THIRTY-EIGHTH

ANNUAL REPORT

OF THE

NATIONAL LABOR RELATIONS BOARD

FOR THE FISCAL YEAR
ENDED JUNE 30

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[1] Reappointed December 5, 1972.
[2] Designated January 19, 1973
[3] Designated February 7, 1973.
[4] Trial Examiner changed to Administrative Law Judge effective August 19, 1972.

LETTER OF TRANSMITTAL

NATIONAL LABOR RELATIONS BOARD,
Washington, D.C., January 3, 1974.

SIR: As provided in section 3(c) of the Labor Management Relations Act, 1947, I submit herewith the Thirty-eighth Annual Report of the National Labor Relations Board for the fiscal year ended June 30, 1973, and, under separate cover, lists containing the cases heard and decided by the Board during this fiscal year, and the names, salaries, and duties of all employees and officers in the employ or under the supervision of the Board.

Respectfully submitted.

EDWARD B. MILLER, *Chairman.*

THE PRESIDENT OF THE UNITED STATES
THE PRESIDENT OF THE SENATE
THE SPEAKER OF THE HOUSE OF REPRESENTATIVES
Washington, D.C.

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Operations in Fiscal Year 1973

A. Summary

In fiscal year 1973, the National Labor Relations Board received more than 40,000 cases. Its total for 1973 was 41,077 cases, setting a new record for the Agency in its administration of the National Labor Relations Act.

The 41,077 cases were 38 more than the 41,039 of fiscal 1972, which then was the highest total of cases to come to the Board in 1 year.

The NLRB does not initiate cases; it processes charges and petitions brought before it.

In fiscal 1973 the NLRB closed 41,566 cases of all types, a new record. Up 5 percent from fiscal 1972, the total closings included 26,989 cases involving unfair labor practice charges, and 14,577 affecting employee representation. (Tables 7, 8, 9, and 10 give statistics on stage and method of closing by type of case.)

In fiscal 1973, case intake was 26,487 of unfair labor practice charges, a 1.4-percent decrease from the 26,852 of the preceding year. Representation petitions, however, rose to 14,032, a 2-percent increase over the 13,711 of the year before.

The two classes of cases amounted to 98.7 percent of the 1973 intake. The remaining 1.3 percent included union-shop deauthorization petitions (0.5 percent), amendments to certification petitions (0.2 percent), and unit clarification petitions (0.6 percent). (Chart 1.)

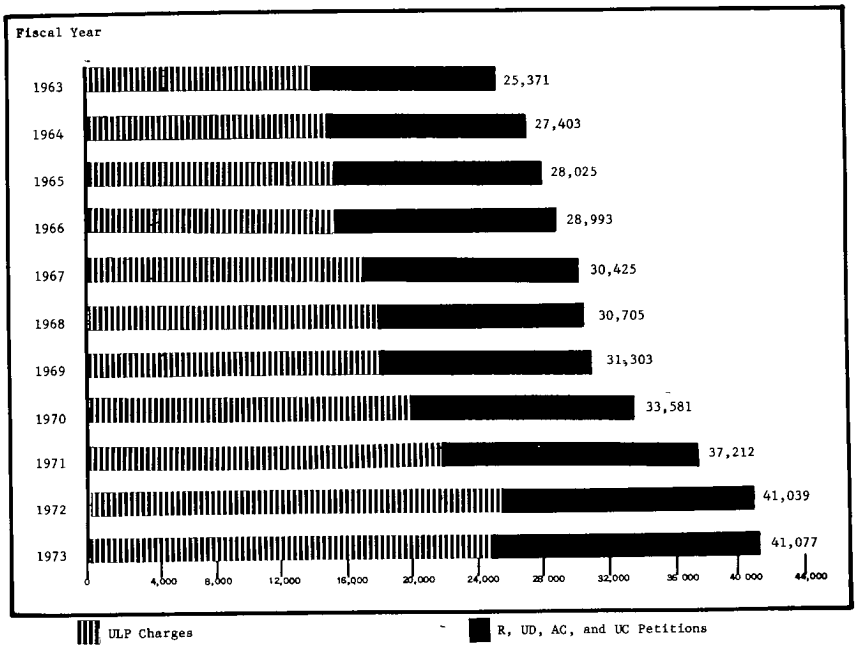
NLRB's emphasis on voluntary disposition of cases was implemented greatly in fiscal 1973 by contributions in administration of the Act by its 31 regional offices. In 1973 there were 25,639 unfair labor practice cases closed by regional offices. These closings came about primarily through voluntary settlements or adjustments by parties to the cases working with NLRB officials, voluntary withdrawal of charges, and administrative dismissals.

Only 5 percent of the unfair labor practice cases closed went to the five-member Board for decision as contested cases. (Chart 3.)

In 1973, the NLRB conducted a record 9,472 conclusive secret ballot elections of all types, up from 9,020 the previous year. The total was made up of 8,916 collective-bargaining elections, 453 decertification elections, and 103 deauthorization polls. Unions won 4,648 bargaining rights elections, or 52 percent.

Chart No. 1

CASE INTAKE BY UNFAIR LABOR PRACTICE CHARGES AND REPRESENTATION PETITIONS



In the 1973 employee representation elections, 81 percent were arranged by agreement of the parties as to appropriate unit, date, and place of election.

Statistical tables of the Agency's activities in fiscal 1973 will be found in Appendix A of this report, along with a glossary of terms used in the tables and a subject index. An index of cases discussed in this report precedes Appendix A.

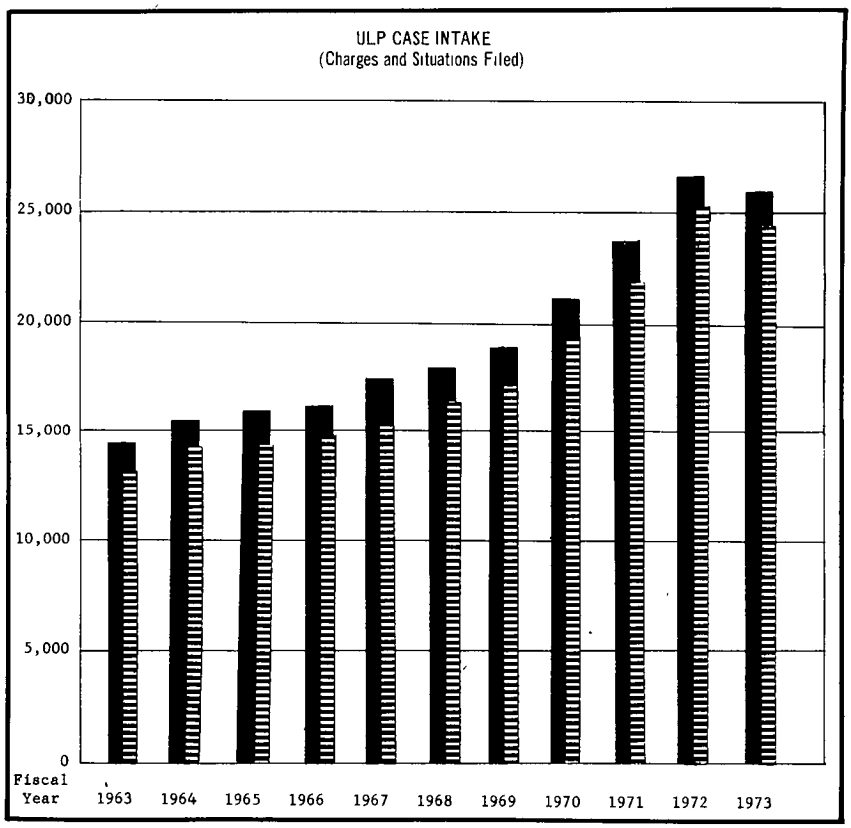
1. NLRB Administration

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

Board Members in fiscal 1973 were Chairman Edward B. Miller of Illinois, John H. Fanning of Rhode Island, Howard Jenkins, Jr., of Colorado, Ralph E. Kennedy of California, and John A. Penello of Maryland. Peter G. Nash of New York was General Counsel. The Board Members and the General Counsel are appointed by the President with Senate consent; the Board Members to 5-year terms, and the General Counsel to a 4-year term.

The National Labor Relations Act is intended to serve the public interest by reducing interruptions in commerce caused by industrial strife. It seeks to do this by providing orderly processes for protecting and implementing the respective rights of employees, employers, and unions in their relations with one another. The overall job of the NLRB is to achieve this aim through interpretation and enforcement of the Act.

Chart No. 2



	1963	1964	1965	1966	1967	1968	1969	1970	1971	1972	1973
CHARGES	14,166	15,620	15,800	15,933	17,040	17,816	18,651	21,038	23,770	26,852	26,487
SITUATIONS	12,719	13,978	14,423	14,539	15,499	16,343	17,045	19,402	22,098	25,143	24,854

In its statutory assignment, the NLRB has two primary functions: (1) to determine and implement, through secret ballot elections, the free democratic choice by employees as to whether they wish to be represented by a union and, if so, by which one; and (2) to prevent and remedy unlawful acts, called unfair labor practices, by either employers or unions, or both. The NLRB does not act on its own motion in either function. It processes only those charges of unfair labor practices and petitions for employee elections which may be filed with it at one of its 31 regional offices or 12 other field offices.

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

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

Agency authority is divided by law and by delegation. The Board Members primarily act as a quasi-judicial body in deciding cases on 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 administrative law judges who hear and decide cases. Administrative law judges' decisions may be appealed to the Board in the form of exceptions taken, but, if no exceptions are taken, under the statute the administrative law judges' orders become orders of the Board.

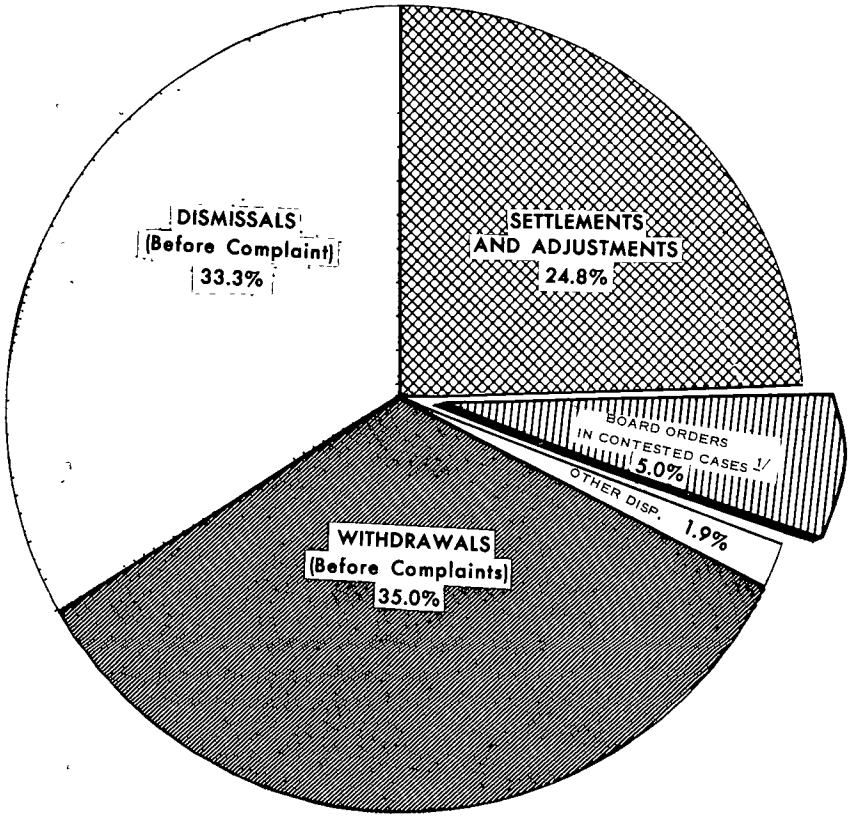
All cases coming to the Agency begin their processing in NLRB regional offices, either through filing of unfair labor practice charges or employee representation petitions.

Chart No. 3

DISPOSITION PATTERN FOR UNFAIR LABOR PRACTICE CASES

(BASED ON CASES CLOSED)

FISCAL YEAR 1973

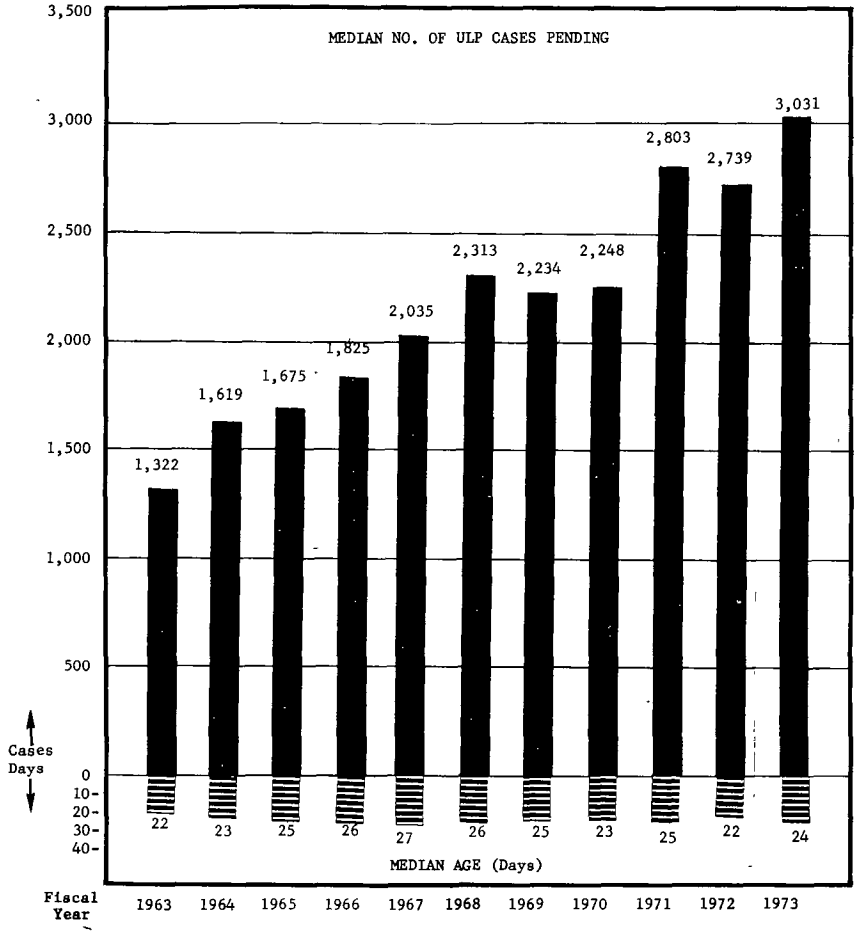


1/ Contested cases reaching Board Members for Decisions.

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

Chart No. 4

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



2. Case Activity Highlights

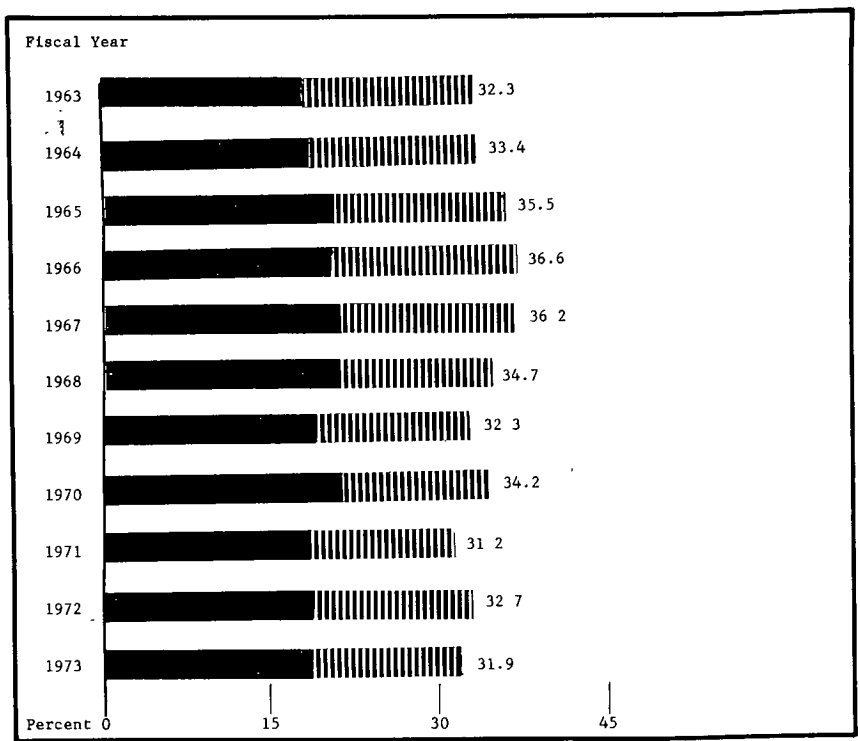
NLRB caseload in fiscal 1973 showed record high numbers in intake of cases, case closures, elections conducted, Board decisions issued, as well as increases in a number of other areas.

NLRB activity in 1973, coming from employers', employees', and labor organizations' requests for adjustments of labor disputes and answers to questions concerning employee representation, included:

Intake—a total of 41,077 cases, of which 26,487 were unfair labor practice charges and 14,590 were representation petitions and related cases.

Chart No. 5

UNFAIR LABOR PRACTICE MERIT FACTOR



	1963	1964	1965	1966	1967	1968	1969	1970	1971	1972	1973
PRECOMPLAINT SETTLEMENTS AND ADJUSTMENTS (%)	17 5	17.8	19 4	19 4	20.5	20 2	18.4	20.4	17 7	18.3	18 2
CASES IN WHICH COMPLAINTS ISSUED (%)	14 8	15 6	16 1	17.2	15.7	14.5	13.9	13 8	13 5	14 4	13 7
TOTAL MERIT FACTOR (%)	32.3	33.4	35.5	36.6	36 2	34.7	32.3	34.2	31.2	32.7	31.9

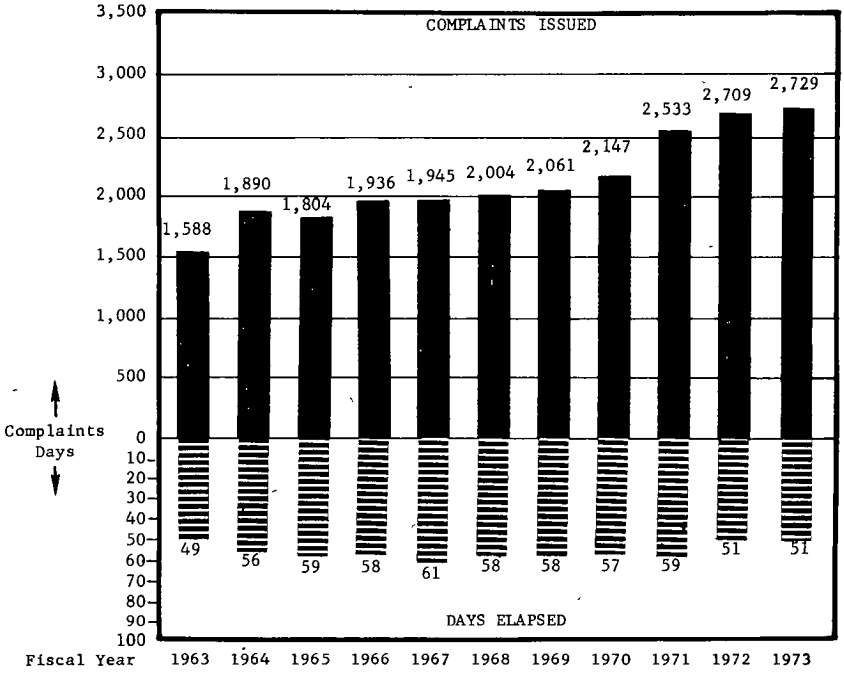
Closed—a total of 41,566, with a record number, 26,989, involving unfair labor practice charges.

Elections—a total of 9,472 conclusive elections of types conducted, a record number.

Board decisions issued—1,432 unfair labor practice decisions and 3,514 representation decisions and rulings, the latter by Board and regional directors.

Chart No. 6

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



General Counsel's office (and regional office personnel)

—issued, 2,729 formal complaints.

—closed 1,205 initial unfair labor practice hearings, including 73 hearings under section 10(k) of the Act (job assignment disputes).

Regional directors issued 2,160 initial decisions in representation cases.

Administrative law judges issued 1,058 initial decisions plus 69 on backpay and supplemental matters.

There were 6,701 unfair labor practice cases settled or adjusted before issuance of administrative law judges' decisions.

Regional offices distributed $5,876,670 in backpay to 6,758 employees. There were 5,407 employees offered reinstatement; 3,879 accepted.

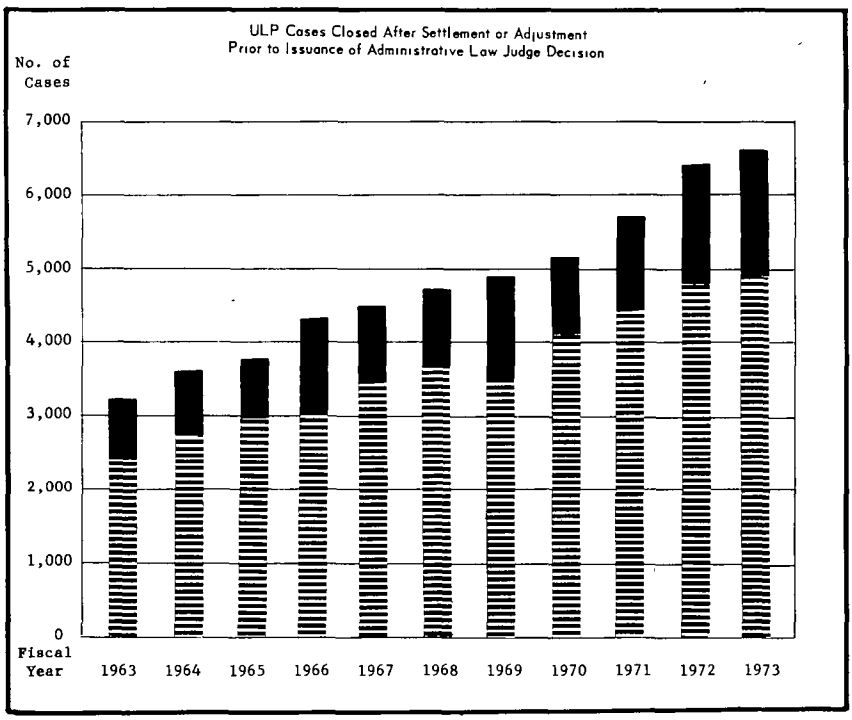
Regional office personnel sat as hearing officers at 2,530 representation hearings—2,267 initial hearings and 263 on objections and/or challenges.

There were 484,090 employees who cast ballots in NLRB-conducted representation elections.

Appeals courts handed down 350 decisions related to enforcement and/or review of Board orders—83 percent affirmed the Board in whole or in part.

Chart No. 7

UNFAIR LABOR PRACTICE CASES SETTLED



Fiscal Year	Precomplaint	Postcomplaint	Total
1963	2,401	796	3,197
1964	2,750	846	3,596
1965	3,003	821	3,824
1966	3,085	1,176	4,261
1967	3,390	1,072	4,462
1968	3,608	1,089	4,697
1969	3,451	1,266	4,717
1970	4,054	1,174	5,228
1971	4,277	1,322	5,599
1972	4,755	1,626	6,381
1973	4,936	1,765	6,701

B. Operational Highlights

1. Unfair Labor Practices

In fiscal 1973 there were 26,487 unfair labor practice cases filed with the NLRB, a decrease of 365 from the 26,852 filed in fiscal 1972. The cases filed in 1973 were almost double the 14,166 filed 10 years before. In situations in which related charges are counted as a single unit, there was a 1.2 percent decrease from fiscal 1972. (Chart 2.)

In 1973, alleged violations of the Act by employers decreased to 17,361 cases, a 2-percent drop from the 17,736 of 1972. Charges against unions decreased less than 1 percent, to 9,022 in 1973 from 9,030 in 1972.

There were 104 charges of violations of section 8(e) of the Act, which bans hot cargo agreements: 76 against unions, 27 against both unions and employers, and 1 against an employer, alone. (Tables 1 and 1A.)

Regarding 1973 charges against employers, 10,979 (or 63 percent of the 17,361 total) alleged discrimination or illegal discharge of employees. There were 5,506 refusal-to-bargain allegations in about one-third of the charges. (Table 2).

On charges against unions in 1973, there were 5,422 alleging illegal restraint and coercion of employees, about 60 percent as against the 59 percent of similar filings in 1972. There were 2,495 charges against unions for illegal secondary boycotts and jurisdictional disputes, 4 percent less than the 2,596 of 1972.

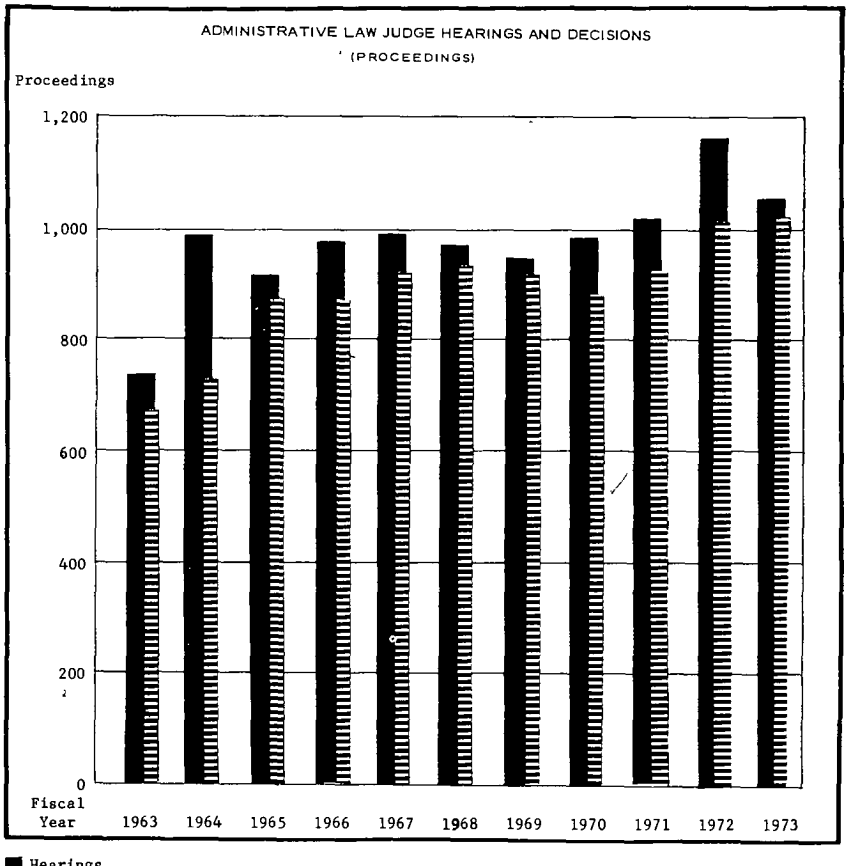
There were 1,587 charges of illegal union discrimination against employees in 1973. There were 475 charges of unions picketing illegally for recognition or for organizational purposes, an increase from the 449 such charges in 1972. (Table 2).

In charges against employers in 1973, unions led by filing 60 percent. Unions filed 10,365; individuals filed 6,954 charges (40 percent); and employers filed 42 charges against other employers.

As to charges against unions, 4,938 were filed by individuals or 54.7 percent of 1973's total of 9,022. Employers filed 3,870, or 42.9 percent of the charges. Other unions filed the 214 remaining charges. Of the 104 hot cargo charges against unions and/or employers (involving the Act's section 8(e)) 66 were filed by employers, 16 by individuals, and 22 by unions.

Regarding the record-high 26,989 unfair labor practice cases closed in 1973, about 93.1 percent were closed by NLRB regional

Chart No. 8



offices, as compared with 93.3 percent in 1972. In 1973 there were 24.8 percent of the cases settled or adjusted before issuance of administrative law judges' decisions, 35 percent by withdrawal before complaint, and 33.3 percent by administrative dismissal. In 1972 the percentages were 25, 35.2, and 33.1, respectively.

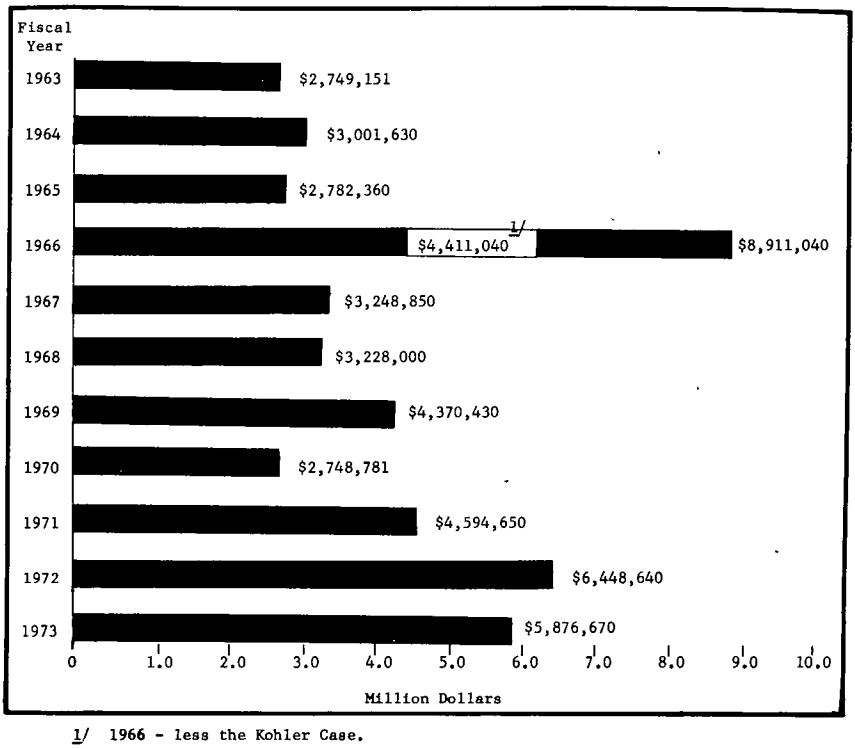
In an evaluation of the regional workload, the number of unfair labor practice charges found to have merit is important. The highest level of cases found to have merit was the 36.6 percent in fiscal 1966. In fiscal 1973 it was 31.9 percent.

In 1973 the merit factor in charges against employers was 32.6 percent, the same as in 1972. In charges against unions,

the merit factor was 30.7 percent in fiscal 1973. It was 33 percent in fiscal 1972.

Chart No. 9

AMOUNT OF BACKPAY RECEIVED BY DISCRIMINATEES



1/ 1966 - less the Kohler Case.

Since 1962 (see Chart 5) more than 50 percent of merit charges have resulted in precomplaint settlements and adjustments; these amounted to 57 percent in fiscal 1973.

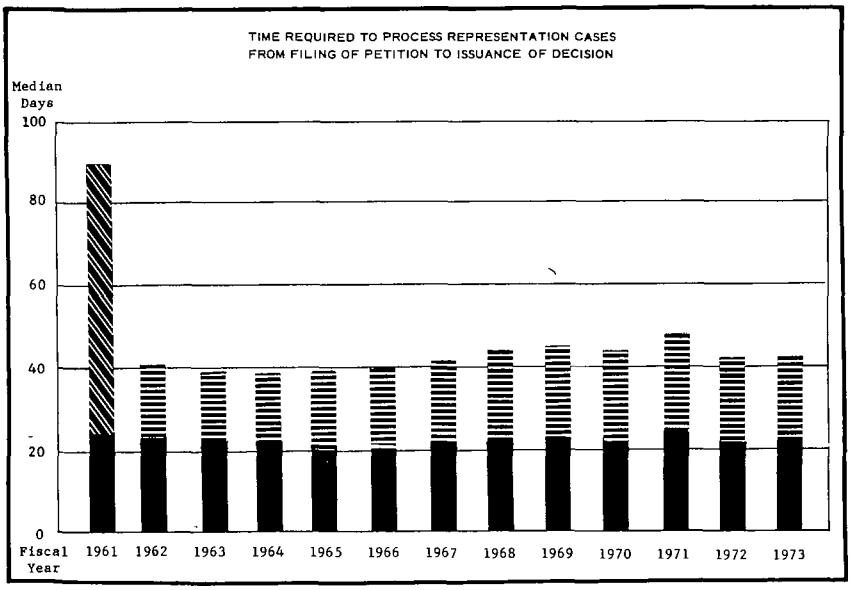
In 1973 there were 3,709 merit charges which caused issuance of complaints, and 4,936 precomplaint settlements or adjustments of meritorius charges. The two totaled 8,645 or 31.9 percent of the unfair labor practice cases. (Chart 5.)

In fiscal 1973 NLRB regional offices issued 2,729 complaints, a slight gain above the 2,709 issued in fiscal 1972. (Chart 6.)

Of complaints issued, 77.5 percent were against employers, 19 percent against unions, and 3.5 percent against both employers and unions.

In 1973, NLRB regional offices processed cases from filing of charges to issuance of complaints in a median of 51 days, the same as in 1972. The 51 days included 15 days in which parties

Chart No. 10



FISCAL YEAR	FILING TO CLOSE OF HEARING	CLOSE OF HEARING TO BOARD DECISION	CLOSE OF HEARING TO REGIONAL DIRECTOR DECISION
1961	24	65	-
1962	23	-	18
1963	22	-	17
1964	22	-	17
1965	21	-	18
1966	21	-	19
1967	22	-	20
1968	22	-	22
1969	23	-	22
1970	23	-	20
1971	24	-	23
1972	22	-	20
1973	22	-	20

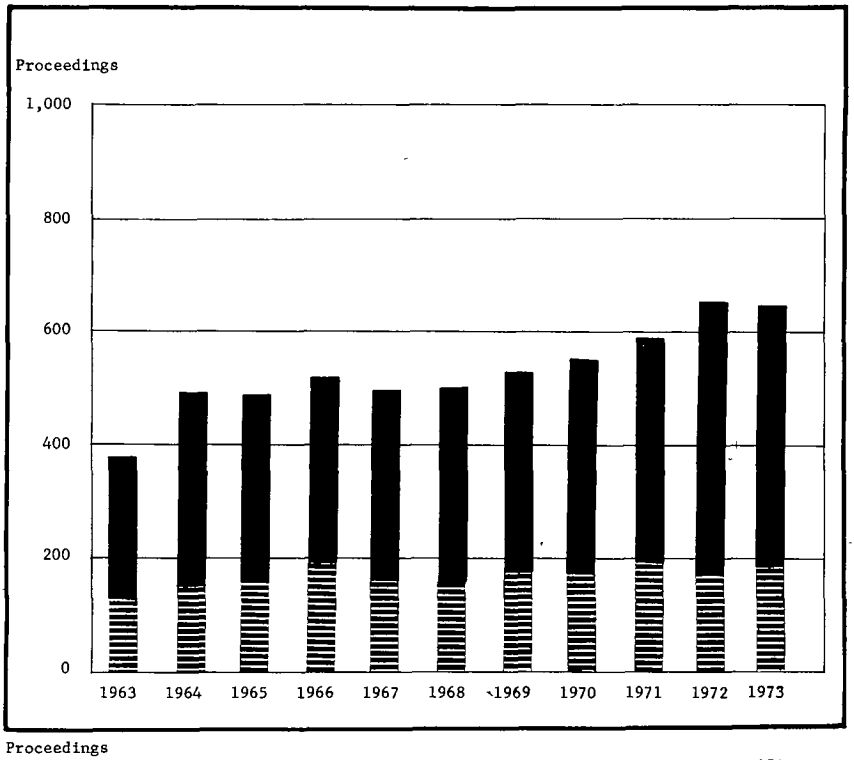
had the opportunity to adjust charges and remedy violations without resort to formal NLRB processes. (Chart 6.)

Administrative law judges in 1973 conducted 1,132 initial hearings involving 1,561 cases, compared with 1,178 hearings involving 1,679 cases in 1972. (Chart 8 and Table 3A.) Also, administrative law judges conducted 67 additional hearings in supplemental matters in 1973.

At the end of fiscal 1973 there were 9,001 unfair labor practice cases pending before the Agency, 5 percent less than the 9,503 cases pending at the end of fiscal 1972.

In fiscal 1973 the NLRB awarded backpay to 6,758 workers, in total amounting to $5.9 million. The backpay was 9 percent less than in fiscal 1972. (Chart 9.)

