.L.R.B.*, 387 F.2d 79.

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

court held the picketing at gates reserved for the exclusive use of the subcontractor's employees to be violative of section 8(b)(4)(B) of the Act.

2. Prohibited Secondary Objectives

The insistence by unions that employers provide certain employment for unit members was held by the Third Circuit in two cases not to constitute an object unlawful under section 8(b)(4)(B), even though the circumstances might establish that the additional employees were unnecessary. In *Local 1291, ILA*,[79] a union successfully demanded that the operator of a coaling pier hire and pay men for "hatch and beam" work upon the arrival and departure of a ship upon which no union members worked. While the Board viewed the union's threat to picket the coal pier operator and compel a work stoppage as having a cease-doing-business object, the court found that neither "explicitly nor by implication" did the union representatives call upon the operator to stop loading the ship or discontinue business with it. Rather the unequivocal demand, as found by the court, was that because the ship had not arranged for employment of a "hatch and beam" crew and a clerk, and the work was proceeding without them, the operator should have to "pay for such supernumeraries." Thus, the court found a cessation of business was neither requested nor required. In the other case[80] an electrical workers' union went on strike at a construction site because one of its members was not being employed to maintain a gasoline driven generator used by a subcontractor. The union members were employed by the general contractor for electrical work at the site, and the union claimed that the object of its strike was to enforce a contract provision requiring its members be employed to operate generators. Rejecting the Board's finding of an unlawful object, the court was unpersuaded by the struck contractor's lack of control over the disputed maintenance work as justification for an inference of a secondary object. Noting that the union was "happy to have its members paid" by the general contractor "for doing nothing" and that there was no proof that the subcontractor was the "real" target, the court found no secondary boycott.

That an employer can be "lawfully subject to pressure designed to protect the interests of its own employees, but not to protect the interests" of union members generally, was pointed out by the Third Circuit in sustaining the Board's finding of an unlawfully induced refusal to handle in a case[81] where a union successfully sought to have

[79] *N L R B* v *Local 1291, ILA* [*Northern Contracting Co*], 382 F.2d 375 (C A 3).
[80] *N.L R B.* v. *Local 164, IBEW*, 388 F 2d 105 (C.A 3).
[81] *N.L R B.* v. *N.Y. Lithographers & Photo-Engravers Union One–P* [*Alco-Gravure Div.*], 385 F 2d 551.

employees of a rotogravure employer refuse to handle electrically scanned positives purchased from a manufacturing company with whom the union was negotiating for a ban on their production. The union considered the new scanning process a threat to the preservation of the work of its members. The court viewed the timing of the refusal to handle at the rotogravure plant, contemporaneous with the new contract demands to bar production, as suggesting that one of the union's objectives was to force the rotogravure employer to stop doing business with the manufacturer, thereby putting more pressure on the manufacturer to stop making scanned positives. Even assuming that another object was to force strict adherence to subcontracting clauses in the rotogravure employer's contract, the union's action, in the court's view, "had a decidedly pointed focus on a single product of a single subcontractor."

In another case [82] the close distinction between permissible "picketing to educate consumers to buy union label merchandise" and prohibited picketing aimed at inducing a generalized loss of patronage to coerce a store owner to cease buying from a nonunion supplier was considered by the court. A week after a union agent complained to a store owner that he was carrying too much bedding made by a manufacturer under contract with another union, pickets had appeared with signs that carried a reproduction of the union's label and an appeal to the public not to buy nonunion bedding but rather to look for the union label in making purchases. In sustaining the Board's conclusion that the picketing was in violation of section 8(b)(4)(ii)(B) of the Act, the court noted that, although the employer pointed out that even bedding made by firms under contract with the picketing union failed to carry the union label, the pickets were removed only when the store promised to stop doing business with the manufacturer who had been the subject of the initial complaint. Despite the union's claim that it was only trying to educate the public to look for the union label, the court agreed with the Board's finding that the action was aimed at disrupting a business relationship with a specific manufacturer, rather than nonunion label manufacturers generally. Since the object was specific, the court reasoned, the picket signs also should have been specific, rather than seeking a generalized loss of patronage. Therefore, the picketing seeking "to shut off all trade with the secondary employer" could not fall within the protective ambit of lawful consumer picketing as defined in *Tree Fruits*.[83]

[82] *Bedding, Curtain & Drapery Workers, Local 140* [*U.S Mattress*] v *N.L.R.B.*, 390 F 2d 495 (C A 2).

[83] *N.L.R.B.* v. *Fruit & Vegetable Packers, Local 760*, 377 U.S. 58.

I. Unit Work Preservation Clauses

Examining the enforcement of a union-signatory-fabricated-items clause in context, the Second Circuit in *Local 28, Sheet Metal Workers* [84] found an absence of evidence of secondary objectives and refused enforcement of a Board order. Under a contract provision listing "fabricated items" and providing that they were "to be manufactured by a contractor having a signed agreement with" the union, the union demanded that a signatory employer use only dampers constructed by local union members and refused to handle prefabricated dampers manufactured by a nonsignatory employer. The court, while noting that the contract provision might have had a broader purpose than the protection of the union's members from a loss of work they traditionally performed, found no evidence that the action of the union was intended to bring pressure on the nonsignatory employer rather than to preserve agreed work for the employees of signatory contractors. In finding no prohibited secondary pressure, the court, citing the *National Woodwork* and *Houston Insulation* cases,[85] adverted to the fact that the employees of the manufacturer whose products were objected to were members of a sister local of the same international.

The distinction between lawful work preservation clauses and unlawful hot cargo clauses was considered by courts of appeals in two cases in which the Board's findings of violations were approved. In one case [86] a union struck and picketed two retail stores in order to obtain the inclusion in a collective-bargaining contract of a food-demonstrator clause which required that demonstrators, whether employed by the retail store or the supplier, had to be covered by the union's contract with the store. The court agreed that section 8(e) was thereby violated since the demonstrators at the retail stores involved were employees of the stores' suppliers, and the effect of the clause would be to require these employees of another employer to become members of the union. The court distinguished between primary activity to protect fairly claimable jobs and "[s]triking and picketing . . . to obtain union recognition subcontracting clauses," terming the latter illegal, "since such clauses concern themselves not with protecting union jobs, but with union affiliation of employees of another employer." [87]

---

[84] *N L R B* v. *Local Union 28, Sheet Metal Workers Intl. Assn* [*Johnson Service Co*], 380 F.2d 827.

[85] *National Woodwork Manufacturers Assn* v *N L R B*, 386 U S 612, *Houston Insulation Contractors Assn.* v. *N L R B*, 386 U S 664, Thirty-second Annual Report (1967), p 139

[86] *Retail Clerks Intl Assn., Local 1288* [*Nickel's Pay-Less Stores*] v *N.L R.B.*, 390 F 2 858 (C A D.C.).

[87] The Board's order banning the demonstrator clause in its entirety was deemed too broad by the court, however, and was denied enforcement insofar as it required rescission of the unobjectionable part of the clause requiring demonstrators who were employees of the stores to be covered by the union's contract

The other case[88] also involved Board determination that a union was seeking through a contract provision to enlarge its membership, rather than merely to protect work opportunities in the bargaining unit. In that case, a provision in a union's contract with a multi-employer association required the employers to employ union members to operate transportation equipment, notwithstanding that previously most of them had used subcontractor haulers to provide transportation for them. The Seventh Circuit affirmed the Board's finding that the union's object was to keep the employers from dealing with the independent haulers, whose employees were represented by different locals, and that the union sought to increase its membership at the expense of those locals. The union's contention that the objective of the clause was merely to prohibit the contracting out of the over-the-road hauling, and thereby require the dairies to use their own employees, was rejected. The court noted that if the clause were thus regarded it would have been "at odds with its alleged goal of job protection," for if only the dairies' own employees were used for hauling, 50 members of the unit—employees of independent haulers—would have been adversely affected.

General union standards provisions regulating subcontracting, with an added provision requiring nonunit self-employed persons to be regarded as employees subject to the union-security clause, were examined by the Third Circuit during the report period[89] upon review of a Board decision. The provisions in the agreement between the union and an association of common carriers provided in detail for the terms and conditions of employment of independent owner-operators from whom the motor carriers leased equipment and required employee status of them. The court accepted the Board's determination that the provisions, to the extent they required the owner-operators to be compensated and treated in general as unit members employed by the carrier, constituted the lawful "exaction of requirements designed to protect union standards against substandard competition which might be an incentive for an employer to deprive his unionized employees of work." However, as to the provision requiring the owner-operators to be regarded as employees in order to retain the work they had been doing on subcontract, the court, disagreeing with the Board, found a secondary purpose. Adverting to the cases in which provisions which permit an employer to subcontract only with third parties who are unionized have been struck down, the court found this provision "substantially similar," since it would bring owner-operators within the union-security clause of the contract. As in the case of secondary boycotts generally, the court noted, a collective-bargaining agreement

[88] *N L.R.B.* v. *Milk Drivers Union, Local 753* [*Korth Transportation Co*], 392 F 2d 845
[89] *A. Duie Pyle, Inc.* v. *N L.R.B.*, 383 F.2d 772.

may not be employed as a means of effectuating an object to coerce another employer to unionize, "Nor may it by this means seek to coerce self-employed persons to become union members," the court concluded.

J. Recognitional Picketing

The question of whether the legality of the agreement sought by a labor organization constitutes a defense to recognitional picketing charges was considered by the Court of Appeals for the District of Columbia Circuit in *Dallas Building & Construction Trades Council.*[90] The court affirmed the Board's holding that a trades council violated section 8(b)(7)(A) of the Act by picketing four general contractor members of an association to obtain an agreement restricting subcontracting to union subcontractors, where the contractors had direct agreements with locals affiliated with the council, but the council did not itself represent any of the general contractors' employees. The court agreed with the Board that the proscription of the recognitional picketing ban did not vary with the legality of the agreement sought. It, therefore, concluded that the asserted legality of the proposed subcontracting agreement, under the construction industry proviso to section 8(e), could not immunize the council's picketing to secure such an agreement, since the council was thereby seeking recognition at a time when "a question of representation could not properly be raised," in violation of section 8(b)(7)(A) of the Act. The court also held that the council's disclaimer of a purpose to impair the representative status of the local unions did not privilege its efforts to supplement the local bargaining agreements, in view of the significant effect of such efforts on the general contractors and their employees.

K. Remedial Order Provisions

In several cases decided by the courts during the year, the validity of the remedial provisions of Board orders was in issue. In one case[91] the Ninth Circuit, while agreeing with the Board that an employer's attempt to withdraw from a multiemployer association was ineffective and that he had violated section 8(a)(5) by refusing to sign the contract negotiated by the association and the union, refused to enforce the Board's order that the employer pay to the appropriate source any fringe benefits provided for in the contract. The court considered an order to carry out provisions of the contract to be beyond the power

[90] *Dallas Building & Construction Trades Council* [*Dallas County Construction Employers Assn.*] v. *N.L.R.B.*, 396 F.2d 677.

[91] *N L R B.* v. *Strong Roofing & Insulating Co*, 386 F 2d 929.

of the Board, which does not, in general, have power to adjudicate contractual disputes.[92]

Two courts had occasion to review Board orders requiring an employer to read a notice to his employees. In the two *J. P. Stevens* cases[93] the Second Circuit, while agreeing with the Fifth Circuit[94] that such a reading might be humiliating, pointed out that this consideration had to be balanced against the necessity of undoing the effect of the employer's numerous and flagrant unfair labor practices. Accordingly, the court modified the order to make it applicable only in the plants where violations of the Act had been found and to give the employer the alternative of having Board representatives, rather than its own officials, read the notice.[95]

On the other hand, the Court of Appeals for the District of Columbia Circuit, in a case[96] decided after the decision in the first *Stevens* case, but before the decision in the second, rejected this remedy entirely.[97] The court regarded the requirement of a public reading of the notice not only as humiliating, but as likely to be a source of continuous resentment which would impair future relations between the employer and the union. It rejected the modification ordered by the court in *J. P. Stevens* on the grounds that it placed the Board's imprimatur on the activities of a particular union, whereas the Board was legally required to be neutral, and that it was improper for the court to prescribe a remedy, this being the Board's function. The Second Circuit, in the second *Stevens* case, commented that remedies could not be "neutral," and that the reading of a Board order by a Board official did not, in its view, put the imprimatur of the Board on a particular union's activities, or on unions in general. Moreover, it considered its modification of the Board's remedy as having merely eliminated its objectionable feature, the humiliation of the employer, without changing its impact.

---

[92] The Board's petition to the Supreme Court for a writ of certiorari was granted, 391 U S. 933

[93] *J P. Stevens & Co* v. *N.L R B.*, 380 F 2d 292, enfg as modified 157 NLRB 869 (1966); *Textile Workers' Union of America* [*J. P. Stevens*] v. *N L R B*, 388 F.2d 896, enfg. as modified 163 NLRB 217 (1967)

[94] *N L R B* v *Laney & Duke Storage Warehouse Co*, 369 F 2d 859

[95] The court also enforced the Board's order that the employer post the notice, and mail it to its employees, in all of its plants. An order provision giving the union reasonable access to company bulletin boards for 1 year was rejected in the first case, but approved in the second, in view of the employer's use of the bulletin boards in its campaign of coercion. Also in the second case, an order that the employer give the union a list of the names and addresses of its employees was rejected, as the court considered the other remedies sufficient to remove the atmosphere of restraint and coercion generated by the employer's unfair labor practices.

[96] *I.U.E* [*Scott's Inc*] v. *N L R B*, 383 F 2d 230.

[97] The court approved the Board's other remedies, including requirements that the employer mail copies of the notice to employees and allow the union to give a presentation of its position on company property and company time.

In another case [98] the Court of Appeals for the District of Columbia Circuit found it necessary to clarify its earlier decree enforcing a Board order based on a finding that the employer had refused to bargain in good faith when it rejected the union's demand for a dues checkoff. The Board and the employer interpreted the order as requiring only that the employer bargain in good faith about alternatives to a checkoff, while the union interpreted it as requiring the employer to agree to a checkoff. The court pointed out that this was the second time that the employer had been found to have not bargained in good faith, and that he had no business reason for refusing the checkoff but had done so only to frustrate agreement with the union. Under these circumstances, the court concluded, merely ordering the employer to bargain in good faith was insufficient; requiring the employer to make a concession or counteroffer was essential to protect the employees' right to bargain collectively. In the court's view, section 8(d) of the Act, while prohibiting a finding of bad faith merely because an employer refused to make a concession, did not limit the scope of the remedy which might be ordered once bad faith was found. Since a checkoff provision, which the court noted was included in 92 percent of all labor contracts in manufacturing industries, was likely to be of great importance to the union, which had no other easy way to collect dues, and of little importance to the employer, a requirement that a checkoff be granted would, at most, be a minor intrusion on freedom of contract. Consequently, the court concluded, the Board could order the company to grant checkoff in return for a reasonable concession by the union on another issue, or, in an appropriate case, simply order the company to grant a checkoff. Accordingly, the case was remanded to the Board for reconsideration of the remedy.[99]

---

[98] *United Steelworkers [H K. Porter Co.]* v *N L R B*, 389 F 2d 295, modifying 363 F 2d 272, which enfd 153 NLRB 1370 (1965)

[99] The Board's decision on remand is discussed *supra*, p 132.

VIII

Injunction Litigation

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

A. Injunction Litigation Under Section 10(j)

Section 10(j) empowers the Board, in its discretion, after issuance of an unfair labor practice complaint against an employer or a labor organization, to petition a U.S. District Court for appropriate temporary relief or restraining order in aid of the unfair labor practice proceeding pending before the Board. In fiscal 1968, the Board filed 16 petitions for temporary relief under the discretionary provisions of section 10(j)—11 against employers, 1 against unions, and 4 against both employers and unions.[1] Injunctions were granted by the district courts in seven cases [2] and denied in two. Of the remaining cases, three were settled prior to court action, two were withdrawn, one was dismissed without prejudice, and five were pending at the close of the report period.[3]

Injunctions were obtained against employers in six cases and in one the injunction ran against both the employer and the union. The cases against the employers variously involved alleged refusals to bargain in various respects with the labor organizations representing their employees, a discriminatory lockout of employees during contract negotiations, discrimination against members of the union, and other acts of interference. In one instance an injunction was obtained against both an employer and a union in a situation where the employer's recogition of the union was alleged to be assistance in violation of the Act.

1. Standard for Section 10(j) Injunctive Relief

The standards under which a court will accord injunctive relief under section 10(j) in advance of the Board's own resolution of the

[1] In four other cases in which the Board authorized sec 10(j) proceedings the issues were subsequently satisfactorily resolved without the institution of court proceedings.

[2] In one case, *Meier* v. *Minnesota Mining & Mfg. Co*, the injunction granted by the district court was vacated on appeal See *infra*, p 166

[3] See table 20 in appendix. Also, four petitions filed during fiscal 1967 were pending at the beginning of fiscal 1968.

348-205—69——12

issues were again [4] a matter in issue before courts of appeals in two cases decided this year. In the *Kansas Refined Helium* case [5] the court, in affirming the district court's granting of an injunction,[6] stated that although the statute provides for such injunctive relief as the court deems "just and proper,"

> We do think, however, that the legislative history indicates a standard in addition to the "probable cause" [that the statute has been violated] finding that must be satisfied before a district court grants relief The circumstances of the case must demonstrate that there exists a probability that the purposes of the Act will be frustrated unless temporary relief is granted. Administration of the Act is vested by Congress in the Board, and when the circumstances of a case create a reasonable apprehension that the efficacy of the Board's final order may be nullified, or the administrative procedures will be rendered meaningless, temporary relief may be granted under section 10(j). Preservation and restoration of the status quo are then appropriate considerations in granting temporary relief pending determination of the issues by the Board.

The Eighth Circuit Court of Appeals expressed "general agreement" with those views in the *Minnesota Mining* case.[7] It held that "[s]ection 10(j) is reserved for a more serious and extraordinary set of circumstances where the unfair labor practices, unless contained, would have an adverse and deleterious effect on the rights of the aggrieved party which could not be remedied through the normal Board channels. In determining the propriety of injunctive relief the district court should be able to conclude with reasonable probability from the circumstances of each case that the remedial purpose of the Act would be frustrated unless immediate action is taken." Applying this standard, the court reversed the district court's action in enjoining an employer from refusing to enter into contract-renewal negotiations with a union because the union's bargaining committee included as nonvoting advisors individuals who normally represented other unions in bargaining with the employer for other units of employees.[8] The court concluded that the district court erred in its findings that the employer's refusal to bargain posed a serious threat to the public interest, that it would result in irreparable injury to the union unless enjoined, and that injunctive relief was necessary to maintain the status quo.

2. Other Section 10(j) Litigation

Interim relief against violations of the bargaining obligation was the remedy most frequently sought by the injunction actions. In one

[4] See Thirty-second Annual Report (1967), p. 176, for other decisions involving this issue

[5] *George A Angle, d/b/a Kansas Refined Helium Co*, 382 F.2d 655 (C A 10)

[6] *Sacks* v *George A Angle d/b/a Kansas Refined Helium Co*, 65 LRRM 2098, 55 LC ¶11,865 (D C Kans). See Thirty-second Annual Report (1967), p. 179.

[7] *Minnesota Mining & Manufacturing Co.* v *Meter*, 385 F 2d 265

[8] *Meter* v *Minnesota Mining & Mfg Co.*, 273 F.Supp. 659 (D.C.Minn.).

such case [9] the court held that there was reasonable cause to believe that the employer had violated the Act by refusing to bargain with the certified union and by taking certain unilateral actions affecting wages, job classifications, and insurance benefits without notice to or consultation with the union, and that an injunction was appropriate. The court noted that, although the employer's refusal to bargain on matters other than wages and job classifications was a reasonable interpretation of the scope of the contract's limited reopening clause, this question did not justify the refusal to bargain and together with the employer's alleged doubt of the union's continuing majority were factual questions for determination by the Board. Accordingly, the court granted the temporary injunction and ordered the employer to bargain with the union.

Similarly, in the *Commercial Automotive* case [10] the court found that there was reasonable cause to believe that an employer had violated the Act by refusing to bargain with the union where, after expiration of the union's contract covering the employees at three terminals and execution of a new contract, the employer refused to recognize the union as the bargaining representative of the employees of one terminal even though no mention was made during the negotiations that these employees would be excluded from the contract's coverage. The court concluded that a temporary injunction was appropriate. In *Huttig Sash*,[11] involving a successor employer, the court found, in granting a temporary injunction, that there was reasonable cause to believe that the successor's action in refusing to recognize and bargain with the union certified as the bargaining representative of the predecessor's employees and in unilaterally granting a wage increase without notice to or consultation with the union violated the Act. The court concluded that the circumstances of this case, including the possible "drifting away" of employees, demonstrated a clear probability that the purposes of the Act would be frustrated unless temporary relief was granted.