Chart No. 11
BOARD CASE BACKLOG



Proceedings	1963	1964	1965	1966	1967	1968	1969	1970	1971	1972	1973
C	256	344	336	323	343	352	356	382	390	486	471
R	122	142	148	190	146	144	171	171	196	171	183
Totals	378	486	484	513	489	496	527	553	586	657	654

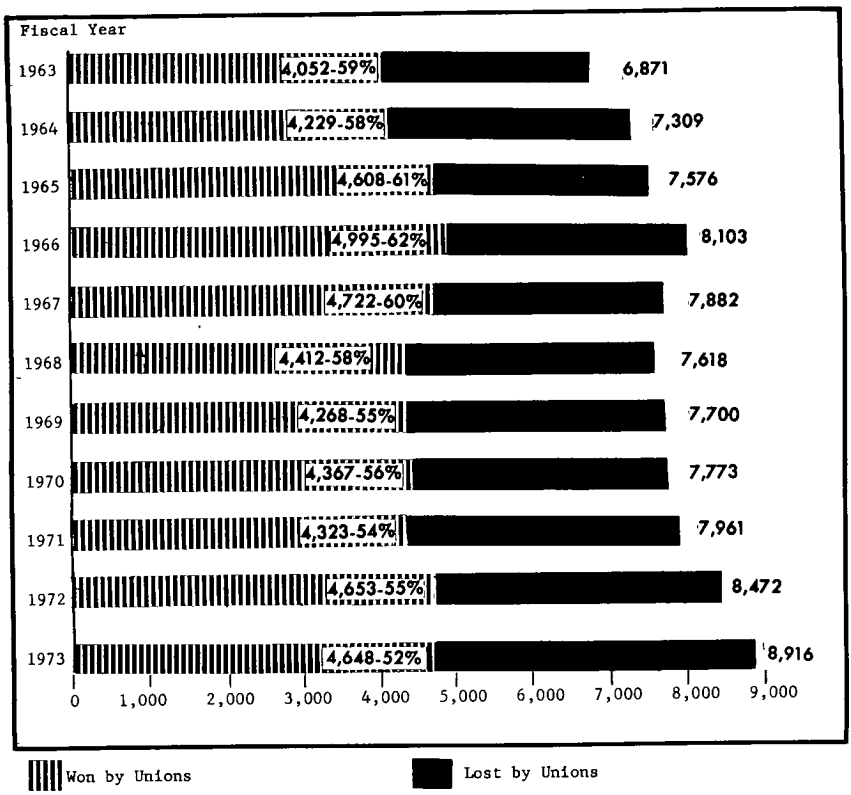
During fiscal 1973, in 1,162 cases there were 5,407 employees offered reinstatement, and 3,879, or 72 percent, accepted. In fiscal 1972, about 72 percent of the employees accepted offered reinstatement.

Work stoppages ended in 225 of the cases closed in fiscal 1973. Collective bargaining was begun in 1,773 cases. (Table 4.)

2. Representation Cases

In fiscal 1973, the NLRB received 14,590 representation and related case petitions. These included 12,888 collective-bargaining cases; 1,144 decertification petitions; 213 union-shop deauthorization petitions; 78 petitions for amendment of certification; and 267 petitions for unit clarification. The NLRB's total representation intake was 3 percent, or 403 cases, above the 14,187 of fiscal 1972.

Chart No. 12
COLLECTIVE-BARGAINING ELECTIONS CLOSED



There were 14,577 representation cases closed in fiscal 1973, about 4.7 percent above the 13,919 closed in fiscal 1972. Cases closed in 1973 included 12,941 collective-bargaining petitions, 1,118 petitions for elections to determine whether unions should be decertified, 202 petitions for employees to decide whether unions should retain authority to make union-shop agreements with employers, and 316 unit clarification and amendment of certification petitions. (Chart 14 and Tables 1 and 1B.).

There were 14,261 representation and union-deauthorization cases closed in fiscal 1973. About 67 percent, or 9,602 cases, were closed after elections. There were 3,447 withdrawals, 24 percent of the total number of cases, and 1,212 dismissals.

NLRB regional directors ordered elections following hearings in 1,757 cases, or 18 percent of those closed by elections. There were 30 cases which resulted in expedited elections pursuant to the Act's 8(b)(7)(C) provisions pertaining to picketing. Board

elections in 72 cases, about 0.8 percent of election closures, followed appeals or transfers from regional offices. (Table 10.)

3. Elections

A record 9,472 conclusive elections were conducted in cases closed in fiscal 1973. An additional 291 inconclusive representation case elections were held that resulted in withdrawal or were dismissed before certification, or required a rerun or runoff election. Of the conclusive elections, 8,916 (94 percent) were collective-bargaining elections. Unions won 4,648, or 52 percent, of them. There also were 453 elections conducted to determine whether incumbent unions would continue to represent employees (decertification elections), and 103 to decide whether unions would continue to have authority to make union-shop agreements with employers (deauthorization polls).

Unions lost the right to make union-shop agreements in 56 of the 103 deauthorization elections, while they maintained the right in 47 other elections, which covered 2,850 employees. (Table 12.)

By voluntary agreement of parties involved 7,628 stipulated and consent elections were conducted. These were 80.5 percent of the total elections, compared with 80 percent in fiscal 1972. (Table 11.)

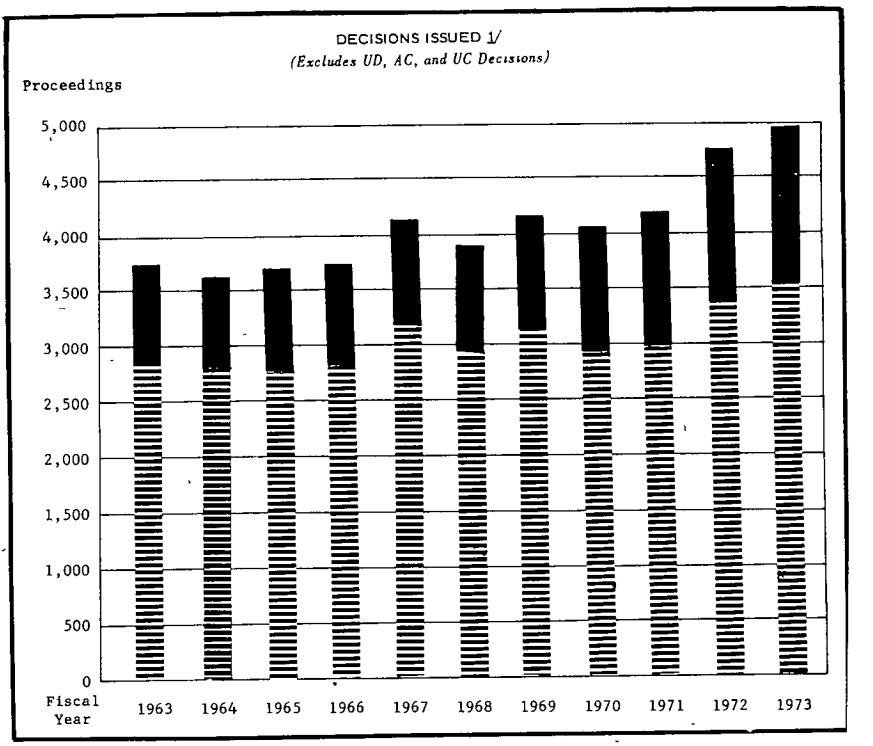
With approximately the same number of elections won by unions in 1973 as compared with 1972 less employees (480,303 in 1973; 519,477 in 1972) exercised their right to vote. For all types of elections, the average number of employees voting, per establishment, was 51 (7 less than in 1972). In about three-fourths of collective-bargaining elections each involved 59 or fewer employees, and there were about 49 employees for the decertification elections. (Tables 11 and 17.)

In decertification elections in fiscal 1973, unions won in 138 and lost in 315. Unions retained the right of representation of 9,913 employees in the 138 elections won. Unions lost the right of representation of 10,094 employees in the 315 in which they did not win. As to size of the bargaining units involved, unions won in units averaging 72 employees and lost in units averaging 31 employees. (Table 13.)

4. Decisions Issued

There were 5,152 decisions issued by the Agency in fiscal 1973, a 4.8-percent increase from the 4,918 decisions of fiscal 1972. Board members issued 2,440 decisions in 3,018 cases—91 more decisions than the 2,349 of 1972. Regional directors issued 2,712

Chart No. 13



	1963	1964	1965	1966	1967	1968	1969	1970	1971	1972	1973
C	854	776	1,000	991	1,023	1,033	1,063	1,167	1,239	1,376	1,432
R	2,857	2,812	2,707	2,769	3,155	2,869	3,108	2,927	2,962	3,361	3,514
Totals	3,711	3,588	3,707	3,760	4,178	3,902	4,171	4,094	4,201	4,737	4,946

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

decisions in 2,891 cases, an increase of 143 over the 2,569 decisions in 1972.

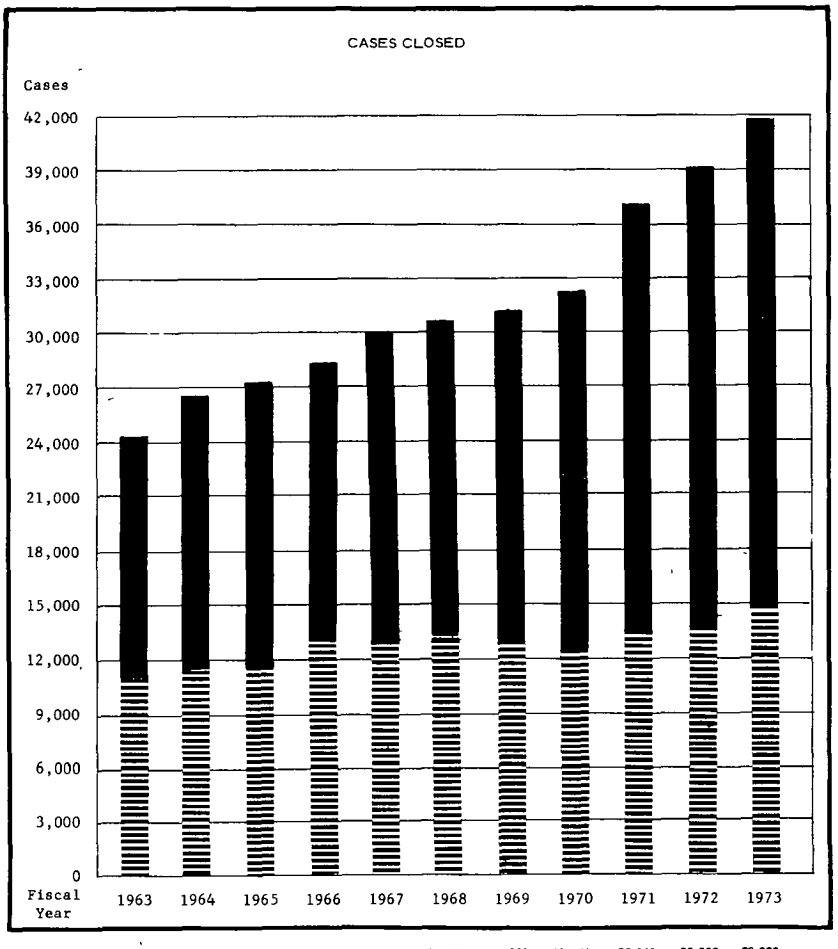
Administrative law judges issued 1,058 decisions and recommended orders in fiscal 1973, a 3.4-percent increase from the 1,023 of fiscal 1972. (Chart 8.)

The administrative law judges in 1973 also issued 40 backpay decisions (32 in 1972) and 29 supplemental decisions (24 in 1972). (Table 3A.)

In 1973 Board Members and regional directors issued 4,946 decisions involving 5,683 unfair labor practice and representation cases. (Chart 13.)

The Board and regional directors issued 206 decisions in 226 cases regarding clarification of employee bargaining units, amendments to union representation certifications, and union-shop deauthorizations.

Chart No. 14



	1963	1964	1965	1966	1967	1968	1969	1970	1971	1972	1973
C CASES	13,605	15,074	15,219	15,587	16,360	17,777	18,939	19,851	23,840	25,555	26,989
R, UD, AC, AND UC CASES	11,073	11,641	11,980	12,917	13,134	12,973	12,656	12,502	13,360	13,919	14,577
TOTALS	24,678	26,715	27,199	28,504	29,494	30,750	31,597	32,353	37,200	39,474	41,566

Parties contested the facts or application of the law in 1,463 of the 2,440 Board decisions.

The contested decisions follow:

Total contested Board decisions	1,463
Unfair labor practice decisions	996
Initial (includes those based on stipulated record)	849
Supplemental decisions	22
Backpay decisions	32
Determinations in jurisdictional disputes	93
Representation decisions total	458

After transfer by regional directors for initial decisions	88
After review of regional directors' decisions	34
Decisions on objections and/or challenges	336
Clarification of bargaining unit decisions	7
Amendment to certification decisions	2
Union deauthorization decisions	0

This tally left 977 decisions which were not contested before the Board.

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

A number of related cases may be covered in Board decisions. In fiscal 1973, the 849 initial contested unfair labor practice decisions were concerned with 1,169 cases. The Board found violations of the Act in 903 of the 1,169 cases. In 1972 violations were found in 890, or 82 percent, of the 1,080 contested cases.

Contested decisions by the Board showed the following results:

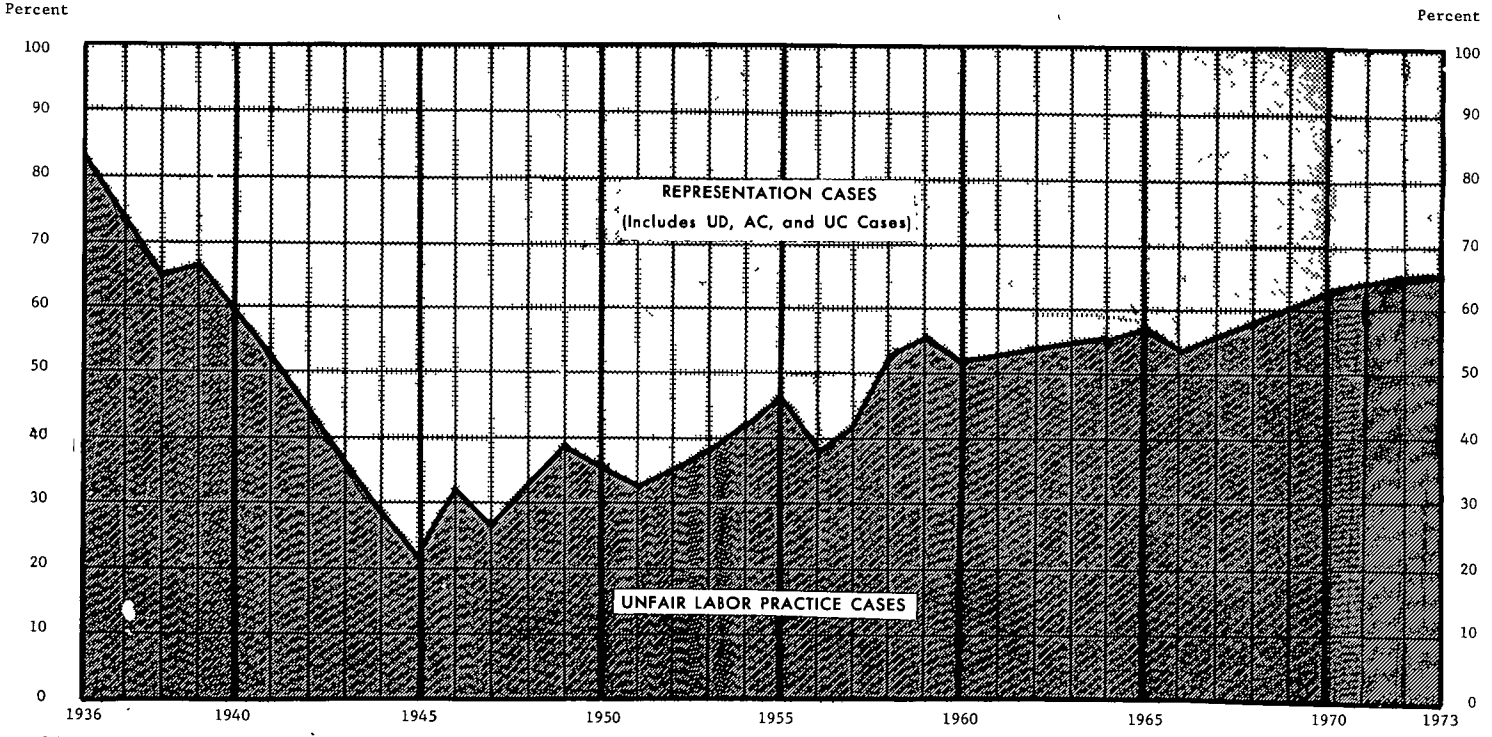
1. Employers—During fiscal 1973 the Board ruled on 956 contested unfair labor practice cases against employers, or 5 percent of the 17,985 unfair labor practice cases against employers disposed of by the Agency, and found violations in 763 cases or 80 percent, as compared with 83 percent in 1972. The Board remedies included ordering employers to reinstate 1,265 employees with or without backpay; to give backpay without reinstatement to 84 employees; to cease illegal assistance to or domination of labor organizations in 15 cases; and to bargain collectively with employee representatives in 241 cases.

2. Unions—In fiscal 1973 Board rulings encompassed 213 contested unfair labor practice cases against unions. Of these 213 cases, violations were found in 140 cases, or 66 percent, as compared to 82 percent in fiscal 1972. The remedies in the 140 cases included orders to unions in 2 cases to cease picketing and give 168 employees backpay.

At the close of fiscal 1973, there were 654 decisions pending issuance by the Board—471 dealing with alleged unfair labor practices and 183 with employee representation questions. The total showed a slight decrease from the 657 decisions pending at the beginning of the year. (Chart 11.)

Chart No. 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 - 1973.

5. Court Litigation

In fiscal 1973, U.S. courts of appeals handed down 350 decisions in NLRB-related cases, 9 more decisions than in fiscal 1972. In the 350 decisions NLRB was affirmed in whole or in part in 83 percent. This was the same as the 83 percent in the 341 cases of fiscal 1972.

A breakdown of appeals court rulings in fiscal 1973 follows:

Total NLRB cases ruled on	350
Affirmed in full	252
Affirmed with modification	37
Remanded to NLRB	17
Partially affirmed and partially remanded	2
Set aside	42

In 18 contempt cases in fiscal 1973 (21 in fiscal 1972) before the appeals courts, the respondents in 13 cases complied with the NLRB orders after the contempt petition had been filed but before decisions by courts, and in 5 the courts held the respondents in contempt (Tables 19 and 19A.)

The U.S. Supreme Court in fiscal 1973 affirmed in full three NLRB orders and three others were remanded to the Board.

U.S. district courts in fiscal 1973 granted 81 contested cases litigated to final order on NLRB injunction requests filed pursuant to section 10(j) and 10(1) of the Act. This amounted to 92 percent of the contested cases, compared with 110 cases granted in fiscal 1972, or 90 percent.

The following shows NLRB injunction activity in district courts in fiscal 1973:

Granted	81
Denied	7
Withdrawn	23
Dismissed	12
Settled or placed on courts' inactive list	113
Awaiting action at end of the fiscal year	25

There were 249 NLRB injunction petitions filed with the district courts in 1973, as against 276 in 1972. The NLRB in 1973 also filed two petitions for injunctions in appeals courts pursuant to provisions of section 10(e) of the Act, and the appeals courts ruled on neither. (See table 20.)

In fiscal 1973 there were 51 additional cases involving miscellaneous litigation decided by appellate and district courts, 49 of which upheld the NLRB's position. (See table 21.)

C. Decisional Highlights

In the course of the Board's administration of the Act during the report year, it was required to consider and resolve complex problems arising from the great variety of factual patterns in the many 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 these developments. Chapter II, "Jurisdiction of the Board," chapter III, "Effect of Concurrent Arbitration Proceedings," chapter IV, "Board Procedure," chapter V, "Representation Proceedings," and chapter VI, "Unfair Labor Practice Proceedings," 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 significant areas.

1. Deferral to Arbitration

In further development of the policy of deferral to available arbitration proceedings established by its *Collyer* decision,[1] the Board in *National Radio Co.*,[2] extended the area of potential deferral to allegations of discriminatory discharge and similar infringements upon employee rights protected by section 7 of the Act. It concluded that "the board is empowered under the statute to defer action on a complained of violation of Section 8(a)(1) and (3), pending arbitration, if, on balance, to do so will advance the policies and purposes of the Act." In determining that its abstention was desirable to permit the parties to seek resolution of their dispute under the provisions of their own contract, the Board pointed out it was thereby reaching a rational accommodation within the duality of both a statutory and a contractual forum for the same asserted wrong. "We may not abdicate our statutory duty to prevent and remedy unfair labor practices. Yet, once an exclusive agent has been chosen by employees to represent them, we are charged with a duty fully to protect the structure of collective representation and the freedom of the parties to establish and maintain an effective and productive relationship."

2. Discrimination in Employment

In *Jubilee Manufacturing Co.*,[3] the Board expressed the view that "discrimination based on race, color, religion, sex, or na-

[1] 37 Ann. Rep. 33–35 (1972).
[2] 198 NLRB No. 1, *infra*, p. 32.
[3] 202 NLRB No. 2, *infra*, p. 90.

tional origin, standing alone, . . . is not 'inherently destructive' of employees' Section 7 rights and therefore is not violative of Section 8(a)(1) and (3) of the Act. There must be actual evidence, as opposed to speculation, of a nexus between the alleged discriminatory conduct and the interference with, or restraint of, employees in the exercise of those rights protected by the Act."

In another case the Board evaluated the relationship between proceedings provided by sections 10(k) and 8(b)(4)(D) of the Act for resolving jurisdictional disputes, and allegations of discrimination in employment resulting from union action taken in a jurisdictional dispute situation. In *Brady-Hamilton Stevedore Co.*,[4] the Board held that the provisions of section 8(a)(3) were not applicable "in situations where the actions of all parties are part and parcel of an acute, bona fide jurisdictional work dispute," but rather that Congress intended that the 10(k) and 8(b)(4)(D) sections of the act dictate the procedure the Board is to follow in such situations. It therefore dismissed charges of 8(a)(3) violations in the discharge of employees because of an employer's change in work assignments resulting from the jurisdictional claim of a rival union, even though in a separate 10(k) proceeding the Board had held that the discharged employees were entitled to perform the work and the rival union was not entitled by means proscribed by section 8(b)(4)(D) to force or require the employer to change that assignment. The Board noted, however, that the union representing the discharged employees, having been successful in the 10(k) proceeding, was free to engage in economic pressure to enforce the Board's assignment, without running afoul of section 8(b)(4)(D).

3. Prohibited Boycotts

The relevance of the right of an employer to control the assignment of work to a determination of the legality of efforts of his employees to enforce an otherwise valid work-preservation clause was clarified by the Board in its decision in *Loc. 438, Plumbers.*[5] The Board held that even though a union in claiming the right to perform work is seeking to enforce a valid work-preservation clause against the employer who signed it, where that employer does not have the right under the circumstances to control the assignment of the work sought and thereby accede to the union's wishes, the union pressure is secondary because it is undertaken for its effect elsewhere. The fact that the union's actions were motivated by work-preservation aims and an at-

[4] 198 NLRB No 18, *infra*, p. 89

[5] *Loc. 438, Plumbers (Geo. Koch Sons)*, 201 NLRB No. 7, *infra*, p. 116.

tempt was being made to enforce a valid work-preservation clause is not sufficient to validate its action if it is directed at a neutral.

D. Financial Statement

The obligations and expenditures of the National Labor Relations Board for fiscal year ended June 30, 1973, are as follows:

Personal compensation	$38,475,356
Personnel benefits	3,406,544
Travel and transportation of persons	2,218,583
Transportation of things	61,080
Rent, communications, and utilities	1,738,401
Printing and reproduction	688,917
Other services	2,493,835
Supplies and materials	434,075
Equipment	260,882
Insurance claims and indemnities	24,693
Subtotal, obligations and expenditures [6]	49,802,366
Transferred to other accounts (GSA)	62,201
Total Agency	49,864,567

[6] Includes reimbursable obligations distributed as follows:

Personnel compensation	6,223
Personnel benefits	1,604
Travel and transportation of persons	17
Other services	100,690
Total obligations and expenditures	108,534

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]

[1] See secs. 9(c) and 10(a) of the Act and also definitions of "commerce" and "affecting commerce" set forth in sec. 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.

A. Territorial Jurisdiction

Three cases decided during the report year [6] presented questions concerning the territorial jurisdiction of the Board. In *Contract Services* the petitioner sought an election in a unit of certain employees, all of whom were Panamanian nationals, employed by a Delaware corporation in its operation of a local bus system transporting U.S. military dependents to and from school within the Panama Canal Zone pursuant to a contract with the U.S. Navy. The Board concluded that the Panama Canal Zone is a State, foreign country, or territory within the definition of "commerce" as defined by Section 2(6) of the Act, and that thus it had statutory authority to assert jurisdiction over U.S. employees conducting business operations there. However, the Board, using its discretionary power to decline to exercise its statutory jurisdiction to the fullest extent, did not assert jurisdiction because of foreign policy considerations. Noting that the issue of Panamanian sovereignty over the Canal Zone has long been a sensitive topic of negotiations between the governments of the United States and Panama, the Board declined to assert jursidiction since such action at this time might adversely affect relations between the two governments.[7]

In *Facilities Management* the Board, assuming *arguendo* that it had statutory jurisdiction over Wake Island, concluded that it would not effectuate the purposes of the Act to assert jurisdiction in view of the fact that Wake Island has no local permanent residents and is remote, difficult of access, and contains nothing but a military installation.

In *RCA, OMS, Inc.*, the petitioner sought to represent certain employees working at five Distant Early Warning (DEW line) sites located in Greenland. The Board concluded that under all the relevant circumstances, particularly the fact that Greenland is a possession of Denmark and governed as a Danish county, Greenland does not come within the jurisdiction of the Act.

B. Jurisdictional Standards

In *Windsor School*,[8] the Board, in a Supplemental Decision and Clarification, established a jurisdictional standard of $1 million annual gross revenue for secondary schools operated for

[6] *Contract Services*, 202 NLRB No. 156 (Chairman Miller and Members Kennedy and Penello), *Facilities Management Corp*, 202 NLRB No 164 (Members Jenkins, Kennedy, and Penello), *RCA OMS, Inc*, 202 NLRB No 42 (Members Fanning, Kennedy, and Penello).

[7] Member Kennedy would also decline jurisdiction based on the fact that the Board has consistently refused to assert jurisdiction over school bus enterprises.

[8] 200 NLRB No. 163.

profit. This same standard is applicable to nonprofit secondary educational institutions. The Board concluded that there was no longer justification for applying different standards to purely educational institutions based solely on whether or not they were operated for profit, and overruled an earlier decision [9] in which it had applied its retail and nonretail jurisdictional standards in asserting jurisdiction over a somewhat similar educational enterprise.

[9] *National College of Business*, 186 NLRB 490 (1970).

III

Effect of Concurrent Arbitration Proceedings

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

The Board has long held that, where an issue presented in an unfair labor practice proceeding has previously been decided in an arbitration proceeding, the Board will defer to the arbitration award if the proceedings appear to have been fair and regular, all parties had agreed to be bound, and the decision of the arbitration panel is not clearly repugnant to the purposes and policies of the Act.[2] Before the *Collyer* decision [3] the Board had deferred in a number of cases [4] where arbitration procedures were available but had not been utilized, but had declined to do

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

[2] *Spielberg Mfg. Co.*, 112 NLRB 1080, 1082 (1955).

[3] *Collyer Insulated Wire*, 192 NLRB 837 (1971). See 36 NLRB Ann. Rep. 33–37 (1972).

[4] E.g., *Jos. Schlitz Brewing Co.*, 175 NLRB 141 (1969). The case was dismissed, without retaining jurisdiction pending the outcome of arbitration, by a panel of three Members; Members Brown and Zagoria did so because they would defer to arbitration; Member Jenkins would not defer but dismissed on the merits. 34 NLRB Ann. Rep. 35–36 (1969); *Flintkote Co.*, 149 NLRB 1561 (1964) 30 NLRB Ann. Rep. 43 (1965); *Montgomery Ward & Co.*, 137 NLRB 418, 423 (1962), *Consolidated Aircraft Corp.*, 47 NLRB 694, 705–707 (1943).

so in other such cases.[5] In the *Collyer* decision [6] the Board established standards for deferring to contract grievance-arbitration procedures before arbitration has been had. During the report year a number of cases have been decided which involve the application of these standards.

A. Issues Deferred

1. Unilateral Changes in Conditions of Employment

The *Collyer* case itself involved an alleged unilateral change in conditions of employment in violation of section 8(a)(5) and (1) of the Act. During the report year the deferral policy announced in that decision was applied in a number of cases involving alleged unilateral changes in conditions of employment in violation of the Act. In deciding whether or not to defer, the Board has considered the language of the parties' collective-bargaining agreement, their contentions concerning events surrounding the execution of the contract, and their past practices.

In *National Biscuit* [7] the Board majority deferred where the complaint alleged, *inter alia*, that the union had violated section 8(b)(3) by refusing to be bound by provisions of the existing contract which required the employer's drivers to make cash collections; unilaterally altering the terms and conditions of employment in said contract by directing and requiring drivers to cease making cash collections; and unilaterally altering the terms and conditions of employment of said drivers by directing and requiring them to cease their established practice of making cash collections. The collective-bargaining agreement contained clauses dealing with both the receipt of money by employees and the force and effect of existing past practices. However, the Board found that the language of the contract did not compel the conclusion that drivers were required

[5] E g., cases discussed in 34 NLRB Ann. Rep 34, 36 (1969); 32 NLRB Ann. Rep 41 (1967), 30 NLRB Ann. Rep 43 (1965)

[6] Members Fanning and Jenkins dissented in separate opinions to the policy announced therein Both have continued to adhere to the views expressed in their respective dissents and have dissented in many of the cases issued during the report year in which the *Collyer* doctrine has been applied A recurrent theme of these dissents, as noted more particularly in the discussion of the various cases hereafter, is that the *Collyer* doctrine has been expanded in subsequent cases to the point where the Board has abdicated its statutory responsibilities and denied its processes to employees, labor organizations, and employers

[7] *Brotherhood of Teamsters & Auto Truck Drivers Loc 70, Teamsters*, 198 NLRB No 4 (Chairman Miller and Members Kennedy and Penello for the majority, Members Fanning and Jenkins dissenting).

to make cash collections. Consequently, they concluded, resolution of this dispute necessarily depended on a determination of the correct interpretation of the contract which could better be resolved by an arbitrator. The dissent, however, argued that since the contract did not compel arbitration the majority's dismissal of this case extended the *Collyer* doctrine beyond permissible limits, and encouraged disruptive strikes and lockouts. In response, the majority noted that the contract did provide for mandatory submission to a bipartite panel composed of union and employer representatives which determined whether arbitration should be invoked, and that further, the Board had deferred to the same bipartite provisions in past cases where appropriate.

In another case [8] the alleged violation involved an employer's unilateral institution of a wage incentive system for certain employees. In concluding that *Collyer* was applicable, the same Board majority found that the core of the dispute involved a good-faith disagreement between the parties concerning the interpretation of their collective-bargaining agreement, with both parties relying on past practice and negotiating history to uphold their respective positions. In their dissent, Members Fanning and Jenkins concluded that neither the contract nor past practice supported the majority's view that the issue of wage incentives was an "open" one, and that the effect of the majority decision would extend *Collyer* to preclude any remedy under the Act where contracting parties act unilaterally regardless of the terms of the contract or the factual situation. The dissenters asserted that the majority had interpreted the contract and found the incentive wage system to be part of it. The majority countered that that was an issue left to the arbitrator for resolution, and that it was the dissent that had decided the merits of the respondent's claim in order to find that a statutory violation had occurred.

In a third case,[9] the Board deferred the alleged violation resulting from an employer's unilateral decision to operate a new facility with a work force made up of housewives working part time. The employer announced that these employees would be considered a separate work force and would appear on a separate seniority list and that full-time employees would not have the opportunity to bid on the part-time work unless they requested a permanent transfer to part-time employment. Historically, full-time and part-time operating employees at the employer's fa-

[8] *Peerless Pressed Metal Corp.*, 198 NLRB No. 5 (Chairman Miller and Members Kennedy and Penello for the majority; Members Fanning and Jenkins dissenting).

[9] *Southwestern Bell Telephone Co.*, 198 NLRB No. 6 (Chairman Miller and Members Kennedy and Penello for the majority; Members Fanning and Jenkins dissenting).

cilities all appeared on a single seniority list and had been considered a single work force. In holding that *Collyer* was applicable, Chairman Miller and Members Kennedy and Penello found that this dispute arguably arose from the collective-bargaining agreement, which contained provisions demonstrating that the parties intended to allow the employer some flexibility in its use of part-time employees. In the view of the dissent, the majority's decision departed from the line of cases beginning with *N.L.R.B.* v. *Benne Katz,* 369 U.S. 736 (1962), holding that unilateral changes in conditions of employment, absent a specific contractual waiver, which was not, in the view of the dissent, present in this case, violates section 8(a)(5) of the Act.

In *Radioear* [10] an employer was alleged to have violated the Act by unilaterally terminating a $30 "turkey money" bonus paid to employees at Thanksgiving and Christmas. The parties had recently negotiated their first collective-bargaining agreement which contained a "zipper" or wrap-up clause. The contract did not mention the bonus. In deferring this case, the Board majority refused to apply the rule used by the administrative law judge, and urged by the dissent,[11] that there must be a "clear and unequivocal" waiver of the right involved, since the contract and events surrounding its execution were at the heart of this dispute. In reaching this conclusion, they stated that they were unwilling to ignore what had occurred at the bargaining table and decide the dispute on the basis of a simplified formula arrived at by this Board, but that each case involving the "clear and unequivocal" waiver issue should be judged on such varied factors as the precise wording of, and emphasis placed upon, any zipper clause agreed upon; other proposals advanced and accepted or rejected during bargaining; the completeness of the bargaining agreement as an "integration"; and the practice of the same or other parties under other collective-bargaining agreements.

2. Issues Determinative of Statutory Rights

In a number of cases during the report year the Board applied its *Collyer* deferral policy to alleged violations involving rights of employees set forth in section 7 of the Act. The cases men-

[10] *Radioear Corp.,* 199 NLRB No. 137 (Chairman Miller and Members Kennedy and Penello for the majority; Members Fanning and Jenkins dissenting).

[11] Members Fanning and Jenkins concluded that the effect of the majority's decision was to defer to arbitration a case in which no contract interpretation could conceivably be involved; that in any event, a general "zipper" clause does not amount to a sufficiently clear waiver over existing employment terms, and hence, the majority sought to reverse both Board and court law regarding the statutory obligation of an employer to refrain from unilateral conduct in the absence of a specific waiver.

tioned below illustrate both the breadth and complexity of the issues which the Board has deferred for resolution by the parties' agreed-upon grievance-arbitration procedure, as well as the Board's continuing approach of defining and refining its deferral policy on a case-by-case basis.

In the *National Radio* decision [12] the Board set forth in detail its considerations in deciding to defer to the dispute resolution procedure agreed upon (and already invoked) by the parties, alleged violations of section 8(a)(1) and (3) of the Act as well as section 8(a)(5). An employee, while acting as a union representative, was first warned, then suspended, and subsequently discharged, allegedly in violation of section 8(a)(1) and (3), for his admitted refusal to comply with a reporting requirement established by the employer. This requirement, which concerned the time spent by union representatives handling grievances, was allegedly established in violation of Section 8(a)(5) and (1) of the Act. The collective-bargaining agreement contained a provision permitting "free movement within the plant area for which they are responsible" for union representatives handling grievances, and a management rights clause which provided that the employer could "establish rules pertaining to the operation of the plant." Thus, the central issue, the propriety of the respondent's imposition of the reporting requirement and subsequent efforts to enforce it, specificially, the disciplinary steps leading to and including discharge of the employee, turned on the meaning and application of the relevant contract clauses and the parties' experience in applying them. Although there was a slight possibility that the employer's establishment of the reporting requirement was permissible under the contract, but might nevertheless be found violative of the Act because imposed for discriminatory motive, the Board concluded that the former issue first should be determined by the arbitrator for both practical as well as statutory considerations, and, therefore, deferred the issues raised by the above-described complaint allegations.

The Board also deferred the respondent's alleged 8(a)(1) and (3) violation by disciplining (suspending) this same employee for destroying a list containing names of employees who had manufactured defective parts. This list had been kept by an employee at a supervisor's request for "personal" reasons of the latter, who was present when the list was destroyed. The matter was grieved and, like the issues above, was pending before an arbitrator when the case came before the Board. Because of that

[12] *National Radio Co.*, 198 NLRB No. 1 (Chairman Miller and Members Kennedy and Penello for the majority; Members Fanning and Jenkins dissenting).

fact, the respondent urged the Board to abstain from exercising to jurisdiction pending an arbitral resolution on the basis that the contract prohibited discipline for other than "just cause" and provided a mechanism for the quick and fair vindication of employee rights when that clause was violated. The Board concluded that it was empowered under the statute to defer action on an alleged 8(a)(1) and (3) violation, pending arbitration, if, on balance, to do so would advance the policies and purposes of the Act. The determinant of that question was held to be the reasonableness of the assumption that the arbitration procedure would resolve the dispute in a manner consistent with the standards set forth in *Spielberg.*[13] The Board noted that it likely would because: the issue most often resolved by arbitrators was that of just cause for the imposition of discipline; the bargaining relationship was stable and amicable; the interests of the employee and the union were in substantial harmony because in protecting him the union protected its own interests, thereby assuring he would be adequately represented under the contractual procedures; and there was no history of animus or a pattern of action subversive of section 7 rights.

In the view of the dissent by Members Fanning and Jenkins, the Board's deferral of the issue of whether an employee was fired for union activity in violation of section 8(a)(3) constituted a subcontracting to a private tribunal of the determination of both public and individual rights conferred and guaranteed solely by the Act, which cannot be reduced, altered, or displaced by contract, and mocked the reason for the Board's existence. In their view, the majority's action extended the *Collyer* policy to a situation containing no question of contract interpretation, and therefore involving no contractual dispute succeptible to arbitration. They found untenable the majority's assumption that the arbitration "will not be 'repugnant to purposes and policies of the Act,' " since it made the existence of "good cause" a complete defense in a case where the reason for discharge was discriminatorily motivated, thereby effecting eliminating the protection of the Act where the "good" reason was a pretext for firing the employee. The dissenting members also concluded that the majority's deferring in this case would enable parties to contract themselves out of the Act by listing in the contract the provisions of the Act they agree not to violate, and appending an arbitration clause to such listing.

Subsequent to *National Radio,* the Board was faced with the situation where an employer was alleged to have violated section

[13] *Spielberg Mfg Co., supra,* fn. 2.

8(a)(1) of the Act by laying off certain employees and refusing to rehire two employees who had engaged in a wildcat strike which had been condoned by the employer.[14] The Board majority held that the collective-bargaining agreement's prohibition of discriminatory or arbitrary treatment of employees by the employer, like the prosciption against discipline except for "just cause" in *National Radio, supra,* warranted its application of the *Collyer* doctrine. Dissenting Members Fanning and Jenkins argued that statutory, not contractual, rights were involved, to wit, the legal doctrine of condonation, and that further, there were no reasonable grounds here to assume that the union would adequately represent the employees involved. In response, the majority noted that the Board had no monopoly on wisdom in matters concerning condonation, and that such matters are as cognizable in an arbitration forum as they are before the Board.

Two other cases [15] during the report year, like *National Radio, supra,* presented issues to the Board involving alleged discrimination by an employer against an employee who was acting as representative of the collective-bargaining agent.

In *Todd Shipyards* the Board deferred an employer's alleged 8(a)(1) violation by threatening to kick an employee, who was acting as a union steward, in his posterior, since an issue was whether the steward was threatened because he engaged in protected activity or because he exceeded the contractual limitations on his authority as a steward.

In *Appalachian Power* the Board majority deferred an alleged 8(a)(1) and (3) violation resulting from an employer's cancellation of an employee's leave of absence. The leave had been granted pursuant to provisions of the collective-bargaining agreement which envisoned employment of the employee during the leave period by the union. While on this leave of absence, the employee engaged in union organizational activities among unrepresented employees of a sister employer, Kentucky Power. After a Board election won by the union, the employee was informed by Appalachian Power that his activities were contrary to both the letter and intent of the contract provisions pursuant to which his leave had been granted and, therefore, his leave was canceled. Thus, the majority concluded, the issue here was essentially a dispute about the meaning of relevant contract terms. They stated that, if "it was the parties' contractual in-

[14] *Tyee Construction Co.*, 202 NLRB No. 34 (Chairman Miller and Members Kennedy and Penello for the majority; Members Fanning and Jenkins dissenting)

[15] *Appalachian Power Co.*, 198 NLRB No. 7 (Chairman Miller and Members Kennedy and Penello for the majority; Members Fanning and Jenkins dissenting); *Todd Shipyards Corp., Houston Div.*, 203 NLRB No. 20 (Chairman Miller and Members Kennedy and Penello).

tent . . . to prohibit an employee granted leave [of absence] under . . . the contract from acting as a union organizer while on leave, [they] would not be prepared to hold, in the context of this case, that either the condition itself, or [the employer's] enforcement of it through the cancellation of the leave, was so inherently destructive of statutory rights as to amount, without more, to a *per se* violation of Section 8(a)(1) and (3) of the Act."

In dissenting, Members Fanning and Jenkins charged that the majority was "turning away" from the Board's responsibility of preserving for employees their statutory rights, in this case the exercise of their section 7 rights. They claimed that the majority erred on three counts: (1) in failing to determine whether the Employer's interpretation of the contract provision in question was reasonable; (2) in being prepared to hold that a contractual waiver by the union of the employee's section 7 rights is not "inherently destructive of statutory rights" (in this case the right to engage in protected concerted activity whether or not on leave); and (3) in ignoring "the long line of Board and court decisions holding that a waiver of statutory rights must be stated in clear and unmistakable terms." Additionally, the dissent disagreed with the majority's conclusion that there was no basis for a finding of unlawful motivation independent of the contract. In this regard, they argued that the administrative law judge was supported in his finding that the employer displayed "a deep-seated animus to its employees' union representation," and that such hostility and the employer's alarm over the union's victory at Kentucky Power, established that the employee's loss of leave was prompted by discriminatory motivation.

To these assertions, the Board majority responded that the close timing of the cancellation of leave to the union's organization of the Kentucky Power plant was as subject to the inference that the employer did not wish to open itself to the risk of election objections as it was to the inference drawn by their dissenting colleagues; that no inference of unlawful motive could be drawn from the preelection statements of either Kentucky Power or the Employer, as they were privileged under section 8(c) of the Act; that implicit in the majority's decision was the conclusion that the applicable contractual provisions involved were succeptible of dual meanings—one favoring the Employer's position, the other not; and that the Board's "clear and unmistakable" waiver concepts were not involved, as the employee's right to go on leave and remain there was derived from the contract, not from the statute. Finally, they concluded that no employees'

statutory rights could be prejudiced, since the right of the individual employee to remain on leave would be determined by the arbitrator's interpretation of the contract's relevant, albeit ambiguous, terms, subject to the Board's review if a claim of prejudice to statutory rights is thereafter raised.

Significant applications of the *Collyer* doctrine were made during the report year in several other cases presenting issues determinative of statutory rights.

In *L.E.M.*[16] the complaint alleged that respondent violated section 8(a)(1), (3), and (5) of the Act by refusing to discharge employees at the request of the union and by failing to recall strikers to the jobs occupied by the employees whose discharges were requested. Following a strike during which some employees returned to work and replacements were hired, the parties negotiated a collective-bargaining agreement which contained a union-security clause. Shortly after the contract was executed, a replacement employee filed a union deauthorization petition. Thereafter, the union requested that a number of employees be discharged for failure to tender initiation fees and dues pursuant to the contract. The employer refused, stating that a UD petition had been filed and until the matter was disposed of by the Board it would refrain from taking any action which "might be construed as an unfair labor practice." As it was clear to the Board majority that any obligation which the employer had to honor the union's request that these employees be discharged emanated from the union-security clause in their collective-bargaining contract, they deferred this dispute to the parties' grievance-arbitration procedure. The dissenting members disputed such deferral primarily on the ground that the employer's refusal to honor the union-security clause was based on an interpretation of Board law and policy rather than an interpretation of that clause and, hence, the matter was not properly placed before an arbitrator.

In the *Atlantic Richfield* decision[17] a split Board deferred on two issues: (1) whether the posting by the employer for apprentices was in accord with the contract then in effect; and (2) whether the employer unlawfully discharged two employees who refused to perform a work assignment and whether, as the union contended, the employees were entitled to so refuse because of the employer's failure to follow safety procedures es-

[16] *L.E.M., Inc., d/b/a Southwest Engraving Co.*, 198 NLRB No. 99 (Chairman Miller and Members Kennedy and Penello for the majority; Members Fanning and Jenkins dissenting).

[17] *Atlantic Richfield Co.*, 199 NLRB No. 185 (Chairman Miller and Members Kennedy and Penello for the majority, Members Fanning and Jenkins dissenting).

tablished by the collective-bargaining agreement and other understandings between the parties. In deferring, the Board majority concluded that both were fundamentally issues of contract interpretation, and should, therefore, be referred to the contract's grievance-arbitration procedures. They also held that since the dispute over these discharges was not one that should be resolved by the parties' grievance-arbitration procedure, it followed that the strike over these discharges was subject to the contractual no-strike clause and was unprotected. The majority then dismissed this strike allegation noting that the unfair labor practices alleged in this case were not of the nature of those in *Mastro Plastics Corp.* v. *N.L.R.B.*,[18] which were "destructive of the foundation on which collective bargaining must rest." [19]

In *Medical Manors* [20] the Board majority deferred the alleged 8(a)(5) and (1) violations resulting from an employer's denial of contract visitation rights to union representatives and its payment of wage rates other than those called for in the collective-bargaining agreement. Although the Board expressed its concern that the respondent in this case might have engaged in unwarranted footdragging in complying with the contractual grievance-arbitration procedure, it noted that the union had obtained a court order compelling the employer to arbitrate the contractual wage rate issue and that both the court's jurisdiction to ensure compliance with its order and the Board's retention of jurisdiction under *Collyer* should impress upon the employer the necessity for honoring its agreement to utilize the dispute resolution procedure established in its collective-bargaining contract with the union. Members Fanning and Jenkins dissented for the reasons expressed in their dissents in *Collyer Insulated Wire*, 192 NLRB 857, and its progeny, particularly in light of the respondent's breach of a settlement of earlier alleged violations and the respondent's refusal to abide by the contract provisions establishing arbitration. In view of that history, they would not have required the union to continue a lawsuit to get respondent into the arbitration process.

[18] 350 U.S. 270 (1956).

[19] *Id.* at 281 The dissent in the instant case concluded that there was nothing to arbitrate on the apprenticeship program issue because the employer's action in that regard was clearly contrary to the applicable contract terms and thus constituted a unilateral modification of the parties' bargaining agreement. As for the other issues, it argued that they were before the Board on the merits, and no useful purpose would be served in deferring. Indeed, it claimed the result of such action would be duplication and delay. Moreover, the dissent charged, the majority's dismissing the issue of whether the strike was an unfair labor practice strike, and the protection to be afforded the employees if it was, only served to undermine the protection of the Act, because employers can eliminate such strikes if they can connect the strike to contractual terms and conditions of employment subject to an arbitration clause.

[20] *Medical Manors, Inc., d/b/a Community Convalescent Hospital*, 199 NLRB No. 189 (Chairman Miller and Members Kennedy and Penello for the majority; Members Fanning and Jenkins dissenting).

3. Union Fines of Employer Representatives

Two cases [21] issued during the report year involved the application of the *Collyer* deferral doctrine to alleged 8(b)(1)(B) violations which prohibits a labor organization or its agents from restraining or coercing an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances. In the *Houston Chronicle* case the respondent, a local of the International Mailers Union, was alleged to have violated the aforementioned provision by fining a foreman, who was also a member, for performing an act within the scope of his supervisory authority. The Board majority stated that the concern of Congress in enacting section 8(b)(1)(B) of the Act "was that one party to the bargaining process should not be *coerced* in his selection of those who will carry out his function in the bargaining and grievance-handling process." However, the majority further stated that it was not aware of anything in the statutory scheme prohibiting an employer's voluntary agreement to limit or circumscribe either the selection of its representatives or the manner in which its representatives' functions are exercised. In this case the parties' collective-bargaining agreement contained several provisions relating to foremen, including one stating that foremen were not to be disciplined by the union for carrying out instructions of the employer authorized by the contract. The Board majority held that where, as here, a broadly phrased statutory provision dealing with the continuing relationship between the parties to collective bargaining has been complemented through voluntary agreement by the parties to more precise limits of their rights and obligations, the latter have become largely contractual and should, at least in the first instance, be presented to an arbitrator for interpretation and decision. The dissenters admonished the majority for deferring an issue, the fining of a supervisor for performing supervisory duties, which the Board had passed on in numerous cases, and which in the present case could have been decided without a ruling on the contract violation alleged and where the expertise of an arbitrator was not needed.

In the *A. S. Abell* case an assistant foreman, who was also a member of the respondent, was fined for obeying a lawful work scheduling order of the employer by performing his supervisory

[21] *Houston Mailers Union 86, Intl. Mailers Union (Houston Chronicle Publishing Co.)*, 199 NLRB No. 69 (Chairman Miller and Members Kennedy and Penello for the majority, Members Fanning and Jenkins dissenting), *Baltimore Typographical Union 12, Intl. Typographical Union (A. S. Abell Co.)*, 201 NLRB No. 5 (Chairman Miller and Member Kennedy for the majority; Member Jenkins dissenting)

duties on a day the respondent insisted should be his day off. The parties' contract contained provisions relating to foremen that were essentially like those in the *Houston Chronicle* case and for the reasons set forth in that decision the alleged 8(b)(1)(B) violation was deferred to the parties' agreed-upon dispute resolution procedure. In dissenting, Member Jenkins relied on the dissent in *Houston Chronicle,* and further urged that deferral in this case promoted litigation in another forum and further delay and served to delegate to an arbitrator the power to determine the meaning of the Act.

B. Issues Not Deferred

Two cases [22] decided by the Board during the report year illustrate statutory issues which the Board will not defer under its *Collyer* doctrine. In the *Ryerson* case an employer, who urged deferral to its grievance-arbitration procedure with the union, was alleged to have violated section 8(a)(1) of the Act by, *inter alia,* threatening an employee, who was also a union representative, with reprisal because of his union activities; *viz,* his participation in the grievance procedure.[23] The Board majority refused to defer, theorizing as follows: A necessary condition for the Board's *Collyer* deferral policy to be applicable is that the dispute presented to the Board be cognizable in the contractual forum. However, the Board will not defer action in cases that present issues which are irresolvable, in conformity with *Spielberg,*[24] in an alternative forum. In this case it was not clear to the majority that the alleged violation could form the basis of a grievance cognizable under the contract. Additionally, even if this matter was cognizable as a grievance under the contract, they concluded that there was no showing that an arbitrator would have any authority under the contract to consider a remedy for interference by the employer with the performance of grievance functions by an employee acting as a union representative. Although the collective-bargaining agreement contained a clause

[22] *Joseph T. Ryerson & Sons,* 199 NLRB No. 44 (Chairman Miller and Members Kennedy and Penello for the majority; Members Fanning and Jenkins dissenting); *United-Carr Tennessee,* 202 NLRB No 112 (Members Jenkins, Kennedy, and Penello).

[23] The majority did defer the complaint allegation alleging a violation of sec. 8(a)(1) based on an employee's engaging in union activity on company time and property in contravention of a contract clause expressly prohibiting such conduct. In their view, deferral of that dispute—which had been submitted under the grievance-arbitration procedures of the contract and then been withdrawn—demonstrated the fundamental soundness of abstaining from action where such procedures are available to resolve a dispute cognizable in either forum. The dissenters strongly disagreed. They reiterated their view that the majority's position reduced the protection of the Act to a question of inerpretation of a contract clause, thereby eliminating any independent protection which the Act otherwise provides.

[24] *Spielberg Mfg. Co., supra,* fn. 2.

prohibiting employer interference with employee rights, or discrimination against employees, because of union membership, it did not expressly protect the type of activity involved when the alleged threat was made, and there was no showing that such grievances had previously been treated as proper subjects of the parties' grievance-arbitration procedure. However, to the majority, the critical element was that the alleged violation struck at the foundation of the grievance and arbitration mechanism upon which the Board relied in the formulation of its *Collyer* doctrine. They concluded that if the Board is to foster the national policy favoring collective bargaining and arbitration as a primary arena for the resolution of industrial disputes, as it sought to do in *Collyer*, by declining to intervene in disputes best settled elsewhere, it must be assured that those alternative procedures are open for use by the disputants. This consideration persuaded the Board majority that the issues of arbitrability and contract coverage should not here be left to resolution by an arbitrator as might be appropriate under other circumstances. Consequently, they considered this allegation on the merits, found no improper interference, and dismissed this aspect of the complaint. Members Fanning and Jenkins welcomed the majority's conclusion as to this allegation. But they could not understand the logic of their colleagues deferring the one alleged violation to arbitration (see fn. 23, *supra*) and not the other, since in their view the underlying contractual clause prohibiting union activity "on company time" or "premises" was unlawfully broad and similarly struck at the foundation of the grievance-arbitration procedures because it shut off access thereto. In response, the majority noted that the lawfulness of the clause in question was not before the Board as it was not raised by the charge or complaint, litigated, decided by the administrative law judge, or presented in the exceptions and, thus, the question whether a clause which on its face may violate the Act may nevertheless serve as the predicate for deferral was not presented.

In the *United-Carr* case the Board adopted without comment the decision of an administrative law judge finding that the Board's *Collyer* doctrine is inapplicable where an employer withholds information requested by the union which is potentially relevant in assisting the union to intelligently evaluate or process a grievance, absent an effective waiver of the statutory right to such information in the contract.

C. Circumstances Where Deferral Inappropriate

The applicability of the deferral policy enunciated in *Collyer* is dependent to a considerable degree on the particular facts and circumstances of each case. The Board refused to defer to the parties' agreed-upon dispute resolution machinery in a number of cases during the report year which presented situations that the Board deemed inappropriate for deferral. These cases exemplify circumstances under which the Board will *not* defer to the parties' grievance-arbitration procedure.

In *MacDonald Engineering* [25] the Board refused to defer an employer's alleged 8(a) (3) and (1) violation where the respondent raised the issue for the first time in its exceptions to the administrative law judge's decision. Respondent had offered no testimony relative to the grievance-arbitration procedure at the hearing and did not seek the admission of the contract into evidence. Nor did it urge the administrative law judge to defer at the hearing or in its brief to him. Consequently, the Board concluded that the record evidence concerning arbitrability of this matter and what powers an arbitrator had under the contract was insufficient to warrant a finding that deferral was appropriate.

Two cases [26] presented situations in which the integrity of the prospective arbitration proceeding would have been open to question. In the *Kansas Meat Packers* case a panel of Chairman Miller and Members Jenkins and Kennedy refused to defer an employer's alleged 8(a)(3) and (1) violations where the interests of the employees allegedly discriminated against appeared to be in conflict with those of the union and certain of its officials, as well as with the interests of the respondent. Two employees had been discharged after making numerous complaints to both the respondent and union concerning alleged work safety hazards, on-the-job injuries, and the respondent's failure to post job vacancies. Their complaints had led to friction between them and a union business agent, as well as with certain supervisors. Shortly before their discharge both employees submitted to the respondent written notice to stop the withholding of union dues from their wages and the union business agent with whom they were at odds apparently participated in the decision to discharge them. The Board panel concluded it would be repugnant to the

[25] *MacDonald Engineering Co.*, 202 NLRB No 113 (decided by the full Board). For reasons stated in their dissenting opinions in *Collyer* and subsequent cases, Members Fanning and Jenkins indicated that they would not, in any event, defer to arbitration.

[26] *Kansas Meat Packers, a Div of Aristo Foods*, 198 NLRB No. 2; Member Jenkins would not, in any event, have deferred to arbitration in this case; *National Football League Management Council*, 203 NLRB No. 165.

purposes of the Act to defer to arbitration in this case because to do so would relegate the alleged discriminatees to an arbitral process authored, administered, and invoked entirely by parties hostile to their interests. In the *National Football League* case the complaint alleged, *inter alia,* that the respondent had violated section 8(a)(5) and (1) by unilaterally promulgating, adopting, and implementing a rule whereby any player leaving the bench area while a fight was in progress on the football field would automatically be fined $200. The parties' contractual arbitrator, the Commissioner of Football, was an intimate participant in the events surrounding this dispute. He had initially conceived this rule and he was responsible under it for both investigating the events leading up to the fines and imposing the fines. In these circumstances, the Board stated, it would be difficult to conclude that the parties' agreed-upon arbitrator was a disinterested party and, consequently, it would not serve the purposes of the Act to defer this dispute.[27]

In *U.S. Playing Card Co.* [28] a union was alleged to have violated section 8(b)(1)(A) of the Act by threatening to fine certain of its members for supposedly violating contractual work rules. No provision of the parties' collective-bargaining agreement concerned in any way the circumstances under which the union could threaten to, or actually, fine its members.[29] Thus, the alleged violation here could not be treated by an arbitrator, since nothing in the contract would give him any jurisdiction to determine the propriety of the union's actions *vis-a-vis* its own members. In addition, the underlying contract interpretation issue concerning the work rules in question had already been resolved by an arbitration award.[30] The Board, therefore, concluded that there was no dispute which could fruitfully be made the subject of any grievance or arbitration proceeding.

The *Packerland Packing* [31] case presented an unusual situation in which an employer was alleged, *inter alia,* to have violated

[27] Members Fanning and Jenkins stated they would not, in any event, have deferred to arbitration relying on their dissenting opinions in *Collyer* and other similar cases.

[28] *Cincinnati Loc. 271, Lithographers & Photoengravers Intl. Union,* 204 NLRB No. 65 (Chairman Miller and Members Kennedy and Penello). Member Kennedy concurred in the above rationale but was also of the view that the rationale offered by the administrative law judge constituted a basis for deferral.

[29] Thus, this case is distinguishable from *Houston Chronicle, supra,* where the Board deferred an issue with respect to a union's fine of a supervisor because the contract there did contain provisions delineating the union's actions with respect to fining supervisors.

[30] As the underlying contract interpretation issue had been the subject of an arbitration award in this case, it is clearly distinguishable from *National Biscuit, supra,* where the dispute was deferred by the Board because its resolution depended upon a determination of the correct interpretation of the contract therein.

[31] *Packerland Packing Co.,* 203 NLRB No. 39 (Members Fanning, Kennedy, and Penello, with Member Fanning noting he would not, in any event, have deferred to arbitation).

section 8(a)(3) and (1) of the Act by discriminatorily transferring three employees to more physically exacting jobs because they had participated in a strike. The Board reversed an administrative law judge's decision deferring this dispute to the grievance-arbitration procedure because it was not clear whether these employees belonged in either of two bargaining units at the time the transfers were made, and one of the labor organizations involved had refused shortly after the transfers to represent these employees in a grievance procedure. Therefore, the Board concluded it would not be appropriate to defer in this case.

D. Deferral After Arbitration

Long before the *Collyer* decision setting forth the standards for deferring to contract grievance-arbitration procedures before arbitration has taken place, the Board held in *Spielberg* [32] that where an issue presented in an unfair labor practice proceeding has previously been decided in an arbitration proceeding, it would defer to the arbitration award if the proceeding appears to have been fair and regular, all parties had agreed to be bound, and the decision of the arbitration panel was not clearly repugnant to the purposes and policies of the Act. Several cases [33] decided during the report year presented issues involving application of the *Spielberg* doctrine.

In the *Gulf States Asphalt* case the issue before the Board was whether or not the unfair labor practice issue, an alleged discriminatory discharge in violation of section 8(a)(3) and (1) of the Act, had been presented to, and ruled upon by, the arbitrator. There was no contention in this case that the arbitration proceeding did not meet the *Spielberg* standards. In the main opinion of the Board, Chairman Miller and Member Penello held that where the arbitrator has not clearly set forth which issues he is deciding and which he is not, they would look to the evidence and contentions presented to him, together with the language of his award, to determine whether he has in fact disposed of the unfair labor practice issue. Utilizing that approach in this case, they found that the issue of discriminatory motive was before the arbitrator and implicitly disposed of by him. Accordingly, they honored the arbitrator's finding that the employee was discharged for just cause, and thus found that the discharge did not violate the Act. Member Kennedy concurred in the result on the basis of his separate opinions in *Airco Industrial*

[32] *Spielberg Mfg Co.*, 112 NLRB 1080.

[33] *Gulf States Asphalt Co.*, 200 NLRB No. 100; *McLean Trucking Co.*, 202 NLRB No. 102; *Malrite of Wisconsin*, 198 NLRB No. 3.

Gases [34] and *Yourga Trucking* [35] in which he stated that the party seeking a result contrary to the arbitrator's award should have the burden of establishing that the arbitrator did not consider the issue before the Board. Members Fanning and Jenkins dissented to the finding that the arbitrator's award decided the unfair labor practice issue. They argued that the presumption that the arbitrator considered the issue, because it was presented to him, placed an unfair burden on the General Counsel to prove a negative—that it had not been considered. In their view the award was completely barren of any indication that the arbitrator disposed of the discriminatory discharge issue and contained some indications that he had not.

The *McLean Trucking* case involved an alleged 8(a)(3) and (1) violation stemming from the discharge of an employee who had refused to haul overloads that he claimed were dangerous and contrary to the collective-bargaining agreement. He also asserted that the employer was happy to get rid of him because of his role as a union steward. His discharge was upheld at the final step of the contractual dispute resolution procedure which was composed of a committee at each step made up of an equal number of management and labor representatives with no neutral third party present. The alleged discriminatee testified at length at the next-to-last stage of the grievance procedure, at which a transcript was made. It was clear from the transcript that the unfair labor practice issue was presented to the committee. The decision to deny the grievance that was reached at the final step was brief, but stated that it was based on the transcript. Since half of this committee consisted of union representatives, and the union, by its pursuit of this matter through its lengthy course, had indicated its interest in the successful prosecution of this grievance, the Board majority was satisfied that in denying the grievance the committee had fully considered the unfair labor practice issue. They concluded that although resolution of this dispute was not reached by a neutral third party, this was the procedure the parties had agreed upon, and the Board itself had previously held that joint grievance committees of the type here involved, though operating without neutral arbitrators, met the *Spielberg* standards of fairness. The majority also rejected the General Counsel's contention that the result reached here was clearly repugnant to the Act and dismissed the complaint in its entirety.

Members Fanning and Jenkins, dissenting, would have found the 8(a)(3) and (1) violation alleged in the complaint. In their

[34] 195 NLRB No. 120. See 37 NLRB Ann. Rep. 38 (1972).
[35] 197 NLRB No. 130. See 37 NLRB Ann. Rep. 39 (1972).

view the result reached by the parties' dispute resolution procedure, which Member Jenkins considered lacking in fairness since it involved no neutral participant, was clearly repugnant to the Act because any contract provision, employer practice, or arbitration award requiring employees to violate state laws or to create safety hazards for themselves or others is void, and any effort to force employees to conform to it is unlawful under the Act, without regard to what an arbitrator or the Board may say to the contrary.

In the *Malrite of Wisconsin* case an employer was alleged to have violated section 8(a)(5) and (1) of the Act by unilaterally changing certain methods of operation set forth in the parties' collective-bargaining agreement. This dispute had previously been processed through the grievance-arbitration machinery and the union's grievance had been upheld by an arbitration panel. However, the employer refused to comply with the award and the union then filed an unfair labor practice charge. An administrative law judge found that, although the arbitral award met the standards set forth in *Spielberg,* that decision was not applicable because of the employer's failure to comply with the award, and recommended a bargaining order. A Board majority of Chairman Miller and Members Kennedy and Penello agreed that the *Spielberg* standards had been met, but rejected the position that noncompliance with the award should be a matter for the Board's concern, and dismissed the complaint in its entirety. They concluded that if the Board's deference to arbitration is to be meaningful, it must encompass the entire arbitration process, including the enforcement of awards. In their view, the desirable objective of encouraging the voluntary settlement of labor disputes through the arbitration process will best be served by requiring that the parties to a dispute, after electing to resort to arbitration, proceed to the usual conclusion of the process—judicial enforcement—rather than permit them to invoke the intervention of the Board.

Members Fanning and Jenkins dissented. They would have affirmed the administrative law judge's conclusion that the *Spielberg* decision was inapplicable due to the employer's failure to comply with the award and would have found the violation alleged in the complaint. In their view, the majority's decision here was an extension of the *Collyer* doctrine rather than an application of the *Spielberg* decision, and its application precluded an adequate remedy at law since only the Board would remedy the proven unfair labor practice by directing the respondent to bargain in good faith with the union or order reinstatement of

the separate classifications that were abrogated by the employer's unilateral action. In response, the Board majority argued that the dissent misconstrued *Spielberg* by distinguishing between those arbitration awards ruling in the grievant's favor by finding a contract breach—in which case an unfair labor practice charge is not likely to be filed—and those ruling against the grievant; that with respect to a remedy at law, the arbitration panel sustained the union's contentions "on the merits," and thus enforcement through the courts would provide full remedial relief.

IV

Board Procedure

A. Waiver of Transcript

In March 1972, the Board amended its Rules and Regulations to permit parties to dispense with a verbatim wrtiten transcript of oral testimony adduced at a hearing, and to waive the right to except to findings of fact.[1] The application of the new rule during the report year has contributed to a reduction in litigation delays.

In *George Williams Sheet Metal Co*[2] the Board reaffirmed its conclusion that the rule did not conflict with the provision in section 10(c) of the Act that "testimony . . . shall be reduced to writing." In the board's view, section 10(c), while clearly designed for the benefit of the parties by preserving a written record of the testimony for review by the Board and by the courts, does not suggest by its languages its legislative history that a verbatim transcript is *required* or that it cannot be voluntarily and consciously waived by agreement of all parties in interest. The Board likened the waiver to the submission of a case on stipulated facts, which both the Board and courts have accepted as a substitute for testimony adduced at a hearing. It noted that as a result of the parties' use of this procedure, the administrative law judge's decision issued approximately 1 month after the hearing was held.

[1] Sec. 102.35(i) grants authority to administrative law judges:

To approve a stipulation voluntarily entered into by all parties to the case which will dispense with a verbatim written transcript of record of the oral testimony adduced at the hearing, and which will also provide for the waiver by respective parties of their right to file with the Board exceptions to the findings of fact (but not to conclusions of law or recommended orders) which the [administrative law judge] shall make in his decision.

[2] 201 NLRB No 144. Member Kennedy, dissenting, was of the view that the new rule was contrary to section 10(c) and that the absence of a transcript precludes any meaningful review of an unfair labor practice proceeding by either the Board or a circuit court of appeals pursuant to sec. 10(e) or (f) of the Act. He rejected the analogy between cases submitted directly to the Board by stipulation and those by waiver of verbatim transcript on the ground that in the former the facts are clear and uncontroverted, while in the latter there are substantial issues of fact involving the credibility of witnesses. He also questioned how an inquiry could be made into questions of fair procedure and substantial evidence if there were no record of what occured at the hearing.

B. Limitation of Section 10(b)

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

In *Serv-All Co.*[3] the Board had occasion to determine the validity of an employer's contention, in defense of an 8(a)(5) charge, that the complaint was barred by the provisions of section 10(b). The employer relied on *Los Angeles Yuma Freight Lines,*[4] a case in which the court held that the failure to process grievances during the 10(b) period did not, in itself, constitute an unfair labor practice. Thus, the court concluded that the Board's finding that this conduct constituted a continuing refusal to bargain during the 10(b) period, was supported only by reliance on the company's time-barred conduct. In the instant case, the Board held that while the employer's initial refusal to sign or abide by the negotiated contract, the ensuing strike, and the employer's filing of an RM petition, all occurred outside the 10(b) period, there were other incidents which were sufficient to indicate that the employer's initial refusal to bargain recurred well within the 6-month period from the filing of the charge on March 18, 1971. Thus, the Board majority found that in November 1970, during a colloquy that occurred in the RM hearing then taking place, the respondent in effect refused to sign the agreement, and that during January and February 1971, the union, on four occasions, contacted the Respondent to get the contract executed, but that respondent would not even discuss the matter.[5]

In another case involving 10(b),[6] a three-member panel of the Board dismissed that portion of a complaint alleging that the employer violated section 8(a) (3) and (1) of the Act by discriminatorily failing to recall three employees who were on layoff status. These employees had been laid off when their department was shut down. When the employer reopened the department in the pre-10(b) period, he hired a full complement

[3] 199 NLRB No. 159

[4] *N L.R.B* v. *Los Angeles Yuma Frieight Lines,* 446 F.2d 210 (C.A. 9, 1971)

[5] Chairman Miller and Member Kennedy, dissenting, were of the opinion that all of the operative facts occurred more than 6 months before the charge was filed, and that therefore the complaint should be dismissed on the basis of sec. 10(b) The dissent disputes the majority's finding that the events in November 1970 and January and February 1971 established a recurrence of the employer's refusal to bargain, essentially on the grounds that the finding regarding the Repsondent's refusal at the November 7, 1970, hearing to sign the agreement was based on a hypothetical question and that, not only was the record ambiguous as to the January and February 1971 "contacts," but also Business Agent Smith testified that he never "in so many words" asked Respondent to sign the contract

[6] *Indian Head Hosiery Co.,* 199 NLRB No. 75.

of employees for the department, but did not recall the three employees in question. An administrative law judge found that the failure to recall them was unlawfully motivated, and hence in violation of section 8(a) (3) and (1). The Board found merit in the employer's contention that the administrative law judge's findings of a violation was time barred by section 10(b). The Board found that all persons hired by the employer after the 10(b) cutoff date were replacements of those either recalled or hired into the reactivated department who subsequently quit. Thus, prior to the 10(b) cutoff date, the employer had filled all jobs in that department, and any discrimination evident in the failure to recall had by that date become final. Since the finding of a violation would be grounded on events predating the 10(b) limitation period, the Board held that no finding of an unfair labor practice could be made.

C. Reconsideration of Dismissal of Charge

In a case involving novel 10(b) issues,[7] the Board considered (1) whether a complaint was barred by section 10(b) of the Act because of prior denials of appeals from the regional director's dismissal of the charge; (2) whether the policy of administrative finality enunciated in *Forrest Industries*,[8] had been substantially modified by the Board's amendment of section 102.19(c) of the Board's Rules and Regulations; and (3) whether, if such modification occurred, it should be applied retroactively.

In *Forrest Industries, supra,* the Board found that the General Counsel's rejection of the first motion for reconsideration was dispositive of the case and concluded that it would not effectuate the purposes of the Act to proceed further. Thereafter, on March 8, 1972, the following language was added to section 102.19(c): "Motions for reconsideration of a decision previously reconsidered will not be entertained, except in unusual situations where the moving party can establish that new evidence has been discovered which could not have been discovered by diligent inquiry prior to the first reconsideration."

Ruling on the issues thus posed, the Board held that the amendment of section 102.19(c) did modify *Forrest Industries, supra,* to permit a second motion for reconsideration on the limited basis, noted in the addition recited above to section 102.-19(c), but that the amendment was only intended to apply prospectively to cases then either actively pending on appeal or to

[7] *Douglas Aircraft Co.*, 202 NLRB No. 65.
[8] 168 NLRB 732 (1967).

future cases, and not to cases dismissed under rules in effect at a prior time. Accordingly, the Board found that the amendment did not apply in the instant case, where the appeal had been denied for a second time prior to the date of the amendment.[9] The Board concluded that the employer's motion to dismiss the complaint as barred by section 10(b) should be granted.

[9] The Board reasoned that to apply the "rule change retroactively would amount to a repudiation of any concept of administrative finality, restrict the expeditious handling of current cases, and substantially undermine the objective of Section 10(b), which was to preclude the litigation of stale charges."

V

Representation Proceedings

The Act requires that an employer bargain with the representative designated by a majority of his employees in a unit appropriate for collective bargaining.[1] 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 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 on the basis of the results of the election. Once certified by the Board, the bargaining agent is the exclusive representative of all employees in the appropriate unit for collective bargaining with respect to rates of pay, wages, hours of employment, or other conditions of employment. The Act also empowers the Board to conduct elections to decertify incumbent bargaining agents who have been previously certified, or who are being currently recognized by the employer. Decertification petitions may be filed by employees, by individuals other than management representatives, or by labor organizations acting on behalf of employees.

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

A. Existence of Questions Concerning Representation

Section 9(c) (1) empowers the Board to direct an election

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

and certify the result thereof, provided the record of an appropriate hearing before the Board [4] shows that a question of representation exists. However, petitions filed in the circumstances described in the first proviso to section 8(b) (7) (C) are specifically exempted from these requirements,[5] and the parties may waive a hearing for the purpose of a consent election. [6]

The investigation of a petition for a representation election must establish facts supplying a proper basis for the finding of the existence of a question of representation. The ultimate finding depends further on the presence or absence of certain factors, some of which are discussed in the following sections.

1. Employee Status

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

These statutory exclusions have continued to require the Board to determine whether the employment functions or relations of particular employees preclude their inclusion in a proposed bargaining unit.

a. Agricultural Laborers

A continuing rider to the Board's appropriations act requires the Board to determine "agricultural laborer" status so as to conform to the definition of the term "agriculture" in section 3(f) of the Fair Labor Standards Act.[7] In a case decided by the Board this year, the Board examined the employer's operations and found that the employer's transportation and distribution of chicks on the farms of independent growers were not performed as a part of

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

[5] That section prohibits a labor organization, which is not currently certified as the collective-bargaining representative, from engaging in recognitional picketing without filing a representation petition within a reasonable period of time not exceeding 30 days. However, when such a petition has been filed, the proviso directs the Board to hold an expedited election without regard to sec. 9(c)(1) See also NLRB Rules and Regulations and Statements of Procedure, Series 8, as amended, sec 101 23(b).

[6] Sec. 9(c)(4); see also NLRB Rules and Regulations and Statements of Procedure, Series 8, as amended, sec 101 19

[7] Although the Board must make its own determination as to the status of any group of employees, where appropriate as a matter of policy the Board gives great weight to the interpretation of sec. 3(f) by the Labor Department, in view of that agency's responsibility and experience in administering the Fair Labor Standards Act.

the farm operation but rather were nonfarm operations incident to, or in conjunction with, a separate and distinct business activity; namely, shipping and marketing.[8] The Board followed its earlier decisions holding that when an employer contracts with independent growers for the care and feeding of the employer's chicks, the employer's status as a farmer engaged in raising poultry ends with respect to those chicks.[9]

b. Employee Versus Independent Contractor Status

During the report year the Board applied the "right-to-control" test in resolving the recurring issue of employee versus independent contractor status of owner-drivers, and nonowner-drivers hired by and supplied to the employer by the lessors of the equipment.[10] Under this test, an employer-employee relationship exists when the employer reserves the right to control not only the ends to be achieved, but also the means to be used in achieving such ends. However, where control is reserved only as to the result sought, an independent contractor relationship exists.[11] Resolution of this issue depends on all the facts of each case, and no single factor is determinative. Applying the test to the case before it, the Board, citing *Deaton,*[12] concluded that the employer controlled the manner and means by which the owner-drivers and nonowner-drivers performed work for the employer by determining the qualifications of drivers; by disqualifying those who were not qualified or failed to pass the physical; by terminating the employment of drivers who violated state laws and U.S. Department of Transportation safety regulations; by requiring leased equipment to be inspected every 90 days; by its exercise of control over and right to sublease the leased equipment; by requiring the drivers to file logs, physical examination certificates, and other reports; by dispatching the drivers; by requiring all leased equipment to exhibit the employer's name and identification number; and by controlling the duration of the relationship through the right to terminate the

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[8] *Imco Poultry, Div. of the Intl. Multifoods Corp.*, 202 NLRB No 44 (Members Fanning, Jenkins, and Penello)

[9] See *Strain Poultry Farms*, 160 NLRB 236 (1966) and 163 NLRB 972 (1967), reversed 405 F 2d 1025 (C.A. 5), *Victor Ryckebosch, Inc*, 189 NLRB 40 (1971), and cases cited therein, reversed 471 F 2d 20 (C.A. 9, 1972). To the extent that the Board's finding in the instant case was in conflict with the decisions of the courts in *Strain Poultry Farms*, and *Victor Ryckebosch*, the Board respectfully disagreed and adhered to its view until such time as the Supreme Court has passed on the matter

[10] *Pony Trucking*, 198 NLRB No. 59 (Members Fanning and Jenkins, with Member Kennedy dissenting).