In another case [12] the court granted a 10(j) injunction to restrain the employer members of an association from engaging in an unlawful lockout of their production employees and from bargaining in bad faith. The court found that the employers had engaged in only surface bargaining with the union and had terminated the collective-bargaining agreement without notice to the mediation agencies as

[9] *Potter* v. *Firestone Synthetic Rubber & Latex Co*, 66 LRRM 2555, 56 LC ¶ 12,262 (D C.Tex).

[10] *Wolberg* v *Commercial Automotive Corp.*, 67 LRRM 2256, 57 LC ¶12,460 (D C N C).

[11] *Davis* v. *Huttig Sash & Door Co.*, 288 F.Supp. 82 (D C Okla.)

[12] *Kaynard* v. *Bagel Bakers Council of Greater N.Y.* (*Culver Bagels*), 68 LRRM 2140, 57 LC ¶ 12,499 (D C N.Y).

required by section 8(d).[13] And in the *Mitchell Construction* case[14] the court granted an injunction against the company, a member of an employer association, to prevent it from unilaterally terminating a collective-bargaining agreement, executed on its behalf by the association, without complying with the notice provisions of section 8(d), and from discriminating against employees in the appropriate unit because of their union membership.

The actions of an employer and a union in execution of an illegal contract and commission of other acts of restraint and coercion of employees were enjoined by the court in the *Senco* case.[15] The employer, and a union rival to the incumbent union, had coerced the employees into joining the rival and had executed a contract containing a union-security provision at a time when the rival union did not represent an uncoerced majority of the employees. The court, in finding that injunctive relief would be "just and proper," concluded that the threat of irreparable harm and the need to insure the efficacy of the Board's final order outweighed any likely harm to the employees resulting from the lack of representation they would experience as a result of the relief granted, which included the withdrawal of recognition of the rival and suspension of the contract until the Board resolved the issues.

Temporary injunctions were denied in two cases. In the *Crown Discount* case[16] the court concluded that the Board failed to establish reasonable cause to believe that the employer and the union had violated the Act. It had been alleged that the parties had violated the Act by the extension of recognition and execution of a contract at a time when the union did not represent an uncoerced majority of the employees, and that the employer had threatened and unlawfully interrogated the employees. In the *Mueller* case[17] the court denied injunctive relief on the ground that the charging union was in court with unclean hands because of the violence it committed against the employees during its picketing of the company plant. It was alleged that the company had refused to execute a contract previously agreed to, and had discharged and threatened strikers.

---

[13] Sec. 8(d) conditions action to obtain a proposed modification or termination of a contract upon, *inter alia*, 60-day notice to the other party to the contract and 30-day notice to the Federal Mediation Service and State mediation agencies

[14] *Paschal* v. *John A. Mitchell Construction*, No 13624 (D.C.La), decided Apr. 23, 1968 (unreported).

[15] *Greene* v. *Senco, Inc.*, 282 F Supp 690 (D C Mass).

[16] *Cassady* v. *Crown Discount Department Stores*, No. 67–1494–HP (D C Calif.), decided Feb. 12, 1968 (unreported).

[17] *Madden* v. *George F. Mueller & Sons*, No. 67–C–871 (D C.Ill.), decided July 19, 1967 (unreported).

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), and (C),[18] or section 8(b)(7),[19] and against an employer or union charged with a violation of section 8(e),[20] whenever the General Counsel's investigation reveals "reasonable cause to believe that such charge is true and a complaint should issue." In cases arising under section 8(b)(7), however, a district court injunction may not be sought if a charge under section 8(a)(2) of the Act has been filed alleging that the employer has dominated or interfered with the formation or administration of a labor organization and, after investigation, there is "reasonable cause to believe such charge is true and that a complaint should issue." Section 10(l) also provides that its provision shall be applicable, "where such relief is appropriate," to violations of section 8(b)(4)(D) of the Act, which prohibits strikes and other coercive conduct in support of jurisdictional disputes. In addition, under section 10(l) a temporary restraining order pending the hearing on the petition for an injunction may be obtained, without notice to the respondent, upon 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 1968, the Board filed 165 petitions for injunctions under section 10(l). Of the total caseload, comprised of this number together with the 5 cases pending at the beginning of the period, 45 cases were settled, 1 was dismissed, 17 were continued in an inactive status, 22 were withdrawn, and 20 were pending court action at the close of the report year. During this period 65 petitions went to final order, the courts granting injunctions in 57 cases and denying them in 8 cases. Injunctions were issued in 32 cases involving secondary boycott action proscribed by section 8(b)(4)(B) as well as violations of section 8(b)(4)(A) which proscribes certain conduct to obtain hot cargo

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

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

[20] 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.

agreements barred by section 8(e). Two cases involved violations of section 8(b)(4)(C) to require recognition where the Board had certified another union as representative, of which one also involved proscribed activities under section 8(b)(4)(B). Injunctions were granted in 12 cases involving jurisdictional disputes in violation of section 8(b)(4)(D), of which 4 also involved proscribed activities under section 8(b)(4)(B). Injunctions were issued in 11 cases to proscribe alleged recognitional or organizational picketing in violation of section 8(b)(7).

Of the eight injunctions denied under section 10(l), two involved alleged secondary boycott situations under section 8(b)(4)(B), three involved alleged jurisdictional disputes under section 8(b)(4)(D) of which one also involved alleged proscribed activities under section 8(b)(4)(B), two were predicated upon alleged violations of section 8(b)(7)(C), and one arose out of charges involving alleged violations of section 8(e).

Almost without exception the cases going to final order were disposed of by the courts upon findings that the evidence, under applicable legal principles, either did or did not suffice to support a "reasonable cause to believe" that the statute had been violated. The decisions in these cases turn largely upon their particular facts, and their significance in the development of the law under section 10(l) is of a limited nature. The decisions, of course, are *res judicata* and do not foreclose the subsequent proceedings on the merits before the Board.

Two of the cases decided during the year, however, are noteworthy. In the *Associated Musicians* case [21] the court concluded that there was reasonable cause to believe that the union, in violation of section 8(b)(4)(i)(ii)(A) of the Act, sought to coerce an employer musician to join it. The union had been regularly displaying in its official monthly publication, distributed to its membership, a notice to the effect that the employer was not a member of the union and that members under the bylaws could not play in orchestras conducted by him or in which he performed. In finding the issuance of an injunction appropriate under the circumstances, the court noted that the union bylaws prohibited its members from performing in or with a band or orchestra led or conducted by a nonmember of the union, and that, although the employer had been previously expelled from the union, the object of the union's actions was to induce him to rejoin it on terms and conditions imposed by it.

[21] *McLeod* v. *Associated Musicians of Greater N.Y., Local 802 (Natl Assn of Orchestra Leaders)*, 283 F Supp 176 (D C N Y).

In the *Seafarers* case [22] the Board sought to enjoin as violative of section 8(b)(4)(D) a union's actions in picketing and refusing to supply personnel to man ships of the employer with the object of forcing the employer to assign to the unlicensed seamen represented by the union the work of being trained to become licensed engineers. The employer, pursuant to an agreement with the union representing licensed shipboard personnel, had established an apprenticeship program for licensed personnel limited to apprentice engineers supplied by that union. The respondent union, certified as representative of all unlicensed personnel, demanded the removal of the apprentice engineers from the ships as the program reduced the opportunities of the unlicensed personnel to qualify for licenses. The court, concluding that reasonable cause to believe the statute had been violated had not been established, declined to issue an injunction. In the court's view, the respondent union's action was not in support of a claim for the assignment of work within the meaning of section 8(b)(4)(D), since training for a job or position is not "work," and the union's concern was not to obtain any particular assignment of work for its membership but to prevent implementation of the apprentice program.

[22] *LeBus* v *Seafarers Intl. Union of North America (Delta S S Lines)*, 279 F Supp. 791 (D.C.La.).

IX

Contempt Litigation

During fiscal 1968, petitions for adjudication in contempt for noncompliance with decrees enforcing Board orders were filed in 20 cases: 17 for civil contempt and 3 for both civil and criminal contempt. In one of these the petition was granted and civil contempt adjudicated.[1] Two cases were dismissed, one in view of the simultaneous enforcement of Board orders remedying the identical violations,[2] the other because the decree did not cover the installation involved.[3] In 10 cases, the courts referred the issues to special masters for trials and recommendations, 1 to a Senior Circuit Judge,[4] 5 to United States District Judges,[5] 3 to Trial Examiners furnished by the United States Civil Service Commission,[6] and 1 to a private attorney.[7] Of the remaining seven cases, six are before the courts for disposition on the merits,[8] while one awaits referral to a special master.[9] Contempt was

[1] *N.L.R.B.* v. *Great Dane Trailers,* 397 F 2d 29 (C A. 5), in contempt of 388 U S. 26.

[2] *N.L R B.* v. *Tennessee Packers,* order of Mar 25, 1968, Nos. 17,183, 17,644 (C A 6) See 390 F 2d 782

[3] *N.L R.B.* v. *Heck's, Inc ,* 388 F.2d 668 (C A. 4).

[4] *N.L R.B.* v. *Local 825, Intl Union of Operating Engineers & Peter Weber,* in civil and criminal contempt of 322 F 2d 488 (C A 3) and the consent decree in No 15, 928 entered Aug 5, 1966, referred to U.S C J Albert B. Maris

[5] *N.L.R.B.* v. *Boat Serafina II,* in civil contempt of bargaining decree of Apr 3, 1967, in No. 6811 (C.A 1), referred to U.S.D J. Andrew A. Caffrey , *N L R B* v *Local 138, Intl Union of Operating Engineers,* in civil contempt of the 8(b)(1)(A) and (2) decrees in 298 F 2d 187 and 321 F 2d 130 (C A 2), referred to U.S D.J. Walter Bruchhausen; *N L.R.B.* v. *Mastro Industries,* in civil contempt of the backpay decree in 354 F 2d 170 (C.A. 2), referred to U S D J. Richard H. Levet; *N L R.B.* v. *Local 553, United Assn. of Journeymen & Apprentices of Plumbing & Pipefitting Industry,* in civil contempt of the 8(b)(4)(i)(ii)(D) decree of Feb. 6, 1961, in No. 13,237 (C.A. 7), referred to U.S.D.J. Robert D. Morgan; *N L R.B* v *Moore's Seafood Products,* in civil contempt of the bargaining decree in 369 F 2d 488 (C A 7), referred to U S D J. James E. Doyle.

[6] *N L R.B* v. *Intl. Shoe Corp of Puerto Rico,* in civil contempt of the bargaining decree in 357 F.2d 330 (C.A. 1); *N L R B* v. *Southwire Company & Roy Richards,* in civil and criminal contempt of the 8(a)(1) and (3) decree in 352 F.2d 346 (C.A. 5); *N L R.B.* v. *Town & Country Mobile Homes,* in civil contempt of the 8(a)(1) decree in 316 F 2d 846 (C A. 5).

[7] *W. B. Johnson Grain Co.* v. *N L R B ,* in civil contempt of the bargaining decree in 365 F 2d 582 (C.A. 10).

[8] *N L R B.* v. *Local 1477–1, Pipe Coverers, ILA,* in civil contempt of the backpay decree of June 21, 1967 (C A. 2) , *N.L.R.B.* v *I. Posner, Inc.,* in civil contempt of the 8(a)(1) and (3) decrees in No 27,342 entered July 16, 1962, and No. 29,047 entered Mar 30, 1965 (C.A. 2) , *N.L.R B* v *Voll's Express Co ,* in civil contempt of the backpay decree in No. 30,459 entered Apr 25, 1966 (C A 2); *General Truckdrivers, Chauffeurs, Warehousemen & Helpers, Local 5* v. *N.L R.B ,* in civil contempt of the posting and notification provisions of the decree in 389 F 2d 757 (C A. 5) , *N L.R B.* v. *Mooney Aircraft Co ,* in civil and criminal contempt of the reinstatement and backpay decree in 337 F 2d 605, 375 F 2d 402 (C.A. 5); *N.L.R.B* v. *August R. Blase d/b/a A. R. Blase Co ,* in civil contempt of the backpay decree of Jan. 11, 1968, in Nos 19,180, 20,759 (C.A. 9).

[9] *N.L.R.B.* v. *Schill Steel Products,* in civil contempt of the 8(a) (1), (3), and (5) decree in 340 F.2d 568 (C.A. 5).

adjudicated in 1 criminal and 11 civil proceedings which were commenced prior to fiscal 1968; of these, 2 civil contempt adjudications resulted from adoption of the recommendations of United States District Judges who had been designated as special masters;[10] 3 civil contempt adjudications followed recommendations after trials before other special masters;[11] 5 civil contempt adjudications resulted from proceedings before the courts themselves;[12] and in 1 civil case the court adjudged contempt after finding clear error in the master's report absolving the respondents.[13] In the criminal proceeding, respondents were found guilty and sentenced upon trial before the court.[14] Two additional pending cases were disposed of during fiscal 1968, one by the dismissal of criminal contempt charges[15] and the other by the entry of a consent order remedying the contumacy in full.[16] In ancillary proceedings, writs of body attachment were issued in two cases because of the failure of adjudged contemnors to comply with the courts' purgation provisions.[17]

Of the opinions which were rendered during this fiscal period, a number warrant comment. In *My Store*[18] the Seventh Circuit rejected a special master's report that the company had fully and in good faith complied with its reinstatement obligation by tendering reinstatement offers to unfair labor practice strikers on a staggered basis rather than to all the strikers as a group. The court held the company in contempt, basing its reversal of the master on two major factors: that *N.L.R.B.* v. *Abbot Publishing Co.*, 331 F.2d 209 (C.A. 7, 1965), relied on by the master as establishing the *prima facie* legality of the staggered offers, stands only for the narrow proposition that such offers made to "economic strikers whose employer had exhibited no anti-union animus are [not] *per se* invalid," and that here the master erred

[10] *N L R B.* v. *Cumberland Shoe Corp*, 351 F 2d 917 (C A 6), *N L R B* v. *U M W. & Dist. 30, U M W.*, 393 F.2d 265, cert. denied 393 U S 841

[11] *N L.R B.* v. *Alamo Express*, 395 F.2d 481 (C A. 5); *N L R B* v. *Satilla Rural Electric Membership Corp*, 393 F 2d 134 (C A 5); *N L R B.* v *Skyline Homes*, 381 F 2d 706 (C A 5), cert. denied 389 U S. 1039.

[12] *N L R.B* v *Sheridan Creations*, 384 F 2d 696 (C A 2); *N L R B* v. *General Precision*, 381 F.2d 61 (C.A 3), cert. denied 389 U S 974; *N L R B.* v *Interurban Gas Corp*, contempt adjudication of June 21, 1968, in No 14,961 (C A. 6); *N L R B* v. *Ambrose Distributing Corp*, contempt adjudication of July 26, 1967, in No 20,200, 382 F 2d 92 (C A. 9); *N L R B.* v. *Burnett Construction Co*, contempt adjudication of July 1, 1967, as amended Dec. 22, 1967, in No. 8,039 (C.A 10).

[13] *N.L R B* v. *My Store, Inc*, contempt adjudication of Feb 23, 1968, as modified Apr 22, 1968, in No. 14,770, 67 LRRM 2733 (C A 7).

[14] *N L R.B.* v. *Winn Dixie Stores, John Blackburn & J. R. King*, company and Blackburn found guilty of criminal contempt by order of October 25, 1967, No 24,632, 66 LRRM 2427 (C A. 5) Sentences of $10,000 against the Company and $500 against Blackburn imposed by order of Dec. 11, 1967.

[15] *N L R B* v. *Alamo Express*, order of Jan 18, 1968, No 24,880 (C A 5).

[16] *N L R B* v *Reliance Fuel Oil Corp*, order for withdrawal of recognition of assisted union and dues reimbursement, entered Oct 3, 1967, in No 26,806 (C A. 2)

[17] *N L R B.* v. *Interurban Gas Corp*, writs issued July 3, 1968, and Oct 9, 1968, in No. 14,961 (C.A. 6), and backpay paid in full upon execution by U.S. marshal

[18] See fn. 13, above.

by not taking into account the court's underlying opinion and the facts therein which established the company's animosity towards the union and which, when properly weighted, required a finding that the staggered offers were neither valid nor bona fide.

In *United Mine Workers & District 30*,[19] the Sixth Circuit, in addition to holding the union and agents who had actual notice of the underlying decree liable in civil contempt for the acts of those agents, found the union also liable in civil contempt for the acts of other agents who lacked knowledge of the decree. Applying the principle that corporations are subject to the composite knowledge of their officers and agents, the court held that agents acting within the scope of their authority have "constructive notice" of the decree and thereby subject the union to liability though they may not be adjudged personally.

In two cases the courts upheld the Board's contention that although money decrees or the underlying Board orders do not expressly so provide, interest must be paid on the principal amounts due where the reimbursement remedy is *ex contractu* in nature. In *Sheridan Creations* [20] the Second Circuit found the company in contempt for refusing to add interest in transmitting dues under a contract which it should have signed; and in *Great Dane* [21] the Fifth Circuit held that when properly construed its decree ordering the reimbursement of vacation pay requires the payment of interest as well.

In *Heck's, Inc.*,[22] the Fourth Circuit, while recognizing that the Board can require an employer to cease unfair labor practices at all of its places of employment upon proof of a violation in one location, construed its decree in this case to be limited to the store where the underlying unfair labor practices occurred, in view of the Board's requirement that notices be posted only at that store.

In *Winn-Dixie*,[23] a proceeding in criminal contempt, both the respondent in the underlying case and one of its subsidiaries were charged with willfully violating the 8(a)(1) provisions of the decree. After noting by way of preface to its opinion the merits that it had entered a pretrial order that respondents were to enjoy "all rights and every protection accorded by law to persons accused of crimes," [24] the court held that as a matter of law the decree could not be construed to include the subsidiary which was not involved in the original Board proceeding. However, the parent corporation was found guilty of

[19] See fn 10, above.
[20] See fn. 12, above.
[21] See fn. 1, above.
[22] See fn 3, above
[23] See fn. 14, above
[24] See *Bloom* v. *Illinois*, 391 U S 194; *Cheff* v. *Schnackenberg*, 384 U.S. 373, *U S.* v. *Barnett*, 376 U.S. 681.

criminal contempt for its own violations, including the posting, by its warehouse superintendent, of a copy of a decertification petition signed by some of its employees. The court ruled that such posting, after a speech in which the superintendent informed employees how they could go about decertifying the union, tended to coerce those employees who had not yet signed the petition.

X

Miscellaneous Litigation

Miscellaneous court litigation during fiscal 1968 involved Board rulings in representation proceedings and on interlocutory appeals in unfair labor practice proceedings, the availability to private litigants of the investigatory files of the Board, and the enforceability by the Board of its subpenas requiring an employer to produce lists of the names and addresses of eligible employees under the Board's *Excelsior* rule [1] requiring such a list for use for campaign purposes by parties to an election proceeding.

A. District Court Jurisdiction To Review Representation Proceedings

Petitions filed during the past year by parties to Board proceedings seeking to invoke the equity powers of a Federal district court to restrain or compel Board action at various stages of representation or unfair labor practice proceedings were opposed by the Board primarily on the ground that the court was without jurisdiction to grant the relief sought. The plaintiffs' efforts were usually directed to establishing that the Board action was within the doctrine of *Leedom* v. *Kyne*,[2] pursuant to which the court may intervene when the Board has violated an express mandate of the Act, or that of *Fay* v. *Douds*,[3] permitting intervention upon a showing that the Board action has deprived the plantiff of a constitutional right.

In one case [4] professional employees whose decertification petition had been dismissed because unfair labor practice charges against the employer were pending sought to compel revocation of the certification of their unit, contending that the certification was illegal and void because it had been issued in violation of section 9(b)(1) of the Act by including nonprofessional employees in the same unit as professional employees, without the prior consent of the latter. The Third Circuit affirmed the district court's dismissal of the complaint, noting that the employees had been invited to intervene in the unfair labor practice proceeding, in which the validity of the unit was one of the

[1] *Excelsior Underwear,* 156 NLRB 1236 (1966), Thirty-first Annual Report (1966), pp 61–63.

[2] 358 U.S. 184, discussed in Twenty-fourth Annual Report (1959), pp. 117–118.

[3] 172 F 2d 720 (C.A. 2, 1949), Fourteenth Annual Report (1949), pp 149–150.

[4] *LaPlant* v. *McCulloch,* 382 F.2d 374, cert. denied 389 U S 1039.

main points in issue. Since the employees had an administrative forum in which they could litigate the matter of which they complained, and that tribunal's decision would be reviewable in court, "the judicial forum could not properly be substituted for the administrative."