[11] See 36 NLRB Ann Rep. 41 (1971)

[12] *Deaton, Inc.*, 187 NLRB 780 (1971), 36 NLRB Ann Rep. 41 (1971)

lease. The Board majority found these factors determinative and therefore concluded that the relationship was one of employment.[13] The Board majority distinguished *Fleet Transport Co.*,[14] wherein it found independent contractor status, on the ground that there the employer had made significant revisions in its lease agreements so as to lessen its control over both the drivers and the equipment.

This issue was again presented to the Board in a case involving owner-operators of dump trucks.[15] Applying the right-to-control test, the Board concluded that certain owner-operators, some working directly for contractors and some working for contractors through overlying carriers, are employees and not independent contractors. The Board majority noted that the situation in the present case was similar to that in *General Teamsters*,[16] and found that the contractors retain and exercise such control over the manner and means by which the drivers perform their tasks as to make them employees.[17]

2. Bars to Raising Questions of Representation

In certain circumstances the Board, in the interest of promoting the stability of labor relations, will find that circumstances appropriately preclude the raising of a question concerning representation. Thus, under the Board's "blocking charge" policy, the Board will refuse to direct an election when an unfair labor practice charge affecting the unit involved is pending.[18] Yet the rule has but general application, and the Board will

[13] In dissenting Member Kennedy's view, whatever control the employer exercised over the owner-drivers and nonowner-drivers was exercised in response to governmental regulations which have been promulgated in the public interest rather than in the specific interest of the employer and other employers similarly situated Because of the owner-drivers investment in their equipment, their control of their hours of work, loads, and routes, their right to hire substitute drivers and helpers, and because the nonowner-drivers are hired and paid by the lessors of the equipment, together with other factors, Member Kennedy regarded the relationship as entrepeneurial rather than that of employer-employee He would have found *Fleet Transport, infra,* fn. 13, controlling and would have held that the owner-drivers hired by the lessors were employees of the lessors

[14] 196 NLRB No. 61 (1972) (Chairman Miller and Members Kennedy and Penello)

[15] *Contractor Members of the A G C. of California,* 201 NLRB No. 36. Chairman Miller and Members Fanning and Jenkins, with Member Kennedy dissenting. Chairman Miller distinguished this case from his special concurrence in *Aetna Freight Lines,* 194 NLRB 740 (1971), on the basis that, in the instant case, the degree of control exercised over the means and manner of the individual's performance was extensive in that the individual was subject to hour-to-hour, minute-to-minute minutiae involving typical employer-employee concerns.

[16] *General Teamsters, Chauffeurs, Warehousemen & Helpers, Loc. 982, Teamsters (J K Barker Trucking Co.),* 181 NLRB 515 (1970), enfd *sub nom. Joint Council of Teamsters No. 42* v. *N L.R.B.*, 450 F.2d 1322 (C.A.D.C, 1971) (Chairman McCulloch and Members Fanning and Jenkins). Chairman McCulloch would have found the owner-operators to be independent contractors.

[17] Member Kennedy dissented. In his view the application of the right-to-control test to the facts of this case established the entrepeneurial, and hence independent contractor status, of these owner-operators.

[18] See *Columbia Pictures Corp.*, 81 NLRB 1313 (1949)

direct an election when an immediate election will effectuate the purposes of the Act.[19] In this regard, the Board during this year decided to make a general exception to its blocking charge policy in a case where a timely decertification petition was filed and an 8(a) (5) charge was filed based only on an allegation of a mere refusal to bargain subsequent to the filing of the petition.[20] The Board majority held that the processing of properly supported decertification petitions under like future circumstances should not be delayed and noted that such an 8(a) (5) charge, unless the charge contains allegations of acts—other than a mere refusal to bargain—which may be a proper basis for finding a violation of the Act, could be promptly dismissed as nonmeritorious.

Another circumstance which will preclude the raising of a question concerning representation occurs under the Board's contract-bar rules. Under these rules, a present election among employees currently covered by a valid collective-bargaining agreement may, with certain exceptions, be barred by an outstanding contract. Generally, these rules require that to operate as a bar, the contract must be in writing, properly executed, and binding on the parties; it must be of definite duration and in effect for no more than 3 years; and it must also contain substantive terms and conditions of employment which in turn must be consistent with the policies of the Act. Established Board policy requires that to serve as a bar to an election, the contract must be signed by all parties before the rival petition is filed.[21] The Board applied these rules to a slightly unusual case in which the Board decided that a contract which was executed during the litigation of a blocking unfair labor practice charge, will not bar a petition, timely filed prior to the execution of the contract, and which was held in abeyance for processing pending disposition of the unfair labor practice charge.[22] The unfair labor practice charge had resulted in a Board decision and order[23] finding that the employer had violated section 8(a) (2) and (1) of the Act by continuing to bargain and entering into a contract with a union while there existed a question concerning representation, raised by the outstanding petition. Subsequently, the United States Court of Appeals for the Ninth Circuit denied enforce-

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[19] *Ibid.*

[20] *Telautograph Corp.*, 199 NLRB No 117 (Chairman Miller and Members Kennedy and Penello, with Members Fanning and Jenkins concurring in dismissing the complaint)

[21] *Fruehauf Trailer Co.*, 87 NLRB 589 (1949)

[22] *Peter Paul, Inc*, 204 NLRB No. 57 (Members Fanning, Jenkins, and Kennedy)

[23] *Peter Paul, Inc.*, 185 NLRB 281 (1970).

ment of the Board's order.[24] The Board rejected the employer's contention in the subsequent representation proceeding that the Ninth Circuit decision indicated that no question concerning representation existed when the employer entered into the contract at issue and that the current contract operated to bar the petition. The Board noted that the Ninth Circuit essentially found only that the employer had not breached its neutral position in violation of the Act by executing the contract, a finding which was separate and apart from the question of processing a petition which was timely filed and supported by an adequate showing of interest.[25] The Board concluded that inasmuch as the current contract had not been signed by all the parties before the rival petition was filed, it did not bar an election.[26]

In another contract-bar case arising during this year the Board refused to apply its *General Box* [27] exception so as to remove a contract as a bar to a petition.[28] The Board's decision in *General Box* established the principle that an uncertified union which already enjoys recognition can file a petition at any time during the term of a contract to secure the benefits of certification. The Board stated that the rationale behind the *General Box* decision was that certification affords certain statutory benefits under section 8(b) (4) of the Act, and lends stability, security, and permanency to the bargaining relationship primarily by removing challenges to a union's majority status for a 1-year period following the date of certification. These benefits of certification provide greater protection to an already recognized union against raids of competing unions with jurisdictional claims or organizational designs on the employees involved. For these reasons, a petition filed by a recognized but uncertified labor organization is treated by the Board as an exception to its contract-bar rules. Furthermore, once a petition is filed under the *General Box* exception, it is viewed the same as any other petition raising a question concerning representation and the recognized union's contract will not bar the otherwise appropriate intervention of a rival union.[29] The Board has even directed

[24] *N.L.R.B. v. Peter Paul, Inc.*, 467 F.2d 700 (1972)

[25] The adequacy of a showing of interest supporting a petition is an administrative matter not subject to litigation. *O. D. Jennings & Company*, 68 NLRB 516 (1946).

[26] The Board pointed out that its direction of an election in the present case is in accord with the teachings of the Supreme Court which recently stated that authorization cards "are admittedly inferior to the election process," which is "the most satisfactory—indeed the preferred—method of ascertaining whether a union has majority support." *N.L.R.B. v. Gissel Packing Co.*, 395 U.S. 575, 602–603.

[27] *General Box Co.*, 82 NLRB 678 (1949).

[28] *National Electric Coil Div., McGraw-Edison Co.*, 199 NLRB No. 133 (Chairman Miller and Members Fanning and Penello).

[29] *Ottawa Machine Products Co.*, 120 NLRB 1133 (1958), *Puerto Rico Cement Corp.*, 97 NLRB 382 (1951)

an election in a case where the petitioner sought to withdraw its petition after intervention occurred.[30] In the *National Electric* case, *supra,* however, the Board concluded that it was inappropriate to remove the petitioner's contract as a bar to an election between the petitioner and the intervenor, since the evidence revealed that the incumbent petitioner had not filed the petition solely to obtain certification for itself. The Board found that the evidence showed the petition constituted an attempt by the employees of change their affiliation from the petitioner to the intervenor and thus escape from the collective-bargaining agreement, a purpose contrary to the principles of *General Box.* The Board therefore refused to remove the current contract as a bar to an election, and dismissed the petition.

B. Unit Determination Issues

1. Retail Store Units

Although the Board has approved less than storewide units in certain circumstances, it has consistently held that storewide units of selling and nonselling employees in retail establishments are inherently appropriate.[31] In a series of four cases decided this year involving *Wickes Furniture,* a company which combines the selling and warehousing functions of its furniture business under a single roof, the Board by a vote of 3 to 2 in each of the four cases held that separate units limited to salesmen or warehouse employees were not appropriate. The facts set forth below are common to each establishment involved.

Each of the four stores consists of a single, large one-story building. The front two-thirds of the building serves as a warehouse area while the remaining one-third in the rear is utilized as a carpeted, air-conditioned showroom.

Customers enter the buildings in the warehouse area and proceed approximately 200 feet to the showroom in the back. The warehouse contains such things as stored merchandise, a customer lounge, shipping and customer pick-up areas, and in some instances a refinishing department and "will-call" office. The vast majority of the showroom area is utilized for the display of furniture. In addition, however, certain areas of the showroom have been set aside as "front office" space for managerial and bookkeeping staffs, and for office clericals who assist in completing sales. Customers make all purchases and credit arrangements in the showroom and adjacent offices. Those who desire

[30] *Jefferson City Cabinet Co.,* 120 NLRB 327 (1958).
[31] 37 NLRB Ann. Rep. 65–67 (1972)

to take their purchases with them proceed back through the warehouse to the warehouse office where they receive the items.

In general, the salesmen show, represent, and sell the items of furniture on display; write sales orders; escort customers to the sales counters; and introduce them to the front office credit employees or the cashier for consummation of the sales.

The warehouse employees perform such functions as receiving, unloading, and storing merchandise; transporting furniture to the showroom where they assist display personnel and salesmen in setting up displays; and assisting customers in loading their cars. In addition, warehouse clericals handle paperwork involved in receiving, scheduling, and storing deliveries and in pulling merchandise for customers; refinishers repair furniture; and truckdrivers deliver merchandise to customers' homes.

In two of the four cases,[32] the petitioners sought units limited to the retail selling employees. Both petitions were dismissed on the grounds that the "integration of operations and overlapping of functions" among the selling and nonselling employees in this type of operation created a common community of interest which outweighed any separate interest which each might enjoy. In reaching this result, the Board noted that all the employees work inside a single one-story building, work the same hours, punch the same timeclock, use the same lounge, and have the same benefits. In addition, the Board also observed that in performing their responsibilities, the sales personnel had regular contact with certain nonselling employees such as the front office clericals, merchandise control employees (who ascertain the availability of items about to be purchased), and display employees; participated with other employees in monthly warehouse sales and the taking of inventory; and, to a limited extent, shared common supervision with nonselling employees. Accordingly, the Board held in both cases that only a storewide unit would be appropriate.[33]

In a similar fashion, the Board dismissed the petitions in the remaining two cases, each of which requested units limited to

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[32] *Wickes Furniture, Div. of Wickes Corp.*, 201 NLRB No 60 (Members Fanning and Jenkins dissenting). *Wickes Furniture, Div of Wickes Corp.*, 201 NLRB No 61 (Members Fanning and Jenkins dissenting).

[33] Members Fanning and Jenkins dissented on the grounds that the selling employees alone constituted an appropriate unit for bargaining since they (1) fell under the separate immediate supervision of the sales supervisor, (2) spent the large majority of their time on the selling floor initiating virtually all of the selling activity for the entire store, (3) were the only employees to receive commissions for their selling activities, and (4) had minimal contacts with warehouse employees

certain warehouse employees.[34] While acknowledging that all of the employees in the proposed units came under the immediate supervision of the warehouse supervisor, the Board nevertheless held that the requested units did not meet its standards for separate warehouse units [35] since the employees sought to be represented were not geographically separated from the retail store operations and were engaged in activities substantially integrated with other store functions.[36]

2. University Units

During the year, the Board was again presented with several cases involving the determination of appropriate bargaining units in an academic setting.

In *Seton Hill College*,[37] the petitioner sought to exclude from a university-wide faculty unit those members of the faculty who belonged to a religious order.[38] The order held legal title to the buildings and grounds on which the college was situated, maintained a 50-percent membership on the board of trustees including an appointment of the Mother General of the order, and appointed the college's president.

Of the 95 faculty members, 58 were sisters who were members of the order, 1 was a nun from another order, 2 were priests, and the remaining 34 were lay persons. Unlike members of the lay faculty, each of the sisters took certain vows including a vow of loyalty to the Mother General of the order and a vow of poverty. Pursuant to the vow of poverty, each sister's wages were paid directly to the order. With the wages so collected, the order paid each sister $25 per month and returned a percentage of the balance of the wages to the college in the form of an annual gift. In addition, the order provided each sister with housing, life and medical insurance, plus a pension plan. The lay faculty, on the other hand, arranged and financed their own housing, were eligible for social security, and participated in a teachers' insurance and annuity program sponsored by the col-

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[34] *Wickes Furniture, Div. of Wickes Corp.*, 201 NLRB No 62 (Members Fanning and Jenkins dissenting). *Wickes Furniture, Div of Wickes Corp.*, 201 NLRB No. 67 (Members Fanning and Jenkins dissenting).

[35] As established in *A. Harris & Co.*, 116 NLRB 1628 (1956), 22 NLRB Ann. Rep. 39 (1957). *Accord, Levitz Furniture Co of Santa Clara*, 192 NLRB 61, 37 NLRB Ann Rep. 66 (1972).

[36] Members Fanning and Jenkins also dissented in these cases. They argued that a separate warehouse unit was appropriate since (1) all of the warehouse employees were supervised by the warehouse supervisor, (2) all but the truckdrivers regularly worked in the warehouse area performing warehouse-type operations, (3) most wore distinctive uniforms and engaged in heavy manual labor, and (4) contacts with nonwarehouse employees were minimal and transfers to nonwarehouse jobs nonexistent.

[37] 201 NLRB No. 155 (Member Kennedy not participating)

[38] Order of the Sisters of Charity of Seton Hill

lege. In all other respects, including hours of work, teaching assignments, supervision, tenure, etc., the working conditions of the sisters and the lay faculty were identical.

The Board determined that while the work and working conditions of both groups were virtually identical, their interests were nevertheless so divergent that inclusion in a single unit would not be appropriate. In reaching this result, the Board focused primarily upon the relationships which the two groups maintained with the college and the respective economic investments which they had in their jobs. It was noted that while a lay faculty member enjoyed a simple employee-employer relationship with the college, a sister's relationship was made somewhat more complex by virtue of the order's ownership and administration of the college and the loyalty which was owed to the Mother General of the order, who also served as a member of the board of trustees. Unit inclusion of sisters, the Board concluded, would give rise to conflicting loyalties.

Moreover, it was determined that the economic interests of the two groups did not coincide. While the lay faculty members were dependent upon their earnings for their own support and the support of their families, the sisters had taken vows of poverty thereby extinguishing any interest which they might otherwise have had in their remuneration. Accordingly, the Board determined that a separate unit of lay faculty members was appropriate.

In two decisions issued this year, *Catholic University of America* [39] and *Syracuse University*,[40] the Board adhered to its policy, first announced in *Fordham University*,[41] that bargaining units limited to law school faculty members are appropriate. In *Catholic University*, a law school unit was the only unit requested. In *Syracuse University*, however, rival labor organizations were competing for the law faculty members—one seeking to represent them in their own separate unit and the other seeking to represent them in a university-wide unit.

After viewing the *Syracuse* record in light of its traditional unit determination criteria, the Board concluded that *both* a separate law school unit and an overall unit would be appropriate. Accordingly, the Board refrained from making a final unit determination and instead directed that the law faculty members

[39] 201 NLRB No. 145, as clarified in 202 NLRB No. 111, and reversed on other grounds in 205 NLRB No. 19 (Chairman Miller and Members Jenkins and Penello).

[40] 204 NLRB No 85 (Chairman Miller and Members Jenkins and Kennedy, with Members Fanning and Penello dissenting in part).

[41] 193 NLRB 134, 37 NLRB Ann. Rep. 64–65 (1972). (Chairman Miller and Member Jenkins, with Member Kennedy dissenting in part.)

decide for themselves, through the Board's election procedures, what form their representation should take.

In formulating the election procedures to be utilized, however, the Board took special note of the fact that law professors actually belong to two separate and distinct professions—the legal profession and the teaching profession. Moreover, the Board further observed that in many instances the intellectual interests of the members of the law faculty may be more nearly aligned with their practicing brethren than with their academic colleagues on the faculty.

Accordingly, in order to preserve the interests which the law faculty members share with the legal profession, and in order to avoid diluting those interests through compulsory representation in an academic bargaining unit, the Board permitted the law faculty to choose between (1) representation in an overall university-wide unit, (2) separate representation in a law school unit, or (3) separate nonrepresentation. In so doing, the Board departed from its traditional "*Globe* doctrine" [42] utilized in the industrial sector which allows minority units of employees to choose between overall or separate representation, but does not provide the option of separate nonrepresentation.[43]

In *Cornell University*,[44] the Board was presented with a university case involving a nonfaculty bargaining unit. Petitioner sought to represent all full-time and regular part-time employees, including students, employed at 10 of the 18 dining halls operated by Cornell on its main campus in Ithaca, New York. The employer on the other hand contended that the unit should consist of all nonacademic, nonsupervisory employees employed by the university throughout the State of New York, excluding, *inter alia,* all student employees.

The Board rejected both positions—the petitioner's because it failed to include five fraternity chefs and the employees at the eight remaining Ithaca dining areas, all of whom shared a community of interest with the employees sought to be represented, and the employer's because it failed to acknowledge the considerable geographic diversity among Cornell's various facili-

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[42] *Globe Machine & Stamping Co.*, 3 NLRB 294 (1937), 3 NLRB Ann. Rep. 7 (1938).

[43] Members Fanning and Penello dissented. In their view, providing for separate nonrepresentation was unwarranted and contrary to the spirit of the Act. They argued that sec 9(b)(1), which the majority relied upon, lumps all professionals together, even though Congress must have known that employers frequently employ members of different professions and that it would be unusual for them to have a second, common profession—a circumstance which would present a such stronger case for maintaining a separate identity. Moreover, the dissent pointed out, the law faculty were employed as teachers, and any collective bargaining would deal with their employment in that status and not as lawyers

[44] 202 NLRB No. 41.

ties, the minimal degree of interchange between dining service employees and other departments, and the homogeneity of the dining service employees resulting from their common duties in providing a unique service to the campus. The Board also noted that no other labor organization actively sought a statewide unit. Accordingly, the Board found that a unit composed of the five fraternity chefs plus the employees at all 18 of the Ithaca dining facilities was appropriate.

With regard to the appropriateness of including in the unit part-time student employees, the Board determined that they did not share a substantial community of interest with the regular, nonstudent employees, and, therefore, should be excluded. The Board reasoned that even though the students performed the same jobs under the same working conditions and subject to the same grievance procedure as their nonstudent counterparts, exclusion of the students was nevertheless justified by the separate treatment afforded to student employees by the university in terms of hiring procedures, duration of employment, lower wage rate and fringe benefits, student supervision, and the absence of any expectation on the part of the students of remaining permanently in their jobs.

3. Multiple Location Units

The Board has held that a single-plant, or single-store, unit is presumptively appropriate absent a bargaining history in a more comprehensive unit or a functional integration so severe as to negate the identity of a single-plant, or single-store, unit.[45] Thus, for example, even where there was substantial centralization of authority and considerable product integration between two facilities, the Board held that one of the two facilities could constitute a separate appropriate unit if the requested facility retained a substantial degree of autonomy.[46] Under its broad authority, the Board, in determining whether such a unit is appropriate, has traditionally looked to such factors as the community of interest among the employees sought to be represented; whether they comprise a homogeneous, identifiable, and distinct group; whether they are interchanged with other employees; the extent of common supervision; the previous history of bargaining; and the geographic proximity of the various parts of the employer's operation.[47] The limits of the smallest appropriate unit of employees in multiple-location enterprises was

[45] *Frisch's Big Boy III-Mar*, 147 NLRB 551 (1964). See 37 NLRB Ann Rep 56 (1972).
[46] *Black & Decker Mfg. Co.*, 147 NLRB 825 (1964).
[47] *Haag Drug Co.*, 169 NLRB 877 (1968); *Montgomery Ward & Co.*, 150 NLRB 598 (1964).

at issue in several cases decided by the Board during the report year.

In *Frito-Lay*[48] the Board found that a regional unit of route salesmen located in three district offices in Phoenix and two district offices in Tucson, Arizona, and one district office in Las Vegas, Nevada, was the smallest appropriate unit. There was no previous history of collective bargaining. The Board concluded that the geographic proximity of the Phoenix-based employees was substantially less important than it would be in a case concerning employees who work in close and steady contact in a plant or on the selling floor, because in this case the employees spent their working day on the road, separate and apart from one another. In these circumstances the Board majority concluded that the lack of autonomy at any level below that of the administrative regional level; the high degree of authority at the regional sales manager level over hiring, transfer, promotion, discipline, discharge, and other terms and conditions of employment;[49] the fact that the Phoenix employees' contacts with one another are limited; and the lack of common supervision in the requested unit, required a finding that the smallest appropriate unit was regionwide.[50]

In another case decided during the year, *See's Candy Shops*,[51] the Board found appropriate a countywide unit of 55 retail candy stores located in Los Angeles County, California. The Board rejected the employer's contention that its decision in *Gray Drug Stores*,[52] warranted a finding that the smallest ap-

[48] *Frito-Lay*, 202 NLRB No. 143 (Chairman Miller and Members Kennedy and Penello, with Members Fanning and Jenkins dissenting).

[49] The Board majority noted that the Board's earlier decision in *Frito-Lay*, 170 NLRB 1678 (1968), finding appropriate a Phoenix-based unit of route salesmen in contiguous districts, similar to the one sought in the present case, was predicated upon a different corporate organization which existed until 1969, under which authority was diffused among the district and regional levels and a subsequently abolished intermediate "Area" level of authority. Since the employer's 1969 reorganization, the Board had found inappropriate a unit limited to three districts in a region of the employer composed of six districts. *Frito-Lay*, 177 NLRB 820 (1969).

[50] Members Fanning and Jenkins dissented In their view, while not deciding that a regional unit was inappropriate, the employer's reorganization did not make the smaller Phoenix-based unit of contiguous districts sought by the petitioner any less appropriate than it was in *Frito-Lay*, 170 NLRB 1678.

[51] 202 NLRB No. 76 (Members Fanning, Kennedy, and Penello).

[52] 197 NLRB No. 105, 37 NLRB Ann. Rep. 57–58 (1972) (Chairman Miller and Members Kennedy and Penello, with Members Fanning and Jenkins dissenting). The Board majority held that the countywide unit requested by the petitioner was not sufficiently remote from the employer's stores in an adjacent county to reflect a separate community of interest on the basis of geographical considerations, since the stores in the two counties appeared in a cluster The Board, therefore, found appropriate a unit covering the stores in both counties.

Members Fanning and Jenkins dissented. They would have found the countywide unit requested by the petitioner to be appropriate It encompassed a standard metropolitan statistical area, treated as such by the Bureau of Labor Statistics; and other Federal agencies and departments and the Board previously have relied on the identification of such areas in making unit determinations

propriate unit was statewide. The Board held in the present case that employee interchange between the Los Angeles County stores and those outside the county was minimal, and that some of the outside stores which the employer wished included in the unit were as much as 250 miles apart. Furthermore, there was no history of collective bargaining. Thus, the Board concluded that a unit of all stores in Los Angeles County was a coherent geographic cluster whose employees had common interests in collective bargaining, and found the countywide unit appropriate.[53]

The same issue arose during the year in the context of the garment industry. In *U-Wanna-Wash Frocks*,[54] a Board majority held that the smallest appropriate unit of production and maintenance employees included the four plants of the employer, two of which were 11 miles from the central plant, while the fourth was 39 miles distant. The Board majority found that the employer's operations were functionally integrated, as evidenced by the virtually complete dependence of the outlying sewing rooms on the central plant for production, administration, maintenance, and transportation. In addition, the central plant determined and administered the terms and conditions of employment.[55] Accordingly, the Board majority found that the requested single-plant unit was inappropriate.[56]

A less than chainwide unit was found appropriate in *White Cross Discount Centers*.[57] In that case there was a distinct cluster of eight stores which were all situated within a radius of one-half mile in downtown Los Angeles. Further, these eight stores constituted, in effect, an administrative division within the employer's organization in that they were supervised collectively by two supervisors who oversaw no other stores, providing the autonomy lacked by the individual store managers in matters of

[53] Member Fanning, as indicated by his dissent with Member Jenkins in *Gray Drug Stores*, *supra*, fn. 51, would have found the Los Angeles County unit appropriate because it is defined by the Federal Government as the Los Angeles-Long Beach Standard Metropolitan Statistical Area, and hence offers an intelligent, orderly, and geographical approach to federally related problems.

[54] 203 NLRB No. 30 (Chairman Miller and Members Jenkins, Kennedy, and Penello, with Member Fanning dissenting).

[55] The Board majority noted that it had previously found an employerwide unit of three then-existing plants appropriate for this employer in its decision dated February 8, 1961, in Cases 4-RC-4378 and 4-RC-4382 (not printed in volumes of Board Decisions), and that no substantial changes had occurred in the employer's operations which would warrant a different finding in the present case.

[56] Member Fanning dissented. In his view, the geographic separateness and the separate supervision of each group by the plant managers, indicated that the four groups of employees had separate communities of interest, and required a finding that the single-plant unit sought was as appropriate as the four-plant unit, and, hence, the employees in that plant were entitled to their own election.

[57] 199 NLRB No. 98 (Chairman Miller and Members Fanning, Kennedy, and Penello)

hiring, discharge, and transfer of employees. The Board noted that where there has been no bargaining on a broader basis, it has found appropriate a geographic grouping of retail chain stores [58] less than chainwide in scope,[59] particularly where such grouping coincided with an administrative division within the employer's organization.[60] Thus, in *White Cross* the Board held that because of geographic proximity and concentration, as well as the employer's organizational structure, the employees in the eight center city stores shared a community of interest separate and apart from that of other employees in the chain.[61]

4. Unit Placement of Licensed Practical Nurses

The Board's decision in 1968 to exercise jurisdiction over proprietary hospitals and nursing homes [62] continues to give rise to questions concerning the appropriate unit for bargaining in such enterprises.[63]

In a case decided this year the Board found appropriate a broad unit of employees at a nursing home which excluded licensed practical nurses as well as registered nurses.[64] The Board found that the nurses were not supervisors. Next it considered various surveys that were introduced into evidence which indicated that there was a nationwide pattern of bargaining in nursing homes to exclude licensed practical nurses from units encompassing aides, orderlies, and housekeepers. It concluded, however, that it was not clear from such surveys whether the licensed practical nurses were being excluded from broader units because they were deemed to be supervisors or because they were considered to have a separate and distinct community of interest. The Board then noted that its own experience with proprietary nursing home cases suggested that the duties and responsibilities given to licensed practical nurses vary considerably from one nursing home to another. However, in view of

[58] The Board noted that the principle that more than one unit may be appropriate among the employees of a particular enterprise has been followed a number of times with the approval of the courts. See *Motts Shop Rite of Springfield, Inc.*, 182 NLRB 172, and cases cited therein at fn. 3.

[59] See *U-Tote-Em Grocery Co.*, 185 NLRB 52 (1970); *Drug Fair-Community Drug Co.*, 180 NLRB 525 (1969), 35 NLRB Ann. Rep. 39–40 (1970).

[60] Citing *State Farm Mutual Automobile Insurance Co.*, 158 NLRB 925 (1966); *Metropolitan Life Insurance Co*, 156 NLRB 1408 (1966).

[61] Member Fanning agreed, but would also have found appropriate the three single-store units sought in outlying areas. In his view, the presumption of appropriateness had not been rebutted as to those three individual store units.

[62] *Butte Medical Properties, d/b/a Medical Center Hospital*, 168 NLRB 266 (1967), and *University Nursing Home*, 168 NLRB 263 (1967). 33 NLRB Ann. Rep. 29 (1968).

[63] See 34 NLRB Ann. Rep. 58 (1969).

[64] *Madeira Nursing Center*, 203 NLRB No. 42 (Chairman Miller and Members Fanning and Penello).

the specialized educational requirements generally prevailing for licensed practical nurses and the existing pattern for broad nursing home units excluding licensed practical nurses, the Board concluded that it would not rigidly insist on their inclusion in overall nursing home units where, as the Board found here, they enjoy a substantial community of interest among themselves and apart from other employees. Thus, in the instant case, the Board found that the licensed practical nurses, who performed virtually the same nursing duties as the registered nurses, like the registered nurses had a separate and distinct community of interest warranting their exclusion from the unit.[65]

In a subsequent case involving licensed practical nurses employed in a proprietary hospital, the Board found that the licensed practical nurses had a separate and distinct community of interest which required that they be represented in a unit sought by the petitioner apart from another unit of technical, service, and maintenance employees.[66] The Board found that they were supervised by registered nurses and performed duties different from those performed by any of the nurses aides and orderlies in the service and maintenance unit. Their wage rate was 40 percent higher, and, unlike the nurses aides and orderlies, the licensed practical nurses had high school diplomas and were required to complete 1 year of formal training and be licensed by the State of West Virginia.[67]

In another case concerning licensed practical nurses in a nursing home, the Board found that they were neither supervisors nor professional employees and hence could not be excluded from an overall unit for those reasons.[68] In concluding that the licensed practical nurses were not supervisors, the Board found no evidence that they exercised supervisory authority over the aides and orderlies, but rather that all directions given by them were routine and followed established procedures and they

[65] To the extent inconsistent with its decision, the Board overruled *New Fern Restorium Co.*, 175 NLRB 871, 34 NLRB Ann. Rep 58 (1969); and *Jackson Manor Nursing Home*, 194 NLRB 892 (1972). The Board also stated that its decision in *Madeira* does not preclude the inclusion of licensed practical nurses in a broader unit when a petitioner seeks their inclusion and the circumstances justify their inclusion See, for example, *Leisure Hills Health Centers*, 203 NLRB No 46

[66] *Extendicare of West Virginia, d/b/a St. Luke's Hospital*, 203 NLRB No 170 (Chairman Miller and Members Fanning, Jenkins, and Penello, with Member Kennedy dissenting).

[67] Member Kennedy dissented. In his view, factually there was little to distinguish the duties and functions of these licensed practical nurses in this case from those in other cases in which the Board included the licensed practical nurses in the overall unit, citing *Leisure Hill Health Centers*, 203 NLRB No 46. They worked under the same supervision and in close contact with the aides and orderlies, their education was less than that of some of the technicians in the other unit, and there was no evidence that the petitioner had historically represented them in a separate unit.

[68] *Pikeville Investors, d/b/a Mountain Manor Nursing Home*, 204 NLRB No 71 (Members Fanning, Jenkins, and Penello).

could not effectively recommend personnel actions. Also, the Board decided that the requirements for a licensed practical nurse—18 years old, completing 2 or 3 years of high school, depending on age, a 12-month course at an accredited nursing school, and passing an examination—were insufficient to show that the licensed practical nurses had attained that "knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital," which is a prerequisite of a "professional employee" as defined in section 2(12) of the Act. In this regard the Board noted that the Kentucky statute governing licensed practical nurses defined them as people who perform "for compensation delegated acts in the care of the ill, injured or infirm under the direction of a registered nurse or a licensed physician or licensed dentist; and not requiring the substantial specialized judgment and knowledge required of the registered nurse."

5. Other Unit Issues

Other unit issues considered by the Board during the year included appropriateness of a systemwide unit of employees working in the pipeline system of a natural gas pipeline utility, the inclusion of computer analysts and programmers in a unit of other data processing employees, the appropriateness of a unit of employees employed at a single earth station of the Communications Satellite Corporation, and the accretion to an existing multistore unit of a unit of employees of a newly opened retail grocery store.

With respect to public utility industries, established Board policy is that a systemwide unit is the optimum bargaining unit because of the inherent integration and interdependence of operations in the public utility industry and the essential services rendered to their customers.[69] The Board has also in appropriate cases permitted the establishment of units which are less than systemwide.[70] Nevertheless, in a case decided this year[71] the Board majority found inappropriate the requested districtwide units of employees of a natural gas pipeline utility. The Board held that the employer's districts were not major administrative

[69] *Pioneer Natural Gas Co.*, 111 NLRB 502 (1955); *Montana-Dakota Utilities Co.*, 115 NLRB 1396 (1956); *Southwestern Bell Telephone Co.*, 108 NLRB 1106 (1954). See 37 NLRB Ann. Rep. 59 (1972).

[70] See, e.g., *Michigan Bell Telephone Co.*, 192 NLRB 1212 (1971) (Chairman Miller and Member Kennedy dissenting), 37 NLRB Ann. Rep. 59 (1972).

[71] *Colorado Interstate Gas Co.*, 202 NLRB No 122 (Chairman Miller and Members Jenkins and Kennedy, with Members Fanning and Penello dissenting).

subdivisions of the type which would justify fragmentation of the employer's pipeline system. In so holding, the Board found that the employees in the two districts sought did not share a sufficiently distinct community of interest from other employees in the system, particularly in light of the high degree of control exercised by the employer's headquarters management over the operational districts; the substantial temporary interchange of employees between the two districts in question and the other districts in the system; the systemwide job-opening posting and bidding procedures; the substantial lack of district-level autonomy over day-to-day personnel matters; and the systemwide uniformity of wages, hours, and conditions of employment.[72]

The issue of a single location versus a systemwide unit of employees was present in a somewhat different context in *Communications Satellite Corp.*[73] The petitioner sought to represent all employees, except those excluded by the Act, at the employer's space satellite message relaying station in Andover, Maine, while the employer desired a unit embracing all employees of its six earth stations in the United States and one in Puerto Rico, its maintenance and supply service center in Maryland, and its operations center in Washington, D.C. Despite certain similarities to the public utility industries, the full Board found that in this case the record established certain factors highly relevant to the question of operational integration which allowed for greater flexibility in determining the appropriate unit for collective bargaining. Thus, each station was separated from other parts of the operation by considerable distance, each had a permanent complement of employees of the type sought by the petitioner, each station manager exercised considerable autonomy over day-to-day personnel actions, there was minimal employee interchange among the stations, and there was no history of bargaining on a broader than one-station basis and no union sought to represent a broader than one-station unit. Of great significance was the evidence that in the event of a work stoppage at the earth station sought by the petitioner, other stations with duplicate facilities could assume the functions of the affected station. Furthermore, despite the similar operational integration of all stations, the employer found it feasible to contract out the operation of the Guam station, indicating that the sta-

[72] Members Fanning and Penello dissented They would have found the two districtwide units requested constituted separate identifiable administrative subdivisions within the employer's systemwide pipeline operation They argued that such subdivisions, in the circumstances of the case, have traditionally been found appropriate for the purposes of collective bargaining in the public utilities industry.

[73] 198 NLRB No. 171.

tions' interdependence was not so great as to foreclose relinquishing managerial control of the stations, and therefore collective bargaining on a separate basis would be as appropriate as in any other multifacility operation where employees are premitted to express their choice on a separate basis. Accordingly, the Board held that each station had a sufficient degree of autonomy in its day-to-day operations, and the employees in the requested unit possessed a sufficiently separate and distinct community of interest from that of employees at other earth stations and parts of the employer's operations to support the establishment of a unit confined to the single earth station.

A different issue was resolved by the Board in *Computer Systems*.[74] The employer was an independent data processing bureau engaged in the sale of data processing services. In the absence of any bargaining history, the issue was the placement of computer analysts and programmers in to a nearly employer-wide unit composed primarily of data processing employees. The regional director had excluded the analysts and programmers from the overall unit, and the employer requested review. Granting review, the Board distinguished its decision in *Ohio Casualty Insurance Co.*[75] In that case the Board had excluded programmers and analysts from a requested unit composed primarily of office clerical employees because of significant differences in job functions and other conditions of employment. In the instant case most of the employees sought to be represented were data processing employees. The employer's operations were highly integrated, there was geographical separation of programmers and analysts from other employees, equipment was shared by employees of different classifications, and there was frequent contact among all data processing employees. The Board concluded that the thus demonstrated close community of interest of the analysts and programmers with other data processing employees, and the absence of a labor organization seeking to represent them separately, required that the analysts and programmers be included in the unit.

Finally, in *Food Fair*,[76] in determining whether a decertification petition raised a question concerning representation, a Board panel majority held that the evidence failed to rebut the presumption of appropriateness of a single-store unit. The Board majority found no merit in the union's contention that the newly opened retail grocery store's employees, for whom the

[74] 204 NLRB No. 34 (Chairman Miller and Members Kennedy and Penello).

[75] 175 NLRB 860 (1969).

[76] *Food Fair Stores*, 204 NLRB No. 23 (Members Kennedy and Penello, with Member Fanning concurring in part and dissenting in part)

union had been recognized as representative before the opening of the store, were accreted to an existing multistore unit. Because of the proven authority and autonomy of individual store managers and the insignificant amount of temporary interchange of the employees into and out of the single store, the Board majority found that the presumption remained intact. Moreover, the Board majority held that on the record in the case, including the fact that there had been no multistore bargaining involving the single store concerned and the lack of any evidence that the employees ever assented to any multistore bargaining or contract on their behalf, the store had not been effectively merged into the existing multistore unit so as to bar the decertification petition.[77]

C. Conduct of Elections

Section 9(c)(1) of the Act provides that where a question concerning representation is found to exist pursuant to the filing of a petition, the Board shall resolve it through a secret ballot election. The election details are left to the Board. Such matters as voting eligibility, timing of elections, and standards of election conduct are subject to rules laid down by the Board in its Rules and Regulations and in its decisions. Elections are conducted in accordance with strict standards designed to insure that the participating employees have an opportunity to register a free and untrammeled choice in the selection of a bargaining representative. Any party to an election who believes that the standards have not been met may file timely objections to the election with the regional director under whose supervision it was held. The regional director may either make an administrative investigation of the objections or hold a formal hearing to develop a record as the basis for a decision, as the situation warrants. If the election was held pursuant to a consent-election agreement authorizing a determination by the regional director, he will then issue a final decision.[78] If the election was held pursuant to a consent agreement authorizing a determination by the Board, the regional director will issue a report on objections

[77] Member Fanning concurred in part and dissented in part. He agreed with the majority that the presumptive appropriateness of a single-store unit had not been rebutted However, he dissented because the empolyer had recognized the union for the subject employees pursuant to an existing bargaining contract which described the unit to include the employees of present and future stores of the employer in the area. In his view, by reason of that recognition the contractual multistore unit was the "currently recognized" bargaining unit and that it, not the single-store, was the only appropriate unit for the holding of a decertification election under sec. 9(c)(1)(A)(ii) of the Act

[78] Rules and Regulations, sec. 102.62(a)

which is subject to exceptions by the parties and decision by the Board.[79] However, if the election was originally directed by the Board,[80] the regional director may either (1) make a report on the objections, subject to exceptions, with the decision to be made by the Board, or (2) issue a decision, which is then subject to limited review by the Board.[81]

1. Eligibility of Voters

The results of an election may depend on the voting eligibility of individual employees whose right to vote has been challenged by one of the parties or the Board agent. If the challenged employees' votes would affect the result of the election, the Board will determine their eligibility and either count or reject their votes, as appropriate. Similarly, in determining the appropriate unit the Board will either include or exclude an individual whose unit placement is disputed.

Close family relationship to a company officer or stockholder may, depending on the circumstances, bar an employee from voting in a representation election. In two cases involving challenges to the ballots of votes who were the children of stockholders, officers, and managers of closely held family corporations, the Board, without deciding whether the challenged individuals were "employees" within the meaning of section 2(3) of the Act, sustained the challenges on the ground that the children had a community of interest separate from that of their fellow employees and thus should be excluded from the unit found appropriate for collective bargaining under section 9(b) of the Act. In both *Parisoff Drive-In Market*[82] and *Economy Cash Stores, a/k/a Cardinal Food Town*,[83] the Board relied on the following factors in concluding that the interests of the children were more closely allied with those of management than with those of their fellow employees: some or all of the owners were members of the same family and related to one another as well

[79] Rules and Regulations, sec. 102 62(b) and (c)

[80] Rules and Regulations, secs 102.62 and 102 67

[81] Rules and Regulations, Sec 102.69(c) and (a)

[82] 201 NLRB No 102.

[83] 202 NLRB No 131 (Chairman Miller and Members Fanning and Jenkins) In *Cerni Motor Sales*, 201 NLRB No. 133 (Members Fanning, Jenkins, Kennedy, and Penello), the Board excluded five individuals from the unit because their father owned 50 percent of the closely held corporate employer. While specifically reaffirming the view first expressed in *Foam Rubber City #2 of Fla., d/b/a Scandia*, 167 NLRB 623 (1967), that under sec 2(3) of the Act (which excludes from the status of "employee . . any individual employed by his parent . ") a parent who owns 50 percent or more of a closely held corporation is, as in the case of a copartner, the employer of his children, the Board also noted that the criteria of *Parisoff* would have warranted exclusion from the unit had the parent owned less than 50 percent of the stock since all the factors of relationship among the owners and the children and the latter's depending on their father were present

as to the challenged voters, thus making it more likely that the business interests of the corporation would be synonymous with the interests of the family to which the employee belonged; the challenged individuals' parent was not only a substantial shareholder and officer but was also active in the day-to-day management of the company; and the children, who worked part time, lived at home with their parents and hence were comparable to confidential employees traditionally excluded from such units due to their access to information about personnel problems, labor relations, and corporate profitability.

In a related matter where an election was conducted pursuant to a stipulation for certification upon consent election, the Board determined a challenge on the ground of statutory supervisory exclusion even though the parties before the election had agreed upon a final and binding eligibility list within the meaning of *Norris-Thermador Corporation,* 119 NLRB 1310, which included the challenged individual.[84] Chairman Miller and Member Jenkins, while indicating that they would accord finality to preelection agreements whether reached at a hearing or a conference, noted that the parties only stipulated to the legal conclusion that the challenged voter was eligible, and did not stipulate as to the duties and authority of the individual, as in *Cruis Along Boats,* 128 NLRB 1019 (1960), where the Board refused to permit a party to repudiate the stipulation. Member Fanning, who dissented in *Cruis Along,* would not have regarded the Board as bound on a supervisory issue;[85] in any event, he would not have extended the *Cruis Along* rule to *Norris-Thermador* eligibility lists, since he viewed that extension as likely to lessen the attractiveness to the parties of entering into binding eligibility agreements.

2. Access to Voters During Mail Ballot Election

In *Sioux City & New Orleans Barge Lines,*[86] the Board, *inter alia,* set aside an election because the employer denied nonemployee union organizers access to its towboats for organizational purposes although normal access to the employees involved was not available to the union. During the fiscal year, the Board again was faced with this problem in two cases involving elec-

[84] *Laymon Candy Co.,* 199 NLRB No 65.

[85] Members Kennedy and Penello would have found the parties bound by their agreement as to eligibility, whether reached at a hearing or in a consent-election situation, as they could see no reason for construing the affirmative agreement that the named individuals were eligible to vote as any different in effect or intent from a negatively worded stipulation that the named individuals do not have or exercise statutory supervisory authority.

[86] 193 NLRB 382 (1971), enforcement denied 472 F.2d 753 (C.A. 8, (1972), see 37 NLRB Ann. Rep. 89 (1972).

tions among employees whose work required them to be aboard boats for extended periods of time.[87] The union was the same in each case. In both cases it had several weeks' notice of the date the Board was to mail ballots to the voters but did not request access to the boats until a couple of days before mailing the ballots. The Board did not set aside the mail ballot elections conducted, even though the employers in each case refused the request for access to the vessels to discuss campaign issues. In both cases, the Board found the requests untimely on the ground that, were the employers to have compiled with the union's last-minute requests, there would have been a considerable risk of violating the Board's instructions to voters that they should refrain from discussions about the election while the mail ballots were in their possession.[88]

3. 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 expression of the employee's choice. In making this evaluation the Board treats each case on its facts, taking an *ad hoc* rather than a *per se* approach to resolution of the issues.

a. Misrepresentations and Threats

In determining whether electioneering statements or propaganda constitute misrepresentations grave enough to require a rerun election or a hearing, the Board has since 1962 applied the standard it enunciated in *Hollywood Ceramics*.[89] There the standard was thus stated (p. 224) :

> We believe that an election should be set aside only

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[87] *Chotin Transportation*, 203 NLRB No. 73 (Chairman Miller and Members Kennedy and Penello), *Ingram Barge Co.*, 203 NLRB No. 17 (Chairman Miller and Members Kennedy and Penello). In the latter case, the Board also found that the company did not violate sec 8(a)(1) of the Act by denying the union's request.

[88] In reaching its decision in *Ingram Barge Co.*, *supra*, the Board assumed that the eligible voters were beyond the reach of reasonable union efforts to reach them and that normally, therefore, a reasonable request should have been granted. For the reasons set forth above, however, the Board concluded that the request of the union was not a reasonable one.

[89] *Hollywood Ceramics Co.*, 140 NLRB 221 (1962), 28 NLRB Ann. Rep. 57 (1963)

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

During the year the Board, in *Modine Manufacturing Co.*[90] adhering to its established policy, refused to permit relitigation in the subsequent unfair labor practice proceeding of the Board's earlier administrative decision that certain alleged misrepresentations made during the critical period before the election did not warrant setting aside the election, nor a hearing. In so doing, the Board explained at length that the source of the *Hollywood Ceramics* standard lies in the fact that the conduct of representation elections is an essentially administrative, as opposed to a quasi-judicial, function, in the performance of which the Board must apply its expertise to insure the free and fair conduct of elections. As a part of that duty, the Board must determine whether the alleged misrepresentation is *prima facie* sufficient to justify either a hearing or a rerun election. In *Modine* the Board majority stated that its experience with the *Hollywood Ceramics* standard since 1962, in view of the self-serving nature and subjectivity of alleged misrepresentations, made it

[90] 203 NLRB No. 77 (Chairman Miller and Members Fanning, Jenkins, and Penello, with Member Kennedy concurring only as to the result)

in some degree tempting to abandon the *Hollywood Ceramics* standard,[91] but that it would not do so. Despite the increased level of education of the voters and the higher sophistication of employees about Board elections, the Board majority stated that it was not yet ready to say that the Board would leave all its voters in all of its elections and in all circumstances to sort out, with no protection from the Board, "from among a barrage of flagrant deceptive misrepresentations." [92]

The question of whether election campaign misrepresentations had been made, and if so, what impact such misrepresentations may have had, arose in *Southern Health Corp.*[93] in which a panel majority overruled the employer's objections to the conduct of the election. The majority adopted the regional director's report finding that under the *Hollywood Ceramics* standard the union's last-minute preelection statement that it had not the power to fine its members for breaking a strike, even if inaccurate, was not material. It was not a significant campaign issue, and, in any event, was a matter well within the electorate's ability to evaluate. The Board majority also adopted the regional director's report finding that the union's wage comparisons were not in fact misrepresentations.[94]

In *Mohawk Bedding Co.*[95] a Board majority found that, beginning shortly after the union filed its petition the employer conducted an antiunion campaign by a series of letters and speeches which, taken cumulatively, conveyed a threat of adverse economic consequences as the inevitable result of the employee's selection of the union as their bargaining representative. The Board majority applied the standard set by the Supreme Court in *N.L.R.B.* v. *Gissel Packing Co., Inc.*,[96] that:

> [The employer] may . . . make a prediction as to the precise effect he believes unionization will have on his company. In such a case, however, the prediction must be

[91] Member Penello did not agree that the Board should continue to adhere to the *Hollywood Ceramics* rule However, as that issue was not presented in this case, he deemed it appropriate to defer discussion of modification of the rule to a future case

[92] Member Kennedy concurred only in the result, and did not adopt the majority's discussion of the *Hollywood Ceramics* issue, nor their statement of the circumstances in which they would direct hearings on alleged misrepresentations.

[93] *Southern Health Corp d/b/a Corydon Nursing Home*, 201 NLRB No 63 (Members Jenkins and Kennedy, with Chairman Miller concurring separately)

[94] Chairman Miller would set aside elections only in those relatively rare instances in which a readily ascertainable pattern of the most egregious kind of clearly identifiable misrepresentations permeated the campaign so significantly that one would be compelled to conclude that voters of ordinary intelligence would have been incapable of forming a rational judgement on the basic issue of whether they wish to be represented by a labor organization (and, when appropriate, by which competing organization they would prefer to be represented).

[95] 204 NLRB No. 1 (Members Fanning, Jenkins, and Penello, with Chairman Miller dissenting).

[96] 395 U S 575, 618–619

> carefully phrased on the basis of objective fact to convey an employer's belief as to demonstrably probable consequences beyond his control or to convey a management decision already arrived at to close the plant in case of unionization. . . . If there is any implication that an employer may not take action solely on his own initiative for reasons unrelated to economic necessities and known only to him, the statement is no longer a reasonable prediction based on available facts but a threat of retaliation based on misrepresentation and coercion, and as such without the protection of the First Amendment. We therefore agree with the court below that "[c]onveyance of the employer's belief, even though sincere, that unionization will or may result in the closing of the plant is not a statement of fact unless, which is most improbable, the eventuality of closing is capable of proof."

Thus, the Board found that in this case the employer's repeated reference to the union causing other plants to close and the high unemployment situation locally, clearly implied that it also would move or go out of business if unionized, an implication not based on "demonstrably probable consequences beyond [the employer's] control." [97] The Board majority also noted that 6 weeks before the election a supervisor had stated to an employee that the employer planned to close its plant if it was unionized, and that sometime before the election the manufacturing manager responded affirmatively to two employee's questions about whether the plant could be converted to a warehouse in the event the union won the election.[98] Accordingly, the Board held that the employer's campaign speeches and literature, as well as the supervisors' statements, taken as a whole, destroyed the laboratory conditions required for a full and fair election.[99]

Coercive conduct by the employer was also grounds for setting aside the election in *Sterling Faucet Co.*[1] Objections were filed by the incumbent union which lost the election to the outside, petitioning union. The Board panel majority found that the employ-

[97] *Ibid.*

[98] Member Penello, while he would not have found that the speeches and literature alone constituted grounds for setting the election aside, joined in the decision because of the coercive meaning imparted to the speeches and literature by the coercive statements of the supervisors

[99] Chairman Miller dissented He would have overruled all of the objections and certified the results of the election for reasons given in the reports of the acting regional director and the hearing officer: that the employer's statements contained no threats of reprisals or any misrepresentations which affected the election, and that the supervisors' statements were not threats but merely opinions identified as such and were, therefore, insufficient to warrant setting aside the election.

[1] *Sterling Faucet Co., Texas Div., Subsidiary of Rockwell Mfg. Co.*, 203 NLRB No 144 (Members Fanning and Jenkins with Chairman Miller dissenting in part)

er's maintenance of an invalid no-distribution rule, its threat to an employee to fire him if the incumbent union won the election; and the statement of its agent to employees that the incumbent union had prevented them from receiving a pay increase offered by the employer, were grounds for setting aside the election. The majority stated that even if the no-distribution rule arose out of collective bargaining between the incumbent union and the employer, the election must nevertheless be set aside, since the rule inhibited the employees in the exercise of their section 7 rights and freedom of choice in the election. As to the threat of discharge, the panel majority concluded that regardless of which of several interpretations the employee may have made of the threat, it clearly interfered with his freedom of choice in the election. Finally, they viewed the statement of the employer that the incumbent union had blocked a pay increase, not as a misrepresentation, but as conduct tainting the election; since, if the pay increase had been agreed to by that union, that agreement if announced would itself have been ground for setting aside the election.[2]

b. Use of Board Documents

In two cases decided by the Board during the year the issue presented was whether the Board's documents had been misused by the employer so as to affect the results of an election. In *Thiokol Chemical Corp.*,[3] a Board majority held that the limits of legitimate campaign propaganda had been exceeded by a document which the employer mailed to the employees, in which the employer reproduced the official seal of the Board and certain portions of a superseded Board publication entitled "A Layman's Guide to Basic Law Under the National Labor Relations Act" (1962 edition) which misstated the presently existing law as to the reinstatement rights of economic strikers. At the bottom the employer added "Thiokol-Hall," thus appropriating an official Board document for partisan purposes. The Board majority set aside the election, finding that by its conduct in reprinting the outdated 1962 document rather than the super-

[2] Chairman Miller would have overruled all the objections and certified the petitioning labor organization that won the election. He would have found that no discharge threat had been made, and, even if it had, it could not have had an impact on the election. As to the unlawful no-distribution rule, he would not have allowed the incumbent union which co-authored and benefited from the rule to use it to set aside an election which it lost despite having the advantage of the rule Finally, as to the statement that the incumbent union prevented effectuation of a pay raise, the theory of the union's objection was that the statement was a misrepresentation, and in the absence of evidence of falsity he would have overruled this objection as well

[3] *Thiokol Chemical Corp.*, 202 NLRB No 57 (Members Fanning and Jenkins, with Chairman Miller dissenting)

seding 1970 edition, the employer, under the cover of implied Board sanction, had misled its employees as to the reinstatement rights of economic strikers—an issue which had been highly significant in the preelection campaign.[4] However, in another case decided during the year, *Stedman Wholesale Distributors*,[5] a panel majority refused to set aside an election, finding that no violence had been done to the Board's *Allied Electric Products*[6] rule. Under that doctrine the Board (p. 1272):

> . . . 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, and upon objection validly filed, will set aside the results of any election in which the successful party has violated this rule.

In *Stedman* the employer's preelection leaflet, containing a sample ballot marked "NO" omitted any reference to the United States Government, the Board, or its agents, was smaller than the Board's official ballot, and stated, "Below is a sample of the way the bottom of the election ballot will look:" The panel majority concluded that this ballot closely corresponded to one in *Statford Furniture*[7] which the Board had found not violative of the *Allied Electric Products* rule.[8]

D. Other Objections

Other conduct alleged to have affected elections so as to require that they be set aside included the payment of election observers for their services, the late posting of notices of the election, and the conduct of a voting study by three professors during the preelection campaign.

In Quick Shop Markets[9] a panel majority found that the union's payment of $15 to each of six employees for their serv-

[4] Chairman Miller dissented. In his view this was not a case where a party had added extraneous propaganda to a Board document suggesting that the Board favored a particular choice in the election. Additionally, he would have found that the misrepresentation as to the reinstatement rights of economic strikers was not significant, could have been rebutted by the union, and that its impact on the election was speculative

[5] *Stedman Wholesale Distributors*, 203 NLRB No 31 (Members Kennedy and Penello, with Member Fanning dissenting).

[6] 109 NLRB 1270 (1954), 20 NLRB Ann Rep 62 (1955).

[7] *Statford Furniture Corp. & Futorian Mfg. Co.*, 116 NLRB 1721 (1956)

[8] Member Fanning dissented. In his view the ballot and the leaflet's characterization of it were integral parts of the leaflet, which also stated that the election would "be supervised by the Federal Government" and *"your right to vote AGAINST the union is guaranteed by the U.S. Government"* Thus, he would have found that the leaflet purported to contain a reproduction of a portion of the Board's election ballot, which had been altered by marking "X" in the "NO" box, and would have set aside the election, citing *Custom Moulders of P.R. & Shaw-Harrison Corp*, 121 NLRB 1007 (1958), 24 NLRB Ann. Rep 51 (1959)

[9] 200 NLRB No. 120 (Members Fanning and Penello, with Chairman Miller dissenting).

ices as election observers, although the payments were approximately twice the amount the employees would have received for a similar period of regular work, were not so grossly disproportionate to their usual rate of pay, or to what the union could reasonably consider was the value of their services, as to have interfered with the election. Further, the panel majority concluded that possible misrepresentations, made by the union to one or two of the employee-observers out of an eligible voter complement of 209, that the $15 payment for 4½ hours' work represented union wage rates, were insufficient to overturn the election.[10]

In *Kilgore Corp.*[11] a divided Board set aside an election because the employer refused to post the official election notices until the day before the election, and then did not post them in the areas housing the employees' work stations. The Board majority rejected the employer's contention that, since almost 100 percent of the eligible voters did in fact vote, the posting was sufficient. The Board majority concluded that while there was no general rule as to the time of posting, the notices contained important information with respect to employees' rights under the Act as well as stating the election date, time, and place, all of which the employees should have been made aware of sufficiently in advance of the election so that they could have asked questions and discussed the election issues and come to a reasoned decision by the date of the election. The Board majority held that the 1-day posting and place of posting in this case had been so deficient as to destroy the laboratory conditions for holding a fair election.[12]

An unusual issue concerning alleged interference with an election was presented to the Board in *Finfrock Motor Sales.*[13] The source of the issue lay in the ruling of the U.S. District Court for the District of Columbia in *Julius G. Getman, et al.* v. *N.L.R.B.*,[14] directing the Board under the Freedom of Informa-

[10] Chairman Miller dissented. In his view any payment to an observer which exceeds his regular rate of pay plus expenses presents a danger that the payee will be induced to demonstrate his support of the payor's position and to silently commit himself to vote for that position. In order to protect the Board's election processes, he would set aside this and any other election in which such payments are made

[11] 203 NLRB No. 28 (Chairman Miller and Members Fanning and Jenkins, with Members Kennedy and Penello dissenting).

[12] Members Kennedy and Penello dissented. In view of the almost 100-percent participation in the election in the present case and the absence of any ground for inferring that there might have been any misunderstanding or lack of comprehension among the employees, they would have found no interference with the conduct of the election.

[13] 203 NLRB No 130 (Chairman Miller and Members Fanning and Penello, with Members Jenkins and Kennedy dissenting)

[14] The court affirmed the ruling 450 F.2d 670, and the Supreme Court denied the Board's application for a stay of the district court's order, 404 U S 1204

tion Act to furnish three professors with the names and home addresses of the employees eligible to vote in certain representation elections. In the instant case the professors questioned the employees both before and after the election, basically about their attitudes toward union representation and the campaign tactics utilized by the parties. A divided Board found that there was neither evidence to suggest that the survey had a probable impact on the employees' free choice nor evidence to show that the interviewers or the questions in any way coerced the employees or prejudiced their free chocie, and, therefore, the Board majority sustained the election.[15]

E. Postelection Proceedings

During the report year, the Board had occasion, pursuant to court remand, to reexamine the validity of its unit determinations in clarification proceedings involving *Libby-Owens-Ford Co.*[16] In its decision remanding the 8(a)(5) refusal-to-bargain proceeding to the Board for further consideration, the United States Court of Appeals for the Third Circuit held that the unit

[15] Members Jenkins and Kennedy dissented. On procedural grounds, they would have affirmed the report of the regional director recommending that the election be set aside, because the only exceptions to the regional director's report were filed with the Board by the three professors Members Jenkins and Kennedy would have found that the three professors were not formal "parties" to the proceeding within the meaning of sec. 102.69 of the Board's Rules and Regulations, and hence would find that no exceptions had been filed. The majority disagreed, finding that since the regional director had allowed the professors to intervene, they thereby became a party and, as such, could file exceptions under sec. 102 69(c) of the Board's Rules and Regulations.

[16] 202 NLRB No. 15; *United Glass & Ceramic Workers of North America* v. *N.L.R.B.*, 463 F.2d 31 (C.A. 3, 1972), remanding *sub nom. Libby-Owens-Ford Co.*, 189 NLRB 871 (1971). These cases all stemmed from the Board's decision in the underlying unit clarification proceeding, 169 NLRB 126 (1968), wherein a three to two majority found that the unit clarification procedure was an appropriate vehicle to conduct an election to determine whether the employees represented by the union in single-plant units at the employer's Lathrop and Brackenridge plants desired to be represented by that same labor organization as part of a larger multiplant unit consisting, before the election, of eight other plants of their employer. In that proceeding, the Board had found the single-plant and multiplant units constituted equally appropriate units for bargaining. Thereafter, in 173 NLRB 1231 (1968), the Board issued a Supplemental Decision in which it found that a majority of the eligible employees in each of the two single-plant units had voted in favor of merger with the multiplant unit, and it ordered that the multiplant unit be clarified by specifically including therein the employees previously represented by the union in the single-plant units described above. When the employer refused to bargain with the union concerning the Brackenridge plant employees as part of the multiplant unit, a complaint issued alleging a refusal to bargain. The complaint was dismissed in 189 NLRB 871. Members Fanning and Jenkins, adhering to their dissents in 169 NLRB 126 and 173 NLRB 1231, found, as they had in those cases, that the Board lacked statutory authority to conduct unit clarification elections in situations where no question concerning representation was raised. Chairman Miller, in a concurring opinion, agreed that the complaint in that case should be dismissed on the basis that the matter of changing the size of a multiplant bargaining unit should be left to the agreement of the parties. Member Kennedy and then Member Brown dissented. In Member Kennedy's view, the Board possessed the statutory authority to conduct the unit clarification elections, the Board's subsequent clarification of the certified unit was valid in all respects, and the employer's refusal to bargain with the union in the clarified unit was a violation of sec. 8(a)(5) and (1) of the Act. Thereafter, the Board's decision came to the court on appeal.

clarification proceeding is an appropriate mechanism for consolidating existing appropriate bargaining units, and that the Board possessed the requisite statutory authority to conduct the clarification elections at the employer's Lathrop and Brackenridge plants. The court, however, remanded the case to the Board for determination of the appropriateness of the units involved in the underlying unit clarification procedure, in which the Board had found that the single-plant and multiplant units constituted equally appropriate units for bargaining. In the instant proceeding, the Board, Chairman Miller dissenting,[17] reaffirmed the unit determinations there made. Having accepted the court's opinion as the law of the case, the Board further found that the employer was obligated to bargain with the union as the exclusive bargaining representative of its employees in the clarified unit.[18] The Board majority concluded that, by refusing to bargain with the union on behalf of its Brackenridge plant employees as part of such unit, the employer violated sec. 8(a)(5) and (1) of the Act.

In another postelection proceeding,[19] Member Kennedy, with Member Jenkins concurring in the result, denied the certified union's petition to amend its certification to combine into one bargaining unit four of its separate existing units at each employer where it had been previously certified. The union argued that the amendment sought was appropriate because of the unified management of the four employers. The Board was of the opinion that the record afforded a wholly insufficient basis for finding that the combined unit sought by the union would be an appropriate one. The Board noted particularly the separate negotiations for each unit, resulting in separate contracts; the separate rates of pay, hours, employment benefits, and seniority lists; the separate immediate supervision and grievance processing, and the lack of interchange of employees among the various employers; and that each employer maintained separate personnel files and operating equipment, filed separate reports to state and Federal authorities, and kept its own revenues.[20]

[17] The Chairman remained of the view he first stated in 189 NLRB 871, that unit clarification procedures were improvidently invoked herein for the purpose of combining, over the employer's objections, an admittedly appropriate unit with some other unit or units. In his view, the matter of combining clearly appropriate units should be effectuated only by voluntary agreement of the parties.

[18] 202 NLRB No. 15, *supra*.

[19] *Denver, Salt Lake & Pacific Stages*, 198 NLRB No. 175.

[20] Chairman Miller, concurring, reaffirmed his view, expressed in the *Libby-Owens-Ford* cases, 189 NLRB 869 and 189 NLRB 871, that the merger of existing appropriate single-plant units into multiplant units is a matter to be decided on a consensual basis by the parties to the bargaining relationship and found no consensual basis for merger in the instant case.

VI

Unfair Labor Practices

The Board is empowered under section 10(c) 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 an unfair labor practice charge has been filed with it. Such charges may be filed by an employer, an employee, a labor organization, or any other persons 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 1973 fiscal year which involved novel questions or set precedents that may be of substantial importance in the future administration of the Act.

A. Employer Interference With Employee Rights

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

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

1. Limitations on Employee Access to Information

Employer-imposed restrictions upon solicitation and distribution activities by employees during nonwork time in nonwork areas are presumptively invalid.

With respect to solicitation, the Board presumes that a no-solicitation rule limited to the time an employee is working is for the maintenance of production and discipline and, therefore, is valid, even though a restriction on section 7 rights. However, if such a rule is ambiguously phrased, so that it may be interpreted as prohibiting legitimate activity, it is unlawful. Thus, a rule prohibiting solicitation during "working hours" was held to be unlawful since working hours could apply to any time and place and not just to times and places that the employees involved are working.[2]

Different standards are applicable to nonemployee union organizers. Where access to plant property is sought by such organizers, "an employer may validly post his property against nonemployee distribution of union literature if reasonable efforts by the union through other available channels of communication will enable it to reach the employees with its message and if the employer's notice or order does not discriminate against the union by allowing other distribution." [3] Applying this standard, in *May Department Store,*[4] the Board held that the employer did not unlawfully deny union access to its premises, since the union was permitted to distribute its literature without interference at the entrance employees were required to use. Similarly, in *Dexter Thread Mills* [5] the Board held that an employer could lawfully deny nonemployee union organizers access to its parking lot, used by employees and customers, when reasonable effort would enable the union to communicate with employees through alternative means. The Board found that the union could obtain the names and addresses of employees through the licence plates of cars entering the lot and from sympathetic employees. The test is not one of relative convenience; though the alternative method might be more expensive and less convenient, it was viewed as reasonable.

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[2] *J. L. Hudson Co.*, 198 NLRB No. 19 (Chairman Miller concurring in relevant part) Member Kennedy, dissenting, would have found that the rule was not invalid because it was not manifestly directed at union solicitations, there was no evidence that the employer had ever construed it to apply to union solicitations, and the rule had been fully explained to the employees and they understood that it did not apply to union solicitations

[3] *N.L.R.B.* v *Babcock & Wilcox Co*, 351 U.S 105, 112 (1956).

[4] *May Department Store Co. d/b/a Meier & Frank Co*, 198 NLRB No. 85 (Chairman Miller and Members Jenkins and Kennedy).

[5] *Dexter Thread Mills, d/b/a Lee Wards*, 199 NLRB No. 113 (Chairman Miller and Members Jenkins and Kennedy)

2. Other Interference

Of course, unlawful interference with employee rights under section 7 can take many forms: unlawful restrictions on employee rights to solicit, distribute, and receive organizational information are merely an example. The following cases are representative, but certainly not exhaustive, of the types of unlawful interference considered by the Board in the past year.

In one of the more unusual cases, the Board found unlawful interference by an employer not otherwise involved in the underlying labor dispute.[6] The respondent employer owned property in an industrial park which it leased to other employers. When the employees of one of the lessees sought to picket their employer's place of business in the park, the respondent threatened to have them arrested. Since the employees had an unquestioned right of access for work purposes, the Board reasoned that section 7 guaranteed them a parallel right of access for the purpose of otherwise lawful picketing. In reaching this conclusion, the Board observed that the nearest public site was over a fifth of a mile away and that picketing there would enmesh otherwise neutrals in the dispute. Balancing the respondent's property rights against the rights of the employees, the Board viewed the latter as controlling. It specifically noted that the property in question was not restricted by the respondent for its exclusive use, but rather that its use was limited to acceptable classes and that employees of a lessee were an acceptable class. The Board held that they might not be excluded merely because they chose to engage in protected concerted activity.

In another case, the Board held that an employer which singled out known union adherents to attend a special meeting away from their work stations violated section 8(a)(1), even though nothing unlawful occurred at the meeting itself. The Board, over a dissent by Chairman Miller, found that the employer's method of calling these employees from the midst of their coworkers was invidious, discriminatory, and coercive.[7]

Generally, an employer cannot forbid employees to wear or display union insignia or emblems. However, an employer involved in contract negotiations was found to have acted lawfully in requiring employees to leave work if they persisted in wearing sweatshirts displaying the slogan "Ma Bell is a Cheap Mother."

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[6] *Frank Visceglia & Vincent Visceglia, t/a Peddie Buildings*, 203 NLRB No 27 (Member Kennedy not participating).

[7] *Greenfield Manufacturing Co., Div of Kellwood Co*, 199 NLRB No. 122 (Chairman Miller and Members Fanning and Jenkins)

There was no evidence that the employer sought to thwart protected concerted activity, or was motivated by union animus, and the employees involved were not otherwise disciplined. In view of the obscene connotation embodied in the slogan, the Board adopted the administrative law judge's finding that the employer's action was not directed against union activity but rather was a reasonable action to maintain discipline and harmonious relations.[8]

B. Employer Assistance to Labor Organization

1. Recognition With Knowledge of Competing Claim

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."

Under the Board's *Midwest Piping* doctrine, an employer faced with conflicting claims of two or more rival unions which give 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 right to be recognized has finally been determined under the special procedures provided in the Act.

During the past year the Board considered a number of cases involving the application and interpretation of section 8(a)(2). In one, the Board rejected an employer's contention that its recognition of a union, based on a demonstrated card majority, in the face of a rival union's representation petition, did not violate the Act. The employer argued that the petition did not raise a real question of representation because it was not supported by an adequate showing of interest. In rejecting this argument, the Board observed that no specific percentage is necessary for "a real question of representation" and that the test is whether the rival claim is clearly unsupportable and lacking in substance. There was no allegation that the latter test was met, and a showing of interest is an administrative requirement not subject to direct or collateral attack. Accordingly, the Board concluded that the petition was sufficient to establish more than a bare claim. In finding the violation, the Board also rejected the argument that the employer was placed in a dilemma between violating 8(a)(5)—by refusing to recognize a union with a card majority—and violating 8(a)(2)—by granting recognition to such a union in the face of the rival petition. The Board noted that an employer is under no obligation to grant recognition on

[8] *Southwestern Bell Telephone Co.*, 200 NLRB No. 101 (Chairman Miller and Members Kennedy and Penello).

the basis of a card majority in the face of a substantiated rival claim.[9]

Another case involved an employer's acquisition from two different employers and merger at a new facility of two separately represented units. The new employer signed a single contract covering the newly merged facility with one of the two unions.[10] The second union had not been notified that the new employer had taken over from the previous employer; that it had entered into negotiations; and that it planned to transfer the operation to a new location. The Board rejected the respondent's claim that there was an accretion and found that there was no basis to presume that the first union represented a majority of employees, despite the fact that it represented the larger unit, in view of employee turnover. In these circumstances the Respondent was obligated to remain neutral. At the time it entered into contract negotiations it had already decided to merge operations at a new site and was on notice that there were conflicting representational claims, since the employees to be merged were represented by different unions. Furthermore, the respondent in effect had entered into a prehire agreement, since the new facility had not been placed in operation at the time the respondent signed the agreement covering the newly merged operation. Accordingly, the employer thereby rendered unlawful assistance to a labor organization in violation of section 8(a)(2).[11]

2. Honoring Dues Checkoff Authorization

In *American Smelting & Refining Co.*,[12] the Board considered a different form of alleged assistance. There the Board concluded that the provisions for revocation of dues checkoff authorizations were ambiguous, but that the employer and union had acted reasonably and in good faith and that their interpretation of the provisions did not infringe on the employees' section 7 rights. The Board concluded that it would not impose its inter-

[9] *Inter-Island Resorts, d/b/a Kona Surf Hotel*, 201 NLRB No 1 (Members Fanning, Jenkins, and Penello). The Board respectfully noted its disagreement with the U.S. Courts of Appeals for the Third, Sixth, Seventh, and Eighth Circuits to the extent its findings might conflict with decisions in those circuits.

[10] *Hudson Berlind Corp.*, 203 NLRB No 63 (Chairman Miller and Members Fanning and Jenkins).

[11] Similarly, an employer was found to have violated sec. 8(a)(2) when it introduced a new process and merged separately represented units into an entirely new unit, which it then recognized as being represented by one of the two unions involved. *Newspaper Agency Corp*, 201 NLRB No. 91 (Members Jenkins, Kennedy, and Penello).

[12] 200 NLRB No. 140. Member Kennedy, dissenting, would have found the checkoff revocations timely, the continued deductions violative of sec 8(a)(2), and the union's causation of the deductions violative of sec. 8(b)(1)(A).

pretation of an ambiguous contract on the parties in these circumstances.

C. Employer Discrimination in Conditions of Employment

Section 8(a)(3) prohibits an employer from discriminating against employees "in regard to hire or tenure of employment or any term or condition of employment" for the purpose of encouraging or discouraging membership in any labor organization. Many cases arising under this section present difficult factual, but legally uncomplicated, issues as to employer motivation. Other cases, however, present substantial questions of policy and statutory construction.

1. Lockouts

During the year, the Board on several occasions passed on the legality of an employer's continued operation, through the use of replacements for rank-and-file employees, while engaging in a lockout against unit employees. In *Inter Collegiate Press*,[13] which split the Board three ways, a complaint alleging that the Respondent had violated the Act by using temporary replacements during a lockout was dismissed. Members Kennedy and Penello, in dismissing, relied on the reasons stated in their opinion in *Ottawa Silica*.[14]

Members Fanning and Jenkins, dissenting, would have found the violation. In their view, if the use of temporary replacements during a lockout is inherently destructive of protected rights, then no proof of union animus is required. However, if the impact on employee rights is comparatively slight and the employer has come forward with evidence of a legitimate and substantial justification, then union animus must be proved. Here, they would have found that the use of such replacements was inherently destructive and violated the Act, thereby dispensing with the need for independent evidence of motivation to support the complaint. But, even applying the second test, they would have found that the employer's action was not justified.