In another case [5] the Second Circuit affirmed the district court's dismissal of a suit to enjoin a representation election, holding that a contention that the plaintiff employer was denied due process by the Board's refusal to reopen the record in the representation proceeding on the ground that there was newly discovered evidence showing that the newspaper distributors among whom an election had been directed were independent contractors rather than employees, was insufficient to give the district court jurisdiction to enjoin the election. The court found the evidence in question was not newly discovered, but was known to the employer before the Board's decision in the representation case, wherefore the claim that the Board's refusal to consider the evidence was unconstitutional was "so clearly incorrect as to be frivolous." It noted that if, on the other hand, the Board had actually considered the evidence, but found it insufficient to change the result, that ruling would be properly reviewable only in an unfair labor practice proceeding which would follow the employer's refusal to bargain with the union. The Board's evaluation of the evidence, even if erroneous, was clearly not unconstitutional, and the employer could introduce the evidence in the unfair labor practice proceeding, or, if the evidence was rejected, seek judicial review on the ground that the rejection was improper.

In two other cases review of unit clarification orders was sought. In one [6] the Court of Appeals for the District of Columbia Circuit, reversing an injunction granted by the district court, found no clear statutory violation in the Board's action in directing an election to determine employees' wishes as to whether separately represented bargaining units should be combined with a multiplant unit through the unit clarification procedure when there was no question concerning representation. In the absence of a clear statutory violation, the court held the district court had no jurisdiction, and could not enjoin the Board's action merely because it was novel. In the other case [7] the Board intervened as a defendant in a suit by the union to compel the employer to arbitrate a grievance concerning the issue of whether certain employees should be included in the bargaining unit represented by the union or in a different bargaining unit represented by another union. The Board moved to dismiss the suit on the ground that it had already determined, in a unit clarification decision, that the employees

[5] *Herald Co.* v. *Vincent*, 392 F 2d 354.

[6] *Libbey-Owens Ford Glass Co.* v. *McCulloch*, 403 F 2d 916

[7] *Smith Steel Workers* v. *A. O Smith Corp* (*N L R.B*, *Intervenor*), 68 LRRM 2643 (D.C.Wis.).

in question should be included in the bargaining unit represented by the other union. The complaining union then moved to set aside the unit clarification order on the ground that it was in violation of section 8(d) of the Act. The court dismissed the suit, finding no violation of an express statutory provision, since section 8(d) is expressly binding only on the parties to a collective-bargaining agreement and does not prohibit the Board from making a unit clarification determination during the life of a collective-bargaining contract. Moreover, the court noted, there was another forum in which the union could obtain review of the Board's unit clarification order. The union had been charged with violating section 8(b)(3) by attempting to compel the employer to arbitrate a matter settled by the Board's decision, and could obtain judicial review of the Board's order in the unfair labor practice proceeding. Consequently, the district court held that it did not have jurisdiction to set aside the Board's unit clarification order, and that it could not compel the employer to take action contrary to the Board order by requiring it to arbitrate a question already decided by the Board.

B. Production by Employer of Names and Addresses of Eligible Voters

During the past year, three courts of appeals had occasion to pass upon the validity of the Board's *Excelsior* rule,[8] requiring employers to furnish for distribution to all parties the names and addresses of employees eligible to vote in a representation election, and the availability of judicial enforcement of this requirement. The Fourth [9] and Seventh [10] Circuits upheld the *Excelsior* rule as being appropriately designed to insure that the employees could exercise an informed and reasoned choice in a representation election, and to prevent needless challenges to voter eligibility resulting from a lack of knowledge of voters' identity. Objections to the rule as interfering with employees' right of privacy and right to refrain from union activity, exposing employees to harassment by union organizers, violating the statutory requirement of an election by secret ballot, and creating the threat of piracy of an employer's work force by his competitors, were rejected. Both courts also held that a Board subpena requiring the employer to furnish the list of names and addresses could be enforced by the district court under section 11(2) of the Act.[11] Since the list of names

[8] *Excelsior Underwear,* 156 NLRB 1236 (1966). See also cases discussed in Thirty-second Annual Report (1967), pp. 191–193.

[9] *N.L.R B.* v *Hanes Hosiery Div.,* 384 F 2d 188.

[10] *N.L R B.* v. *Rohlen,* 385 F.2d 52.

[11] The Fourth Circuit held, in the alternative, that compliance with such a subpena could be enforced by mandatory injunction. The Seventh Circuit did not pass upon this question

and addresses was related to a matter under investigation, and to a matter in issue—the desire of the employees concerning representation—it was "evidence" within the scope of section 11.[12]

A contrary result was reached by the First Circuit in the *Wyman-Gordon* case,[13] in which it declared the *Excelsior* rule invalid. While not questioning the substantive validity and desirability of the rule, the court pointed out that although it had been promulgated through decisionmaking rather than through a more formal rulemaking procedure, the rule had been given prospective effect only; the Board had decided the *Excelsior* case one way on the merits and laid down a future rule the other way. In the court's view, since the rule required the employer to furnish interested parties with affirmative assistance in conducting their election campaigns, it was clearly substantive and had to be promulgated in accordance with the requirements of the Administrative Procedure Act. The court concluded that the Board had "designed its own rulemaking procedure, adopting such part of the Congressional mandate as it chose, and rejecting the rest." Accordingly, it declared the rule invalid.[14]

C. Subpena Enforcement

In a case[15] in which a union was charged with picketing in violation of section 8(b)(7)(B) of the Act, the Board issued subpenas directing the charging party to produce a copy of its collective-bargaining agreement with the respondent union. Subsequently, the union admitted the violation alleged in the complaint. The Seventh Circuit held that the Board was nonetheless entitled to enforcement of the subpenas. Although it found there was no longer any question that the union had violated the Act, there remained an issue as to the appropriate remedy for this violation, and the purpose of the subpenas was to obtain information as to whether a collective-bargaining agreement had been executed as a result of the unlawful picketing, in which case

[12] In *N.L.R.B.* v *Duncan Foundry & Machine Works,* 67 LRRM 2515, the Seventh Circuit refused to stay, pending appeal, an order of the district court granting enforcement of a subpena, since, in light of *Rohlen,* there was no substantial probability that the employer would succeed on appeal.

[13] *Wyman-Gordon Co.* v *N.L.R.B.*, 397 F.2d 394.

[14] The Board's petition to the Supreme Court for a writ of certiorari was granted 393 U.S. 932. The rationale adopted by the court in *Wyman-Gordon* was rejected in two district court decisions; *N.L.R.B.* v. *Q-T Shoe Mfg. Co.*, 279 F.Supp. 1 (D.C.N.J.) (holding, however, that the court had no jurisdiction to enforce the subpena, since the list of names and addresses was not "evidence" within the meaning of section 11), *N.L.R.B.* v. *Beech Nut Life Savers,* 274 F.Supp. 432 (D.C.N.Y.) (enforcing subpena). Other court decisions upholding the *Excelsior* rule and enforcing subpenas were *N.L.R.B.* v *Teledyne,* 66 LRRM 2408 (D.C.Calif.), and *Swift & Co.* v *Solien,* 67 LRRM 2473 (D.C.Mo.). In *Magnesium Casting Co.* v. *Hoban,* 69 LRRM 2235, the First Circuit held that an employer who had complied with the *Excelsior* rule could not rely on the decision in *Wyman-Gordon* to obtain an injunction against certification of the union which had won the election.

[15] *N.L.R.B.* v. *Williams,* 396 F.2d 247.

the abrogation of the contract would be an appropriate remedy. The court pointed out that the district court is required to enforce an administrative subpena if the information sought is not plainly incompetent or irrelevant to any lawful purpose, and that the Board could issue a subpena to obtain evidence relating to any matter under investigation. The fashioning of an appropriate remedy is a concomitant phase of the matter under investigation in an unfair labor practice proceeding, and the Board is entitled to seek information indicating the actual effect of the unfair labor practice in order to determine what remedy is appropriate.

In another case [16] where the respondent employer and counsel for the General Counsel had agreed to a stipulation of the facts relevant to certain merit wage increases allegedly granted in violation of section 8(a)(1) of the Act, the charging party refused to go along with the stipulation and sought the issuance of a subpena to enable it to examine the evidence upon which the stipulation was based. The Second Circuit enforced the subpena, pointing out that, under section 11(1) of the Act, the Board is required to issue a subpena upon the application of any party to the proceedings. No contention was made that the subpena did not relate to any matter in question or under investigation, or that it did not describe with sufficient particularity the evidence whose production was required; those, the court held, are the only grounds for revocation of a subpena specified in section 11(1).

D. Other

Two cases [17] decided by district courts during the year required consideration of the scope of the Freedom of Information Act [18] and of the exceptions to its disclosure requirements. In each case employers sought to inspect and copy statements of employees who were interviewed by Board agents investigating charges which alleged unfair labor practices by the employers. Each court concluded that these statements came within the provision of the new act exempting "investigatory files compiled for law enforcement purposes, except to the extent available by law to a party other than an agency." [19] The courts pointed out that, under the Jencks Act,[20] criminal defendants would be entitled to see such statements only after the witness making the statements had testified on direct examination, and expressed the conviction that Congress could not have intended to

[16] *N L R B* v *Consolidated Vacuum Corp*, 395 F.2d 416.

[17] *Barceloneta Shoe Corp.* v *Compton*, 291 F Supp 59 (D C.P R.); *Clement Bros Co* v *N L R B*, 282 F.Supp 540 (D.C.Ga.).

[18] 80 Stat 250, amending 5 U S.C. sec. 552

[19] Sec 3(e)(7) of the Freedom of Information Act, 5 U S C. sec 552(b)(7).

[20] 18 U.S.C. sec. 3500.

grant broader rights of inspection and copying of witnesses' statements to persons faced only with remedial administrative orders under regulatory statutes, than to criminal defendants, a viewpoint also found to be supported by the legislative history of the new act. The courts also held that the statements in question came within the statutory exemption for documents of a privileged or confidential nature given by persons to Government agencies. Allowing disclosure of statements made by employees to Board agents before the employees testified, the courts pointed out, might well hamper the Board's investigations by making employees reluctant to reveal information prejudicial to their employer.

In the *Marhoefer* case [21] the Board sought dissolution of a State court injunction against a union's picketing which the Board had found to be in violation of section 8(b)(7)(C) of the Act. The Board had obtained a consent decree from the Fifth Circuit prohibiting the unlawful picketing. Without ruling on the Board's petition, the Fifth Circuit gave the employer, who had obtained the State court injunction, 90 days to have it vacated and the suit in the State court dismissed. The employer complied with the court's directive, and the Board's petition was then dismissed as moot.

[21] *N L R B v E H Marhoefer Co*, No 25883 (unreported)

Index of Cases Discussed

APPENDIX A

Statistical Tables for Fiscal Year 1968

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

GLOSSARY OF TERMS USED IN STATISTICAL TABLES

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

Adjusted Cases

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

Advisory Opinion Cases

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

Agreement of Parties

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

Amendment of Certification Cases

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

Backpay

Amounts of money paid or to be paid employees as reimbursement for wages lost because they were discriminatorily discharged or unlawfully denied employment, plus interest on such money. Also included is payment for bonuses, vacations, other fringe benefits, etc., lost because of the discriminatory acts, as well as interest thereon. All moneys noted in table 4 have been reported as paid or owing in cases closed during the fiscal year. (Installment payments may protract some payments beyond this year and some payments may have actually been made at times considerably in advance of the date a case was closed; i.e., in a prior fiscal year.)

Backpay Hearing

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

Backpay Specification

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

Case

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

Certification

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

Challenges

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

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

Charge

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

Complaint

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

Compliance

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

Dismissed Cases

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

Dues

See "Fees, Dues, and Fines."

Election, Consent

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

Election Directed

Board-Directed

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

Regional Director-Directed

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

Election, Expedited

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

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

Election, Rerun

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

Election, Runoff

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

Election, Stipulated

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

Eligible Voters

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

Fees, Dues, and Fines

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

Fines

See "Fees, Dues, and Fines."

Formal Action

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

Formal Agreement (in unfair labor practice cases)

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

Informal Agreement (in unfair labor practice cases)

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

Injunction Petitions

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

Jurisdictional Disputes

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

Objections

Any party to an election may file objections alleging that either the conduct of the election or the conduct of a party to the election failed to meet the Board's standards. An election will be set aside if eligible employee-voters have not been given an adequate opportunity to cast their ballots, in secrecy and without hindrance from fear or other interference with the expression of their free choice.

Petition

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

Proceeding

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

Representative Case

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

Representative Election

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

Situation

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

Types of Cases

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

C Cases (unfair labor practice cases)

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

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

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

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

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

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

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

R Cases (representation cases)

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

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

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

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

Other Cases

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

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

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

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

UD Cases

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

Unfair Labor Practice Cases

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

Union Deauthorization Cases

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

Union-Shop Agreement

An agreement between an employer and a labor organization which requires membership in the union as a condition of employment on or after the 30th day following (1) the beginning of such employment or (2) the effective date of the agreement, whichever is the later.

348-205—69——14

Unit, Appropriate Bargaining

A grouping of employees in a plant, firm, or industry recognized by the employer, agreed upon by the parties to a case, or designated by the Board or its regional director, as appropriate for the purposes of collective bargaining.

Valid Vote

A secret ballot on which the choice of the voter is clearly shown.

Withdrawn Cases

Cases are closed as "withdrawn" when the charging party or petitioner, for whatever reasons, requests withdrawal of the charge or the petition and such request is approved.

SUBJECT INDEX TO ANNUAL REPORT TABLES

Changes in Statistical Tables, Fiscal Year 1968

Table 11A, Analysis of Elections Conducted in Representation Cases Closed, has been revised to show all representation elections held by type of case and type of election.

The presentation of these data is similar in form to Table 11. The total number of representation elections held, 8,317, includes those elections which resulted in certification; those which resulted in a rerun or runoff; and those which were dismissed or withdrawn.

The total number of elections, 7,931, shown in Table 11, are only the elections which resulted in certification, including UD elections.

A new Table 11B, Representation Elections in Which Objections and/or Determinative Challenges Were Ruled Upon in Cases Closed, has been added. The data shown further distributes all representation elections held by type of case and type of election; and the ratios of objections and determinative challenges by each category to the number of elections held.

Table 11C—formerly Table 11D

Table 11D—formerly Table 11B

Table 11E—formerly Table 11C

Table 1.—Total Cases Received, Closed, and Pending, Fiscal Year 1968 [1]

	Total	Identification of filing party					
		AFL-CIO unions	Teamsters	Other national unions	Other local unions	Individuals	Employers
All cases							
Pending July 1, 1967	10,331	4,798	1,271	343	427	2,254	1,238
Received fiscal 1968	30,705	12,090	4,523	1,256	715	8,105	4,016
On docket fiscal 1968	41,036	16,888	5,794	1,599	1,142	10,359	5,254
Closed fiscal 1968	30,750	12,117	4,563	1,279	831	7,788	4,172
Pending June 30, 1968	10,286	4,771	1,231	320	311	2,571	1,082
Unfair labor practice cases [2]							
Pending July 1, 1967	7,338	3,049	669	201	322	2,097	1,000
Received fiscal 1968	17,816	5,625	1,497	402	290	7,160	2,842
On docket fiscal 1968	25,154	8,674	2,166	603	612	9,257	3,842
Closed fiscal 1968	17,777	5,559	1,538	397	424	6,872	2,987
Pending June 30, 1968	7,377	3,115	628	206	188	2,385	855
Representation cases [3]							
Pending July 1, 1967	2,892	1,710	598	137	98	127	222
Received fiscal 1968	12,307	6,186	3,011	843	395	781	1,091
On docket fiscal 1968	15,199	7,896	3,609	980	493	908	1,313
Closed fiscal 1968	12,409	6,292	3,012	870	373	759	1,103
Pending June 30, 1968	2,790	1,604	597	110	120	149	210
Union-shop deauthorization cases							
Pending July 1, 1967	28					28	
Received fiscal 1968	152					152	
On docket fiscal 1968	180					180	
Closed fiscal 1968	143					143	
Pending June 30, 1968	37					37	
Amendment of certification cases							
Pending July 1, 1967	19	9	1	2	4	0	3
Received fiscal 1968	194	171	4	0	9	1	9
On docket fiscal 1968	213	180	5	2	13	1	12
Closed fiscal 1968	186	160	2	2	11	1	10
Pending June 30, 1968	27	20	3	0	2	0	2
Unit clarification cases							
Pending July 1, 1967	54	30	3	3	3	2	13
Received fiscal 1968	236	108	11	11	21	11	74
On docket fiscal 1968	290	138	14	14	24	13	87
Closed fiscal 1968	235	106	11	10	23	13	72
Pending June 30, 1968	55	32	3	4	1	0	15

[1] See "Glossary" for definitions of terms. Advisory opinion (AO) cases not included. See table 22.
[2] See table 1A for totals by types of cases.
[3] See table 1B for totals by types of cases.

Table 1A.—Unfair Labor Practice Cases Received, Closed, and Pending, Fiscal Year 1968 [1]

	Total	Identification of filing party					
		AFL-CIO unions	Teamsters	Other national unions	Other local unions	Individuals	Employers
	CA Cases						
Pending July 1, 1967	5,424	2,984	654	189	263	1,324	10
Received fiscal 1968	11,892	5,524	1,447	344	240	4,315	22
On docket fiscal 1968	17,316	8,508	2,101	533	503	5,639	32
Closed fiscal 1968	11,779	5,459	1,502	341	356	4,101	20
Pending June 30, 1968	5,537	3,049	599	192	147	1,538	12
	CB Cases						
Pending July 1, 1967	1,134	58	10	5	44	756	261
Received fiscal 1968	3,557	55	29	18	28	2,743	684
On docket fiscal 1968	4,691	113	39	23	72	3,499	945
Closed fiscal 1968	3,590	67	26	17	47	2,684	749
Pending June 30, 1968	1,101	46	13	6	25	815	196
	CC Cases						
Pending July 1, 1967	389	3	2	6	11	5	362
Received fiscal 1968	1,395	12	3	35	16	66	1,263
On docket fiscal 1968	1,784	15	5	41	27	71	1,625
Closed fiscal 1968	1,404	12	3	34	17	50	1,288
Pending June 30, 1968	380	3	2	7	10	21	337
	CD Cases						
Pending July 1, 1967	151	4	1	0	0	5	141
Received fiscal 1968	478	18	4	1	2	8	445
On docket fiscal 1968	629	22	5	1	2	13	586
Closed fiscal 1968	475	18	3	1	1	11	441
Pending June 30, 1968	154	4	2	0	1	2	145
	CE Cases						
Pending July 1, 1967	35	0	2	0	0	5	28
Received fiscal 1968	78	10	11	0	2	6	49
On docket fiscal 1968	113	10	13	0	2	11	77
Closed fiscal 1968	37	0	1	0	0	9	27
Pending June 30, 1968	76	10	12	0	2	2	50
	CP Cases						
Pending July 1, 1967	205	0	0	1	4	2	198
Received fiscal 1968	416	6	3	4	2	22	379
On docket fiscal 1968	621	6	3	5	6	24	577
Closed fiscal 1968	492	3	3	4	3	17	462
Pending June 30, 1968	129	3	0	1	3	7	115

[1] See "Glossary" for definitions of terms.

Table 1B.—Representation Cases Received, Closed, and Pending, Fiscal Year 1968[1]

	Total	Identification of filing party					
		AFL-CIO unions	Teamsters	Other national unions	Other local unions	Individuals	Employers
	RC Cases						
Pending July 1, 1967	2,546	1,710	597	137	98	4	----
Received fiscal 1968	10,449	6,179	3,010	843	390	27	----
On docket fiscal 1968	12,995	7,889	3,607	980	488	31	----
Closed fiscal 1968	10,559	6,287	3,011	870	368	23	----
Pending June 30, 1968	2,436	1,602	596	110	120	8	----
	RM Cases						
Pending July 1, 1967	222	----	----	----	----	----	222
Received fiscal 1968	1,091	----	----	----	----	----	1,091
On docket fiscal 1968	1,313	----	----	----	----	----	1,313
Closed fiscal 1968	1,103	----	----	----	----	----	1,103
Pending June 30, 1968	210	----	----	----	----	----	210
	RD Cases						
Pending July 1, 1967	124	0	1	0	0	123	----
Received fiscal 1968	767	7	1	0	5	754	----
On docket fiscal 1968	891	7	2	0	5	877	----
Closed fiscal 1968	747	5	1	0	5	736	----
Pending June 30, 1968	144	2	1	0	0	141	----

[1] See "Glossary" for definitions of terms.