Chairman Miller cast the deciding vote. He regarded the split between his colleagues as reflecting the view, on the one hand, that the use of replacements always violates the Act and, on the other, that such tactics never violate the Act if the lockout is not specifically shown to be a device to defeat organizational rights.

[13] 199 NLRB No. 35.

[14] *Ottawa Silica Co.*, 197 NLRB No. 53. See 37 NLRB Ann. Rep. 98 (1972).

He rejected both approaches, stating that the determination requires a balancing of the interests involved. In this context, those interests are the extent to which the use of replacements has a tendency to discourage union membership on the one hand and the legitimate and significant business justifications, or union animus, on the other. The Chairman expressed some doubt about the circumstances in which a lockout would be offensive rather than defensive and about whether affixing such labels aids analysis. Finding that there was no evidence here that the use of temporary replacements had any great tendency to discourage union membership, and that the respondent, in good faith, had sought to maintain its competitive position, the Chairman concluded that the respondent had not violated section 8(a)(3) and concurred in the dismissal.

The Board also held during the year that an employer did not violate section 8(a)(3) by locking out its employees following a bargaining impasse, while continuing to operate on a limited basis with managerial employees.[15] In another case the Board lineup remained the same, with the members expressing their previously announced views. Thus, a majority composed of Chairman Miller and Members Kennedy and Penello found that the employer had not violated the Act by continuing operations with its own nonunit employees during a lockout.[16]

In a somewhat unusual factual situation, the Board concluded that the employers' layoff of employees shortly before expiration of a contract was not a lockout, and consequently not in violation of section 8(d)(4) and 8(a)(5).[17] The respondents operated packing plants where they slaughtered, processed, and sold beef. Because of the nature of the operations, the respondents, being intent on a total and lawful lockout upon expiration of the collective-bargaining agreement, were required to cut back on work in advance of that date. As these cutbacks occurred, certain employees had no work and were laid off. Thus the layoffs were economic. The Board indicated that to view them otherwise would require the employers to either bear the risk of an inventory

[15] *Ozark Steel Fabricators*, 199 NLRB No. 136. Members Fanning and Jenkins, in accord with their dissenting opinions in *Ottawa Silica* and *Inter Collegiate Press*, *supra*, would have found the violation. Further, they would reach the same result, even were a business justification test applied since, in their view, the Respondent failed to establish such a justification.

[16] *Ralston Purina Co.*, 204 NLRB No. 43. Members Kennedy and Penello relied on their opinion in *Ottawa Silica*, *supra*, and the Chairman concurred relying on the views he expressed in *Inter Collegiate Press*, *supra*. Members Fanning and Jenkins dissented in reliance on their opinions in *Ottawa Silica* and *Inter Collegiate Press*, *supra*.

[17] *Royal Packing Co.*, 198 NLRB No. 148 (Chairman Miller and Members Kennedy and Penello).

loss, since the Respondents were shutting down in anticipation of a strike, or to retain employees on payroll despite the absence of work.

In yet another case, *Wire Products Mfg. Corp.*, four members of the Board, with Member Jenkins concurring in the result, found that a lockout was unlawful, since it was motivated, at least in part, by union animus.[18] Chairman Miller and Members Kennedy and Penello found it unnecessary, therefore, to consider whether the employer had violated the Act simply by continuing operations during the lockout. Member Fanning, however, would also have reached that issue and, consistent with his dissent in *Ottawa Silica, supra,* would have found the continued operation unlawful. Member Jenkins, concurring, viewed the lockout as unlawful without regard for "subjective motive or hostility" and questioned the wisdom and necessity of attempting to divine the employer's state of mind in such circumstances.

2. Discharges During Jurisdictional Disputes

Normally, an employer which discriminates in hiring or tenure of employment violates section 8(a)(3) of the Act. However, the Act cannot be read blindly if its application is to achieve its ultimate purposes, and the various sections of the Act must be interpreted in the context of the particular case and the Act as a whole.

With these considerations in mind, the Board held that an employer, in the context of a classic jurisdictional dispute, had not violated the Act even though it discharged employees because they were members of one union and not another.[19] The Board had previously considered the jurisdictional controversy, and in a 10(k) proceeding awarded the work in dispute to the employees who were discharged. When the other union refused to comply with that determination, the Board in an unfair labor practice proceeding found that said union had violated section 8(b)(4)(D). When the employer and the offending union chose not to comply with the Board's determination of dispute and its subsequent order in the 8(b)(4)(D) proceeding, 8(a)(3) charges were filed and a complaint issued. Since this was essentially a jurisdictional dispute, the Board concluded that the 10(k) and

[18] 198 NLRB No. 90.

[19] *Brady-Hamilton Stevedore Co.*, 198 NLRB No. 18. Members Kennedy and Penello dissenting, were of the opinion that, merely because a union has violated one section of the Act, there is nothing to bar a finding that an employer has violated another. While agreeing that 10(k) policies and procedures are controlling in jurisdictional disputes, they argued that the Board need not look to sec. 10(k) when other sections are violated, and would have found that, under the policies of the Act, sec. 8(a)(3) should have been given precedence in the circumstances of the case

8(b)(4)(D) sections of the Act constituted the exclusive procedure for remedying the overall controversy.

In this regard, the Board noted that the above sections had recently been examined by the Supreme Court. The Court observed that, if a union refuses to abide by the Board's determination in the 10(k) proceeding, then a complaint alleging violation of section 8(b)(4)(D) may issue and the offending union may be ordered to cease and desist. If, however, the employer refuses to abide by the award, then it loses the protection of section 8(b)(4)(D) and the successful union may lawfully picket, putting the employer under intense pressure to conform with the Board's determination.[20] Since the Court stated that Congress had provided no other way to implement a 10(k) determination, the Board viewed the present action as an attempt to "implement our 10(k) determination via the 8(a)(3) route" and dismissed the complaint.[21]

3. Other Issues

The Board also considered a wide variety of other issues involving the application of section 8(a)(3) during the year, including whether or not sex discrimination, *per se,* violates the Act. By a 3 to 1 vote, the Board concluded that it did not and dismissed the complaint.[22] Although the case involved only sex discrimination, the Board classed such discrimination with that based on race, color, religion, or national origin in concluding that such discrimination standing alone is not inherently destructive of section 7 rights and, therefore, does not violate section 8(a)(1) and (3) of the Act. The Board, contrary to the U.S. Circuit Court of Appeals for the District of Columbia[23] with which it disagreed, refused to assume that Congress intended such matters to be protected by section 7, and held that "[t]here must be actual evidence, as opposed to speculation, of a nexus between the alleged discriminatory conduct and the interference with, or restraint of, employees in the exercise of those rights protected by the Act."

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[20] *N.L.R.B.* v. *Plasterers' Loc 79, Operative Plasterers' & Cement Masons' Intl. Assn*, 404 U.S 116, 126–127 (1971).

[21] In a subsequent case, *J. L. Allen Co.*, 199 NLRB No. 111, the Board followed the same reasoning in finding that a union engaged in a jurisdictional dispute had not violated sec 8(b)(1)(A) and (2) of the Act by causing an employer to discharge members of another union Members Kennedy and Penello dissented for the reasons they set forth in *Brady-Hamilton Stevedore Co., supra*

[22] *Jubilee Mfg. Co.*, 202 NLRB No. 2. Member Fanning, concurring in the result, found that the evidence did not establish sex discrimination and, therefore, did not reach the legal issue

[23] *United Packinghouse, Food & Allied Workers Intl. Union [Farmers Cooperative Compress]* v. *N.L.R.B.*, 416 F.2d 1126, cert denied 396 U S 903 (1969)

Member Jenkins, in a strong dissent, argued that the Act must be construed in line with the national labor policy, which is opposed to invidious discrimination. In his view, such discrimination creates and fosters divisiveness by the clash of interests; and this divisiveness unlawfully restrains and interferes with the employees' exercise of concerted rights. The employees are thereby required to squander their efforts to correct a condition of employment which is unlawful and should never have existed.

Another case involving section 8(a)(3) provided a vehicle for clarification of Board policy with respect to union solicitation during an employee's working time.[24] Two employees had been discharged, pursuant to an unlawfully broad no-solicitation rule for soliciting during their working time. Though an employer may lawfully publish and enforce restrictions on worktime solicitation, the Board found that the employees were unlawfully discharged. The Board explained that a rule prohibiting union solicitation during working time is presumptively valid, since it is presumed, but only presumed, to be intended to prevent interference with production. However, the Act establishes and protects the right of union solicitation, and it is only a substantial business justification which will support curtailment of this right. In the absence of a valid rule, or a showing that the solicitation actually interfered with production, the restriction of union solicitation violates the Act. Since the rule was unlawfully broad, it offered no support for the discharges, and, since the discharges were based only on the violation of the rule, not conduct evidencing an interference with production, the discharges were held to violate section 8(a)(3).

The Board also held during the year that an employer, by hiring new employees represented by a different union following an economic layoff, thereby effectively substituted one union for another and violated section 8(a)(3). The Board reasoned that this action was inherently destructive of employee interests because the failure to recall any of the members of the original union had the natural effect of discouraging membership. In find-

[24] *Daylin Inc., Discount Div. d/b/a Miller's Discount Dept. Stores*, 198 NLRB No. 40 (Chairman Miller and Member Kennedy dissenting in separate opinions). The Chairman was of the opinion that the majority had concluded that merely because the rule was unlawful, and the discharges were pursuant to the rule, they too were bad Since, in his opinion, the employer could lawfully prohibit the conduct involved, the discharges were for cause and the majority's decision violated sec. 10(c) which prohibits reinstatement in such cases Member Kennedy would have found that the discharges were lawful since they were based on the employees' neglect of their own work and interfered with the work of others. Moreover, Member Kennedy would refuse to invalidate the no-solicitation rule since there was no evidence that it had ever been unlawfully enforced.

ing the violation, the Board concluded that the employer had not established an adequate business justification.[25]

In *George Lithograph Co.* an employer was found to have violated the Act by closing a department in order to avoid recognizing a disfavored union.[26] In reaching this conclusion, the Board held that in a partial closing case it is not necessary to show, by direct proof, an actual "chilling effect" on the union activities of other employees. It is sufficient if the chilling effect is a foreseeable—and, hence, an intended—consequence. While hostility toward the union motivated the closing of the department, that did not establish, *ipso facto,* that there was also an intent to chill other employees. However, the Board concluded that hostility would indicate a disposition toward chilling and would support a logical inference of such an intent. In the circumstances—particularly the fact that the department was located in the same building as the employer's other operations and under the same immediate management, was serviced by several other departments, and was closed for the openly avowed purpose of blocking organizing activities—the Board found that the closing could not but deter exercise of section 7 rights by the remaining employees, and that this consequence was entirely foreseeable.

During the year the Board considered another case concerning the rights of replaced economic strikers pursuant to *Laidlaw* [27] and *Fleetwood Trailer.*[28] The question presented was whether an employer could lawfully terminate, 1 year after the strikers' unconditional offer to return to work, a preferential hiring list established for the replaced economic strikers. The Board rejected the employer's contention that replaced economic strikers could be equated with laid-off employees, since the formers' right is statutory, and found that maintaining a preferential hiring list was not unduly onerous. The Board declined to establish a limit on the time an employer is required to maintain such a list. Holding that the strikers' right to reinstatement could be

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[25] *Rushton & Mercier Woodworking Co.*, 203 NLRB No. 17 (Members Fanning, Kennedy, and Penello). The Board also held that finding an 8(a)(2) violation in the employer's recognition of the new union followed as a matter of course from its finding of discriminatory refusal to recall and preferential hiring of the new union's members. Similarly, an 8(a)(5) violation was found based on the employer's refusal to bargain with the old union after recognizing the new.

[26] 204 NLRB No. 50. Chairman Miller, concurring, unlike Members Fanning and Jenkins would not have ordered the respondent to resume the department's operation but would have given it the option of reinstating the employees to other remaining positions.

[27] *Laidlaw Corp.*, 171 NLRB 1366, enfd. 414 F.2d 99 (C.A. 7), cert. denied 397 U.S. 920 (1969).

[28] *N.L.R.B.* v. *Fleetwood Trailer Co.*, 389 U.S. 375 (1967).

defeated only by a showing of legitimate and substantial business justifications, and that the employer had not met its burden of proof, the Board found that the employer's termination of the seniority and preferential hiring rights of the strikers violated section 8(a)(3) and its decision to do so without first bargaining with the Union violated section 8(a)(5).[29]

D. The Bargaining Obligation

1. Obligation to Recognize on Demand

The Board and the courts have now made it clear that signed authorization cards can provide a valid basis for requiring an employer to bargain with a labor organization.[30] But the Board will not enter a bargaining order based solely on cards or other evidence of majority status short of a Board-conducted election. However, if the employer engages in unfair labor practices which impede a fair election or agrees, or attempts, to determine majority status by some means other than a Board-conducted election, then the Board will issue a bargaining order.[31]

Consistent with that view, in *Green Briar Nursing Home,* the Board concluded that an employer had not violated the Act by refusing to recognize a union which possessed a card majority, despite further evidence of majority support provided by a strike and picketing engaged in by a majority of employees in the unit.[32] Although the employer's owner physically assaulted two union representatives when they sought recognition; sought to disperse pickets by frequently driving his car at excessive rates of speed and causing the car to go into a skid, in one instance brushing a picket with his car; and on another occasion loudly offering to run over the pickets in a truck, the Board concluded that, while this conduct demonstrated hostility to collective bargaining and violated section 8(a)(1), it would not have the severe and lingering impact necessary to preclude an election.

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[29] *Brooks Research & Mfg.*, 202 NLRB No. 93 (Members Fanning, Kennedy, and Penello)

[30] See 37 NLRB Ann. Rep 101–103 (1972).

[31] *Arthur F. Derse, Sr., & Wilder Mfg. Co.*, 198 NLRB No. 123 (Member Fanning, dissenting). See discussion, *infra*

[32] *Green Briar Nursing Home*, 201 NLRB No 73 (Members Jenkins and Kennedy). Member Fanning, dissenting, would have issued a bargaining order both on the ground that the employer's conduct had precluded a fair election and on the ground that the union-called strike revealed "convincing support" for the union independent of valid authorization cards See *Arthur F. Derse, Sr., & Wilder Mfg Co.*, 185 NLRB 175 (1970), and Member Fanning's dissent in *Linden Lumber Div., Summer & Co.*, 190 NLRB 718 (1971).

In a more clear-cut case, where an employer had not committed any independent unfair labor practices but had refused to recognize the union's claimed card majority, insisting on an election instead, the Board dismissed the complaint. *Transway Corp*, 198 NLRB No 185 (Members Jenkins, Kennedy, and Penello)

Since the Board will not find an unlawful refusal to bargain solely on the basis of union-proffered evidence of majority support unless the employer's conduct precludes an election, the 8(a)(5) allegations of the complaint were dismissed.

In a series of cases during the year, the Board applied the principle enunciated in *Nation-Wide Plastics* and found that employers, which could, in proper circumstances, have insisted on a Board-conducted election, unlawfully refused to bargain after unilaterally determining the union's majority status by means of their own choosing.[33] In *Sullivan Electric Co.* the employer interrogated 11 of the 16 employees in the unit and determined that each had designated the union as his collective-bargaining representative. Since the employer nonetheless refused to recognize the union, the Board found an 8(a)(5) violation.[34] Similarly, where an employer unilaterally conducted a secret ballot election under its own auspices, which revealed a union majority, its continued refusal to recognize the union was found to violate the Act.[35] A like result was reached in *Soil Mechanics Corp.*, 200 NLRB No. 60.[36]

2. Appropriateness of Bargaining Order Where Request For Recognition Rejected

Pursuant to remand of a *Gissel*-type case by the United States Court of Appeals for the Fifth Circuit,[37] the Board for a second time reconsidered its original decision that a bargaining order

[33] *Nation-Wide Plastics Co*, 197 NLRB No. 136, 37 NLRB Ann. Rep. 102 (1972) There, the employer through independent action of his own, i.e, a poll of the employees, acquired evidence, apart from cards, of the union's majority

[34] 199 NLRB No. 97 Member Kennedy dissenting would have found that there was no evidence that the unit was appropriate, that there had been no agreement upon a means for resolving majority status, and that the Board's decision in *Linden Lumber Div*, *supra*, was controlling Since there were no findings of independent unfair labor practices, as required under *Linden*, Member Kennedy would have dismissed the complaint.

[35] *Atlantic Technical Services Corp.*, 202 NLRB No. 13 (Chairman Miller and Member Jenkins). Member Kennedy, dissenting in relevant part, would not have issued a bargaining order, which in his view is not appropriate in the absence of unfair labor practices which cannot be erased by traditional remedies. See his dissenting opinion in *Sullivan Electric Co*, *supra*

[36] (Members Fanning, Jenkins, and Penello) Compare, however, the earlier decision in *Arthur F Derse, Sr, & Wilder Mfg Co*, 198 NLRB No 123, where, citing *Linden Lumber Div.*, *supra*, the Board majority concluded that an 8(a)(5) order would not issue "solely on the basis of facts which might give rise to an inference that an employer had knowledge of majority status" Accordingly, the 8(a)(5) complaint was dismissed Member Fanning, dissenting, reasoned that since the employer was furnished convincing evidence that the union represented a majority, and the union did in fact have such status, the employer could not lawfully withhold recognition In his view, an employer who refuses to recognize a union in the absence of a *bona fide* dispute over majority status violates sec 8(a)(5) At the least, Member Fanning would require an employer, possessed of such knowledge, to resolve any doubt through the election process

[37] *N.L.R.B.* v *Gibson Products Co of Washington Parish, La*, 421 F 2d 156 (1969), remanding, 172 NLRB 2240 (1968)

was necessary to remedy the respondent employer's 8(a)(1) violations and reached the same conclusion.[38] This time, the Board determined that the case was factually and legally governed by *Sinclair,* one of the four cases involved in *Gissel,*[39] and reaffirmed its prior decisions [40] that a bargaining order was the only appropriate remedy for respondent employer's unfair labor practices. The Board concluded that, regardless of whether lapse of time or other circumstances might at the present time make a fair election possible, an election would not remedy the long period during which the employer's intransigent violations of the Act had denied its employees the right to bargain collectively.[41] The Board specifically relied on the Supreme Court's pronouncement in *Sinclair* that "a bargaining order is designed as much to remedy past election damage as it is to deter future misconduct," and the Court's substantive adoption of the Board's longstanding "policy of issuing a bargaining order, in the absence of §8(a)(5) violation or even a bargaining demand, when that was the only available, effective remedy for substantial unfair labor practices." [43]

In *Lawrence Rigging, Inc.,*[44] a panel of the Board held that a bargaining order was necessary to remedy the employer's 8(a)(1),(2), and (5) violations, since none of the traditional remedies available to the Board would enable it to hold a fair election. The employer's conduct included threats, interrogation, and promises designed to preclude the majority union from becoming the bargaining agent and to force the employees to accept the union unlawfully assisted by the employer, which assistance included recognition. The panel agreed that such conduct justified a bargaining order remedy. Members Fanning and Jenkins stated that such conduct is no less intimidating than the grant of benefits or an unlawful discharge, disagreeing with Chairman Miller's apparent view as expressed in his dissenting opinion in

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[38] *Gibson Products Co. of Washington Parish, La.,* 199 NLRB No 115

[39] *N L.R.B* v. *Gissel Packing Co.,* 395 U S. 575 (1969)

[40] 172 NLRB 2240; 185 NLRB 362 (1970).

[41] In its first reconsideration of its 8(a)(5) finding and bargaining order in this case (185 NLRB 362), the Board carefully considered, and respectfully disagreed with, the position of the Fifth Circuit as set forth in its second *American Cable* decision, *N.L.R.B* v. *American Cable Systems,* 427 F 2d 466 (1970), decided subsequent to the remand in this proceeding, wherein the court stated that under *Gissel* no bargaining order should issue unless, at the time such an order is directed, the Board "finds the electoral atmosphere unlikely to produce a fair election." The Board stated that, in its view, "the situation must be appraised as of the time of the commission of the unfair labor practices, and not currently."

[42] *N L R B.* v. *Gissel Packing Co., supra,* 612.

[43] *N.L.R.B.* v. *Gissel Packing Co., supra,* 614

[44] 202 NLRB No. 159

General Stencils that threats must be evaluated on a different basis than active conduct.[45]

In another case decided under the *Gissel* standards,[46] Members Fanning and Penello found that the employer's unfair labor practices were serious and pervasive in character and extensive in their impact on the unit employees and, thus, warranted a bargaining order. The employer's antiunion campaign included threats of plant closure and loss of employment, widespread interrogation, and promises of benefits if the employees rejected the union. The Board majority found, contrary to Chairman Miller,[47] that the threats of plant closure and job loss, even though made to only four employees, a minority of the employee complement, were plainly actions which in and of themselves were egregious enough to come within the first category specified in *Gissel:* " . . . unfair labor practices . . . of 'such a nature that their coercive effects cannot be eliminated by the application of traditional remedies, with the result that a fair and reliable election [in this case a fair and reliable rerun] cannot be had.' " 395 U.S. at 613–614. The Board concluded that, in any event, these threats together with the other conduct of the employer brought this case within the second category defined in *Gissel,* of "less extraordinary cases marked by less pervasive practices which nonetheless still have the tendency to undermine majority strength and impede the election processes."

Applying *Gissel* tests in four additional cases, the Board determined that remedial bargaining orders were not warranted. In the first case,[48] a Board majority found that conventional remedies were sufficient to neutralize the effects of the unfair labor practices found; namely, creating the impression of and engaging in surveillance, interrogating one employee, and discriminatorily refusing to permit one employee to attend employ-

[45] 195 NLRB 1109 (1972). In the instant case, Chairman Miller concurred in the conclusion that a bargaining order was required but relied on the rationale expressed in his dissenting opinion in *General Stencils.* He expressly found that because the threats in the present case were of a pervasive, serious, and continuing nature, likely to be seriously regarded by the employees, a bargaining order was appropriate.

[46] *Mulgo Industrial, Inc.,* 203 NLRB No. 152; *N L.R.B.* v. *Gissel Packing Co.,* 395 U.S. 575

[47] Chairman Miller, concurring in part and dissenting in part, was of the view that the employer's misconduct did not satisfy the *Gissel* requirements for issuance of a remedial bargaining order. With respect to the threat of plant closure, he found that its impact and lingering effect was highly questionable as only one employee testified that such a threat was made, there was no record evidence that he publicized it to other employees, and he conceded it had no effect on his continuing to support the union. As for "other conduct" relied on by the majority, the Chairman found that most of it could not be attributed to the employer, as he disagreed with the majority's agency finding concerning the employee who engaged in such conduct.

[48] *J. J Newberry Co.,* 202 NLRB No 53.

ees' meetings. Hence, the Board set aside the first election and directed a second election.[49]

In the second case,[50] a panel of Chairman Miller and Members Kennedy and Penello found that the employer's unfair labor practices were neither pervasive nor extensive. While the employer's polling of the employees without assurances against reprisals violated section 8(a)(1) of the Act,[51] the poll was not attended by any threats or coercive statements and its purpose appeared to be solely to determine the union's claim of majority. Although the election was set aside partly because of the poll, the Board concluded there was substantial likelihood that application of traditional Board remedies would erase the past effects of this unfair labor practice and ensure the holding of a fair second election.

In the third case,[52] a panel majority of Members Kennedy and Penello found that the 8(a)(1) violations of the employer fell within the category described by the Supreme Court in *Gissel*,[53] as "minor or less extensive unfair labor practices, which, because of their minimal impact on the election machinery, will not sustain a bargaining order." The unfair labor practices found consisted of (1) the grant of overtime compensation to 5 of the 13 unit employees a week before the scheduled election, and (2) the announcement of a uniform policy for severance pay to discharged employees. The Board concluded that the holding of a second election would be the most suitable means of determining the employees' sentiment regarding the union.[54]

In the fourth case,[55] Chairman Miller and Members Fanning and Jenkins found that a bargaining order was not appropriate even though it found that the 8(a)(1) and (3) violations were extensive and pervasive, because the General Counsel had disclaimed throughout the hearing any intent to seek a bargaining order, and the issue of the union's majority status or the desire of the employees in being represented by the union had thus not

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[49] Members Fanning and Jenkins, dissenting in part, were of the opinion that the employer's unfair labor practices were so extensive that they had the tendency to undermine the union's majority strength and impede the election process Accordingly, they would have issued a bargaining order. However, in reaching that conclusion they relied on two additional findings of unfair labor practices that their colleagues refused to find. The most notable of these was their finding that in a speech to the employees the employer threatened that the store might close if the union won the election.

[50] *Northeastern Dye Works*, 203 NLRB No 159.

[51] *Strukenes Construction Co.*, 165 NLRB 1062 (1967)

[52] *WCAR, Inc.*, 203 NLRB No. 181.

[53] *N.L.R.B.* v. *Gissel Packing Co.*, 395 U S. 575, 615

[54] Member Fanning, dissenting in part, was of the opinion that the violations found were substantial and dissented from the majority's failure to find an 8(a)(5) violation and to impose a remedial bargaining order

[55] *Fuqua Homes Missouri, Inc.*, 201 NLRB No. 13

been litigated. The Board also noted that, aside from a petition circulated by the employees favoring union representation, the record was devoid of any evidence establishing majority status on the union's part, or any union demand for recognition. The Board found that the petition failed to demonstrate that the employees had chosen the union as their exclusive bargaining representative. Accordingly, no bargaining order was decreed.

3. Obligation of Successor Employer

During the report year, the Board considered the bargaining obligation of a successor employer in the light of the Supreme Court's decision in *N.L.R.B.* v. *Burns Intl. Security Services.*[56] In *Burns,* the Supreme Court held that a successor employer is ordinarily free to set initial terms on which it will hire the employees of a predecessor. However, the Court also indicated that "there will be instances in which it is perfectly clear that the new employer plans to retain all of the employees in the unit and in which it will be appropriate to have him initially consult with the employees' bargaining representative before he fixes terms." *Howard Johnson Co.,*[57] decided by the full Board during the report year, was held to be such a case. The facts showed that at the time of the takeover of the business, the employer's regional manager told the predecessor's employees that their employment would continue after the change in ownership. This retention of all of the employees in the units obligated the employer to bargain with the unions before it fixed initial wages and terms of employment, and the Board found that the employer, by failing to do so, violated section 8(a)(5) and (1) of the Act. To remedy these unfair labor practices, the Board although not ordering the successor to assume the contract of the predecessor did order the employer to make whole the employees in the units for any loss of pay or other benefits they might have suffered as a result of the employer's unilateral action.

Applying the *Burns* principles in *Hecker Machine,*[58] the full Board found successorship where all of the employer's eventual complement of permanent employees had been employed by the predecessor and the change in ownership did not affect the basic product line, employee identity, or job functions. Accordingly, the Board concluded that when the union demanded bargaining and the employer refused to comply, the employer, by its refusal, violated section 8(a)(5) and (1) of the Act. In *Hecker,*

[56] 406 U S 272, 294–295 (1972)
[57] 198 NLRB No. 98
[58] 198 NLRB No. 161

however, unlike *Howard Johnson, supra,* the Board did not require the employer to reimburse the employees for losses suffered resulting from the unilateral establishment by the successor, of its own terms and conditions of employment. The Board found the instant case distinguishable from *Howard Johnson* because the facts showed that it was not until after the employer had established initial terms and conditions of employment, began operations, and hired a representative employee complement that it became evident the union had majority status in the new work force. The Board viewed these facts as more closely paralleling those in *Burns, supra,* wherein the Supreme Court had reached a conclusion paralleling that reached by the Board here.

4. Bargaining Conduct

On remand from the Court of Appeals for the Fourth Circuit,[59] the Board had before it the issue of whether a union's agreement to a "zipper clause" in its collective-bargaining agreement was fraudulently induced by the employer so as to relieve the union of the effects of that clause. In its original decision,[60] the Board had found that the employer violated section 8(a)(5) and (1) of the Act by unilaterally discontinuing Christmas bonuses. The court of appeals disagreed with the Board's finding that the "zipper clause" did not, by its terms, evidence that the union waived its right to bargain over Christmas bonuses, but remanded the case for a further evaluation of the negotiantions which had led up to the inclusion of the clause. Accepting the remand, a panel consisting of Chairman Miller and Members Fanning and Jenkins found that there had been deceptive conduct by the employer during negotiations. The employer was found to have intentionally withheld information sought by the union concerning the benefits the employer had been paying, thus concealing from the union the existence of the bonus. In these circumstances, the Board found that the employer's misconduct effectively relieved the union of any concessions contained in the "zipper clause" with respect to the Christmas bonus. The Board therefore reaffirmed its original finding that the employer violated section 8(a)(5) by unilaterally eliminating the Christmas bonus.[61]

In a consolidated bargaining case,[62] involving three separate units of employees of three separate employers, Ohio Power,

[59] *N.L.R.B.* v. *Southern Materials Co*, 447 F.2d 15 (1971)
[60] 181 NLRB 958 (1970)
[61] 198 NLRB No 43 (1972).
[62] *Utility Workers Union of America, Locals 111, et al (Ohio Power Co)*, 203 NLRB No. 55

Central Operating, and Wheeling Electric, the Board, through a panel of Members Jenkins, Kennedy, and Penello, found that the respondent unions violated section 8(b)(3) of the Act by insisting, as a condition of reaching agreement in the separate bargaining units, that the negotiations also include the other units, and by withholding agreement for the separate units until the three employers agreed to submit identical offers for all the units for which the unions were certified or recognized. In reaching this conclusion, the Board found that the facts in the instant proceeding were significantly distinguishable from those in the *Phelps Dodge* case,[63] in which the Court of Appeals for the Third Circuit set aside the Board's finding of an 8(b)(3) violation. In that case, the unions sought common contract expiration dates and simultaneous settlements of all contracts, but separate negotiations were conducted at each company's unit and no bargaining was conducted for any unit with regard to wages, terms, or employment conditions of other units.

5. Withholding of Wage Increases

In a case decided during the report year,[64] a panel majority of Members Jenkins and Penello adopted the decision of an administrative law judge that an employer violated section 8(a)(5) by withholding a previously promised wage increase without notifying the certified union. In April 1969 the employer promised the employees a wage increase effective on April 20, 1970. In the interim the union was selected as the employees' bargaining representative. The Board found that the selection of the union caused the employer to withhold the raise in violation of section 8(a)(1) and (3) of the Act as well as section 8(a)(5). In doing so, the Board distinguished its decision in *Chevron Oil Co.*[65] In the instant case, the employer had previously promised both the specific amount and effective date of the wage increase but withheld it following the union's certification without notifying and offering to bargain with the union. In *Chevron,* the company's policy was to grant to its unorganized employees the wage and benefit increases negotiated in the most recent industrywide agreement, but there had been no announcement to the employees and, in fact, the new industrywide agreement had not been negotiated prior to either certification of the

[63] *AFL–CIO Joint Negotiating Committee for Phelps Dodge* v. *N.L.R.B.*, 459 F.2d 374, as amended May 25, 1972, setting aside 184 NLRB No. 106, cert. denied 409 U.S. 1059 (1972).

[64] *United Aircraft Corp., Hamilton Standard Div.*, 199 NLRB No. 68.

[65] 182 NLRB 445, enforcement denied in pertinent part 442 F.2d 1067 (C.A. 5, 1971)

union or the commencement of the bargaining.[66]

In another case involving the withholding of wage increases, Members Jenkins and Penello reversed the decision of an administrative law judge in relevant part, and held that the employer's unilateral cancellation of an announced wage increase after the employees had selected the union as their exclusive bargaining representative was an 8(a)(1), (3), and (5) violation.[67] They stated that the definition of "condition of employment" includes not only what the employer has granted, but also what he "proposes to grant." This panel majority then found that the employer's action in announcing the increase, though subject to Internal Revenue Service approval, created a reasonable expectation of an increase to take place upon a contingency. The subsequent withdrawal of the expected increase thus changed the conditions of employment to those which had existed before the announcement had been made and the expectation created. They concluded that, in these circumstances, the cancellation of the increase to the unit employees, without consultation with the certified bargaining representative, constituted an unlawful change in the working conditions.

Washington Employers [68] presented to the Board the issue of the effect of the Federal pay board's regulations on an employer's obligation to pay an agreed-upon wage increase in collective-bargaining agreements negotiated during the wage-price freeze in 1971 but prior to the effective date of the Phase II wage-price controls that followed the expiration of that freeze. After Phase II became effective, the respondent employer association and its members refused to put into effect any of the negotiated amount in excess of the general 5.5 percent wage guideline set by the pay board until the pay board acted on the full increase provided for in the contracts executed by the parties after Phase II commenced. Limiting its decision to the instant case, a panel of Members Fanning, Jenkins, and Kennedy found that nothing in the pay board's rules and regulations prevented respondents from paying the wage increases, and that by their failure to do so respondents violated section 8(a)(5) and (1)

[66] Member Kennedy, dissenting, was of the opinion that *Chevron, supra,* is not distinguishable because the condition of employment can be as readily created by a course of conduct, as in *Chevron,* as by an explicit promise, as in this case, and that in either case an increase need not be granted in the absence of agreement unless it occurs in a context of bad-faith bargaining. Since he found no such conduct here, he would have found no violation in withholding the increase in issue.

[67] *Liberty Telephone & Communications,* 204 NLRB No. 54. Member Kennedy would have affirmed the finding and rationale of the administrative law judge that the employer did not violate the Act by its cancellation of the increase, citing his dissent in *United Aircraft Corp., Hamilton Standard Div., supra*

[68] 200 NLRB No. 117

of the Act. The panel noted that the respondents, notwithstanding their knowledge that some controls would remain on the economy after the expiration of the wage-price freeze, were willing to assume the risk of being obliged to pay what might later be excused as an increase in excess of the pay board's regulations and, thus, were in no position to complain of this Board's requiring them to pay what they agreed upon both before and after Phase II.

6. Subcontracting Unit Work

Under the Supreme Court's decision in *Fibreboard*,[69] an employer in certain circumstances is obligated to bargain concerning the contracting out of work previously performed by members of the bargaining unit. In a case decided during the year,[70] a 3 to 2 majority of the Board, applying the Supreme Court's ruling, found that the respondent employer failed to meet its bargaining obligation when, during bargaining negotiations with the certified union, it unilaterally subcontracted unit work and laid off unit employees. The Board majority rejected the finding of the administrative law judge that the union was given sufficient notice of the subcontracting. It found that the union was not advised of the imminency of the contemplated subcontract until the unit employees were on the verge of losing their jobs. It also rejected his finding that, in any event, any defect in such notice was cured by subsequent bargaining, because no meaningful discussion of the issues posed by respondent's unilateral conduct was possible so long as any reinstatement of the unlawfully terminated employees was used as bargaining bait by the employer to force acceptance of its terms. The majority distinguished, on its facts, *Hartmann Luggage Co.*,[71] in which the Board had held that the company's signing of a subcontracting agreement before advising the union of subcontracting negotiations was not unlawful, noting, *inter alia*, that the union in the present case, unlike the one in *Hartmann Luggage*, never acquiesced in the employer's unilateral action

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

[70] *Florida-Texas Freight*, 203 NLRB No. 74.

[71] 145 NLRB 1572, 1579–80 (1964). Chairman Miller and Member Kennedy, dissenting in part, were of the opinion that *Hartmann Luggage* was "on all fours" with the instant case and would have dismissed the 8(a)(5) allegation. They noted that in one respect this case was stronger for finding no violation than *Hartmann Luggage* because here, unlike there, the union was told that the employer was considering subcontracting. Furthermore, in view of a cancellation clause in the subcontracting agreement, they concluded that the situation in the instant case was similar to that in *Hartmann Luggage* which involved an executory subcontract, because in both cases there was no legal obstacle to canceling the subcontract and resuming work with employees if agreement could be reached. They also noted that the subcontracting of the unit work was not found to be unlawfully motivated in this case, and that the parties reached a legitimate impasse in bargaining on the terms under which the unit could be reinstated.

and did not limit its negotiating efforts, as that union had, to the effects of the subcontracting.

In another subcontracting case,[72] a panel majority of Members Jenkins and Kennedy affirmed an administrative law judge's finding of an 8(a)(5) violation where the employer subcontracted repair work and equipment to other concerns operated by the employer's owner, without prior notification or consultation with the union. This work had been done by unit personnel. When the union requested information concerning the transfer of unit work, the employer refused to supply it. The Board found the instant proceeding factually distinguishable from *Union Carbide Corp.*,[73] in which no violation was found in the employer's unilateral subcontracting of unit work under the particular circumstances of that case.