Table 2.—Types of Unfair Labor Practices Alleged, Fiscal Year 1968

	Number of cases showing specific allegations	Percent of total cases
A CHARGES FILED AGAINST EMPLOYERS UNDER SEC. 8(a)		
Subsections of Sec. 8(a): Total cases	11,892	100 0
8(a)(1)	800	6 7
8(a)(1)(2)	238	2 0
8(a)(1)(3)	6,071	51 1
8(a)(1)(4)	33	0 3
8(a)(1)(5)	2,600	21 9
8(a)(1)(2)(3)	264	2 2
8(a)(1)(2)(5)	87	0 7
8(a)(1)(3)(4)	233	2 0
8(a)(1)(3)(5)	1,285	10 8
8(a)(1)(4)(5)	4	0 0
8(a)(1)(2)(3)(4)	156	1.3
8(a)(1)(2)(3)(5)	87	0 7
8(a)(1)(2)(4)(5)	1	0 0
8(a)(1)(3)(4)(5)	25	0 2
8(a)(1)(2)(3)(4)(5)	8	0.1
RECAPITULATION [1]		
8(a)(1) [2]	11,892	100 0
8(a)(2)	841	7.1
8(a)(3)	8,129	68 4
8(a)(4)	460	3 9
8(a)(5)	4,097	34 5
B. CHARGES FILED AGAINST UNIONS UNDER SEC. 8(b)		
Subsections of Sec. 8(b). Total cases	5,846	100 0
8(b)(1)	1,525	26 1
8(b)(2)	147	2 5
8(b)(3)	222	3 8
8(b)(4)	1,873	32.0
8(b)(5)	7	0 1
8(b)(6)	13	0 2
8(b)(7)	416	7 1
8(b)(1)(2)	1,410	24.1
8(b)(1)(3)	143	2 5
8(b)(1)(5)	10	0 2
8(b)(1)(6)	9	0.2
8(b)(2)(3)	7	0.1
8(b)(2)(5)	1	0.0
8(b)(3)(6)	1	0.0
8(b)(5)(6)	1	0 0
8(b)(1)(2)(3)	49	0.9
8(b)(1)(2)(5)	6	0.1
8(b)(1)(2)(6)	4	0.1
8(b)(1)(3)(6)	1	0.0
8(b)(1)(2)(3)(6)	1	0 0

	Number of cases showing specific allegations	Percent of total cases
RECAPITULATION [1]		
8(b)(1)	3,158	54.0
8(b)(2)	1,625	27.8
8(b)(3)	424	7.3
8(b)(4)	1,873	32.0
8(b)(5)	25	0 4
8(b)(6)	30	0 5
8(b)(7)	416	7.1
B1 ANALYSIS OF 8(b)(4)		
Total cases 8(b)(4)	1,873	100 0
8(b)(4)(A)	60	3 2
8(b)(4)(B)	1,230	65 7
8(b)(4)(C)	19	1 0
8(b)(4)(D)	478	25 5
8(b)(4)(A)(B)	60	3 2
8(b)(4)(B)(C)	24	1 3
8(b)(4)(A)(B)(C)	2	0.1
RECAPITULATION [1]		
8(b)(4)(A)	122	6 5
8(b)(4)(B)	1,316	70.3
8(b)(4)(C)	45	2.4
8(b)(4)(D)	478	25.5
B2 ANALYSIS OF 8(b)(7)		
Total cases 8(b)(7)	416	100 0
8(b)(7)(A)	103	24.7
8(b)(7)(B)	24	5 8
8(b)(7)(C)	277	66 6
8(b)(7)(A)(B)	5	1.2
8(b)(7)(A)(C)	3	0.7
8(b)(7)(B)(C)	4	1 0
RECAPITULATION [1]		
8(b)(7)(A)	111	26.7
8(b)(7)(B)	33	7.9
8(b)(7)(C)	284	68.3
C CHARGES FILED UNDER SEC. 8(e)		
Total cases 8(e)	78	100 0
Against unions alone	51	65.4
Against employers alone	0	0.0
Against unions and employers	27	34 6

[1] A single case may include allegations of violation of more than one subsection of the Act. Therefore, the total of the various allegations is greater than the total number of cases.

[2] Subsec 8(a)(1) is a general provision forbidding any type of employer interference with the rights of the employees guaranteed by the Act, and therefore is included in all charges of employer unfair labor practices.

Table 3A.—Formal Actions Taken in Unfair Labor Practice Cases, Fiscal Year 1968 [1]

Types of formal actions taken	Cases in which formal actions taken	Formal actions taken by type of case										
		Total formal actions taken	CA	CB	CC	CD		CE	CP	CA combined with CB	C combined with representation cases	Other C combinations
						Jurisdictional dispute	Unfair labor practices					
10(k) notices of hearings issued	76	65				65						
Complaints issued	2,580	2,004	1,502	137	117		5	5	32	62	121	23
Backpay specifications issued	65	29	24	1	0		0	0	0	2	2	0
Hearings completed, total	1,514	1,049	725	70	42	41	0	2	13	40	104	12
Initial ULP hearings	1,453	1,018	703	68	41	41	0	1	12	38	103	11
Backpay hearings	42	15	13	0	0		0	0	0	2	0	0
Other hearings	19	16	9	2	1		0	1	1	0	1	1
Decisions by trial examiners, total	1,427	988	739	56	35		1	4	13	35	98	7
Initial ULP decisions	1,346	943	703	54	34		1	3	12	33	97	6
Backpay decisions	47	24	21	1	0		0	0	0	2	0	0
Supplemental decisions	34	21	15	1	1		0	1	1	0	1	1
Decisions and orders by the Board, total	1,513	1,033	739	65	49	36	5	4	13	31	73	18
Upon consent of the parties												
Initial decisions	153	83	41	14	17		2	0	1	5	0	3
Supplemental decisions	9	4	4	0	0		0	0	0	0	0	0
Adopting trial examiners' decisions (no exceptions filed)												
Initial ULP decisions	165	128	91	12	5		1	0	3	1	12	3
Backpay decisions	7	5	5	0	0		0	0	0	0	0	0
Contested·												
Initial ULP decisions	1,111	757	553	33	27	36	1	3	7	25	61	11
Decisions based upon stipulated record	19	17	10	4	0		1	1	1	0	0	0
Supplemental ULP decisions	30	25	22	1	0		0	0	1	0	0	1
Backpay decisions	19	14	13	1	0		0	0	0	0	0	0

[1] See "Glossary" for definitions of terms.

Table 3B.—Formal Actions Taken in Representation and Union Deauthorization Cases, Fiscal Year 1968 [1]

Types of formal actions taken	Cases in which formal actions taken	Formal actions taken by type of case				
		Total formal actions taken	RC	RM	RD	UD
Hearings completed, total	2,469	2,167	1,980	97	90	0
Initial hearings	2,267	1,971	1,790	93	88	0
Hearings on objections and/or challenges	202	196	190	4	2	0
Decisions issued, total	2,207	1,952	1,782	82	88	0
By regional directors	2,007	1,809	1,653	71	85	0
Elections directed	1,794	1,614	1,483	58	73	0
Dismissals on record	213	195	170	13	12	0
By Board	200	143	129	11	3	0
After transfer by regional directors for initial decision	166	112	98	11	3	0
Elections directed	105	71	62	7	2	0
Dismissals on record	61	41	36	4	1	0
After review of regional directors' decisions	34	31	31	0	0	0
Elections directed	26	25	25	0	0	0
Dismissals on record	8	6	6	0	0	0
Decisions on objections and/or challenges, total	933	917	852	53	12	10
By regional directors	416	412	385	19	8	10
By Board	517	505	467	34	4	0
In stipulated elections	478	467	432	31	4	0
No exceptions to regional directors' reports	268	257	236	18	3	0
Exceptions to regional directors' reports	210	210	196	13	1	0
In directed elections (after transfer by regional directors)	25	24	23	1	0	0
In directed elections after review of regional directors' supplemental decisions	14	14	12	2	0	0

[1] See "Glossary" for definitions of terms

Table 3C.—Formal Actions Taken in Amendment of Certification and Unit Clarification Cases, Fiscal Year 1968 [1]

Types of formal actions taken	Cases in which formal actions taken	Formal actions taken by type of case	
		AC	UC
Hearings completed	195	20	92
Decisions issued after hearing	200	15	94
By Regional directors	181	11	82
By Board	19	4	12
After transfer by regional directors for initial decision	17	3	11
After review of regional directors' decisions	2	1	1

[1] See "Glossary" for definitions of terms.

Table 4.—Remedial Actions Taken in Unfair Labor Practice Cases Closed, Fiscal Year 1968 [1]

Action taken	Total all	Remedial action taken by—											
		Employer						Union					
		Total	Pursuant to—					Total	Pursuant to—				
			Agreement of parties		Recommendation of trial examiner	Order of—			Agreement of parties		Recommendation of trial examiner	Order of—	
			Informal settlement	Formal settlement		Board	Court		Informal settlement	Formal settlement		Board	Court
A. By number of cases involved	[2] 5,674												
Notice posted	2,861	2,158	1,303	64	101	368	322	703	480	60	26	89	48
Recognition or other assistance withdrawn	89	89	57	11	0	12	9	----	----	----	----	----	----
Employer-dominated union disestablished	20	20	13	1	1	3	2	----	----	----	----	----	----
Employees offered reinstatement	1,281	1,281	837	35	50	184	175	----	----	----	----	----	----
Employees placed on preferential hiring list	122	122	96	0	1	12	13	----	----	----	----	----	----
Hiring hall rights restored	28	----	----	----	----	----	----	28	26	0	0	0	2
Objections to employment withdrawn	102	----	----	----	----	----	----	102	87	2	4	4	5
Picketing ended	665	----	----	----	----	----	----	665	620	9	6	21	9
Work stoppage ended	296	----	----	----	----	----	----	296	266	12	2	15	1
Collective bargaining begun	1,531	1,371	1,080	28	27	107	129	160	145	1	0	8	6
Backpay distributed	1,726	1,615	1,075	43	62	222	213	111	77	6	7	15	6
Reimbursement of fees, dues, and fines	100	60	34	6	0	17	3	40	26	3	1	5	5
Other conditions of employment improved	373	193	189	0	1	2	1	180	175	0	0	5	0
Other remedies	131	65	64	0	1	0	0	66	64	0	0	2	0

See *footnotes at end of table.*

B. By number of employees affected													
Employers offered reinstatement, total	3,107	3,107	2,166	178	94	292	377						
Accepted	2,061	2,061	1,595	90	60	157	159						
Declined	1,046	1,046	571	88	34	135	218						
Employees placed on preferential hiring list	510	510	456	0	1	27	26						
Hiring hall rights restored	31							31	28	0	0	0	3
Objections to employment withdrawn	128							128	110	1	4	7	6
Employees receiving backpay													
From either employer or union	6,258	6,144	3,897	297	192	731	1,027	114	67	1	20	21	5
From both employer and union	16	16	13	0	0	2	1	16	13	0	0	2	1
Employees reimbursed for fees, dues, and fines													
From either employer or union	1,700	1,580	1,128	97	0	98	257	120	97	0	17	4	2
From both employer and union	127	127	93	34	0	0	0	127	93	34	0	0	0
C. By amounts of monetary recovery, total	$3,228,000	$3,147,090	$1,178,630	$107,730	$218,210	$534,180	$1,108,340	$80,910	$27,890	$2,570	$10,680	$23,830	$15,940
Backpay (includes all monetary payments except fees, dues, and fines)	3,189,340	3,117,560	1,159,810	104,520	218,210	530,550	1,104,470	71,780	23,180	1,470	10,590	23,310	13,230
Reimbursement of fees, dues, and fines	38,660	29,530	18,820	3,210	0	3,630	3,870	9,130	4,710	1,100	90	520	2,710

[1] See "Glossary" for definitions of terms Data in this table are based upon unfair labor practice cases that were closed during fiscal year 1968 after the company and/or union had satisfied all remedial action requirements

[2] A single case usually results in more than one remedial action. therefore, the total number of actions exceeds the number of cases involved.

Table 5.—Industrial Distribution of Cases Received, Fiscal Year 1968 [1]

Industrial group [2]	All cases	Unfair labor practice cases							Representation cases				Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C cases	CA	CB	CC	CD	CE	CP	All R cases	RC	RM	RD	UD	AC	UC
Ordnance and accessories	101	63	42	18	1	2	0	0	36	29	1	6	0	0	2
Food and kindred products	1,722	910	677	173	40	9	2	9	779	671	57	51	10	10	13
Tobacco manufacturers	24	14	12	2	0	0	0	0	10	7	1	2	0	0	0
Textile mill products	359	246	222	22	0	1	0	1	104	89	10	5	3	2	4
Apparel and other finished products made from fabric and similar materials	485	346	272	57	3	0	0	14	134	111	17	6	4	1	0
Lumber and wood products (except furniture)	455	222	187	23	7	2	0	3	227	199	14	14	4	1	1
Furniture and fixtures	388	218	174	35	5	1	0	3	164	136	18	10	2	2	2
Paper and allied products	611	338	244	75	10	6	0	3	256	233	9	14	1	2	14
Printing, publishing, and allied industries	948	537	369	131	16	16	0	5	398	316	53	29	3	1	9
Chemicals and allied products	894	491	360	74	40	10	2	5	389	339	20	30	6	2	6
Products of petroleum and coal	283	148	114	21	10	3	0	0	124	108	10	6	0	3	8
Rubber and plastic products	552	293	219	57	6	3	0	8	250	218	21	11	2	2	5
Leather and leather products	209	132	111	19	1	0	0	1	75	67	4	4	1	1	0
Stone, clay, and glass products	777	430	288	92	28	14	1	7	340	276	16	48	2	1	4
Primary metal industries	1,094	648	410	196	34	2	0	6	413	352	33	28	6	10	17
Fabricated metal products (except machinery and transportation equipment)	1,501	787	598	145	24	10	0	10	680	572	60	48	13	5	16
Machinery (except electrical)	1,463	782	605	146	17	11	0	3	650	547	53	50	9	6	16
Electrical machinery, equipment, and supplies	1,076	694	525	138	20	7	0	4	360	322	22	16	7	4	11
Aircraft and parts	333	231	164	65	1	1	0	0	91	81	6	4	4	2	5
Ship and boat building and repairing	146	108	81	20	4	3	0	0	38	35	1	2	0	0	0
Automotive and other transportation equipment	1,192	579	435	133	7	1	0	3	605	566	19	20	4	2	2
Professional, scientific, and controlling instruments	198	113	90	21	0	1	0	1	84	71	9	4	1	0	0
Miscellaneous manufacturing	507	292	187	84	12	2	0	7	206	165	21	20	3	1	5
Manufacturing	15,318	8,622	6,386	1,747	286	105	5	93	6,413	5,510	475	428	85	58	140

Metal mining	60	41	22	14	2	2	0	1	17	14	0	3	0	2	0
Coal mining	125	95	77	15	0	0	0	3	28	23	2	3	0	1	1
Crude petroleum and natural gas production	99	56	46	6	3	0	0	1	41	37	1	3	0	0	2
Nonmetallic mining and quarrying	83	43	26	10	2	2	0	3	39	29	5	5	1	0	0
Mining	367	235	171	45	7	4	0	8	125	103	8	14	1	3	3
Construction	3,329	2,890	983	677	744	306	19	161	431	349	58	24	2	3	3
Wholesale trade	1,870	799	586	114	63	7	2	27	1,041	857	127	57	10	6	14
Retail trade	3,584	1,653	1,308	187	58	7	38	55	1,766	1,410	229	127	30	110	25
Finance, insurance, and real estate	310	117	96	11	7	1	1	1	192	180	6	6	1	0	0
Local passenger transportation	246	168	130	32	4	1	0	1	73	61	6	6	3	0	2
Motor freight, warehousing, and transportation services	1,969	1,295	841	324	82	12	3	33	668	581	58	29	1	1	4
Water transportation	280	222	91	110	14	5	1	1	48	45	0	3	0	1	9
Other transportation	113	47	28	14	3	2	0	0	65	57	5	3	0	1	0
Communications	507	302	229	39	23	5	3	3	191	162	14	15	7	4	3
Heat, light, power, water, and sanitary services	350	168	122	30	9	3	1	3	169	151	9	9	1	2	10
Transportation, communication, and other utilities	3,465	2,202	1,441	549	135	28	8	41	1,214	1,057	92	65	12	9	28
Hotels and other lodging places	373	239	166	52	13	1	0	7	128	109	15	4	2	0	4
Personal services	201	102	78	15	5	0	0	4	95	87	6	2	1	0	3
Automobile repairs, garages, and other miscellaneous repair services	389	134	102	18	9	1	0	4	247	211	18	18	2	2	4
Motion pictures and other amusement and recreation services	292	208	114	64	20	4	3	3	78	48	25	5	3	0	3
Medical and other health services	339	131	112	11	5	2	0	1	205	195	8	2	1	0	2
Legal services	1	1	0	1	0	0	0	0	0	0	0	0	0	0	0
Educational services	47	37	17	0	12	6	0	2	10	10	0	0	0	0	0
Museums, art galleries, and botanical and zoological gardens	2	0	0	0	0	0	0	0	2	2	0	0	0	0	0
Nonprofit membership organizations	89	73	46	23	2	0	2	0	15	11	1	3	0	0	1
Miscellaneous services	729	373	286	43	29	6	0	9	345	310	23	12	2	3	6
Services	2,462	1,298	921	227	95	20	5	30	1,125	983	96	46	11	5	23
Total, all industrial groups	30,705	17,816	11,892	3,557	1,395	478	78	416	12,307	10,449	1,091	767	152	194	236

[1] See "Glossary" for definitions of terms.
[2] Source: Standard Industrial Classification, Division of Statistical Standards, U S. Bureau of the Budget, Washington, 1957.

Table 6.—Geographic Distribution of Cases Received, Fiscal Year 1968 [1]

Division and State [2]	All cases	Unfair labor practice cases							Representation cases				Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C cases	CA	CB	CC	CD	CE	CP	All R cases	RC	RM	RD	UD	AC	UC
Maine	115	53	25	9	12	5	0	2	62	58	2	2	0	0	0
New Hampshire	62	33	18	4	8	1	0	2	29	22	3	4	0	0	0
Vermont	21	11	9	2	0	0	0	0	10	8	1	1	0	0	0
Massachusetts	713	381	243	80	46	6	1	5	314	272	23	19	3	6	9
Rhode Island	94	61	32	14	10	5	0	0	31	30	0	1	1	0	1
Connecticut	314	155	95	31	16	5	0	8	141	118	16	7	12	1	5
New England	1,319	694	422	140	92	22	1	17	587	508	45	34	16	7	15
New York	2,616	1,692	986	404	151	74	12	65	879	736	86	57	14	1	30
New Jersey	1,315	796	570	166	31	18	1	10	497	441	28	28	13	1	8
Pennsylvania	1,591	907	523	233	81	33	3	34	649	559	55	35	8	7	20
Middle Atlantic	5,522	3,395	2,079	803	263	125	16	109	2,025	1,736	169	120	35	9	58
Ohio	1,845	1,043	709	211	63	43	3	14	745	662	52	31	3	36	18
Indiana	884	497	345	113	17	14	0	8	370	302	45	23	6	1	10
Illinois	1,926	1,243	765	346	72	24	2	34	659	562	64	33	5	3	16
Michigan	2,189	1,153	796	241	62	17	32	5	931	802	66	63	12	82	11
Wisconsin	665	337	246	63	18	1	0	9	323	242	38	43	0	1	4
East North Central	7,509	4,273	2,861	974	232	99	37	70	3,028	2,570	265	193	26	123	59
Iowa	322	125	86	11	19	3	1	5	192	167	17	8	0	4	1
Minnesota	311	113	81	12	13	3	0	4	188	153	20	15	2	2	6
Missouri	1,106	680	457	154	44	9	0	16	404	352	20	32	12	5	5
North Dakota	57	23	22	0	1	0	0	0	34	32	1	1	0	0	0
South Dakota	57	14	13	0	0	0	0	1	43	37	4	2	0	0	0
Nebraska	180	100	76	10	12	2	0	0	79	67	8	4	0	1	0
Kansas	241	129	97	19	8	2	0	3	112	95	8	9	0	0	0
West North Central	2,274	1,184	832	206	97	19	1	29	1,052	903	78	71	14	12	12
Delaware	66	24	16	4	3	0	0	1	40	37	2	1	0	1	1
Maryland	415	195	129	41	19	4	0	2	212	197	8	7	3	3	2
District of Columbia	129	52	38	7	4	1	2	0	76	71	2	3	1	0	0
Virginia	299	164	134	18	4	4	0	4	135	119	13	3	0	0	0

West Virginia	280	205	119	47	25	8	1	5	73	63	5	5	0	0	2
North Carolina	366	236	205	28	2	1	0	0	130	121	4	5	0	0	0
South Carolina	196	125	118	4	3	0	0	0	70	64	5	1	0	0	1
Georgia	397	214	167	20	20	5	0	2	182	165	8	9	0	0	1
Florida	949	621	468	64	65	12	0	12	325	292	13	20	0	2	1
South Atlantic	3,097	1,836	1,394	233	145	35	3	26	1,243	1,129	60	54	4	6	8
Kentucky	412	227	167	32	14	8	0	6	178	163	9	6	6	0	1
Tennessee	587	364	286	47	17	13	0	1	214	191	14	9	0	4	5
Alabama	491	308	270	23	8	4	0	3	178	163	8	7	0	3	2
Mississippi	192	132	107	17	4	2	0	2	60	58	2	0	0	0	0
East South Central	1,682	1,031	830	119	43	27	0	12	630	575	33	22	6	7	8
Arkansas	268	136	98	30	4	1	1	2	131	110	8	13	0	0	1
Louisiana	424	254	151	44	28	17	1	13	165	144	5	16	1	0	4
Oklahoma	212	96	60	23	8	3	0	2	113	103	8	2	1	0	2
Texas	1,341	891	618	148	81	31	0	13	420	347	36	37	0	9	21
West South Central	2,245	1,377	927	245	121	52	2	30	829	704	57	68	2	9	28
Montana	154	79	57	11	9	1	0	1	68	41	11	16	2	1	4
Idaho	109	53	45	5	1	0	0	2	56	46	5	5	0	0	0
Wyoming	29	12	11	1	0	0	0	0	17	14	1	2	0	0	0
Colorado	459	272	178	36	42	8	0	8	183	144	24	15	0	2	2
New Mexico	193	107	71	13	15	6	0	2	84	69	7	8	0	1	1
Arizona	240	132	87	26	9	4	0	6	106	84	18	4	0	1	1
Utah	112	62	35	19	6	0	0	2	48	43	2	3	0	0	2
Nevada	186	129	98	23	4	1	0	3	55	36	12	7	0	1	1
Mountain	1,482	846	582	134	86	20	0	24	617	477	80	60	2	6	11
Washington	577	338	215	72	33	11	0	7	221	167	38	16	6	1	11
Oregon	365	172	101	30	33	7	0	1	181	127	41	13	9	2	1
California	3,742	2,238	1,324	513	238	58	18	87	1,446	1,129	209	108	27	10	21
Alaska	97	54	22	24	4	3	0	1	39	35	3	1	1	0	3
Hawaii	163	88	69	14	4	0	0	1	73	71	1	1	1	0	1
Pacific	4,944	2,890	1,731	653	312	79	18	97	1,960	1,529	292	139	44	13	37
Puerto Rico	587	264	208	50	4	0	0	2	318	304	8	6	3	2	0
Virgin Islands	44	26	26	0	0	0	0	0	18	14	4	0	0	0	0
Outlying Areas	631	290	234	50	4	0	0	2	336	318	12	6	3	2	0
Total, all States and areas	30,705	17,816	11,892	3,557	1,395	478	78	416	12,307	10,449	1,091	767	152	194	236

[1] See "Glossary" for definitions of terms.
[2] The States are grouped according to the method used by the Bureau of the Census, U.S. Department of Commerce.

Table 7.—Analysis of Methods of Disposition of Unfair Labor Practice Cases Closed, Fiscal Year 1968 [1]

Method and stage of disposition	All C cases			CA cases		CB cases		CC cases		CD cases		CE cases		CP cases	
	Number	Percent of total closed	Percent of total method	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed
Total number of cases closed	17,777	100 0	-------	11,779	100.0	3,590	100 0	1,404	100 0	475	100 0	37	100.0	492	100 0
Agreement of the parties	4,456	25.1	100 0	3,029	25.7	610	17.0	665	47 4	5	1 0	8	21.6	139	28.3
Informal settlement	4,327	24 3	97 1	2,963	25.1	588	16.4	632	45 0	2	0 4	5	13 5	137	27 9
Before issuance of complaint	3,367	18 9	75 5	2,178	18.4	499	14.0	558	39 8	(2)	-------	4	10 8	128	26.0
After issuance of complaint, before opening of hearing	857	4 8	19 3	693	5.9	84	2 3	68	4 8	2	0 4	1	2.7	9	1.9
After hearing opened, before issuance of trial examiner's decision	103	0 6	2 3	92	0 8	5	0.1	6	0 4	0	-------	0	-------	0	-------
Formal settlement	129	0 8	2.9	66	0.6	22	0 6	33	2.4	3	0.6	3	8.1	2	0.4
After issuance of complaint, before opening of hearing	100	0 6	2 2	48	0.4	19	0 5	28	2.0	0	-------	3	8.1	2	0.4
Stipulated decision	13	0.1	0 3	11	0 1	2	0 1	0	-------	0	-------	0	-------	0	-------
Consent decree	87	0 5	1 9	37	0.3	17	0 4	28	2.0	0	-------	3	8.1	2	0.4
After hearing opened	29	0 2	0 7	18	0.2	3	0 1	5	0.4	3	0.6	0	-------	0	-------
Stipulated decision	2	0 0	0 0	0	-------	0	-------	2	0.2	0	-------	0	-------	0	-------
Consent decree	27	0 2	0 7	18	0 2	3	0.1	3	0.2	3	0.6	0	-------	0	-------
Compliance with	977	5.5	100 0	809	6.9	84	2.3	51	3.6	16	3.4	1	2 7	16	3.2
Trial examiner's decision	131	0.7	13 4	105	0.9	16	0 4	6	0 4	0	-------	0	-------	4	0.8
Board decision	467	2 6	47 8	376	3 2	46	1 3	34	2 4	3	0.6	0	-------	8	1 6
Adopting trial examiner's decision (no exceptions filed)	64	0 4	6 6	55	0.5	5	0.1	0	-------	1	0.2	0	-------	3	0 6
Contested	403	2 2	41.2	321	2.7	41	1.2	34	2 4	2	0.4	0	-------	5	1.0

Circuit court of appeals decree	328	1.9	33.6	290	2 5	16	0 4	7	0 5	10	2 2	1	2 7	4	0 8
Supreme Court action	51	0 3	5 2	38	0 3	6	0 2	4	0 3	3	0 6	0	-------	0	-------
Withdrawal:	6, 262	35 2	100. 0	4, 244	36 0	1, 386	38 6	459	32 7	2	0 4	10	27 0	161	32 7
Before issuance of complaint	6, 079	34. 2	97 1	4, 110	34 9	1, 357	37 8	446	31 8	(2)	-------	10	27. 0	156	31. 7
After issuance of complaint, before opening of hearing	148	0 8	2 4	104	0 9	25	0 7	13	0 9	2	0 4	0	-------	4	0 8
After hearing opened, before trial examiner's decision	17	0 1	0 3	16	0 1	1	0 0	0	-------	0	-------	0	-------	0	-------
After trial examiner's decision, before Board decision	10	0 1	0 1	8	0 1	1	0 0	0	-------	0	-------	0	-------	1	0 2
After Board or court decision	8	0 0	0 1	6	0 0	2	0 1	0	-------	0	-------	0	-------	0	-------
Dismissal:	5, 628	31 7	100 0	3, 694	31 4	1, 510	42 1	229	16 3	1	0 2	18	48 7	176	35 8
Before issuance of complaint	5, 349	30 0	95. 1	3, 473	29 5	1, 479	41 2	208	14 8	(2)	-------	15	40 6	174	35 4
After issuance of complaint, before opening of hearing	11	0 1	0 2	5	0 0	4	0 1	2	0 2	0	-------	0	-------	0	-------
After hearing opened, before trial examiner's decision	9	0 1	0 1	9	0 1	0	-------	0	-------	0	-------	0	-------	0	-------
By trial examiner's decision	4	0 0	0 1	2	0 0	2	0 1	0	-------	0	-------	0	-------	0	-------
By Board decision	209	1 2	3 7	170	1 5	23	0 6	13	0 9	1	0 2	0	-------	2	0 4
Adopting trial examiner's decision (no exceptions filed)	43	0 2	0 7	34	0 3	5	0 1	3	0 2	1	0 2	0	-------	0	-------
Contested	166	1 0	3 0	136	1 2	18	0 5	10	0 7	0	-------	0	-------	2	0 4
By circuit court of appeals decree	37	0. 2	0 7	28	0 2	2	0 1	6	0 4	0	-------	1	2 7	0	-------
By Supreme Court action	9	0 1	0 1	7	0 1	0	-------	0	-------	0	-------	2	5 4	0	-------
10(k) actions (see table 7A for details of dispositions)	451	2 5	-------	-------	-------	-------	-------	-------	-------	451	95 0	-------	-------	-------	-------
Otherwise (compliance with order of trial examiner or Board not achieved—firms went out of business)	3	0 0	-------	3	0. 0	0	-------	0	-------	0	-------	0	-------	0	-------

[1] See table 8 for summary of disposition by stage. See "glossary" for definitions of terms.
[2] CD cases closed in this stage are processed as jurisdictional disputes under Sec. 10(k) of the Act. See table 7A.

348-205—69——15

Table 7A.—Analysis of Methods of Disposition of Jurisdictional Dispute Cases Closed Prior to Unfair Labor Practice Proceedings, Fiscal Year 1968 [1]

Method and stage of disposition	Number of cases	Percent of total closed
Total number of cases closed before issuance of complaint	451	100.0
Agreement of the parties—Informal settlement	212	47 0
Before 10(k) notice	194	43 0
After 10(k) notice, before opening of 10(k) hearing	14	3 1
After opening of 10(k) hearing, before issuance of Board decision and determination of dispute	4	0 9
Compliance with Board decision and determination of dispute	29	6 4
Withdrawal	157	34.8
Before 10(k) notice	140	31.0
After 10(k) notice, before opening of 10(k) hearing	12	2.7
After opening of 10(k) hearing, before issuance of Board decision and determination of dispute	1	0 2
After Board decision and determination of dispute	4	0.9
Dismissal	53	11 8
Before 10(k) notice	50	11.1
After 10(k) notice, before opening of 10(k) hearing	1	0 2
After opening of 10(k) hearing, before issuance of Board decision and determination of dispute	0	----------
By Board decision and determination of dispute	2	0 5

[1] See "Glossary" for definitions of terms.

Table 8.—Disposition by Stage of Unfair Labor Practice Cases Closed, Fiscal Year 1968 [1]

Stage of Disposition	All C cases		CA cases		CB cases		CC cases		CD cases		CE cases		CP cases	
	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed
Total number of cases closed	17,777	100 0	11,779	100 0	3,590	100 0	1,404	100 0	475	100 0	37	100 0	492	100 0
Before issuance of complaint	15,246	85 8	9,761	82 9	3,335	92 9	1,212	86 4	451	95 0	29	78 4	458	93 1
After issuance of complaint, before opening of hearing	1,117	6 3	851	7 2	132	3 7	111	7 9	4	0 8	4	10 8	15	3 1
After hearing opened, before issuance of trial examiner's decision	158	0 9	135	1 1	9	0 2	11	0 8	3	0 6	0	--------	0	--------
After trial examiner's decision, before issuance of Board decision	145	0 8	115	1 0	19	0 5	6	0 4	0	--------	0	--------	5	1.0
After Board order adopting trial examiner's decision in absence of exceptions	108	0 6	90	0 8	10	0 3	3	0 2	2	0 4	0	--------	3	0 6
After Board decision, before circuit court decree	578	3 3	464	3 9	61	1 7	44	3 1	2	0 4	0	--------	7	1 4
After circuit court decree, before Supreme Court action	365	2 0	318	2 7	18	0 5	13	0 9	10	2 2	2	5 4	4	0 8
After Supreme Court action	60	0 3	45	0 4	6	0 2	4	0 3	3	0 6	2	5 4	0	--------

[1] See "Glossary" for definitions of terms.

Table 9.—Disposition by Stage of Representation and Union Deauthorization Cases Closed, Fiscal Year 1968 [1]

Stage of disposition	All R cases		RC cases		RM cases		RD cases		UD cases	
	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed
Total number of cases closed	12,409	100 0	10,559	100 0	1,103	100 0	747	100 0	143	100 0
Before issuance of notice of hearing	6,180	49 8	4,937	46 8	743	67 4	500	66 9	95	66 4
After issuance of notice of hearing, before close of hearing	3,922	31 6	3,542	33 5	232	21 0	148	19 8	2	1 4
After hearing closed, before issuance of decision	76	0 6	68	0 6	8	0 7	0		0	
After issuance of regional director's decision	2,036	16 4	1,835	17 4	104	9 4	97	13 0	46	32 2
After issuance of Board decision	195	1 6	177	1.7	16	1 5	2	0 3	0	

[1] See "Glossary" for definitions of terms.

Table 10.—Analysis of Methods of Disposition of Representation and Union Deauthorization Cases Closed, Fiscal Year 1968 [1]

Method and stage of disposition	All R cases		RC cases		RM cases		RD cases		UD cases	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Total, all	12,409	100.0	10,559	100 0	1,103	100 0	747	100 0	143	100 0
Certification issued, total	8,050	64 9	7,264	68 8	540	48 9	246	32 9	73	51 0
After										
Consent election	2,438	19 7	2,192	20 8	156	14 1	90	12 0	17	11 9
Before notice of hearing	1,608	13 0	1,429	13 5	119	10 8	60	8 0	17	11.9
After notice of hearing, before hearing closed	822	6 6	756	7 2	36	3 2	30	4 0	0	----------
After hearing closed, before decision	8	0 1	7	0 1	1	0 1	0	----------	0	----------
Stipulated election	3,878	31 2	3,510	33 2	280	25 4	88	11 8	10	7 0
Before notice of hearing	1,891	15 2	1,666	15 8	175	15 9	50	6 7	10	7 0
After notice of hearing, before hearing closed	1,963	15 8	1,821	17 2	104	9.4	38	5 1	0	----------
After hearing closed, before decision	24	0 2	23	0 2	1	0 1	0	----------	0	----------
Expedited election	17	0 1	0	----------	17	1 5	0	----------	----------	----------
Regional director-directed election	1,599	12 9	1,455	13 8	78	7.1	66	8 8	46	32 1
Board-directed election	118	1 0	107	1.0	9	0 8	2	0 3	0	----------
By withdrawal, total	3,045	24 5	2,361	22.4	389	35 3	295	39 5	55	38 5
Before notice of hearing	1,772	14 2	1,247	11 8	300	27.2	225	30 1	54	37.8
After notice of hearing, before hearing closed	1,052	8 5	909	8 6	81	7.3	62	8 3	1	0 7
After hearing closed, before decision	42	0 3	37	0 4	5	0 5	0	----------	0	----------
After regional director's decision and direction of election	171	1 4	160	1 5	3	0.3	8	1 1	0	----------
After Board decision and direction of election	8	0 1	8	0 1	0	----------	0	----------	0	----------
By dismissal, total	1,314	10 6	934	8 8	174	15 8	206	27 6	15	10 5
Before notice of hearing	892	7.2	595	5 6	132	12.0	165	22 1	14	9 8
After notice of hearing, before hearing closed	85	0 7	56	0 5	11	1 0	18	2 4	1	0 7
After hearing closed, before decision	2	0 0	1	0 0	1	0 1	0	----------	0	----------
By regional director's decision	266	2.1	220	2 1	23	2 1	23	3 1	0	----------
By Board decision	69	0.6	62	0.6	7	0 6	0	----------	0	----------

[1] See "Glossary" for definitions of terms.

Table 10A.—Analysis of Methods of Disposition of Amendment of Certification and Unit Clarification Cases Closed, Fiscal Year 1968

	AC	UC
Total, all	186	235
Certification amended or unit clarified	121	66
Before hearing	43	20
By regional director's decision	43	20
By Board decision	0	0
After hearing	78	46
By regional director's decision	78	42
By Board decision	0	4
Dismissed	28	75
Before hearing	6	23
By regional director's decision	5	23
By Board decision	1	0
After hearing	22	52
By regional director's decision	18	43
By Board decision	4	9
Withdrawn	37	94
Before hearing	34	90
After hearing	3	4

Table 11.—Types of Elections Resulting in Certification in Cases Closed, Fiscal Year 1968 [1]

Type of case	Total	Type of election				
		Consent	Stipulated	Board-directed	Regional Director-directed	Expedited elections under 8(b)(7)(C)
All types, total.						
Elections	7,931	2,435	3,765	101	1,614	16
Eligible voters	570,172	100,709	305,109	17,317	146,680	357
Valid votes	509,538	89,412	276,458	14,433	128,933	302
RC cases						
Elections	7,241	2,212	3,488	91	1,450	0
Eligible voters	517,372	93,766	281,227	16,523	125,856	0
Valid votes	462,646	83,227	255,409	13,720	110,290	0
RM cases						
Elections	377	119	182	8	52	16
Eligible voters	33,238	3,269	14,893	696	14,023	357
Valid votes	30,342	2,953	13,064	622	13,401	302
RD cases						
Elections	239	88	84	2	65	0
Eligible voters	15,554	2,243	8,714	98	4,499	0
Valid votes	13,784	2,052	7,826	91	3,815	0
UD cases						
Elections	74	16	11	0	47	----
Eligible voters	4,008	1,431	275	0	2,302	----
Valid votes	2,766	1,180	159	0	1,427	----

[1] See "Glossary" for definitions of terms.

Table 11A.—Analysis of Elections Conducted in Representation Cases Closed, Fiscal Year 1968

Type of election	All R elections				RC elections				RM elections				RD elections			
	Elections conducted				Elections conducted				Elections conducted				Elections conducted			
	Total elections	Withdrawn or dismissed before certification	Resulting in a rerun or runoff	Resulting in certification	Total elections	Withdrawn or dismissed before certification	Resulting in a rerun or runoff	Resulting in certification	Total elections	Withdrawn or dismissed before certification	Resulting in a rerun or runoff	Resulting in certification	Total elections	Withdrawn or dismissed before certification	Resulting in a rerun or runoff	Resulting in certification
All types	8,317	158	302	7,857	7,679	147	291	7,241	394	10	7	377	244	1	4	239
Rerun required			215				209				3				3	
Runoff required			87				82				4				1	
Consent elections	2,506	28	59	2,419	2,295	25	58	2,212	122	2	1	119	89	1	0	88
Rerun required			38				37				1				0	
Runoff required			21				21				0				0	
Stipulated elections	3,974	72	148	3,754	3,692	64	140	3,488	194	8	4	182	88	0	4	84
Rerun required			100				96				1				3	
Runoff required			48				44				3				1	
Regional director-directed	1,710	57	86	1,567	1,591	57	84	1,450	54	0	2	52	65	0	0	65
Rerun required			68				67				1				0	
Runoff required			18				17				1				0	
Board-directed	111	1	9	101	101	1	9	91	8	0	0	8	2	0	0	2
Rerun required			9				9				0				0	
Runoff required			0				0				0				0	
Expedited—Sec. 8(b)(7)(C)	16	0	0	16	0	0	0	0	16	0	0	16	0	0	0	0
Rerun required			0				0				0				0	
Runoff required			0				0				0				0	

Table 11B.—Representation Elections in Which Objections and/or Determinative Challenges Were Ruled Upon in Cases Closed, Fiscal Year 1968

	Total elections	Objections only		Challenges only		Objections and challenges		Total objections		Total challenges	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
All representation elections	8,317	793	9 5	258	3 1	204	2 5	997	12 0	462	5 6
By type of case											
In RC cases	7,679	755	9 8	237	3 1	191	2 5	946	12 3	428	5 6
In RM cases	394	25	6 3	14	3 6	12	3 0	37	9 4	26	6 6
In RD cases	244	13	5 3	7	2 9	1	0 4	14	5 7	8	3 3
By type of election											
Consent elections	2,506	125	5 0	77	3 1	42	1 7	167	6 7	119	4 7
Stipulated elections	3,974	378	9 5	113	2 8	79	2 0	457	11 5	192	4 8
Expedited elections	16	2	12 5	0	------	0	------	2	12 5	0	------
Regional director-directed elections	1,710	267	15 6	61	3 6	76	4 4	343	20 1	137	8. 0
Board-directed elections	111	21	18 9	7	6. 3	7	6 3	28	25 2	14	12 6

Table 11C.—Objections Filed in Representation Cases Closed, By Party Filing, Fiscal Year 1968 [1]

	Total		By employer		By union		By both parties [2]	
	Number	Percent by type	Number	Percent by type	Number	Percent by type	Number	Percent by type
All representation elections	1,313	100 0	355	27 0	921	70 2	37	2 8
By type of case								
RC cases	1,242	100 0	347	27 9	866	69 8	29	2 3
RM cases	55	100 0	7	12 7	41	74 6	7	12 7
RD cases	16	100 0	1	6 3	14	87 4	1	6 3
By type of election								
Consent elections	248	100 0	47	19 0	197	79. 4	4	1 6
Stipulated elections	615	100 0	177	28 8	422	68 6	16	2 6
Expedited elections	3	100 0	1	33 3	1	33 3	1	33 3
Regional director-directed elections	415	100 0	122	29 4	279	67 2	14	3 4
Board-directed elections	32	100 0	8	25 0	22	68 7	2	6 3

[1] See "Glossary" for definitions of terms
[2] Objections filed by more than one party in the same case are counted as one

Table 11D.—Disposition of Objections in Representation Cases Closed, Fiscal Year 1968 [1]

	Objections filed	Objections withdrawn	Objections ruled upon	Overruled		Sustained [2]	
				Number	Percent of total ruled upon	Number	Percent of total ruled upon
All representation elections	1,313	316	997	662	66 4	335	33. 6
By type of case							
RC cases	1,242	296	946	625	66 1	321	33 9
RM cases	55	18	37	26	70 3	11	29 7
RD cases	16	2	14	11	78 6	3	21 4
By type of election							
Consent elections	248	81	167	109	65 3	58	34 7
Stipulated elections	615	158	457	299	65 4	158	34 6
Expedited elections	3	1	2	2	100 0	0	
Regional director-directed elections	415	72	343	233	67 9	110	32 1
Board-directed elections	32	4	28	19	67. 9	9	32 1

[1] See "Glossary" for definitions of terms.
[2] See table 11E for rerun elections held after objections were sustained In 120 elections in which objections were sustained, 109 were subsequently withdrawn In 11 elections the outcome was decided by ruling on challenges, therefore, in these cases no rerun elections were conducted.