7. Other Issues

During the year, the Board also had before it a case involving the effect of a state law on the employer's obligation to execute a collective-bargaining contract negotiated by an employer association of which it was a member.[74] The employer admittedly refused to execute the contract because it contained a clause requiring foremen to be members of the union. Confining its decision to the specific facts in the case, the Board majority dismissed the 8(a)(5) complaint. The Board found that a state so-called right-to-work law would have subjected the employer to criminal prosecution for executing the contract which contained a clause clearly violative on its face of the governing state law (it having been so found in a declaratory judgment action between the employer and the charging party, and wherein the prohibited clause was declared "absolutely void" by a lower court of the State). The state court's holding, the Board concluded, would also make any disposition of the case, other than dismissal, an exercise in futility as the Board would

[72] *Grand Machining Co.*, 201 NLRB No. 86

[73] 178 NLRB 504 (1969). Chairman Miller, dissenting in the instant case, was of the view that the administrative law judge failed to analyze the facts in the light of the Board's holding in *Union Carbide*, and that either a remand or full review of the record and the applicable law, rather than a routine adoption of the administrative law judge's findings and recommendations, was required. The Chairman noted that in *Union Carbide* the Board had looked to factors other than just the fact of the subcontracting being entered into unilaterally to determine if a violation had occurred The Chairman found that there was evidence that these factors might have been present in the instant case, in which event a different result may have been required than found by the administrative law judge, who ignored them, basing his decision solely on the unilateral nature of the action

[74] *Stein Printing Co*., 204 NLRB No 2

not order the employer either to violate a criminal statute of the State or agree to a clause which is void.[75]

In a multicraft bargaining case,[76] a Board panel, reversing an administrative law judge, found no 8(a)(5) violation in an employer's refusal to negotiate separately with one union after a multicraft agreement had been reached, and its insistence on adherence to the bargain reached in the multicraft negotiations. Unlike the administrative law judge, the Board found that the unit represented by the union had been merged into the multicraft unit, and that the union had not appropriately withdrawn therefrom. The Board found that the union's conduct during the negotiations was not consistent with an unequivocal withdrawal from multicraft bargaining. Accordingly, the employer had no obligation to grant the union's request for separate bargaining.

The Board also had occasion during the year to consider the issue of the legality of a union's efforts to enforce contract terms relating to terms and conditions of employment of nonunit employees.[77] The Board found that the contracting union did not violate section 8(b)(3) of the Act by peaceful efforts, through grievance and arbitration procedures, to require the employer to give effect to a contractual provision prohibiting the paying of lower than contract wage rates and other economic benefits to unrepresented employees in new plants established by the employer. The Board based its decision primarily on the fact that the union undertook no strike or other action which would be disruptive of the bargaining relationship in the contract unit, and that the arbitration award, resulting from the union's efforts, specifically did not confer upon the union any representational rights with respect to nonunit employees. The Board noted that the intent of the clause was to prevent unit work from being assigned to employees with lower wage rates, and that the Board must assume, until a court of last resort should decide to the contrary, that the arbitrator was correct in finding that the collective-bargaining agreement constituted a voluntary agreement between the parties that employees may not be hired by the company at non-New York locations to perform the same duties as those performed by New York employees

[75] Members Fanning and Jenkins, dissenting, were of the view that it was incumbent upon the employer to sign the contract, as its separate bargaining rights were extinguished when it became a member of the multiemployer bargaining association and designated the association as its exclusive bargaining representative. Also, the contract contained a severability clause, and there had been no final adjudication by higher state courts with respect to the legality of the clause in question.

[76] *Tampa Ship Repair & Dry Dock Co*, 202 NLRB No. 62.

[77] *Loc. 455, Electrical Workers (Sperry Rand Corp.)*, 202 NLRB No 18

but at lower wage rates and with other economic benefits. The Board concluded, therefore, that if such an agreement is lawful and the arbitrator was correct in holding that the parties had so agreed, there was no 8(b)(3) violation in the union's attempts to secure compliance with the agreement through peaceful and orderly means.[78]

In *Taft Broadcasting, WDAF–TV, AM–FM,*[79] the Board considered the validity of an employer's challenge to the continuing majority status of a union that had been certified more than 20 years earlier. A panel of Chairman Miller and Members Kennedy and Penello found no 8(a)(5) or independent 8(a)(1) violation was involved in the employer's conduct even though at the time of the challenge there was an as yet unremedied past unfair labor practice.[80] The Board found it significant that no independent violations of the Act were involved in the instant proceeding; that 28 months had elapsed between the employer's earlier unfair labor practice and its challenge to the union's majority and withdrawal of recognition; and that many months of good-faith bargaining had taken place between the parties during that period. The Board concluded that at the time the employer withdrew recognition it had sufficient objective grounds for believing that a majority of the employees no longer desired union representation, and that, since the General Counsel failed to come forward with evidence that the union did in fact represent a majority, the allegations in the complaint were without merit.[81]

E. Union Interference With Employee Rights

Even as section 8(a) of the Act imposes certain restrictions

[78] Members Kennedy and Penello, dissenting, were of the opinion that the union violated sec 8(b)(3). They found the instant case indistinguishable from *Smith Steel Workers*, 174 NLRB 235, enfd. as modified 420 F 2d 1 (C A. 7, 1969), in which the Board found that a union's insistent demands for the application of a contract to employees previously determined by the Board to be outside the unit violated sec 8(b)(3) of the Act They would have found that the arbitrator's award was repugnant to the Act because it was contrary to established Board and court decisions holding that a contract cannot lawfully be applied to employees outside the established unit unless they constitute an accretion They concluded that the effect of the award required the employer to deal with the union as the exclusive representative of the unrepresented employees in violation of their sec. 7 rights With respect to the work preservation motive, they found the evidence did not support it, and that, in any event, motivation is not controlling where the rights sought to be exercised are representational in nature.

[79] 201 NLRB No 113.

[80] 185 NLRB 202 (1970)

[81] Chairman Miller questioned whether, even if the General Counsel proved majority status, an 8(a)(5) finding would be justified in view of the objective considerations warranting the employer's conclusion that the union lacked majority status However, he noted that the comments of the majority concerning this aspect of the case could not affect the result since the General Counsel offered no proof of majority status

on employers, section 8(b) limits the activities of labor organizations and their agents. Section 8(b)(1)(A), which is analogous to 8(a)(1), makes it an unfair labor practice for a union or its agent to restrain or coerce employees in the exercise of their section 7 rights which generally guarantee them freedom of choice with respect to collective activities. However, an important proviso to section 8(b)(1)(A) recognizes the basic right of a labor organization to prescribe its own rules for acquisition and retention of membership.

1. Obligation to Assist Members in Obtaining Employment

Collective-bargaining provisions establishing a referral preference for qualified employees in relation to their previous experience are not in and of themselves unlawful when administered nondiscriminatorily.

In one case [82] decided during the past year a union's refusal to refer an individual because of his failure to pay dues was called into question. Although a panel of Members Fanning, Kennedy, and Penello agreed with the administrative law judge that such conduct did not constitute a violation of the Act, they dismissed the complaint which alleged 8(b)(1)(A) and (2) violations for a different reason. The administrative law judge recommended dismissal since he found that the individual who was involved was not an employee within the meaning of the Act at the time of the union's refusal to aid him in obtaining employment and could not, therefore, be included as an employee in the unit to which the union owed a statutory duty of fair representation. In the Board's opinion, the reason for the union's refusal to assist the individual in obtaining employment was his failure to pay his union's lawful dues and his subsequent suspension from membership therefor. In dismissing the complaint the Board noted that the individual's act in failing to pay dues is one which is nowhere protected by section 7 and that in the case under consideration there was no exclusive hiring arrangement with the employer with whom the individual sought work so that the individual could have sought employment on his own without union assistance. The Board distinguished this case from *Hoisting & Portable Engineers, Loc. 4 (Carlson Corp.)*,[83] on the ground that in that case the union involved engaged in disparate treatment of certain members because they had engaged in protected activities under the Act, and that such conduct acted as a restraint on the exercise of the members' section 7 rights.

[82] *Buffalo Typographical Union No 9 (Buffalo Courier Express Co.)*, 202 NLRB No. 11.
[83] 189 NLRB 366 (1971), enfd 456 F.2d 242 (C A 1, 1972)

In another case,[84] a panel of Chairman Miller and Members Fanning and Kennedy reversed an administrative law judge's conclusion that the union violated section 8(b) (1) (A) and (2) of the Act by refusing to allow an individual who was a union member in good standing to sign a job referral list maintained at the union hall until he provided a written statement declaring that he would not engage in millwright contracting as an employer for a period of 12 months. The administrative law judge had stated that the union's conduct was unfair, irrelevant, invidious, arbitrary, and capricious, was without legitimate purpose, and, therefore, breached the union's statutory duty of fair representation. The Board concluded that the union's purpose in refusing to permit the individual to sign the referral list was reasonable and legitimate, regarding the case as analogous to the decision in *Loc. 825, Operating Engineers (Associated General Contractors of New Jersey)*.[85] There the Board had found no violation when a union refused to refer an applicant because he was an employer or independent contractor and the union desired to limit referrals to individuals who were employees under the Act. The Board added that the union's requirement in the case being considered, that an individual at least affirm that he would not become an employer for 12 months in return for being allowed to sign the referral list, appeared reasonable as an effort to assure that the employment opportunities of those who, day in and day out, are rank-and-file employees are not prejudiced by competition from those who have operated and intend in the immediate future to operate as contracting employers.

2. Coercion of Employees

Section 8(b) (1) (A) of the Act makes it an unfair labor practice for a union, or its agent, to coerce or restrain employees in the exercise of their section 7 rights. In one case[86] decided during the past year, a panel of Members Fanning, Jenkins, and Kennedy considered whether the technique utilized by a union in attempting to organize an unorganized employer was coercive and a restraint upon employees in the exercise of section 7 rights and thereby violative of section 8(b) (1) (A). Union representatives admittedly entered the employer's luncheonette, which was separate from the business operations of the employer, and distributed union organization literature, solicited employees to sign

[84] *Lower Ohio Valley Dist. Council of Carpenters, Loc 1080 (Commercial Contracting Corp.)*, 201 NLRB No 112

[85] 187 NLRB 50 (1970)

[86] *Retail Store Employees Loc. 1001 (Levitz Furn. Co. of Washington)*, 203 NLRB No. 75

authorization cards, refused to leave at the employer's request, and then, after a verbal exchange with police as to the employer's right to eject them, distributed organizational literature on the employer's parking lot. Based on these facts, both the General Counsel and the respondent, seeking opposite results, filed motions for summary judgment. The General Counsel, relying on *Dist. 65, Retail, Wholesale & Dept. Store Union (B. Brown Associates)*,[87] contended that, in these circumstances, the refusal of the representatives to leave the premises constituted an 8(b) (1) (A) violation on the theory, *inter alia*, that the imposition of a union's will over that of a protecting employer on his own premises and in the presence of his own employees would result in the employees being inclined to conclude that they would be unable to withstand the force of the union and should therefore yield to its wishes. The Board rejected this contention and found merit in the union's position that its action did not constitute restraint and coercion of employees within the meaning of section 8(b) (1) (A) of the Act under the standards of *District 65, supra*. Accordingly, it granted the union's motion for summary judgment and dismissed the complaint in its entirety. In reaching its decision, the Board noted that the peaceful activities of the union did not come within the parameters of *District 65* where a "mass" of union representatives "came swarming into" the work areas and their conduct created "unusual commotion" and disrupted production. The Board added that it would not comment on whether the union trespassed, as that was a matter for the state or local authorities.

In another case [88] a Board panel of Chairman Miller and Members Jenkins and Kennedy reversed an administrative law judge's finding that a union violated section 8(b) (1) (A) and (2) of the Act by causing an employer to discharge an individual because of his lack of union membership. The Board found that only hearsay evidence existed as to the allegation that the union requested that the individual in question be discharged, and such evidence could not support a finding that a discharge request was made. The Board also found that the union did not condition the return of its members to work on the discharge of the nonunion member. In this regard the Board noted that the work stoppage which was alleged to have caused the employer to discharge the individual in question was a wildcat strike not

[87] 157 NLRB 615 (1966), enfd. 375 F 2d 745 (C A 2, 1967).

[88] *Edward Kraemer & Sons*, 203 NLRB No. 110 The Board agreed with the finding of the administrative law judge that the assault by a union agent against an employee was in furtherance of the union's claim to all truckdriving and its opposition to the employee's driving a truck on the project, and that by such conduct the union violated sec 8(b) (1) (A).

authorized by the union, and that, in fact, after learning of the strike the union sent an emissary to the work project to order the strikers to return to work. Thus, in the Board's view, the strikers engaged in a wildcat strike for which the union was not responsible and the General Counsel failed to prove by competent evidence that the union caused or attempted to cause the employer to discharge a nonunion member who was working for the employer.

3. Other Issues

During the past year the Board considered several cases which involved the relationship between section 8(b) (1) (A), which makes it an unfair labor practice for a union or its agent to restrain or coerce employees in the exercise of their section 7 rights, and the proviso to section 8(b) (1) (A), which recognizes the basic right of a labor organization to prescribe its own rules for acquisition and retention of membership. It is well settled that a union may enforce a properly adopted rule reflecting a legitimate interest if it does not impair any congressional policy imbedded in the labor laws. However, a union may not, through fine or expulsion, enforce a rule which "invades or frustrates an overriding policy of the labor laws . . . ." [89]

In one case the Board in a split decision [90] affirmed the conclusion of an administrative law judge that the union did not violate section 8(b) (1) (A) of the Act by expelling from membership four employees for crossing its picket line after their effective resignations. Chairman Miller and Member Kennedy reached this conclusion for the reasons set forth in Chairman Miller's dissent in *Dist. Lodges 99 and 2139, Machinists (General Electric Co.)*, 194 NLRB 938 (1972), and the opinion of the U. S. Court of Appeals for the Fifth Circuit in *Loc. 1255, Machinists (Mason & Hanger-Silas Mason Co.* v. *N.L.R.B.*[91] Concurring, Member Fanning observed that the expulsion in question was not coercive within the meaning of the Act and, contrary to the view of dissenting Member Penello, was distinguishable from discipline in the form of a suspension of the right to participate in union activities. In Member Fanning's view, suspension tends to restrain the employee in his future actions because he is uncertain of the union's control over him, but expulsion has no such tendency because it severs the relationship and assures the employee of freedom from such possible control.

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[89] *Scofield [Wisconsin Motor Corp]* v *N L R.B*, 394 U S. 423, 429 (1969); *N L.R B* v. *Industrial Union of Marine & Shipbuilding Workers of America*, 391 U.S 418 (1968)

[90] *Pattern Makers Assn. of L A (Lietzau Pattern Co.)*, 199 NLRB No. 14

[91] 456 F.2d 1214 (1972)

In the opinion of dissenting Member Penello, the majority decision places the law in the odd posture of making it lawful for a union to expel a member who has previously resigned but unlawful to fine or suspend him and, in effect, makes the harshest form of union discipline the only legal one.

In another case [92] a panel of Chairman Miller and Members Fanning and Jenkins agreed with the administrative law judge's decision that section 8(b) (1) (A) of the Act was not violated by the action of a union agent who filed internal union charges against three members who refused to wear a union emblem bearing the legend "Ma Bell is a cheap mother." As put by the administrative law judge, the question presented was whether there is an overriding public policy protecting union members against internal union discipline in the event members view participation in union-sponsored activity as "morally repugnant and personally offensive." In dismissing the complaint in its entirety the administrative law judge noted that cases in which the Board held internal union discipline to be unlawful involved preventing access to the Board or a breach of a union's collective-bargaining agreement, a far cry from conduct which is viewed as "morally repugnant or personally offensive." He further observed that individual views hardly rise to the level of an overriding public policy and stated that voluntary members can leave the union or oust a leadership that directs "morally repugnant and personally offensive'" conduct, so that the remedy seemed to lie within the union itself.

F. Union Coercion of Employer on Selection of Representatives

Section 8(b) (1) (B) of the Act makes it an unfair labor practice for a union to coerce or restrain an employer in the selection of its representatives for the purposes of collective bargaining or the adjustment of grievances. Several cases decided during the report year involved this section.

The full Board, with Member Jenkins dissenting, held in one case [93] that a union violated section 8(b) (1) (B) by striking to demand replacement of a white foreman with a black foreman. The administrative law judge heard evidence that the black foreman was returned to rank-and-file status when the employer decided that a particular project did not require two foremen, but did not take evidence concerning alleged racial discrimina-

[92] *Communications Workers, Loc. 6222 (Southwestern Bell Telephone Co.)*, 200 NLRB No 109

[93] *Laborers Intl Union, Loc 478 (Intl Builders of Fla.)*, 204 NLRB No 32

tion. In dissenting, Member Jenkins would have reopened the case to take testimony as to whether the white foreman's conduct in supervising the employees was oppressive and racially discriminatory. In his view, a charge of racial discrimination is an appropriate ground of Board inquiry, and an employer cannot shift its constitutional responsibility under the national labor policy to eliminate all racial discrimination by hiding behind its right granted under section 8(b) (1) (B) to select, free from coercion or restraint, representatives who may engage in racial discrimination, and thereafter declare itself free from all concerted activities directed to eliminate the discriminatory practices of the selected representatives. The majority opinion on the other hand stated that the employees involved were not barred from protesting the white supervisor's treatment of them, whether or not it was racially motivated. However, the Board majority held in agreement with the administrative law judge that the right to strike or engage in concerted activity because of unfair conditions of employment does not encompass the right to force an employer to appoint a specific supervisor with power to engage in collective bargaining or adjust grievances. Since both foremen had such power and did adjust grievances for the employees in the case being considered, the Board concluded that the union, whatever its motivation, could not by restraint or coercion dictate to the employer the selection of a particular supervisor.

In another case,[94] a complaint alleging an 8(b) (1) (B) violation was dismissed by Members Fanning, Jenkins, and Penello since the panel was unable to determine from the entire record, including a stipulation of facts and incorporated exhibits, whether an individual, a general foreman, was fined by the union for acting in his capacity as a supervisor for the employer, rather than because of his internal union conduct. The General Counsel argued that the supervisor involved was fined because he was too interested in why nonmembers of the union on his job quit, because he advised them as to their section 7 rights, and because he showed concern over whether the union was operating an illegal referral system. The General Counsel further contended that the action against the supervisor in question interfered with his managerial duty to select and retain employees. The Board found conflicting facts which were subject to conflicting interpretations, one being that the supervisor was fined for acting for his employer, the other being that a personal intraunion vendetta existed between the individual involved and cer-

[94] *Intl Brotherhood of Electrical Workers, Loc 716 (Fisk Electric Co)*, 203 NLRB No 52

tain union leaders, and that therefore he was fined not because of his actions as a supervisor but because of the internal union conduct he engaged in as a union member. Under these circumstances, the Board found that it could not be determined to what extent the union's actions against the general foreman were predicated upon illegitimate grounds, and therefore concluded that the General Counsel failed to make out a *prima facie* violation.

G. Union Causation of Employer Discrimination

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

During the past year, the Board considered several cases which involved allegations concerning discrimination in referral and employment, pension eligibility conditioned upon membership, a union's motivation in causing interference with its members' employment, and coercion of an employer through threats of harm to employees.

In one case[95] the full Board found that the union violated section 8(b) (1) (A) and (2) of the Act by interpreting and applying contracts with a multiemployer association to require that the experience necessary to obtain employment through placement on an industry experience roster be acquired with employers who are signatories to contracts with the union and the multiemployer association. The Board found no significant difference between the case before them and *Intl. Photographers of the Motion Picture Industries Loc. 659, IATSE (MPOTV of Calif.)*,[96] in which it found roster provisions imposing work experience with employers who were signatories to union contracts, as interpreted and applied by the parties in that case, as an invasion of the right of employees under section 7 of the Act to refrain from union activities. For the reasons stated in the previous case, the Board held that the union violated the Act

[95] *Directors Guild of America (Assn of Motion Picture & TV Producers)*, 198 NLRB No. 103

[96] 197 NLRB No 134, 37 NLRB Ann Rep 111 (1972)

by applying the roster provisions of its contract with the multi-employer association contract to deny the individual's application for placement on the industrial experience roster because he had not obtained his work experience with employers who were signatories to the union contract.

In another case [97] a 3 to 1 Board majority upheld an administrative law judge's dismissal of a complaint which alleged that a union violated section 8(b) (1) (A) and (2) by requiring membership in good standing in the union in order for applicants to become eligible for and to continue to participate in pensions or other benefits. The case involved only persons who were retirees or pensioners and the complaint was based on the premise that such persons were "employees." In granting the union's motion to dismiss, the administrative law judge concluded that the Supreme Court's decision in *Allied Chemical & Alkali Workers, Loa 1* v. *Pittsburgh Plate Glass*,[98] was controlling, and that retirees and pensioners involved in the case were not "employees" within the meaning of the Act. Dissenting, Chairman Miller would find that the requirement in question violated the Act because of its impact on active miners. He argued that, because of the membership requirement, active employees know that when they reach retirement age they can be eligible for pension benefits only if they have maintained their union membership, and that this, in effect, conditions a future benefit upon current maintenance of membership in violation of the Act. He deemed irrelevant the status of the employees at the time they receive payment of the benefit. Members Fanning, Jenkins, and Kennedy agreed with the administrative law judge that to assess the impact of the alleged eligibility requirement on active miners would amount to outright speculation because, among other reasons, they are required to maintain their membership in respondent union because of a valid union-security clause and to receive certain fund benefits. The majority further noted that if a violation were found the remedy would not go to the purported impact of the union's conduct on active miners who are required to maintain their union membership under a valid union-security clause. Rather, the Board noted that the provisions of a cease-and-desist order and remedy would refer directly to the requirement allegedly imposed upon retirees, over whom the Supreme Court has denied the Board jurisdiction.

In a third case [99] a panel majority of Members Jenkins and

[97] *Intl Union, United Mine Workers (Michael Trbovich)*, 202 NLRB No. 79
[98] 404 U.S. 157 (1971).
[99] *Austin & Wolfe Refrigeration, Air Conditioning & Heating*, 202 NLRB No 4

Kennedy upheld the decision of an administrative law judge that the union violated section 8(b) (1) (A) and (2) by causing the employer to discharge an employee pursuant to an agreement between the union and the employer by which the latter's current employees, all of whom were receiving below-union rates, would be discharged and then referred out through the union's hiring hall to employers who were already paying union scale.[1] New hires were to be compensated at union scale and, by these means, no employee would receive a wage increase from the employer in contravention of lawfully promulgated Federal wage controls. In the view of dissenting Chairman Miller, the union evidenced a genuine intent to maintain union scale and to achieve wage increases for union constituents, both of which are bona fide objectives of bargaining. In his opinion, the interference with the employment relationship which encouraged union membership was not caused by illegal discrimination, but, rather, by bargaining considerations designed to benefit the entire group. He added that the issue before the Board did not involve whether the scheme in question was illegal under some law other than the one the Board administers. The panel majority held that the discharge of an employee pursuant to the union-employer agreement tended to encourage membership in the union and evidenced a discriminatory motivation under the tests set forth by the Supreme Court in *Great Dane Trailers*.[2] There the Court placed the requirements for proof of motivation in 8(a) (3) cases in two categories. In one, the conduct is "so inherently destructive of employee interests" that it may be deemed proscribed without need for proof of underlying motive. In the second, the harm to employee rights is deemed slight, so that if a "substantial and legitimate business end is served" the employer's conduct is *prima facie* lawful, and an affirmative showing of improper motivation must be made. The panel majority found that the union conduct fell into the first category, but that even if it fell into the second category, it could not agree with the dissent that the circumvention of Federal wage controls was a legitimate business end or in conformance with the bargaining obligation required by the Act.

In a fourth case,[3] which involved section 8(b) (1) (A) and (2) of the Act, the full Board agreed with the decision of an administrative law judge that the union committed an unfair

[1] Only one employee was discharged because at the time of the agreement all others were on strike Instead of returning to work upon settlement of the strike, they were referred by the union to other jobs and new hires referred through the union hiring hall replaced them

[2] 388 U S 26 (1967).

[3] *Loc 212, Intl. Brotherhood of Teamsters (Stuart Wilson, Inc)*, 200 NLRB No 83

labor practice by causing the employer to lay off three employees because of their refusal to cease work and join the union's strike by informing the employer's president that the nonstriking employees would be harmed if they stayed on the job. As a result of the union's threats, the three employees remained home for 7 or 8 weeks after their layoffs. In holding that the threats of harm to the nonstriking employees coerced the employer in violation of section 8(b) (1) (A) and (2), the administrative law judge cited for comparison *General Truckdrivers, Chauffeurs, Warehousemen & Helpers of America, Loc. 5 (Ryder Truck Lines)* v. *N.L.R.B.*,[4] in which 8(b)(2) and (1)(A) violations were found as the result of an employee being "assigned" to his home by his employer for 4 months under union threats of strike and of physical violence to the employee.

In another case,[5] a Board panel found that a union violated section 8(b)(1)(A) and (2) of the Act when it denied a suspended member his normal seniority on the employee referral list because he allegedly had engaged in offensive conduct at the hiring hall and had also engaged in conduct disruptive of an internal union election. An administrative law judge had found the violation on a *per se* ground, since the union interference with the employee's employment status was for reasons other than his failure to pay dues and initiation fees or service fees uniformly required for the use of a hiring hall. The Board rejected that rationale as being at odds with Board precedent.[6] Instead, it based its finding of a violation on the principle that a union cannot enforce its own internal rules of conduct by applying employment-related sanctions. The Board reasoned that, while the union may have had no intent to encourage union membership by interfering with the individual's employment, the display of union power exhibited by an exercise of control over employment opportunity solely for reasons relating to the conduct of an employee as a union member would necessarily have that effect. Therefore, since the union's discrimination against the member was related to his obligations as a union member, such union action comes within the proscription of section 8(b)(2) and (1)(A).

H. Prohibited Strikes and Boycotts

The statutory prohibitions against certain types of strikes and boycotts are contained in section 8(b)(4). Clause (i) of that

[4] 389 F 2d 757 (1968).

[5] *Intl Union of Operating Engineers, Loc 18 (William F. Murphy)*, 204 NLRB No 112.

[6] See, for example, *Millwrights' Loc 1102, United Brotherhood of Carpenters & Joiners of America (Planet Corp.)*, 144 NLRB 798, *Houston Typographical Union 87 (Houston Chronicle Publishing Co.)*, 145 NLRB 1657, *Philadelphia Typographical Union 2 (Triangle Publications)*, 189 NLRB 829 (1971)

section forbids unions to strike, or to induce or encourage strikes or work stoppages by any individual employed by any person engaged in commerce, or in any industry affecting commerce, and clause (ii) makes it unlawful for a union to threaten, coerce, or restrain any such person, when in the case of either clause, for any of the objects proscribed by subparagraphs (A), (B), (C), or (D). Provisos to the section exempt from its prohibitions "publicity, other than picketing," and "primary strike or primary picketing."

1. Identification of Primary Employer

The prohibition against secondary boycotts is intended to protect neutral or secondary employers from being drawn into a primary dispute between a union and another employer. Therefore, the identification of the employer with whom the union has its primary dispute frequently becomes the crucial issue in secondary boycott cases.

One case [7] in which this issue was determinative of whether a violation of section 8(b)(4)(B) occurred involved unions which threatened to refuse and did refuse to install pipe prefabricated for a subcontractor, whose employees were members of the unions, since the pipe had been prefabricated by the prime contractor. The subcontractor was a signatory to an agreement with the unions which contained a valid work preservation clause; but the subcontractor also had an agreement with its prime contractor by which the subcontractor agreed to install pipe prefabricated by the prime contractor. In finding that the unions by their conduct violated section 8(b)(4)(i) and (ii)(B), Chairman Miller and Members Fanning, Jenkins, and Kennedy rejected the unions' argument that the Supreme Court's opinion in *National Woodwork* [8] was controlling and dispositive of the issues. The Board factually distinguished the situation in *National Woodwork* from the one in the instant case on the ground that in the instant case it was *specified* in the contract between the subcontractor and the prime contractor that prefabricated pipe would be installed. In *National Woodwork,* no such requirement was present concerning the doors to be used. The Board stated that the union pressure directed against the employer in *National Woodwork* was therefore primary because its object was work preservation *and* the employer was in a position to respond to the union's pressure. However, in the case before it for consideration, the Board concluded that, even though the subcontractor

[7] *Loc 438, Plumbers (Geo Koch Sons),* 201 NLRB No 7
[8] 386 U S 612 (1967)

against which the pressure was directed was the immediate employer, the unions' action must have been undertaken to produce illegal secondary effects, since the subcontractor had no power to give the unions the work they sought. Thus, the fact that the unions were motivated by work preservation aims was not sufficient to validate its action where such action was directed at a neutral and was undertaken for its effect elsewhere. In this connection, the Board noted that it always analyzes whether a union's objective was solely one of work preservation in light of all the surrounding circumstances and then whether the pressures were directed at the right person; i.e., at the primary in the dispute. The Board added that if a contract breach occurred in the agreement between the unions and the subcontractor in the case before it for consideration a remedy may well lie in a civil suit, but that the possibility that such an action might lie did not immunize the unions' actions from scrutiny under the Act.

In the second case [9] where the identity of the primary-secondary was in doubt, the Board, with Member Fanning dissenting, affirmed its original decision [10] that the union violated section 8(b)(4)(i) and (ii)(B) of the Act by its action connected with its refusal to allow carpenters of an employer to install premachined plastic-faced doors. In accordance with the court's remand, the Board considered the employer's control over the work the union claimed it desired to protect only as a part of the total factual milieu which was examined in an effort to determine the objectives of the union's conduct. The Board majority of Chairman Miller and Members Jenkins, Kennedy, and Penello found scant evidence that a primary dispute existed over genuine work preservation, but instead found substantiation that the union's conduct was "tactically calculated to satisfy union objectives elsewhere" since the employer against whom the union's action was directed was without power to fulfill the desires of the union to perform the work. If the work sought had been performed on the jobsite, this would have destroyed the lifetime guarantee which the manufacturer had given to the employer's prime contractor. Thus, the effect of the union's action against the subcontractor which employed its members was to force the prime contractor and its supplier to change the substance of their agree-

[9] *Loc 742, Carpenters (J L Simmons Co.)*, 201 NLRB No 8, remanded 444 F 2d 895 (C.A.D.C.), cert. denied 404 U.S. 986 (1971).

[10] 178 NLRB 351 (1969), where the Board found an 8(b)(4)(B) violation on the basis that the contractor installing the doors had no control over the type of doors to be used and, hence, was found to be a secondary. The court characterized the Board's rationale in that case as the "right to control" test. In accepting the remand, the Board acquiesced in the court's view concerning use of the "right to control" test for the purpose of the instant case

ment as to guarantees—or else to effectuate a cessation of business.[11] That the union's objectives were indeed secondary was further established in the Board's view by the union's admission that its actions against the employer were taken pursuant to a general local and international policy "not to install pre-cut doors," and the union's express concern over the wages paid to the manufacturer's employees. Dissenting Member Fanning noted that union members had traditionally performed the same work that was in dispute on a wooden door which was similar to the plastic-faced door in dispute. Moreover, he noted testimony that the plastic-faced doors could have been worked on just as efficiently and well at the jobsite as in the factory, the only distinction being that that door manufacturer would not give its lifetime guarantee to the doors if such were done. In Member Fanning's view of all the surrounding circumstances, the union's objective was addressed to the labor relations of the subcontractor only and such objective had as its sole aim the preservation of union members' unit work.

In a third case[12] involving the identification of the employer with whom the unions had its primary dispute, a panel majority of Chairman Miller and Member Jenkins, as did an administrative law judge, dismissed allegations that the unions violated section 8(b)(4)(i) and (ii)(B) of the Act by striking South Atlantic port shipping companies after the union's contract with the companies expired. Allegedly the unions struck the charging employers in South Atlantic ports in order to aid the bargaining objectives of sister unions who had struck the shipping companies operating in the North Atlantic ports when their negotiations had failed to produce agreement. Although just before the South Atlantic strike the unions' sister locals had struck North Atlantic port shipping companies because of a breakdown in their negotiations, the panel majority concluded that the South Atlantic strike was called in conformity with the unions' "no contract, no work" policy solely in furtherance of a primary labor dispute between the unions and the charging employers. In this regard it was noted that (1) at the time the union members struck their South Atlantic employers, the charging employers and the respondent locals were primary parties to a contract bargaining dispute which had not been resolved, and (2) the unions neither established any picket lines nor engaged in any other action beyond striking upon expiration of their contracts. To dissenting Mem-

[11] The Board stated, however, that the analysis in the instant case was required by the law of the case and, in the face of the majority's respectful disagreement with the circuit court, was not to be construed or inconsistent with the Board's decision in *George Koch Sons, supra.*

[12] *Loc. 1426, Intl. Longshoremen's Assn. (Almont Shipping Co.)*, 198 NLRB No 150.

ber Kennedy it seemed realistic to conclude that the strike was designed at least in part to force South Atlantic shippers to pressure North Atlantic negotiators into settling their differences with the unions' sister locals as soon as possible. In finding that the strike had the unlawful secondary objective of causing the charging parties to bring pressure on North Atlantic shippers to settle their contemporaneous dispute with North Atlantic ILA locals, Member Kennedy relied on, among other factors, the finding that the unions' negotiating chairman told the head negotiator for the shippers that because North Atlantic negotiators had failed on September 30, 1971, the unions had gone on strike effective midnight, September 30. Member Kennedy based his finding on the additional facts of the union's refusal to alter the pattern of bargaining, the absence of an impasse over local issues before the strike, the apparent control of the international union president over the South Atlantic local's strike activity, and the union's negotiating chairman's statement that the union policy was "one port down, all ports down." The majority opinion found that the testimony of the union agent was ambiguous and would not place any secondary taint on the respondent unions' action in light of the fact that historically the parties had permitted their interest in wages and fringe benefits to be determined by the results of bargaining conducted by the North Atlantic negotiators and that bargaining had been attempted by the parties.

2. Other Issues

In one case [13] presenting a situation involving picketing at common situs locations, where business is carried on by both the primary employer and neutral employers, the Board had occasion to determine whether a union's conformance with *Moore Dry Dock* standards [14] shielded a union's picketing activities. A Board majority of Chairman Miller and Members Kennedy and Penello found that the union violated section 8(b)(4)(i) and (ii)(B) of the Act by picketing directed at neutral employers and their employees with an object of putting a supplier of concrete out

[13] *General Teamsters, Warehouse & Dairy Employees Loc. 126, Teamsters (Ready Mixed Concrete)*, 200 NLRB No. 41.

[14] *Sailors Union of the Pacific, AFL (Moore Dry Dock Co.)*, 92 NLRB 547 (1950), in which the Board, in order to accommodate lawful primary picketing while shielding secondary employers and their employees from pressures in controversies not their own, laid down certain tests to establish common situs picketing as primary: (1) The picketing must be strictly limited to times when the situs of the dispute is located on the secondary employer's premises; (2) at the time of the picketing the primary employer must be engaged in its normal business at the situs, (3) the picketing must be limited to places reasonably close to the location of the situs, and (4) the picketing must clearly disclose that the dispute is with the primary employer

of business despite the fact that the picketing, which took place at construction sites at which a concrete supplier was making deliveries, conformed to criteria for lawful picketing set forth in *Moore Dry Dock*. In the majority's view, *Moore Dry Dock* tests are not the single guide for determining the legality of "common situs" picketing, but rather are evidentiary in nature and are to be employed in the absence of more direct evidence of the intent and purposes of the labor organization. In this regard the majority opinion noted that the Board and the courts have uniformly held direct appeals to secondary employers or other regular common situs tenants have, in effect, negated conditions required in *Moore Dry Dock* to justify picketing, and have exceeded the limits of permissible primary activity and thereby constituted 8(b)(4)(i) and (ii)(B) violations of the Act. The majority of the Board found that there was direct evidence of the union's secondary purposes in violation of the act and that such violations occurred in the case before them since, although *Moore Dry Dock* standards were met, the union's picketing was conducted in a manner to demonstrate that the intent and purpose of the picketing was to appeal to the employees of neutral employers, with the avowed object of forcing said employers to cease doing business with the concrete supplier, thereby forcing the latter out of business. Although dissenting Members Fanning and Jenkins did not condone the attempt of the union to picket a nonunion supplier with an object of driving it out of business, they concluded that the picketing was lawful since it conformed to *Moore Dry Dock* standards. They noted that the *Moore Dry Dock* standards aptly serve to distinguish lawful picketing which merely serves to induce employees to respect a picket line from unlawful picketing which is aimed at inducing employees of a neutral employer to engage in a strike against their own employer. Thus, having found that the picketing was in conformance with the criteria set forth in *Moore Dry Dock*, dissenting Members Fanning and Jenkins would find no 8(b)(4)(i) and (ii)(B) violations as a result of the union's picketing. However, the dissenting Members agreed that respondent's inducements to employees of a neutral and threats to a neutral superintendent to refrain from working if the site was picketed violated section 8(b)(4)(i) and (ii)(B) of the Act.

I. Jurisdictional Dispute Proceedings

Section 8(b(4)(D) of the Act prohibits a labor organization from engaging in or inducing strike action for the purpose of forcing any employer to assign particular work to "employees in

a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work . . . ."

An unfair labor practice charge under this section, however, must be handled differently from a charge alleging any other type of unfair labor practice. Section 10(k) requires that parties to a jurisdictional dispute be given 10 days, after notice of the filing of the charges with the Board, to adjust their dispute. If at the end of that time they are unable to "submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute," the Board is empowered to hear the dispute and make an affirmative assignment of the disputed work.[15]

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

1. Voluntary Method of Settling Disputes

Of interest among decisions made by the Board during the report year were several in which the Board considered whether to dismiss 10(k) proceedings based on the contention that the disputing parties had contractual provisions to settle work assignment disputes voluntarily.