Table 11E.—Results of Rerun Elections Held in Representation Cases Closed, Fiscal Year 1968 [1]

	Total rerun elections [2]		Union certified		No union chosen		Outcome of original election reversed	
	Number	Percent by type	Number	Percent by type	Number	Percent by type	Number	Percent by type
All representation elections	202	100 0	68	33 7	134	66 3	61	30 2
By type of case								
RC cases	196	100 0	65	33 2	131	66 8	59	30 1
RM cases	3	100 0	1	33. 3	2	66. 7	1	33 3
RD cases	3	100 0	2	66 7	1	33 3	1	33 3
By type of election								
Consent elections	36	100 0	15	41 7	21	58 3	14	38 9
Stipulated elections	94	100 0	34	36 2	60	63 8	32	34. 0
Expedited elections	0		0		0		0	
Regional director-directed elections	63	100 0	18	28 6	45	71 4	14	22 2
Board-directed elections	9	100. 0	1	11. 1	8	88. 9	1	11 1

[1] See "Glossary" for definitions of terms
[2] Includes only final rerun elections, i e , those resulting in certification. Excluded from the table are 13 rerun elections which were conducted and subsequently set aside pursuant to sustained objections The 13 invalid rerun elections were followed by valid rerun elections which are included in the table.

Table 12.—Results of Union-Shop Deauthorization Polls in Cases Closed, Fiscal Year 1968

Affiliation of union holding union-shop contract	Number of polls					Employees involved (number eligible to vote)[1]					Valid votes cast			
	Total	Resulting in deauthorization		Resulting in continued authorization		Total eligible	In polls				Total	Percent of total eligible	Cast for deauthorization	
							Resulting in deauthorization		Resulting in continued authorization					
		Number	Percent of total	Number	Percent of total		Number	Percent of total	Number	Percent of total			Number	Percent of total eligible
Total	74	40	54 1	34	45 9	4,008	1,846	46 1	2,162	53 9	2,766	69 0	1,426	35 6
AFL-CIO unions	54	29	53 7	25	46 3	2,944	1,431	48 6	1,513	51 4	1,870	63 5	1,070	36 3
Teamsters	16	10	62 5	6	37 5	534	402	75 3	132	24 7	466	87 3	345	64 6
Other national unions	2	1	50 0	1	50 0	69	13	18 8	56	81 2	39	56 5	11	15 9
Other local unions	2	0	----------	2	100 0	461	0	----------	461	100 0	391	84 8	0	----------

[1] Sec. 8(a)(3) of the Act requires that to revoke a union-shop agreement, a majority of the employees eligible to vote must vote in favor of deauthorization.

Table 13.—Final Outcome of Representation Elections in Cases Closed, Fiscal Year 1968 [1]

Participating unions	Total elections [2]	Elections won by unions						Elections in which no representative chosen	Employees eligible to vote						In elections where no representative chosen
		Percent won	Total won	AFL-CIO unions	Teamsters	Other national unions	Other local unions		Total	In elections won	In units won by				
											AFL-CIO unions	Teamsters	Other national unions	Other local unions	
A. ALL REPRESENTATION ELECTIONS															
AFL-CIO	4,543	53.7	2,442	2,442				2,101	331,353	130,939	130,939				200,414
Teamsters	2,042	55.1	1,125		1,125			917	62,729	30,535		30,535			32,194
Other national unions	299	53.8	161			161		138	18,589	7,001			7,001		11,588
Other local unions	153	52.9	81				81	72	5,776	2,463				2,463	3,313
1-union elections	7,037	54.1	3,809	2,442	1,125	161	81	3,228	418,447	170,938	130,939	30,535	7,001	2,463	247,509
AFL-CIO v. AFL-CIO	198	70.7	140	140				58	34,055	21,482	21,482				12,573
AFL-CIO v Teamsters	210	82.9	174	73	101			36	29,178	21,976	10,881	11,095			7,202
AFL-CIO v Natl	144	88.9	128	64		64		16	29,152	25,546	10,601		14,945		3,606
AFL-CIO v Local	141	94.3	133	70			63	8	37,262	36,180	15,474			20,706	1,082
Teamsters v Teamsters	1	100.0	1		1			0	16	16		16			0
Teamsters v. Natl	26	92.3	24		12	12		2	2,743	2,698		1,357	1,341		45
Teamsters v Local	36	80.6	29		18		11	7	3,139	2,798		1,474		1,324	341
Natl v. Natl	2	100.0	2			2		0	300	300			300		0
Natl v. Local	11	100.0	11			6	5	0	747	747			467	280	0
Local v Local	2	50.0	1				1	1	68	52				52	16
2-union elections	771	83.4	643	347	132	84	80	128	136,660	111,795	58,438	13,942	17,053	22,362	24,865
AFL-CIO v AFL-CIO v. AFL-CIO	8	87.5	7	7				1	1,160	834	834				326
AFL-CIO v. AFL-CIO v. Teamsters	2	100.0	2	2	0			0	233	233	233	0			0
AFL-CIO v. AFL-CIO v. Natl	5	80.0	4	3		1		1	808	538	424		114		270
AFL-CIO v AFL-CIO v. Local	7	71.4	5	1			4	2	1,675	1,476	100			1,376	199
AFL-CIO v Teamsters v. Teamsters	1	100.0	1	0	1			0	27	27	0	27			0
AFL-CIO v Teamsters v Natl	6	83.3	5	1	2	2		1	1,384	1,141	76	270	795		243

See footnotes at end of table

Table 13.—Final Outcome of Representation Elections in Cases Closed, Fiscal Year 1968 [1]—Continued

Participating unions	Total elections [2]	Elections won by unions: Percent won	Total won	AFL-CIO unions	Teamsters	Other national unions	Other local unions	Elections in which no representative chosen	Employees eligible to vote: Total	In elections won	In units won by: AFL-CIO unions	Teamsters	Other national unions	Other local unions	In elections where no representative chosen
A. ALL REPRESENTATION ELECTIONS—Continued															
AFL-CIO v Teamsters v Local	4	100 0	4	2	1		1	0	825	825	539	218		68	0
AFL-CIO v Natl v Natl	1	100 0	1	1		0		0	3	3	3		0		0
AFL-CIO v Natl v Local	2	100 0	2	1		0	1	0	1,291	1,291	995		0	296	0
AFL-CIO v Local v Local	6	100 0	6	3			3	0	1,118	1,118	971			147	0
Teamsters v Local v Local	1	100 0	1		0		1	0	41	41		0		41	0
AFL-CIO v AFL-CIO v AFL-CIO v AFL-CIO	2	100 0	2	2				0	55	55	55				0
AFL-CIO v AFL-CIO v AFL-CIO v Teamsters	2	50 0	1	1	0			1	828	129	129	0			699
AFL-CIO v AFL-CIO v Teamsters v Local	1	100 0	1	0	1		0	0	1,575	1,575	0	1,575		0	0
AFL-CIO v AFL-CIO v AFL-CIO v AFL-CIO v. Local	1	100 0	1	1			0	0	34	34	34			0	0
3 (or more)-union elections	49	87 8	43	25	5	3	10	6	11,057	9,320	4,393	2,090	909	1,928	1,737
Total representation elections	7,857	57 2	4,495	2,814	1,262	248	171	3,362	566,164	292,053	193,770	46,567	24,963	26,753	274,111
B ELECTIONS IN RC CASES															
AFL-CIO	4,155	55 1	2,291	2,291				1,864	307,568	120,928	120,928				186,640
Teamsters	1,883	57 4	1,080		1,080			803	59,109	29,307		29,307			29,802
Other national unions	286	54 5	156			156		130	18,067	6,809			6,809		11,258
Other local unions	143	54 5	78				78	65	5,492	2,395				2,395	3,097
1-union elections	6,467	55 7	3,605	2,291	1,080	156	78	2,862	390,236	159,439	120,928	29,307	6,809	2,395	230,797
AFL-CIO v AFL-CIO	187	71 7	134	134				53	21,207	9,636	9,636				11,571
AFL-CIO v Teamsters	193	82 4	159	69	90			34	23,858	16,709	9,169	7,540			7,149

AFL-CIO v Natl	141	88 7	125	63		62		16	28,471	24,865	10,298		14,567		3,606
AFL-CIO v Local	130	93 8	122	67			55	8	35,725	34,643	15,047			19,596	1,082
Teamsters v Teamsters	1	100 0	1		1			0	16	16		16			0
Teamsters v Natl	25	92 0	23		12	11		2	2,735	2,690		1,357	1,333		45
Teamsters v Local	35	80 0	28		18		10	7	3,097	2,756		1,474		1,282	341
Natl v Natl	2	100 0	2			2		0	300	300			300		0
Natl v Local	9	100 0	9			5	4	0	602	602			386	216	0
Local v Local	2	50 0	1				1	1	68	52				52	16
2-union elections	725	83 3	604	333	121	80	70	121	116,079	92,269	44,150	10,387	16,586	21,146	23,810
AFL-CIO v AFL-CIO v AFL-CIO	8	87 5	7	7				1	1,160	834	834				326
AFL-CIO v AFL-CIO v Teamsters	2	100 0	2	2	0			0	233	233	233	0			0
AFL-CIO v AFL-CIO v Natl	5	80 0	4	3		1		1	808	538	424		114		270
AFL-CIO v AFL-CIO v Local	7	71 4	5	1			4	2	1,675	1,476	100			1,376	199
AFL-CIO v Teamsters v Teamsters	1	100 0	1	0	1			0	27	27	0	27			0
AFL-CIO v Teamsters v Natl	6	83 3	5	1	2	2		1	1,384	1,141	76	270	795		243
AFL-CIO v Teamsters v Local	4	100 0	4	2	1		1	0	825	825	539	218		68	0
AFL-CIO v Natl v Natl	1	100 0	1	1		0		0	3	3	3		0		0
AFL-CIO v Natl v Local	2	100 0	2	1		0	1	0	1,291	1,291	995		0	296	0
AFL-CIO v Local v Local	6	100 0	6	3			3	0	1,118	1,118	971			147	0
Teamsters v Local v Local	1	100 0	1		0		1	0	41	41		0		41	0
AFL-CIO v AFL-CIO v AFL-CIO v AFL-CIO	2	100 0	2	2				0	55	55	55				0
AFL-CIO v AFL-CIO v AFL-CIO v Teamsters	2	50.0	1	1	0			1	828	129	129	0			699
AFL-CIO v AFL-CIO v Teamsters v Local	1	100 0	1	0	1		0	0	1,575	1,575	0	1,575		0	0
AFL-CIO v AFL-CIO v AFL-CIO v AFL-CIO v Local	1	100 0	1	1			0	0	34	34	34			0	0
3 (or more)-union elections	49	87 8	43	25	5	3	10	6	11,057	9,320	4,393	2,090	909	1,928	1,737
Total RC elections	7,241	58 7	4,252	2,649	1,206	239	158	2,989	517,372	261,028	169,471	41,784	24,304	25,469	256,344

C ELECTIONS IN RM CASES

AFL-CIO	225	43 6	98	98				127	14,742	5,020	5,020				9,722
Teamsters	112	34 8	39		39			73	2,564	854		854			1,710
Other national unions	8	25 0	2			2		6	323	6			6		317
Other local unions	8	37 5	3				3	5	245	68				68	177
1-union elections	353	40 2	142	98	39	2	3	211	17,874	5,948	5,020	854	6	68	11,926

See footnotes at end of table.

Table 13.—Final Outcome of Representation Elections in Cases Closed, Fiscal Year 1968 [1]—Continued

Participating unions	Total elections [2]	Elections won by unions						Elections in which no representative chosen	Employees eligible to vote						In elections where no representative chosen
		Percent won	Total won	AFL-CIO unions	Teamsters	Other national unions	Other local unions		Total	In elections won	In units won by				
											AFL-CIO unions	Teamsters	Other national unions	Other local unions	
C. ELECTIONS IN RM CASES—Continued															
AFL-CIO v AFL-CIO	9	44 4	4	4				5	12,838	11,836	11,836				1,002
AFL-CIO v Teamsters	5	80 0	4	2	2			1	1,539	1,504	114	1,390			35
AFL-CIO v Natl	1	100 0	1	0		1		0	10	10	0		10		0
AFL-CIO v Local	5	100 0	5	1			4	0	782	782	4			778	0
Teamsters v Natl	1	100 0	1		0	1		0	8	8		0	8		0
Teamsters v Local	1	100 0	1		0		1	0	42	42		0		42	0
Natl v Local	2	100 0	2			1	1	0	145	145			81	64	0
2-union elections	24	75 0	18	7	2	3	6	6	15,364	14,327	11,954	1,390	99	884	1,037
Total RM elections	377	42 4	160	105	41	5	9	217	33,238	20,275	16,974	2,244	105	952	12,963
D. ELECTIONS IN RD CASES															
AFL-CIO	163	32 5	53	53				110	9,043	4,991	4,991				4,052
Teamsters	47	12 8	6		6			41	1,056	374		374			682
Other national unions	5	60 0	3			3		2	199	186			186		13
Other local unions	2	0 0	0				0	2	39	0				0	39
1-union elections	217	28 6	62	53	6	3	0	155	10,337	5,551	4,991	374	186	0	4,786
AFL-CIO v. AFL-CIO	2	100 0	2	2				0	10	10	10				0
AFL-CIO v Teamsters	12	91 7	11	2	9			1	3,781	3,763	1,598	2,165			18
AFL-CIO v Natl	2	100 0	2	1		1		0	671	671	303		368		0
AFL-CIO v. Local	6	100 0	6	2			4	0	755	755	423			332	0
2-union elections	22	95 5	21	7	9	1	4	1	5,217	5,199	2,334	2,165	368	332	18
Total RD elections	239	34 7	83	60	15	4	4	156	15,554	10,750	7,325	2,539	554	332	4,804

[1] See "Glossary" for definitions of terms

[2] Includes each unit in which a choice as to collective-bargaining agent was made, for example there may have been more than one election in a single case, or several cases may have been involved in one election unit

Table 14.—Valid Votes Cast in Representation Elections, by Final Results of Election, in Cases Closed, Fiscal Year 1968 [1]

Participating unions	Total valid votes cast	Valid votes cast in elections won						Valid votes cast in elections lost					
		Votes for unions					Total votes for no union	Votes for unions					Total votes for no union
		Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions		Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions	
A ALL REPRESENTATION ELECTIONS													
AFL-CIO	296,509	78,041	78,041				37,972	65,333	65,333				115,163
Teamsters	56,652	18,815		18,815			8,774	9,500		9,500			19,563
Other national unions	16,922	4,159			4,159		2,083	4,003			4,003		6,677
Other local unions	4,927	1,638				1,638	434	876				876	1,979
1-union elections	375,010	102,653	78,041	18,815	4,159	1,638	49,263	79,712	65,333	9,500	4,003	876	143,382
AFL-CIO v. AFL-CIO	31,229	18,355	18,355				1,424	4,172	4,172				7,278
AFL-CIO v Teamsters	25,371	17,883	8,568	9,315			903	2,554	1,268	1,286			4,031
AFL-CIO v. Natl	25,930	21,682	10,765		10,917		862	1,170	314		856		2,216
AFL-CIO v. Local	33,180	31,230	15,251			15,979	1,212	299	176			123	439
Teamsters v Teamsters	15	11		11			4	0		0			0
Teamsters v Natl	2,421	2,353		1,311	1,042		24	43		21	22		1
Teamsters v Local	2,866	2,473		1,332		1,141	83	107		58		49	203
Natl v Natl	26,	259			259		2	0			0		0
Natl v. Local	699	685			373	312	14	0			0	0	0
Local v. Local	64	47				47	1	16				16	0
2-union elections	122,036	94,978	52,939	11,969	12,591	17,479	4,529	8,361	5,930	1,365	878	188	14,168
AFL-CIO v AFL-CIO v AFL-CIO	963	636	636				32	141	141				154
AFL-CIO v. AFL-CIO v. Teamsters	200	200	129	71			0	0	0	0			0
AFL-CIO v. AFL-CIO v Natl	752	495	391		104		3	96	6		90		158
AFL-CIO v AFL-CIO v Local	1,568	1,378	548			830	17	58	58			0	115
AFL-CIO v. Teamsters v. Teamsters	27	27	0	27			0	0	0	0			0
AFL-CIO v. Teamsters v Natl	1,234	993	119	402	472		12	105	10	0	95		124
AFL-CIO v Teamsters v Local	660	651	300	287		64	9	0	0	0		0	0
AFL-CIO v. Natl v Natl	3	3	3		0		0	0	0		0		0
AFL-CIO v. Natl v Local	1,109	1,101	655		19	427	8	0	0		0	0	0
AFL-CIO v Local v. Local	993	963	627			336	30	0	0			0	0

See footnote at end of table.

Table 14.—Valid Votes Cast in Representation Elections, by Final Results of Election, in Cases Closed, Fiscal Year 1968 [1]—Continued

Participating unions	Total valid votes cast	Valid votes cast in elections won						Valid votes cast in elections lost					
		Votes for unions					Total votes for no union	Votes for unions					Total votes for no union
		Total	AFL–CIO unions	Teamsters	Other national unions	Other local unions		Total	AFL–CIO unions	Teamsters	Other national unions	Other local unions	
A ALL REPRESENTATION ELECTIONS													
Teamsters v Local v Local	33	33		10		23	0	0		0		0	0
AFL–CIO v AFL–CIO v AFL–CIO v AFL–CIO	53	53	53				0	0	0				0
AFL–CIO v AFL–CIO v AFL–CIO v Teamsters	791	127	127	0			0	220	137	83			444
AFL–CIO v AFL–CIO v. Teamsters v Local	1,309	1,290	113	1,022		155	19	0	0	0		0	0
AFL–CIO v AFL–CIO v. AFL–CIO v. AFL–CIO v Local	31	31	26			5	0	0	0			0	0
3 (or more)-union elections	9,726	7,981	3,727	1,819	595	1,840	130	620	352	83	185	0	995
Total representation elections	506,772	205,612	134,707	32,603	17,345	20,957	53,922	88,693	71,615	10,948	5,066	1,064	158,545
B ELECTIONS IN RC CASES													
AFL–CIO	275,613	71,511	71,511				35,542	61,409	61,409				107,151
Teamsters	53,463	18,034		18,034			8,430	8,994		8,994			18,005
Other national unions	16,447	4,056			4,056		2,010	3,909			3,909		6,472
Other local unions	4,688	1,580				1,580	431	852				852	1,825
1-union elections	350,211	95,181	71,511	18,034	4,056	1,580	46,413	75,164	61,409	8,994	3,909	852	133,453
AFL–CIO v. AFL–CIO	18,822	7,125	7,125				1,101	3,944	3,944				6,652
AFL–CIO v Teamsters	20,676	13,371	6,564	6,807			769	2,539	1,253	1,286			3,997
AFL–CIO v. Natl	25,270	21,138	10,599		10,539		746	1,170	314		856		2,216
AFL–CIO v Local	31,794	29,897	14,738			15,159	1,159	299	176			123	439
Teamsters v. Teamsters	15	11		11			4	0		0			0
Teamsters v Natl	2,414	2,346		1,309	1,037		24	43		21	22		1
Teamsters v Local	2,830	2,437		1,322		1,115	83	107		58		49	203
Natl v. Natl	261	259			259		2	0			0		0
Natl v. Local	563	550			308	242	13	0			0	0	0

Local v Local	64	47				47	1	16				16	0
2-union elections	102,709	77,181	39,026	9,449	12,143	16,563	3,902	8,118	5,687	1,365	878	188	13,508
AFL-CIO v. AFL-CIO v AFL-CIO	963	636	636				32	141	141				154
AFL-CIO v. AFL-CIO v Teamsters	200	200	129	71			0	0	0	0			0
AFL-CIO v. AFL-CIO v Natl	752	495	391		104		3	96	6		90		158
AFL-CIO v AFL-CIO v. Local	1,568	1,378	548			830	17	58	58			0	115
AFL-CIO v. Teamsters v Teamsters	27	27	0	27			0	0	0	0			0
AFL-CIO v Teamsters v Natl	1,234	993	119	402	472		12	105	10	0	95		124
AFL-CIO v Teamsters v. Local	660	651	300	287		64	9	0	0	0		0	0
AFL-CIO v Natl v Natl	3	3	3		0		0	0	0		0		0
AFL-CIO v Natl v. Local	1,109	1,101	655		19	427	8	0	0		0	0	0
AFL-CIO v Local v Local	993	963	627			336	30	0	0			0	0
Teamsters v Local v Local	33	33		10		23	0	0		0		0	0
AFL-CIO v AFL-CIO v AFL-CIO v AFL-CIO	53	53	53				0	0	0				0
AFL-CIO v AFL-CIO v AFL-CIO v Teamsters	791	127	127	0			0	220	137	83			444
AFL-CIO v AFL-CIO v. Teamsters v Local	1,309	1,290	113	1,022		155	19	0	0	0		0	0
AFL-CIO v. AFL-CIO v. AFL-CIO v AFL-CIO v Local	31	31	26			5	0	0	0			0	0
3 (or more)-union elections	9,726	7,981	3,727	1,819	595	1,840	130	620	352	83	185	0	995
Total RC elections	462,646	180,343	114,264	29,302	16,794	19,983	50,445	83,902	67,448	10,442	4,972	1,040	147,956

C ELECTIONS IN RM CASES

AFL-CIO	12,921	3,378	3,378				1,167	2,831	2,831				5,545
Teamsters	2,245	595		595			191	340		340			1,119
Other national unions	291	3			3		0	93			93		195
Other local unions	205	58				58	3	21				21	123
1-union elections	15,662	4,034	3,378	595	3	58	1,361	3,285	2,831	340	93	21	6,982
AFL-CIO v. AFL-CIO	12,398	11,221	11,221				323	228	228				626
AFL-CIO v Teamsters	1,369	1,221	548	673			115	14	14	0			19
AFL-CIO v. Natl	9	9	4		5		0	0	0		0		0
AFL-CIO v. Local	725	714	236			478	11	0	0			0	0
Teamsters v. Natl	7	7		2	5		0	0		0	0		0
Teamsters v Local	36	36		10		26	0	0		0		0	0
Natl v. Local	136	135			65	70	1	0			0	0	0
2-union elections	14,680	13,343	12,009	685	75	574	450	242	242	0	0	0	645
Total RM elections	30,342	17,377	15,387	1,280	78	632	1,811	3,527	3,073	340	93	21	7,627

See footnote at end of table.

Table 14.—Valid Votes Cast in Representation Elections, by Final Results of Election, in Cases Closed, Fiscal Year 1968 [1]—Continued

Participating unions	Total valid votes cast	Valid votes cast in elections won						Valid votes cast in elections lost					
		Votes for unions					Total votes for no union	Votes for unions					Total votes for no union
		Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions		Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions	
D. ELECTIONS IN RD CASES													
AFL-CIO	7,975	3,152	3,152				1,263	1,093	1,093				2,467
Teamsters	944	186		186			153	166		166			439
Other national unions	184	100			100		73	1			1		10
Other local unions	34	0				0	0	3				3	31
1-union elections	9,137	3,438	3,152	186	100	0	1,489	1,263	1,093	166	1	3	2,947
AFL-CIO v. AFL-CIO	9	9	9				0	0	0				0
AFL-CIO v. Teamsters	3,326	3,291	1,456	1,835			19	1	1	0			15
AFL-CIO v. Natl	651	535	162		373		116	0	0		0		0
AFL-CIO v. Local	661	619	277			342	42	0	0			0	0
2-union elections	4,647	4,454	1,904	1,835	373	342	177	1	1	0	0	0	15
Total RD elections	13,784	7,892	5,056	2,021	473	342	1,666	1,264	1,094	166	1	3	2,962

[1] See "Glossary" for definitions of terms

Table 15.—Geographic Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1968

Division and State [1]	Total elections	Number of elections in which representation rights were won by unions					Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions					Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions				Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions		
Maine	57	40	35	4	1	0	17	5,417	4,882	2,560	2,321	60	8	171	2,322	3,183
New Hampshire	24	11	6	4	1	0	13	2,030	1,935	839	768	55	16	0	1,096	538
Vermont	10	6	3	2	1	0	4	624	577	266	120	10	136	0	311	219
Massachusetts	220	116	61	44	7	4	104	16,090	14,368	7,139	4,767	1,226	615	531	7,229	6,328
Rhode Island	25	18	14	3	0	1	7	2,069	1,802	958	700	156	92	10	844	1,195
Connecticut	92	51	33	15	3	0	41	6,157	5,540	2,531	2,080	280	171	0	3,009	1,854
New England	428	242	152	72	13	5	186	32,387	29,104	14,293	10,756	1,787	1,038	712	14,811	13,317
New York	474	268	154	78	16	20	206	23,909	21,316	13,487	8,363	1,674	722	2,728	7,829	13,817
New Jersey	317	186	87	79	11	9	131	19,433	17,576	11,279	5,598	3,119	607	1,955	6,297	11,575
Pennsylvania	449	256	149	65	29	13	193	34,192	31,578	20,810	13,425	1,626	1,807	3,952	10,768	20,892
Middle Atlantic	1,240	710	390	222	56	42	530	77,534	70,470	45,576	27,386	6,419	3,136	8,635	24,894	46,284
Ohio	505	300	180	80	21	19	205	38,864	35,358	24,067	14,258	2,675	5,746	1,388	11,291	23,487
Indiana	248	142	101	26	9	6	106	23,551	20,936	12,385	8,922	1,336	1,344	883	8,551	11,097
Illinois	388	229	132	61	15	21	159	28,181	24,888	12,561	8,712	2,827	561	461	12,327	12,332
Michigan	475	273	210	45	10	8	202	27,798	24,537	14,017	11,413	1,271	931	402	10,520	15,088
Wisconsin	217	136	84	44	4	4	81	11,394	10,193	4,771	3,600	804	250	117	5,422	4,176
East North Central	1,833	1,080	707	256	59	58	753	129,788	115,912	67,801	46,905	8,913	8,832	3,151	48,111	66,180
Iowa	125	74	56	15	2	1	51	6,808	6,193	3,416	2,743	480	153	40	2,777	4,061
Minnesota	116	76	40	32	3	1	40	5,383	4,839	3,154	1,772	860	399	123	1,685	3,468
Missouri	250	149	84	61	2	2	101	16,881	14,425	9,512	6,104	2,449	568	391	4,913	11,047
North Dakota	19	12	4	8	0	0	7	635	581	222	24	198	0	0	359	115
South Dakota	28	18	15	3	0	0	10	680	622	331	294	37	0	0	291	325
Nebraska	52	31	21	9	1	0	21	1,863	1,715	924	760	150	13	1	791	1,266
Kansas	85	51	35	10	5	1	34	5,430	4,906	3,212	1,743	821	603	45	1,694	3,357
West North Central	675	411	255	138	13	5	264	37,680	33,281	20,771	13,440	4,995	1,736	600	12,510	23,639

See footnote at end of table.

Table 15.—Geographic Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1968—Continued

Division and State [1]	Total elections	Number of elections in which representation rights were won by unions					Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions					Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions				Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions		
Delaware	22	13	7	5	1	0	9	1,061	902	610	297	123	45	145	292	530
Maryland	153	68	35	24	7	2	85	10,686	9,508	3,990	2,392	1,077	432	89	5,518	2,845
District of Columbia	47	32	28	2	0	2	15	2,782	2,373	1,881	1,149	65	0	667	492	2,466
Virginia	93	63	49	10	2	2	30	7,311	6,612	4,242	3,368	306	171	397	2,370	4,833
West Virginia	56	36	19	7	9	1	20	4,303	3,983	2,200	1,600	206	385	9	1,783	1,671
North Carolina	95	45	37	7	1	0	50	10,691	9,760	4,642	4,248	389	5	0	5,118	3,831
South Carolina	46	23	15	7	1	0	23	15,575	14,244	6,185	6,025	138	22	0	8,059	3,771
Georgia	126	63	48	13	2	0	63	11,497	10,428	5,018	3,570	796	643	9	5,410	4,505
Florida	210	104	63	34	6	1	106	12,773	11,100	5,999	4,106	1,505	349	39	5,101	6,119
South Atlantic	848	447	301	109	29	8	401	76,679	68,910	34,767	26,755	4,605	2,052	1,355	34,143	30,571
Kentucky	149	88	48	29	10	1	61	14,580	13,553	7,814	4,374	1,884	522	1,034	5,739	6,690
Tennessee	175	94	65	23	3	3	81	23,440	21,619	10,615	8,613	1,047	716	239	11,004	7,447
Alabama	130	61	42	8	7	4	69	14,019	12,846	7,278	5,333	955	503	487	5,568	6,686
Mississippi	62	36	31	5	0	0	26	7,904	7,323	3,712	3,524	80	108	0	3,611	4,355
East South Central	516	279	186	65	20	8	237	59,943	55,341	29,419	21,844	3,966	1,849	1,760	25,922	25,178
Arkansas	83	44	31	12	1	0	39	8,420	7,542	4,569	3,930	417	12	210	2,973	5,122
Louisiana	129	72	36	30	3	3	57	9,489	8,385	5,480	2,690	1,265	809	716	2,905	6,164

Oklahoma	109	67	43	21	1	2	42	5,844	5,372	2,738	2,036	519	117	66	2,634	2,409
Texas	316	186	147	35	3	1	130	24,691	21,888	12,048	10,161	1,156	490	241	9,840	11,813
West South Central	637	369	257	98	8	6	268	48,444	43,187	24,835	18,817	3,357	1,428	1,233	18,352	25,508
Montana	33	21	10	9	2	0	12	380	330	214	161	44	9	0	116	225
Idaho	26	8	5	2	0	1	18	3,377	2,896	1,867	874	402	0	591	1,029	1,625
Wyoming	10	7	5	1	0	1	3	331	297	179	89	14	0	76	118	228
Colorado	104	47	30	13	4	0	57	3,918	3,494	1,649	1,106	184	359	0	1,845	987
New Mexico	37	25	21	4	0	0	12	1,587	1,346	734	557	177	0	0	612	1,094
Arizona	84	53	36	17	0	0	31	3,696	3,286	1,998	1,560	344	18	76	1,288	2,420
Utah	33	17	10	6	1	0	16	1,906	1,691	610	406	200	4	0	1,081	414
Nevada	28	15	7	8	0	0	13	546	474	218	172	46	0	0	256	185
Mountain	355	193	124	60	7	2	162	15,741	13,814	7,469	4,925	1,411	390	743	6,345	7,178
Washington	132	88	58	27	1	2	44	4,157	3,473	2,214	1,437	659	13	105	1,259	2,643
Oregon	103	53	33	17	1	2	50	5,690	4,965	2,733	1,820	804	55	54	2,232	2,419
California	851	472	272	165	25	10	379	59,639	53,046	34,161	27,308	4,528	1,585	740	18,885	37,729
Alaska	13	6	4	2	0	0	7	496	297	225	209	16	0	0	72	394
Hawaii	43	30	10	4	16	0	13	1,140	995	649	212	115	297	25	346	728
Pacific	1,142	649	377	215	43	14	493	71,122	62,776	39,982	30,986	6,122	1,950	924	22,794	43,913
Puerto Rico	172	107	58	27	0	22	65	16,254	13,542	9,037	4,195	1,976	0	2,866	4,505	9,796
Virgin Islands	11	8	7	0	0	1	3	592	435	355	313	0	0	42	80	489
Outlying Areas	183	115	65	27	0	23	68	16,846	13,977	9,392	4,508	1,976	0	2,908	4,585	10,285
Total, all States and areas	7,857	4,495	2,814	1,262	248	171	3,362	566,164	506,772	294,305	206,322	43,551	22,411	22,021	212,467	292,053

[1] The States are grouped according to the method used by the Bureau of the Census, U S. Department of Commerce.

Table 16.—Industrial Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1968

Industrial group [1]	Total elections	Number of elections in which representation rights were won by unions					Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions					Total votes for no union	Eligible employees in units choosing representation
		Total	AFL–CIO unions	Teamsters	Other national unions	Other local unions				Total	AFL–CIO unions	Teamsters	Other national unions	Other local unions		
Ordnance and accessories	25	11	8	2	0	1	14	4,805	4,406	1,727	1,532	110	18	67	2,679	517
Food and kindred products	535	309	146	127	27	9	226	39,629	35,134	20,918	12,062	6,045	1,633	1,178	14,216	22,111
Tobacco manufacturers	5	4	3	1	0	0	1	194	182	73	69	4	0	0	109	88
Textile mill products	70	35	23	7	2	3	35	21,071	19,384	9,451	8,363	248	95	745	9,933	5,945
Apparel and other finished products, made from fabric and similar materials	64	34	28	3	2	1	30	9,716	8,861	4,092	3,794	107	133	58	4,769	4,239
Lumber and wood products (except furniture)	177	99	79	17	2	1	78	12,223	11,040	6,092	4,900	1,017	127	48	4,948	5,690
Furniture and fixtures	109	56	35	15	3	3	53	9,831	8,952	4,804	3,628	688	393	95	4,148	5,289
Paper and allied products	188	116	80	27	8	1	72	20,890	18,982	12,791	9,167	2,554	892	178	6,191	14,674
Printing, publishing, and allied industries	305	178	153	12	11	2	127	12,734	11,507	6,475	5,303	509	509	154	5,032	6,505
Chemicals and allied products	266	152	80	50	16	6	114	22,360	20,738	12,836	6,818	2,806	1,635	1,577	7,902	12,330
Products of petroleum and coal	74	39	23	9	1	6	35	5,344	4,912	3,153	1,487	405	144	1,117	1,759	3,590
Rubber and plastic products	185	101	65	20	9	7	84	19,676	17,694	10,276	6,881	1,869	520	1,006	7,418	10,744
Leather and leather products	43	16	10	4	1	1	27	8,050	7,082	3,136	2,576	205	71	284	3,946	2,239
Stone, clay, and glass products	210	132	75	42	12	3	78	10,730	9,830	6,120	4,121	1,295	449	255	3,710	6,395
Primary metal industries	273	163	126	21	10	6	110	25,223	22,560	12,050	8,972	593	1,775	710	10,510	10,224
Fabricated metal products (except machinery and transportation equipment)	476	263	200	45	9	9	213	36,142	32,734	19,609	15,230	2,206	1,316	857	13,125	19,834
Machinery (except electrical)	466	259	197	31	19	12	207	51,269	46,677	26,754	18,340	2,403	2,673	3,338	19,923	24,683
Electrical machinery, equipment, and supplies	279	126	89	25	9	3	153	46,066	41,510	20,535	16,664	2,137	1,214	520	20,975	17,200
Aircraft and parts	63	35	20	9	5	1	28	18,193	16,674	11,412	6,717	546	3,997	152	5,262	10,588
Ship and boat building and repairing	25	15	8	6	0	1	10	2,924	2,521	1,872	998	515	26	333	649	2,431
Miscellaneous transportation equipment	196	112	74	21	11	6	84	23,607	21,454	13,795	9,238	838	1,082	2,637	7,659	14,983
Professional, scientific, and controlling instruments	68	35	23	6	3	3	33	10,857	9,849	6,242	4,004	215	163	1,860	3,607	5,432
Miscellaneous manufacturing	107	60	43	13	4	0	47	11,107	10,252	5,683	4,541	812	303	27	4,569	5,080
Manufacturing	4,209	2,350	1,588	513	164	85	1,859	422,641	382,935	219,896	155,405	28,127	19,168	17,196	163,039	210,811

Metal mining	19	11	6	2	1	2	8	3,321	2,959	2,055	1,167	137	71	680	904	1,958
Coal mining	25	19	1	3	10	5	6	2,910	2,724	1,178	183	22	813	160	1,546	890
Crude petroleum and natural gas production	32	18	17	1	0	0	14	2,119	1,453	714	707	7	0	0	739	793
Nonmetallic mining and quarrying	30	15	7	5	2	1	15	1,056	966	569	332	82	132	23	397	645
Mining	106	63	31	11	13	8	43	9,406	8,102	4,516	2,389	248	1,016	863	3,586	4,286
Construction	190	117	92	9	10	6	73	9,552	7,667	4,507	3,303	234	312	658	3,160	5,480
Wholesale trade	697	386	125	240	15	6	311	15,933	14,570	7,838	3,361	3,854	385	238	6,732	8,286
Retail trade	1,162	647	422	166	16	43	515	34,483	29,492	15,590	11,028	3,126	325	1,111	13,902	15,775
Finance, insurance, and real estate	116	86	74	11	1	0	30	4,177	3,711	2,228	1,920	305	2	1	1,483	2,400
Local passenger transportation	38	20	12	8	0	0	18	2,700	2,100	899	525	328	0	46	1,201	876
Motor freight, warehousing, and transportation services	422	249	34	205	7	3	173	9,630	8,500	4,789	823	3,715	157	94	3,711	5,540
Water transportation	33	24	14	3	5	2	9	1,927	1,678	1,392	537	407	59	389	286	1,656
Other transportation	34	14	9	5	0	0	20	2,123	1,872	730	601	110	0	19	1,142	206
Communications	148	101	91	6	3	1	47	19,221	17,698	15,226	13,826	1,153	89	158	2,472	17,887
Heat, light, power, water, and sanitary services	123	79	54	20	1	4	44	6,107	5,642	3,615	2,383	275	194	763	2,027	3,352
Transportation, communication, and other utilities	798	487	214	247	16	10	311	41,708	37,490	26,651	18,695	5,988	499	1,469	10,839	29,607
Hotels and other lodging places	70	37	30	4	1	2	33	5,139	4,012	2,184	1,763	260	87	74	1,828	2,029
Personal services	44	27	12	14	1	0	17	1,540	1,366	772	313	384	75	0	594	1,068
Automobile repairs, garages, and other miscellaneous repair services	138	76	46	26	2	2	62	2,611	2,371	1,259	811	370	50	28	1,112	1,416
Motion pictures and other amusement and recreation services	29	18	9	6	2	1	11	2,756	1,819	1,314	856	182	58	218	505	2,045
Medical and other health services	108	88	82	0	0	6	20	5,017	4,098	2,927	2,789	1	0	137	1,171	4,039
Education services	3	1	1	0	0	0	2	171	141	75	46	29	0	0	66	49
Museums, art galleries, and botanical and zoological gardens	1	1	0	0	1	0	0	14	7	6	0	0	6	0	1	14
Nonprofit membership organizations	3	3	3	0	0	0	0	42	33	25	25	0	0	0	8	42
Miscellaneous services	183	108	85	15	6	2	75	10,974	8,958	4,517	3,618	443	428	28	4,441	4,706
Services	579	359	268	65	13	13	220	28,264	22,805	13,079	10,221	1,669	704	485	9,726	15,408
Total, all industrial groups	7,857	4,495	2,814	1,262	248	171	3,362	566,164	506,772	294,305	206,322	43,551	22,411	22,021	212,467	292,053

[1] Source Standard Industrial Classification, Division of Statistical Standards, U S. Bureau of the Budget, Washington 1957.

Table 17.—Size of Units in Representation Election Cases Closed, Fiscal Year 1968 [1]

Size of unit (number of employees)	Number eligible to vote	Total elections	Percent of total	Cumulative percent of total	Elections in which representation rights were won by								Elections in which no representative was chosen	
					AFL-CIO unions		Teamsters		Other national unions		Other local unions			
					Number	Percent by size class	Number	Percent by size class	Number	Percent by size class	Number	Percent by size class	Number	Percent by size class
A. CERTIFICATION ELECTIONS (RC & RM)														
Total RC and RM elections	550,610	7,618	100 0	----------	2,754	100 0	1,247	100 0	244	100 0	167	100 0	3,206	100 0
Under 10	10,385	1,818	23 9	23 9	597	21 7	467	37 4	49	20 1	33	19 7	672	21 0
10 to 19	22,383	1,605	21 1	45 0	616	22 4	320	25 6	54	22 2	27	16 1	588	18 4
20 to 29	22,569	935	12 3	57 3	348	12 6	148	11 8	29	11 9	15	9 0	395	12 3
30 to 39	19,572	575	7 5	64 8	235	8 5	85	6 8	19	7 8	11	6 6	225	7 0
40 to 49	17,739	403	5 3	70 1	151	5 5	44	3 5	13	5 4	7	4 2	188	5 9
50 to 59	16,616	307	4 0	74 1	114	4 1	35	2 8	14	5 8	6	3 6	138	4 3
60 to 69	17,336	270	3 5	77 6	101	3 7	22	1 8	6	2 5	8	4 8	133	4 1
70 to 79	14,871	201	2 6	80 2	71	2 6	24	1 9	4	1 6	7	4 2	95	3 0
80 to 89	12,656	150	2 0	82 2	55	2 0	7	0 6	5	2 0	4	2 4	79	2 5
90 to 99	10,907	116	1 5	83 7	48	1 7	7	0 6	3	1 2	1	0 6	57	1 8
100 to 109	11,567	111	1 5	85 2	41	1 5	9	0 7	6	2 5	2	1 2	53	1 7
110 to 119	9,721	85	1 1	86 3	30	1 1	9	0 7	3	1 2	1	0 6	42	1 3
120 to 129	11,525	93	1 2	87 5	30	1 1	7	0 6	5	2 0	0	----------	51	1 6
130 to 139	9,898	74	1 0	88 5	33	1 2	7	0 6	3	1 2	1	0 6	30	0 9
140 to 149	7,813	54	0 7	89 2	24	0 9	4	0 3	1	0 4	2	1 2	23	0 7
150 to 159	7,984	52	0 7	89 9	17	0 6	4	0 3	4	1 6	3	1 8	24	0 7
160 to 169	9,147	56	0 7	90 6	23	0 8	3	0 2	3	1 2	2	1 2	25	0 8
170 to 179	7,647	44	0 6	91 2	14	0 5	5	0 4	0	----------	2	1 2	23	0 7
180 to 189	7,545	41	0 5	91 7	16	0 6	2	0 2	2	0 8	1	0 6	20	0 6
190 to 199	8,524	44	0 6	92 3	19	0 7	2	0 2	0	----------	3	1 8	20	0 6
200 to 299	59,760	248	3 3	95 6	82	3 0	20	1 6	7	2 9	9	5 4	130	4 1

300 to 399	39,251	114	1 5	97 1	30	1 1	5	0 4	6	2.5	8	4 8	65	2 0
400 to 499	29,441	66	0 9	98 0	14	0 5	5	0 4	3	1 2	1	0 6	43	1 3
500 to 599	21,613	40	0 5	98 5	10	0 4	2	0 2	0		4	2 4	24	0 7
600 to 799	30,180	44	0 6	99 1	13	0 5	1	0 1	2	0 8	3	1 8	25	0 8
800 to 999	23,202	26	0 3	99 4	8	0 3	1	0 1	1	0 4	0		16	0 5
1,000 to 1,999	47,113	35	0 5	99 9	11	0 4	1	0 1	1	0 4	5	3 0	17	0 5
2,000 to 2,999	14,227	6	0 1	100 0	2	0 0	1	0 1	0		0		3	0 1
3,000 to 9,999	17,830	4	0 0	100 0	0		0		1	0 4	1	0 6	2	0 1
10,000 and over	11,588	1	0 0	100 0	1	0 0	0		0		0		0	

B DECERTIFICATION ELECTIONS (RD)

Total RD elections	15,554	239	100 0		60	100 0	15	100 0	4	100 0	4	100 0	156	100 0
Under 10	355	61	25 5	25 5	5	8 3	1	6 7	0		1	25 0	54	34 7
10 to 19	743	52	21.8	47 3	8	13 3	2	13 3	0		0		42	26 9
20 to 29	718	30	12 6	59 9	10	16 7	2	13 3	1	25 0	0		17	10 9
30 to 39	378	11	4 6	64 5	3	5 0	1	6 7	0		1	25 0	6	3 9
40 to 49	590	13	5 5	70 0	6	10 0	0		0		0		7	4 5
50 to 59	648	12	5 0	75 0	3	5 0	0		1	25 0	0		8	5 2
60 to 69	438	7	2 9	77 9	2	3 3	1	6 7	0		0		4	2 6
70 to 79	504	7	2 9	80 8	2	3 3	1	6 7	0		0		4	2 6
80 to 89	258	3	1 3	82 1	1	1 7	1	6 7	0		0		1	0 6
90 to 99	573	6	2 5	84.6	4	6 7	0		0		0		2	1 3
100 to 109	309	3	1 3	85 9	1	1 7	0		1	25 0	0		1	0 6
110 to 119	685	6	2 5	88 4	2	3 3	1	6 7	0		0		3	1 9
120 to 129	499	4	1 7	90 1	3	5 0	0		0		0		1	0 6
130 to 139	134	1	0 4	90 5	0		0		0		1	25 0	0	
140 to 149	290	2	0 8	91 3	1	1 7	0		0		0		1	0 6
150 to 159	159	1	0 4	91 7	0		0		0		1	25 0	0	
160 to 169	166	1	0 4	92 1	0		0		0		0		1	0 6
170 to 199	720	4	1 7	93 8	1	1 7	0		0		0		3	1 9
200 to 299	1,209	5	2 1	95 9	3	5 0	2	13 3	0		0		0	
300 to 399	1,645	5	2 1	98 0	2	3 3	1	6 7	1	25 0	0		1	0 6
400 to 499	487	1	0 4	98 4	1	1 7	0		0		0		0	
500 to 799	1,273	2	0 8	99 2	0		2	13 3	0		0		0	
800 and over	2,773	2	0 8	100 0	2	3 3	0		0		0		0	

[1] See "Glossary" for definitions of terms.

Table 18.—Distribution of Unfair Labor Practice Situations Received, by Number of Employees in Establishment, Fiscal Year 1968 [1]

Size of establishment (number of employees)	Total number of situations	Total		Type of situations															
				CA		CB		CC		CD		CE		CP		CA–CB combinations		Other C combinations	
		Percent of all situations	Cumulative percent of all situations	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class
Total	[2] 15,258	100 0		9,973	100 0	2,336	100 0	1,147	100 0	375	100 0	32	100 0	355	100.0	884	100 0	156	100 0
Under 10	3,514	23 0	23 0	2,183	21 9	531	22 7	364	31 7	99	26 4	22	68 7	127	35 8	140	15 8	48	30 8
10 to 19	1,784	11 7	34 7	1,252	12.5	182	7 8	183	15 9	45	12 0	1	3 1	59	16 6	43	4 9	19	12 2
20 to 29	1,192	7 8	42.5	823	8 2	128	5.5	112	9 8	28	7 5	0	-------	37	10 4	52	5 9	12	7.7
30 to 39	770	5 0	47 5	518	5 2	98	4 2	64	5 6	13	3 5	1	3 1	27	7 6	39	4 4	10	6.4
40 to 49	543	3 6	51 1	390	3 9	66	2 8	33	2 9	15	4 0	0	-------	12	3 4	19	2 2	8	5 2
50 to 59	651	4 3	55 4	404	4 0	98	4 2	66	5 7	27	7.2	2	6 3	15	4 1	30	3.4	9	5 8
60 to 69	395	2 6	58 0	279	2 8	55	2 3	18	1 6	8	2 1	0	-------	9	2 5	24	2 7	2	1.8
70 to 79	388	2 5	60 5	263	2 6	48	2 1	40	3 5	6	1 6	0	-------	7	2 0	18	2 0	6	3 3
80 to 89	265	1 7	62 2	184	1 8	45	1 9	11	1.0	4	1 1	0	-------	5	1 4	13	1 5	3	1 9

90 to 99	142	0.9	63 1	111	1.1	18	0 8	3	0 3	1	0 3	0	-------	1	0 3	6	0 7	2	1.3
100 to 109	561	3 7	66.8	327	3.3	108	4 6	42	3.6	23	6 1	2	6 3	18	5 0	33	3 7	8	5 2
110 to 119	114	0.7	67 5	85	0.9	8	0 3	7	0.6	5	1 3	0	-------	1	0.3	8	0 9	0	-------
120 to 129	210	1.4	68.9	155	1 6	23	1.0	6	0.5	10	2 7	0	-------	1	0 3	14	1.6	1	0 6
130 to 139	124	0.8	69.7	82	0.8	18	0 8	11	1 0	1	0 3	0	-------	3	0 8	7	0.8	2	1 3
140 to 149	82	0.5	70.2	59	0.6	9	0 4	3	0 3	1	0 3	0	-------	0	-------	7	0.8	3	1 9
150 to 159	319	2.1	72 3	216	2 2	52	2.2	11	1 0	13	3 5	0	-------	2	0 6	21	2 4	4	2 6
160 to 169	80	0 5	72 8	64	0.6	7	0 3	4	0 3	1	0.3	0	-------	1	0 3	2	0 2	1	0 6
170 to 179	90	0.6	73 4	57	0.6	16	0.7	13	1 1	0	-------	0	-------	0	-------	4	0 5	0	-------
180 to 189	64	0 4	73 8	47	0.5	7	0 3	5	0 4	3	0.8	0	-------	1	0 3	1	0 1	0	-------
190 to 199	29	0 2	74 0	26	0.3	1	0.0	0	-------	0	-------	0	-------	0	-------	1	0 1	1	0.6
200 to 299	866	5 7	79 7	582	5 8	143	6.1	32	2 8	11	2 9	3	9 4	9	2 5	81	9.2	5	3 2
300 to 399	560	3 7	83 4	385	3 9	87	3 7	15	1.3	10	2.7	0	-------	6	1 7	53	6.0	4	2 6
400 to 499	339	2.2	85 6	229	2.3	48	2 1	16	1.4	7	1 8	0	-------	4	1 1	33	3.7	2	1 3
500 to 599	248	1 6	87 2	139	1.4	64	2.7	13	1 1	4	1 1	0	-------	2	0.6	25	2 8	1	0 6
600 to 699	178	1 2	88 4	124	1.2	27	1.2	8	0 7	3	0 8	0	-------	0	-------	15	1 7	1	0 6
700 to 799	127	0 8	89 2	87	0.9	21	0 9	6	0 5	2	0 5	0	-------	1	0 3	10	1 1	0	-------
800 to 899	113	0 7	89 9	65	0 7	35	1 5	3	0.3	3	0 8	1	3 1	0	-------	6	0 7	0	-------
900 to 999	63	0 4	90 3	39	0 4	13	0 6	0	-------	3	0 8	0	-------	0	-------	8	0 9	0	-------
1,000 to 1,999	511	3 3	93 6	298	3 0	121	5.2	24	2.1	7	1 8	0	-------	2	0 6	57	6 5	2	1 3
2,000 to 2,999	225	1 5	95 1	106	1.1	69	3.0	8	0 7	8	2 1	0	-------	2	0 6	32	3 6	0	-------
3,000 to 3,999	145	1 1	96 2	80	0.8	38	1 6	5	0 4	5	1 3	0	-------	0	-------	17	1 9	0	-------
4,000 to 4,999	91	0 6	96 8	53	0 5	22	0 9	3	0 3	2	0 5	0	-------	2	0 6	9	1 0	0	-------
5,000 to 9,999	235	1 6	98 4	129	1.3	68	2 9	8	0 7	4	1 1	0	-------	1	0 3	24	2 7	1	0 6
10,000 and over	240	1.6	100.0	132	1 3	62	2.7	10	0 9	3	0 8	0	-------	0	-------	32	3.6	1	0 6

[1] See "Glossary" for definitions of terms

[2] Based on revised situation count which absorbs companion cases, cross-filing and multiple filings as compared to situations shown in charts 1 and 2 of chapter I, which are based on single and multiple filings of same type of case.

Table 19.—Litigation for Enforcement and/or Review of Board Orders, Fiscal Year 1968; and Cumulative Totals, Fiscal Years 1936–68

	Fiscal year 1968									July 5, 1935–June 30, 1968	
	Number of proceedings [1]					Percentages					
	Total	Vs employers only	Vs unions only	Vs both employers and unions	Board dismissal [2]	Vs employers only	Vs unions only	Vs both employers and unions	Board dismissal	Number	Percent
Proceedings decided by U S courts of appeals	319	271	32	4	12						
On petitions for review and/or enforcement	301	255	31	3	12	100 0	100 0	100 0	100 0	3, 652	100 0
Board orders affirmed in full	177	139	26	3	9	54 5	83 9	100 0	75 0	2, 121	58 1
Board orders affirmed with modifications	72	71	1	0	0	27 8	3 2			720	19 7
Remanded to Board	9	6	1	0	2	2 4	3 2		16 7	149	4 1
Board orders partially affirmed and partially remanded	6	5	0	0	1	2 0			8 3	46	1.3
Board orders set aside	37	34	3	0	0	13 3	9 7			616	16 8
On petitions for contempt	18	16	1	1	0	100 0	100 0	100 0			
Compliance after filing of petition, before court order	1	1	0	0	0	6 3					
Court orders holding respondent in contempt	13	11	1	1	0	68 7	100 0	100 0			
Court orders denying petition	4	4	0	0	0	25 0					
Proceedings decided by U S Supreme Court [3]	3	2	1	0	0	100 0	100 0			170	100 0
Board orders affirmed in full	3	2	1	0	0	100 0	100 0			107	62 9
Board orders affirmed with modification	0	0	0	0	0					13	7 6
Board orders set aside	0	0	0	0	0					28	16 5
Remanded to Board	0	0	0	0	0					7	4 1
Remanded to court of appeals	0	0	0	0	0					12	7 1
Board's request for remand or modification of enforcement order denied	0	0	0	0	0					1	0 6
Contempt cases remanded to court of appeals	0	0	0	0	0					1	0 6
Contempt cases enforced	0	0	0	0	0					1	0 6

[1] "Proceedings" are comparable to "cases" reported in annual reports prior to fiscal year 1964 This term more accurately describes the data inasmuch as a single "proceeding" often includes more than one "case" See "Glossary" for definitions of terms

[2] A proceeding in which the Board had entered an order dismissing the complaint and the charging party appealed such dismissal in the court of appeals

[3] The Board appeared as *amicus curiae* in two cases *Amalgamated Food Employees Union Local 590 et al.* v *Logan Valley Plaza, Inc , et al* , 391 U.S 308, and *Nash* v *Florida Industrial Commission et al* , 389 U.S. 235, judgements of State courts reversed The position supported by the Board was sustained in both cases.

Table 19A.—Proceedings Decided by Circuit Courts of Appeals on Petitions for Enforcement and/or Review of Board Orders, Fiscal Year 1968 Compared With 5-Year Cumulative Totals, Fiscal Years 1963 Through 1967 [1]

Circuit courts of appeals (headquarters)	Total fiscal year 1968	Total fiscal years 1963–67	Affirmed in full				Modified				Remanded in full				Affirmed in part and remanded in part				Set aside			
			Fiscal year 1968		Cumulative fiscal years 1963–67		Fiscal year 1968		Cumulative fiscal years 1963–67		Fiscal year 1968		Cumulative fiscal years 1963–67		Fiscal year 1968		Cumulative fiscal years 1963–67		Fiscal year 1968		Cumulative fiscal years 1963–67	
			Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Total all circuits	301	1,131	177	58 8	657	58 1	72	23 9	218	19 3	9	3 0	49	4 3	6	2 0	20	1 8	37	12 3	187	16 5
1. Boston, Mass	13	66	9	69 2	40	60 6	1	7 7	8	12 1	0	-----	5	7 6	1	7 7	2	3 0	2	15 4	11	16 7
2 New York, N Y	27	115	18	66 7	73	63 5	5	18 5	20	17 4	1	3 7	6	5 2	1	3 7	4	3 5	2	7 4	12	10 4
3 Philadelphia, Pa	19	70	13	68 4	53	75 7	2	10 5	3	4 3	1	5 3	5	7 1	0	-----	0	-----	3	15 8	9	12 9
4 Richmond, Va	41	90	25	61 0	52	57 8	13	31 7	18	20 0	0	-----	2	2 2	0	-----	0	-----	3	7 3	18	20 0
5 New Orleans, La	50	188	24	48 0	108	57 4	16	32 0	57	30 3	3	6 0	6	3 3	1	2 0	1	0 5	6	12 0	16	8 5
6 Cincinnati, Ohio	55	141	26	47 3	78	55 3	16	29 1	29	20 6	2	3 6	2	1 4	0	-----	3	2 1	11	20 0	29	20 6
7 Chicago, Ill	22	121	16	72 7	56	46 3	2	9 1	26	21 5	0	-----	0	-----	0	-----	1	0 8	4	18 2	38	31 4
8 St Louis, Mo	15	68	5	33 3	23	33 8	6	40 0	24	35 3	0	-----	1	1 5	0	-----	2	2 9	4	26 7	18	26 5
9 San Francisco, Calif	27	125	22	81 5	76	60.8	2	7 4	16	12 8	1	3 7	8	6 4	0	-----	2	1 6	2	7 4	23	18 4
10 Denver, Colo	11	53	4	36 4	36	67 9	7	63 6	4	7 5	0	-----	5	9 4	0	-----	0	-----	0	-----	8	15 2
Washington, D C	21	94	15	71 4	62	66 0	2	9 5	13	13 8	1	4 8	9	9 6	3	14 3	5	5 3	0	-----	5	5 3

[1] Percentages are computed horizontally by current fiscal year and total fiscal years

Table 20.—Injunction Litigation Under Section 10(e), 10(j), and 10(l), Fiscal Year 1968

	Total proceedings	Injunction proceedings		Total dispositions	Disposition of injunctions						Pending in district court June 30, 1968
		Pending in district court July 1, 1967	Filed in district court fiscal year 1968		Granted	Denied	Settled	Withdrawn	Dismissed	Inactive	
Under sec. 10(e), total	11	2	[1] 9	11	2	9	0	0	0	0	0
Under sec 10(j), total	20	4	16	15	7	2	3	2	1	0	5
8(a)(1)	1	0	1	1	0	0	1	0	0	0	0
8(a)(1)(2), 8(b)(1)(A)(2)	1	0	1	0	0	0	0	0	0	0	1
8(a)(1)(2)(3), 8(b)(1)(A)(2)	1	0	1	1	0	1	0	0	0	0	0
8(a)(1)(2)(3)(5)	1	0	1	0	0	0	0	0	0	0	1
8(a)(1)(2)(3)(5), 8(b)(1)(A)	1	0	1	1	1	0	0	0	0	0	0
8(a)(1)(2)(3)(5), 8(b)(1)(A)(2)	1	0	1	1	0	0	1	0	0	0	0
8(a)(1)(3)	1	1	0	1	0	0	1	0	0	0	0
8(a)(1)(3)(5)	5	1	4	4	3	1	0	0	0	0	1
8(a)(1)(5)	7	2	5	5	3	0	0	1	1	0	2
8(b)(1)(3)	1	0	1	1	0	0	0	1	0	0	0
Under sec 10(l), total	170	5	165	150	57	8	45	22	1	17	20
8(b)(4)(A)	2	0	2	2	1	0	1	0	0	0	0
8(b)(4)(A)(B)	2	0	2	1	0	0	1	0	0	0	1
8(b)(4)(B)	87	0	87	77	31	2	25	10	0	9	10
8(b)(4)(B)(C)	1	0	1	1	0	0	1	0	0	0	0
8(b)(4)(B)(D)	20	0	20	19	4	1	6	5	0	3	1
8(b)(4)(B), 8(b)(7)(C)	1	0	1	1	1	0	0	0	0	0	0
8(b)(4)(B), 8(e)	2	0	2	0	0	0	0	0	0	0	2
8(b)(4)(C)	1	0	1	1	1	0	0	0	0	0	0
8(b)(4)(D)	20	1	19	19	8	2	4	3	0	2	1
8(b)(7)(A)	9	3	6	8	4	0	2	1	0	1	1
8(b)(7)(B)	2	0	2	2	0	0	0	2	0	0	0
8(b)(7)(B)(C)	1	0	1	1	1	0	0	0	0	0	0
8(b)(7)(C)	16	0	16	16	6	2	4	1	1	2	0
8(e)	6	1	5	2	0	1	1	0	0	0	4

[1] In courts of appeals.

Table 21.—Miscellaneous Litigation Involving NLRB; Outcome of Proceedings in Which Court Decisions Issued in Fiscal Year 1968

Type of litigation	Number of proceedings								
	Total—all courts			In courts of appeals			In district courts		
	Number decided	Court determination		Number decided	Court determination		Number decided	Court determination	
		Upholding Board position	Contrary to Board position		Upholding Board position	Contrary to Board position		Upholding Board position	Contrary to Board position
Totals—all types	34	30	4	8	8	0	26	22	4
NLRB-initiated actions	10	8	2	3	3	0	7	5	2
To enforce subpena	10	8	2	3	3	0	7	5	2
To restrain dissipation of assets by respondent	0	0	0	0	0	0	0	0	0
To defend Board's jurisdiction	0	0	0	0	0	0	0	0	0
Action by other parties	24	22	2	5	5	0	19	17	2
To restrain NLRB from	11	10	1	0	0	0	11	10	1
Proceeding in R case	6	5	1	0	0	0	6	5	1
Proceeding in unfair labor practice case	5	5	0	0	0	0	5	5	0
Proceeding in backpay case	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0
To compel NLRB to	12	11	1	4	4	0	8	7	1
Issue complaint	2	2	0	1	1	0	1	1	0
Seek injunction	0	0	0	0	0	0	0	0	0
Take action in R case	4	3	1	2	2	0	2	1	1
Other	6	6	0	1	1	0	5	5	0
Other	1	1	0	1	1	0	0	0	0

Table 22.—Advisory Opinion Cases Received, Closed, and Pending, Fiscal Year 1968 [1]

	Total	Number of cases			
		Identification of petitioner			
		Employer	Union	Courts	State boards
Pending July 1, 1967	1	1	0	0	0
Received fiscal 1968	7	6	1	0	0
On docket fiscal 1968	8	7	1	0	0
Closed fiscal 1968	8	7	1	0	0
Pending June 30, 1968	0	0	0	0	0

[1] See "Glossary" for definitions of terms

Table 22A.—Disposition of Advisory Opinion Cases, Fiscal Year 1968 [1]

Action taken	Total cases closed
Total	8
Board would assert jurisdiction	3
Board would not assert jurisdiction	3
Unresolved because of insufficient evidence submitted	1
Dismissed	0
Withdrawn	1

[1] See "Glossary" for definitions of terms.

○