In one case [16] the full Board, with Member Kennedy dissenting, denied a motion for reconsideration of a previous decision [17] in which the Board quashed a notice of hearing after finding that all parties involved in a jurisdictional dispute had agreed to be bound by a determination of the National Joint Board for the Settlement of Jurisdictional Disputes of the Building Construction Trades Industry, notwithstanding that one of the unions involved had been placed in a status of noncompliance with the Joint Board because of refusal to comply with its awards. Member Kennedy adhered to the view expressed in his dissent to

[15] *N.L.R.B.* v *Radio & TV Broadcast Engineers Union, Loc 1212 [CBS]*, 364 U.S. 573 (1961), 26 NLRB Ann. Rep. 152 (1961).

[16] *Loc 423, Laborers' Intl Union (V & C Brickcleaning Co.)*, 203 NLRB No. 176.

[17] 199 NLRB No. 48.

the original decision, *viz*, that the Board has a clear statutory mandate to decide the case on the merits. In his view, there cannot be an agreed-upon method of settlement where the rules and regulations of the Joint Board preclude issuance of a decision in favor of the noncomplying party. Chairman Miller and Members Fanning, Jenkins, and Penello, on the other hand, were of the opinion that the union which filed the motion for reconsideration cannot, by the mere act of noncompliance with one or more decisions of the Joint Board, thereby revoke or abrogate its previously established method for settling jurisdictional disputes "agreed-upon" within the meaning of section 10(k) of the Act. The majority observed that stability in labor relations requires a deliberate and formal withdrawal from an "agreed-upon" method before it will be considered no longer effective. The majority further noted that, in other areas, one party's failure to comply with an arbitration award does not eliminate the entire grievance machinery, and a breach of a collective-bargaining agreement does not necessarily terminate the agreement. The majority perceived no reason why the rule should be different with respect to "agreed-upon" methods for settling jurisdictional disputes.

In another case [18] a panel majority of Members Fanning and Penello held that a union, which had been found to be in noncompliance with previous awards of the National Joint Board and therefore could have no representative on the Board and would be ineligible for any decision to be decided in its favor, was, nevertheless, bound by the determinations of the National Joint Board (as were the other parties) because the union was formally affiliated with the Building and Construction Trades Department, AFL–CIO, a signatory to the April 3, 1970, agreement reconstituting the Joint Board. Member Kennedy, dissenting, was of the opinion that the parties had no agreed-upon method to resolve the dispute before the Board since one of the unions involved had been found to be in noncompliance with the Joint Board's previous awards and the other union had refused to comply with the Joint Board's procedures. For these reasons, and as explicated in his dissent in *V & C Brickcleaning Co.*,[19] Member Kennedy would have found that the Joint Board was not likely to effectively resolve the dispute and that the dispute was properly before the Board.

In a third case [20] a panel of Chairman Miller and Members

[18] *Loc. 571, Intl. Union of Operating Engineers (Affholder, Inc.)*, 203 NLRB No. 182
[19] 199 NLRB No. 48, *supra*.
[20] *Intl. Assn of Iron Workers, Loc 380 (Skoog Construction Co.)*, 204 NLRB No. 74.

Fanning and Jenkins found that all parties had agreed upon a method for the voluntary adjustment of a dispute and, accordingly, quashed a 10(k) notice of hearing. The facts showed that the employer and one of the unions involved had agreed by their contract to be bound by the determinations of the National Joint Board for the Settlement of Jurisdictional Disputes. While the other union involved was not signatory to that agreement, and its contract with the employer may have been silent in that regard, it was formally affiliated with the Building and Construction Department, AFL–CIO, a signatory to an April 3, 1970, agreement reconstituting the Joint Board, and, by virtue of that agreement, had agreed to be bound by Joint Board determinations. The Board found, therefore, that in these circumstances the absence of specific language in the agreement between the employer and the second union reiterating their earlier and currently effective agreements to be bound to the Joint Board was immaterial. Nor did the Board, for the reasons stated in *V & C Brickcleaning Co.*, 199 NLRB No. 48, find merit in the contention that the parties were not bound to submit disputes to the Joint Board because one of the unions involved was in "noncompliance" status.

2. Dispute Determinations

In numerous cases during the report year the Board was called upon to make affirmative work assignments to resolve jurisdictional disputes.

The factors normally considered by the Board in its determination of disputes were discernibly absent in one case [21] decided by the full Board during the past year. There were no outstanding Board certifications or orders requiring that the employer bargain with either of the contending local unions. There were no contracts affecting assignment of the work in question. What skill was required was possessed equally by the members of all locals involved. Regarded as controlling by the Board was a grant by the international union of the locals involved to one of the locals of exclusive charter jurisdiction over the performance of the work in dispute. This grant, said the Board, represented an effort to eliminate racial discrimination by affirmative action in a manner which would assure to all qualified employees in the area involved, whatever their union affiliation, an equal opportunity to engage in the disputed work. Accordingly, in the absence of other suitable criteria, the award was made on this basis.

[21] *Loc 440, South Atlantic & Gulf Coast Dist, Longshoremen (Port Arthur Stevedores)*, 198 NLRB No. 116.

In another case [22] a 3 to 2 Board majority of Members Fanning, Jenkins, and Kennedy denied a motion to quash the notice of hearing based on a tripartite agreement among the parties. They found it did not constitute an agreed-upon method for resolving the dispute since the Carpenters, whose members did not have the work, could not, by virtue of the agreement's terms, be a party to a grievance between the employer and the Painters. The work was awarded to the employer's own employees who were represented by the Painters, based on the Painters' contract with the employer, company and area practice, efficiency, and several provisions of the tripartite agreement which clearly expressed the acquiescence of all the parties in the employer's work practices as they existed at the time of the work stoppage. In the opinion of the dissenters, Chairman Miller and Member Penello, the tripartite agreement constituted an agreed-upon method for the voluntary adjustment of the dispute because it clearly specified what work was required to be assigned to the employees represented by each of the two unions. In their view, the majority's award could well operate in contravention of the parties' agreement, since it provided that if sufficient members of one of the unions were not available to do the work in dispute, members of the other union were to perform the work. Thus, the dissenters stated, should there be an insufficient number of members of the first union (Painters) available to do the work in question, the use of members of the second union (Carpenters), in adherence to the tripartite agreement, would violate the majority's award which was made exclusively to one of the unions involved in the dispute. Accordingly, the dissenters would have granted a motion to quash the notice of hearing. In response, the majority opinion stated that the tripartite agreement was not as precise as to work jurisdiction as the dissenters stated, that, in any event, the agreement had expired, and that the majority was unwilling to speculate as to what the parties involved in the dispute might or might not agree to in the future.

In a third case [23] a panel majority of Chairman Miller and Member Penello concluded that past practice, the employer's present assignment of work, and economy favored an award to employees represented by a local which was engaged in a work assignment dispute with a sister local. The majority further found that the employer's work assignment was not inconsistent with its agreement with the sister local. Member Fanning would have quashed the notice of hearing since he found that the

[22] *Carpenters Loc. 213 (Brede, Inc of Houston)*, 202 NLRB No. 96.
[23] *Sheet Metal Workers, Loc. 12 (A. A. Samuels Sheet Metal Co.)*, 203 NLRB No. 23.

employer was bound by an agreed-upon method of resolving the dispute through the unions' National Joint Adjustment Board, and that, in any event, the union other than the one to which the majority of the panel awarded the work had a primary claim to the work. The panel majority found that the record failed to establish that all parties were bound by the same settlement procedures, and did not show whether the union to which the employees of the employer belonged was bound to any settlement procedure. In addition, the majority stated, even if the record did show that all parties were bound by the procedure set forth in the sister local's agreement with the employer, that procedure did not appear to cover a jurisdictional dispute arising between sister locals.

J. Hot Cargo Clauses

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

1. Union Standards Clauses

During the past fiscal year, union efforts to obtain contract provisions protecting the work standards of the employees in the units they represented were again the subject of Board consideration in several cases.

In one case,[24] a 3 to 2 Board majority composed of Members Fanning, Jenkins, and Penello, concluded that a union did not violate section 8(e) of the Act by entering into a contract with a general contractor which required that any subcontractor agree that its employees would receive all wages and economic benefits of the contract. In their view, the subcontractor was not required to adhere to the noneconomic terms of the contract, and the con-

[24] *General Teamsters Loc 886 (Construction Materials Trucking)*, 198 NLRB No. 129

tract contained a legitimate union standards clause. Accordingly, the complaint was dismissed. Dissenting, Chairman Miller and Member Kennedy viewed the contract provision in question and the provision by which it was to be implemented as unlawful union-signatory clauses proscribed by section 8(e) of the Act. In their opinion, the primary contract provision in question required not only that the subcontractor pay "wages and economic benefits provided" for in the agreement but also that he conform with "any other programs" of the contract. In their view, by use of the latter phrase, the parties intended the subcontractor to adopt the union-security and hiring hall "programs" which were highly beneficial to the union. They added that the thrust of the agreement was to force the subcontractor to abide by all provisions of the agreement, particularly in light of the fact that the phrase "and any other programs" followed a rather exhaustive list of specified economic benefits. For similar reasons, they would have held that the obligation of the subcontractor to submit disputes concerning his performance under the contract to the grievance procedure had the practical effect of making each subcontractor a signatory to the agreement. The union was inserting itself into the labor relations of the subcontractor by requiring the subcontractor to submit to a grievance procedure with the union, although the union did not represent the subcontractor's employees. In their view, such a requirement did not serve to protect the interests of the general contractor's employees represented by the union. The dissenters found persuasive an earlier decision of the Board [25] in which the Board had said that if a subcontracting clause should require the subcontractor to adhere not only to the contract wage and hour terms, but also to such contract working conditions as seniority and grievance procedures, it would be an unlawful secondary clause. Commenting on the dissent, the majority observed that had the contracting parties intended that the subcontractor be bound to all provisions of the contract they would have said just that. In this regard they noted that, in the paragraph of the agreement which preceded the provision in question, the subcontractor was required with respect to jobsite work to agree "to comply with all the terms and conditions of the agreement." The majority further noted that the phrase "and any other programs" is a reference to something to be received by employees, and that it was difficult for them to perceive how, as in the view of the dissenters, this could mean such matters as union security and hiring halls. With respect to

[25] *Loc. 487, Intl. Brotherhood of Electrical Workers (Dimes Construction Co.)*, 180 NLRB 420.

the requirement for submitting questions concerning the economic obligations imposed by the clause in question to the grievance procedure, they concluded that the grievance language was ancillary to the legitimate primary job protection purpose of the provision and thus designed to effectuate such lawful primary purpose.

In a later case,[26] a Board majority of Members Fanning, Jenkins, and Penello again considered the same provisions and reached the same result.[27] Chairman Miller and Member Kennedy, again dissenting, found reinforcement for their view that the subcontracting provisions were unlawful union signatory clauses in the testimony of the president and business agent of the union involved, who stated that the union construed and applied the provision in question as requiring compliance by the subcontractor with noneconomic as well as economic programs of the agreement. Since the union would require the subcontractor to pay health, welfare, and pension contributions into the union's own security fund, even though the subcontractor's employees were not, nor likely to become, members of the union, and would receive no benefits from the payments, Chairman Miller and Member Kennedy viewed the payments as a benefit to the union in a general sense which would aid the union's membership rather than the subcontractor's employees actually performing the work and for whom the payments would have been made, and thus the clause went beyond a legitimate work preservation objective and was "tactically calculated to satisfy union objectives elsewhere." Because Members Fanning, Jenkins, and Penello found the contract provisions in question to be unambiguous, they were of the opinion that the testimony of the union's agent as to the alleged implementation of the provisions in question did not have the relevance that was given it by the minority view.

On remand from the U.S. Court of Appeals for the Third Circuit,[28] a Board majority of Chairman Miller and Members Kennedy and Penello accepted as the law of the case the court's view that, contrary to the Board's decision and order, a clause requiring owner-operators and fleet owners to become employees and thus join the union in order to retain the work which they

[26] *Bldg. Material & Construction Teamsters Union Loc. 216 (Bigge Drayage Co.)*, 198 NLRB No. 130.

[27] In another aspect of the case, a majority of Chairman Miller and Members Kennedy and Penello found that the union violated sec. 8(e) when it sought to extend the application of this clause to work that the contracting employers had never performed, or anticipated performing, on the ground that the object of the restriction was not the preservation or protection of unit work, and thus was a secondary one.

[28] *A. Duie Pyle, Inc.* v. *N.L.R.B.*, 383 F 2d 772 (1967), cert denied 390 U S. 905 (1968), remanding *sub nom Highway Truck Drivers & Helpers, Loc. 107, Teamsters*, 159 NLRB 84 (1966)

had been doing on subcontract violated section 8(e). They concluded that the reopened hearing before an administrative law judge following the remand had failed to produce additional evidence which would provide a more comprehensive picture of how the trucking industry utilized owner-operators, or percentage haulers, than was provided in the original record. Accordingly, they concluded, as had the court, that the record was inadequate to show that "the valid and severable union standards provisions of the collective bargaining agreement were inadequate to safeguard the maintenance of union standards." [29] Dissenting Members Fanning and Jenkins disagreed and would have found that the evidence adduced at the reopened hearing established that the contract provision in question was not in violation of section 8(e). In their view, the new evidence, in conjunction with the old, showed that this provision was designed to protect bargaining unit work and the work standards of the bargaining unit and, hence, the Board's previous decision and order should be affirmed.

2. Unit Work Preservation Clauses

During the past fiscal year the Board had occasion to determine whether various contract clauses came within the purview of section 8(e). The proper standard for evaluation of such clauses had earlier been set forth by the Supreme Court in *Natl. Woodwork Manufacturers,*[30] where the Court held that section 8(e) does not prohibit agreements made between an employee representative and the primary employer to preserve for the employees work traditionally done by them and that in assessing the legality of a challenged clause "[t]he touchstone is whether the agreement or its maintenance is addressed to the labor relations of the contracting employer *vis-a-vis* his own employees." [31]

One case [32] decided during the report year involved a clause which provided that sales work performed by employees of a licensee of an employer remain within the contractual bargaining unit set forth in the contract between the employer and the union. A panel of Members Fanning, Kennedy, and Penello dismissed an allegation that this provision, or a demand that the provision be enforced, violated section 8(e) of the Act. In so holding the Board found with the union's position that the clause in question

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[29] *Highway Truck Drivers & Helpers, Loc. 107, Teamsters (S & E McCormick),* 199 NLRB No. 63.

[30] *Natl. Woodwork Manufacturers Assn.* v *N.L.R.B.,* 386 U.S. 612, 32 NLRB Ann. Rep. 139 (1967).

[31] *Id.* at 644, 645.

[32] *Dept. Store Employees Union, Loc 1100, Retail Clerks (White Front San Francisco),* 203 NLRB No. 79.

was designed to preserve the pattern of bargaining between the employer and the union and to prevent balkanization of the bargaining unit and erosion of the union's effectiveness by insuring that unit work would not be gradually eliminated by a series of license agreements.

In another case,[33] on remand from the U.S. Court of Appeals, for the Ninth Circuit,[34] a panel of Chairman Miller and Members Kennedy and Penello held that implementation of an agreement requiring an employer to terminate its contract with independent newspaper dealers violated section 8(e) of the Act. The court overturned the Board's original decision [35] in which it held that the newspaper dealers were employees of the newspaper printing company, not independent contractors, and that the relationship between the employer and the dealers was not controlled by the "hot cargo" provisions of the Act. Following the court's ruling, the Supreme Court denied a petition for writ of certiorari.[36] In reconsidering the case, the Board panel was persuaded that the provision for termination of the dealers' contracts for distribution and sale of San Francisco newspapers in the bay area was aimed principally at the nonunion independent dealers which the union had failed to organize, and not at the primary employer. The work preservation aspect of the contract terminations, cited as a defense by the union, was incidental to the cessation of doing business, rather than the other way around, the Board stated. The Board further observed that when newspaper circulation was extended into the suburbs, outside the area of the union's earlier jurisdiction, no substantial work opportunities would necessarily be added for employees from the union's preexisting bargaining unit. Instead, there would be new employees who must become union members. Indeed, the expansion of the geographical area served by the employer would not in itself cause any decrease in the amount of work available to unit employees. In these circumstances the Board rejected the union's work preservation defense.

K. 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.

[33] *Newspaper & Periodical Drivers' & Helpers Union Loc. 921, Teamsters (San Francisco Newspaper Printing Co.)*, 204 NLRB No. 60.
[34] *Brown* v. *N.L.R.B.*, 462 F.2d 699 (1972).
[35] 194 NLRB 37 (Members Fanning and Jenkins, with Member Kennedy dissenting)
[36] U.S. 34 L.Ed. 2d 301 (1972)

1. Backpay Issues

It is well settled that the purpose of a reinstatement or backpay order is to restore the situation, as nearly as possible, to that which would have obtained but for the unlawful discrimination. However, in one case [37] decided during the report year a majority of the Board disagreed with a recommendation by an administrative law judge which provided an order directing a union to give backpay to all employees who did not work as a result of union threats and picket line violence. In so holding, Members Fanning, Jenkins, and Penello stated that while the union's misconduct was serious and constituted a violation of the Act, adoption of a remedy by which the union would provide backpay would risk the diminution of the right to strike. They noted that misconduct of a few pickets may be sufficient to intimidate many employees. Faced with a financial responsibility of providing backpay for all intimidated employees, few unions would be in a position to establish a picket line, the three-member majority reasoned. The majority held that the preferred methods of deterring picket line misconduct are the availability of an immediate court injunction under section 10(j) of the Act, implemented by contempt action, if necessary, as well as the withholding of an otherwise appropriate bargaining order and the direction of an election. The view of Chairman Miller and Member Kennedy, dissenting, was that the Board should award backpay in the case in light of the union's unfair labor practices which prevented nonstriking employees from working. In their view, section 10(c)'s concern is not with preventing or deterring violence, but with eliminating and remedying the effects of that violence. Hence, any incidental deterrent or penal effect of backpay was irrelevant to a determination of an adequate remedy for the 8(b)(1)(A) violations found. Furthermore, they stated that a backpay order in the case at bar making an employee whole for the union's unlawful activity in preventing employees from working would be no less remedial or any more punitive or deterrent in effect than ordering the union to make an employee whole for loss of wages suffered when the employer would not allow him to work because of the union's unlawful conduct, as in *Stuart Wilson, Inc.*[38]

In another case,[39] a panel of Members Fanning, Jenkins, and Penello, on remand from the U.S. Court of Appeals for the District of Columbia,[40] considered whether strikers employed in the

[37] *Union de Tronquistas de Puerto Rico, Loc. 901, Teamsters (Lock Joint Pipe & Co of Puerto Rico)*, 202 NLRB No. 43

[38] 200 NLRB No. 83.

[39] *Madison Courier*, 202 NLRB No. 115.

[40] *N.L.R.B.* v *Madison Courier, Inc.*, 472 F.2d 1307 (1972)

printing industry, who allegedly failed to make reasonable efforts to obtain interim employment were entitled to backpay. Addressing itself to the matters raised in the remand, the Board concluded that the claimants' right to receive backpay should not be diminished by the fact that the claimants picketed, attended union-sponsored training sessions, or received strike benefits roughly comparable to their take-home pay, during the period of the employer's liability. After considering the skill, background, and experience of each of the claimants, the Board concluded that during the backpay period, alternative employment which existed outside, and was wholly unrelated to, the printing industry was not suitable for 12 of the claimants in question, so that these unfair labor practice strikers were not required to lower their sights to seek such employment. It was further determined that the strikers' continuing registration with the State's employment agency and their use of the union "grape vine" constituted adequate efforts on their part to obtain work in the printing industry. Three claimants were disqualified from receiving backpay benefits. The Board found that two of the claimants, who were recent high school graduates, were disqualified because they failed to make a reasonable effort to obtain nonprinting industry clerical jobs for which they qualified by reason of their experience in reading proofs and operating the typewriter-like keyboard of a teletypesetter. As to the third claimant who was disqualified, the Board noted that he failed to take action to obtain employment by registering with the Indiana Employment Security Division. In the absence of evidence that he performed any work during the 18-month backpay period, the Board concluded that the union's effort to find employment for him and the single application which he made to obtain a job did not constitute an adequate effort to find suitable interim employment.

2. Other Provisions

Other remedial issues were of a more specific nature concerning the design of a remedy for the particular violations found.

In one case[41] Chairman Miller and Members Jenkins and Penello affirmed an administrative law judge's decision which found that a union and its secretary-treasurer should give nine employees who were transferred by their employer to the union's territorial jurisdiction the same representation which the union

[41] *Teamsters Locs 186, 391, 396, 467, 542, 572, 871, 898, 952 & 982, Teamsters (United Parcel Service)*, 203 NLRB No 125

gave to all other employees of the employer within the union's jurisdiction. The union failed to do this because the employees in question were not members of the union and because they filed charges with the Board, the administrative law judge determined. The Board ordered the union and its secretary-treasurer to cease restraining and coercing employees in the exercise of their rights, to proceed promptly to arbitration over the propriety of the seniority dates assigned to the nine employees upon their transfer, to permit the employees to have their own counsel at the arbitration proceeding, and to pay the reasonable legal fees of such counsel (pursuant to established policy the Board exempted the union agent from liability for payment of the legal fees).

In another case [42] a panel of Members Fanning, Kennedy, and Penello found that a union's use of force, threats, and general intimidating conduct, engaged in to "persuade" employees to withdraw a decertification petition, was of such a nature as to preclude the normal affirmative bargaining order for the employer's unlawful conduct, citing *Laura Modes Co.*[43] where a similar result was reached. The Board disqualified the union from the normal remedy for a violation of section 8(a)(5) notwithstanding the Employer's unlawful acts of preparing and circulating the decertification petition involved, promising benefits to employees to induce them to withdraw from the union, and then, following expiration of its contract with the union, refusing to bargain and illegally withdrawing recognition. In light of the coercive conduct of both parties, and so that the employees themselves should determine the representative status of the union, the Board directed a remedial election at such time as the regional director determined that a free election could be held.

In a third case [44] a panel of Chairman Miller and Members Kennedy and Penello concluded that although a union's action might have been in technical contravention of the Act, it was so insignificant and so largely rendered meaningless by the union's subsequent conduct that it would not be used as a basis for either a finding of a violation or the granting of a remedial order. The union allegedly threatened to take disciplinary action against an alleged supervisor if he continued to work for his father during the latter's musical engagement at a particular location. It was undisputed that no action was taken pursuant to the threat and, in fact, the union rescinded its instruction to the supervisor long before the complaint was issued. In the absence of any indication

[42] *Allou Distributors*, 201 NLRB No. 4

[43] 144 NLRB 1592 (1963).

[44] *American Fed. of Musicians, Loc 76 (John C. Wakely)*, 202 NLRB No 80

that the union withdrew its suggestion because of compulsion or fear of the Board, because there was no basis for concluding that the case was part of a pattern of harassment against supervisors, and because there was no suggestion that the union's action was even intended to be directed against a supervisor, the issue, in the panel's view, was so remote as to be for all practical purposes, moot.[45] Even if not entirely moot, the Board noted, the alleged misconduct was of such obviously limited impact and significance that the Board did not find that it rose to the level of constituting a violation for which a remedy was due.

[45] In this respect the Board panel cited *N.L.R.B.* v. *Columbia Typographical Union No 101, Intl. Typographical Union* [*Evening Star Newspaper Co. & Washington Daily News*], 470 F.2d 1274 (C.A.D C., 1972), denying inforcement of 193 NLRB 1089, and see the comments of the court in *Dallas Mailers Union, Loc. 143* [*Dow Jones Co*] v. *N.L.R.B.*, 445 F.2d 730 (C.A.D.C., 1971), enfg. 181 NLRB 286

VII

Supreme Court Litigation

During fiscal year 1973, the Supreme Court decided four cases involving review of Board orders, sustaining the Board's position in all four. In three additional cases, it vacated judgments enforcing Board orders and directed that the cases be remanded to the Board for reconsideration in the light of *N.L.R.B.* v. *Burns Intl. Security Services*, 406 U.S. 272.

A. Legality of Fines Imposed by Unions on Strikebreaking Employees

Three of the cases decided by the Court involved union fines imposed on strikebreaking employees. In *Granite State* [1] the Court,[2] upholding the Board, held that it was a violation of section 8(b)(1)(A) of the Act for a union to fine, for strikebreaking, employees who had been union members at the inception of a strike, but who had resigned from membership prior to returning to work. The Court noted that this case involved "no problem of construing a union's constitution or bylaws defining or limiting the circumstances under which a member may resign from the union. We have, therefore, only to apply the law which normally is reflected in our free institutions—the right of the individual to join or to resign from associations, as he sees fit . . . ." (409 U.S. at 216.) The Court added (*id.* at 217):

> . . . the power of the union over the member is certainly no greater than the union-member contract. Where a member lawfully resigns from a union and thereafter engages in conduct which the union rule proscribes, the union commits an unfair labor practice when it seeks enforcement of fines for that conduct. That is to say, when there is a lawful dissolution of a union-member relation, the union has no more

[1] *N.L.R.B.* v. *Granite State Joint Board, Textile Workers Union of Amer., Loc. 1029 [Intl. Paper Box Machine Co.]*, 409 U.S. 213, reversing 446 F.2d 369 (C.A. 1), denying enforcement of 187 NLRB 636.

[2] Justice Douglas delivered the opinion of the Court, Justice Blackmun dissented.

control over the former member than it has over the man in the street.

Nor, in the Court's view, was it material that the resigning employee had participated in the vote to strike:

> Events occurring after the calling of a strike may have unsettling effects, leading a member who voted to strike to change his mind. The likely duration of the strike may increase the specter of hardship to his family; the ease with which the employer replaces the strikers may make the strike seem less provident. [409 U.S. at 217.]

In *Booster Lodge*,[3] the Court rejected the union's argument "that a result different from [*Granite State*] is warranted in this case because, even though its constitution does not expressly restrict the right to resign during a strike, it does impose on members an obligation to refrain from strikebreaking." The Court found that this commitment by its terms was applicable only to "members," and that there was no showing that "Union members were informed, prior to the bringing of the charges that were the basis of this action, that the provision was interpreted as imposing any obligation on a resignee. . . . [W]e are no more disposed," the Court concluded, "to find an implied post-resignation commitment from the strikebreaking proscription in the Union's constitution here than we were to find it from the employees' participation in the strike vote and ratification of penalties in [*Granite State*]." (412 U.S. at 88–89.)

Finally, in *Boeing*,[4] the Court[5] agreed with the Board that "Congress did not intend to give the Board authority to regulate the size of union fines or to establish standards with respect to a fine's reasonableness." The Court reasoned that:

> Inquiry by the Board into the multiplicity of factors that . . . have a bearing on the issue of reasonableness would necessarily lead the Board to a substantial involvement in strictly internal union affairs. . . . [T]o the extent that the Board was required to examine into such questions as a union's motivation for imposing a fine it would be delving into internal union affairs in a manner which we have previously held Congress did not intend. . . . [412 U.S. at 74.]

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[3] *Booster Lodge 405, Machinists* v. *N.L.R.B.*, 412 U.S 84, affg. in this respect 459 F.2d 1143 (C.A.D.C), enfg. in this respect 185 NLRB 380

[4] *N.L.R.B.* v. *Boeing Co.*, 412 U S. 67, reversing in this respect 459 F 2d 1143 (C.A D C), remanding in this respect 185 NLRB 380

[5] Justice Rehnquist delivered the opinion of the Court, Chief Justice Burger and Justices Douglas and Blackmun dissented

Accordingly, the Court concluded, "[i]ssues as to the reasonableness or unreasonableness" of union fines levied on union members "must be decided upon the basis of the law of contracts, voluntary associations, or such other principles as may be applied in a forum competent to adjudicate the issue" (U.S. at).

B. Reinstatement Rights of Unlawfully Discharged Economic Strikers

In *Intl. Van Lines*,[6] the Court [7] held that four economic strikers who were discharged before they had been permanently replaced [8] and then continued to strike were entitled, upon their application, to be reinstated unconditionally to their former jobs. It thus reversed the decision of the court of appeals that they were entitled to reinstatement only if the employer could not show legitimate and substantial business justifications for refusing to take them back. The Court pointed out that " 'Reinstatement is the conventional correction for discriminatory discharges,' " and that this remedy was not rendered inappropriate "merely because [the four employees] continued for a time to engage in their lawful strike after the unfair labor practices had been committed" (409 U.S. at 53).

C. Authority of Successor Employer to Make Unilateral Changes in Working Conditions

In *N.L.R.B.* v. *Burns Intl. Security Services*, 406 U.S. 272, the Court indicated that, "[a]lthough a successor employer is ordinarily free to set initial terms on which it will hire the employees of a predecessor, there will be instances in which it is perfectly clear that the new employer plans to retain all of the employees in the unit and in which it will be appropriate to have him initially consult with the employees' bargaining representative before he fixes terms" (*id.* at 294–295). The Court remanded for initial consideration by the Board three cases [9] involving the application of this principle. The three cases had been decided by the Board prior to the Court's decision in *Burns*.

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[6] *N.L.R.B.* v. *Intl. Van Lines*, 409 U.S. 48, reversing 448 F.2d 905 (C.A. 9), remanding 177 NLRB 353.

[7] Justice Stewart delivered the opinion of the Court. Justice Blackmun filed a concurring opinion.

[8] The discharges thus violated sec. 8(a)(3) and (1) of the Act. See *N.L.R.B.* v. *Globe Wireless*, 193 F.2d 748, 750 (C.A. 9).

[9] *Bachrodt Chevrolet Co.* v. *N.L.R.B.*, 411 U.S. 912, remanding 468 F.2d 963 (C.A. 7). *Denham Co.* v. *N.L.R.B.*, 411 U.S. 945, remanding 469 F.2d 239 (C.A. 9). *Spitzer Akron* v. *N.L.R.B.*, 411 U.S. 979, remanding 470 F.2d 1000 (C.A. 6).

VIII

Enforcement Litigation

Board orders in unfair labor practice proceedings were the subject of judicial review by the courts of appeals in 350 court decisions issued during fiscal 1973.[1] Some of the more important issues decided by the respective courts are discussed in this chapter.

A. Board and Court Procedure

In a case[2] presenting the first judicial test of the Board's *Collyer* doctrine,[3] the Second Circuit affirmed the Board's deferral to a bipartite panel of the question whether the union had violated section 8(b)(3) of the Act by unilaterally changing the company's policy of making cash collections. The court accepted the Board's conclusion that the dispute was essentially contractual in nature and should be handled by the procedure promoted in the collective-bargaining agreement in the first instance. It rejected the company's contention that deferral was not appropriate because the contractual procedure did not culminate in binding arbitration. The court reasoned that the policy underlying the Act favoring the utilization of agreed-upon contractual procedures was not so narrow as to be limited to situations where the dispute settlement technique involved mandatory arbitration, and the Board's deferral was within the broad discretion accorded it by section 10(2) of the Act to defer to other means of adjustment.

In *Catalytic*,[4] the First Circuit rejected the employer charging party's objections to an informal settlement reached between the General Counsel and the charged party and accepted by the Board, regarding disposition of charges under section 8(b)(4) of the Act. The court refused to accept Catalytic's suggestion

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

[2] *Nabisco, Inc.* v *N.L.R.B.*, 479 F.2d 770.

[3] *Collyer Insulated Wire*, 192 NLRB 837.

[4] *N.L.R.B.* v *Oil, Chemical & Atomic Workers Intl Union [Catalytic Industrial Maint. Co.]*, 476 F.2d 1031

that the Administrative Procedure Act required a hearing on a charging party's objections to settlement, and found that the NLRA required a hearing only where, unlike the situation therein, the charging party had raised a material issue of disputed fact. In so holding, the First Circuit adopted the views of the Fifth Circuit, which had earlier reached a similar conclusion.[5]

In a case [6] involving the reinstatement rights of replaced economic strikers, the District of Columbia Circuit refused to enforce the Board's order insofar as it found that the company had violated the Act by failing to seek out permanently replaced strikers in order to give them priority in hiring after their permanent replacements had left the company's employ. The court did not pass upon the general validity of the Board's *Laidlaw* doctrine,[7] but determined that its retroactive application could not be sustained under the facts presented therein. In particular, the court noted that *Laidlaw* was an abrupt departure from prior Board law, which had held that permanently replaced strikers had no greater employment rights than new applicants; the company had relied on such prior law; there was no evidence of discriminatory intent on the part of the company in failing to seek out the strikers; and the statutory interest in retroactively applying *Laidlaw* was not outweighed by the burden upon the company by its retroactive application. In so holding, the court differed with the Second Circuit, which had previously upheld a retroactive application of *Laidlaw*.[8]

The Eighth Circuit in the *Mansion House* case,[9] held *inter alia* that the Board had improperly certified the union [10] without hearing evidence as to the union's alleged practice of racial discrimination. The court reasoned that the Fifth Amendment of the Constitution prohibited a Federal agency from in any way recognizing or enforcing illegal policies,[11] rejecting the union's argument to the contrary, and remanded the case to the Board to permit the company to adduce further evidence of racial discrimination [12] by the union constituting a bar to action by the Board

[5] *Concrete Materials of Georgia* v *N.L.R.B.*, 440 F.2d 61 (C A. 5, 1971).

[6] *Retail, Wholesale & Dept. Store Union [Coca Cola Bottling Works]* v. *N.L.R B.*, 466 F.2d 380.

[7] *The Laidlaw Corp.*, 171 NLRB 1366, enfd. 414 F.2d 99 (C.A. 7, 1969), cert denied 397 U S 920

[8] *H. & F. Binch Co.* v. *N.L.R.B*, 456 F.2d 357 (C.A. 2, 1972)

[9] *N.L.R.B.* v. *Mansion House Center Management Corp*, 466 F.2d 1283

[10] Painters Local 115.

[11] This is in accord with a previously expressed Board policy, *Independent Metal Wkrs. Union, Loc. 1 (Hughes Tool Co.)*, 147 NLRB 1573 (1964).

[12] The Board had found no evidence of racial discrimination but, in reaching this conclusion, had refused to allow the company to introduce in evidence statistics tending to show a substantial disparity in the racial makeup of the union when compared with that of the community at large.

on its behalf. The court suggested that the bar to agency action because of racial discrimination might be valid only where the issue is raised in good faith and not as a pretext for refusing to bargain with a union, but left to the Board the formulation of specific rules in this regard.

Two recent cases decided by the District of Columbia Circuit [13] and the Ninth Circuit,[14] respectively, explored the scope and meaning of section 10(k) of the Act. In *Bricklayers*, the court concluded that the Board did not err in deciding a jurisdictional dispute under section 8(b)(4)(D) of the Act without a recommended decision by an Administrative Law Judge, since a 10(k) proceeding is not an adjudication within the meaning of the Administrative Procedure Act. In so concluding, the court analogized the proceedings under section 10(k) to represent proceedings which similarly do not result in a final disposition by the Agency.

However, in *Waterway Terminals Co.*, which was decided before the *Bricklayers* decision, the Ninth Circuit rejected the Board's contention that the quashing of a notice of hearing under section 10(k) is not a final order reviewable under section 10(f) of the Act. The court reasoned that, although no complaint ever formally issued, the 10(k) hearing is tantamount to a hearing on a complaint issued by the regional director because the Board is required to make a determination that both completes the 10(k) proceeding and resolves the 8(b)(4)(D) charge. The court distinguished both representation proceedings and refusals to issue a complaint, and further distinguished cases upholding the nonapplicability of actual awards under section 10(k).

B. Representation Proceeding Issues

1. "Employee" Status of Managerial Employees

Among the Board decisions reviewed by the courts during the year were two involving the recurrent problem of whether managerial employees are "employees" entitled to the protection of the statute and to be represented by a labor organization in treating with their employer. In *Bell Aerospace Co.*,[15] the Board held the company was required to bargain with a Board-certified unit of buyers, who, *inter alia*, had full discretion in selecting prospective vendors, preparing invitations to bids, negotiating prices and

[13] *Bricklayers, Masons & Plasterers Intl. Union* [*Shelby Marble & Tile Co.*] v. *N.L.R.B.*, 475 F.2d 1316.

[14] *Waterway Terminals Co.* v. *N.L.R.B.*, 467 F 2d 1011.

[15] *Bell Aerospace Co Div. of Textron Inc.* v. *N L R B*, 475 F 2d 485 (C.A. 2).

terms, and preparing purchase orders. They executed all purchase orders up to $50,000 but must obtain prior approval for commitments exceeding $5,000. The company resisted the bargaining order on the basis that buyers were managerial employees and therefore not entitled to protection under sections 7 and 8(a) of the Act and that further, even if they are not managerial employees, granting them bargaining rights would create a possible conflict of interest between their rights as union members and their duties as employees. The court, in denying enforcement of the Board's order, noted the Board's holding that managerial employees are excluded from coverage only if, unlike here, their union membership would create a conflict of interest in their employment, as when their duties are "concerned with management policies in the labor relations area" or are "inextricably intertwined and of necessity affect or infringe upon the labor relations area." Included in these categories are corporate representatives with "board managerial discretion" in determining where the employer's plants should be located and what capital expenditures should be made and in deciding financial and research and development policies. The court noted that the Board has long held that separate units of managerial employees are inappropriate because their interests were "allied with management" and therefore they are not "employees" under the Act. It pointed out that the 1947 Congress "clearly believed that at least some 'managerial employees' other than 'supervisors' were excluded from the protections of the Act" and the Board had been of the view that Congress had meant to exclude all "true 'managerial employees.'" Accordingly, the court observed, "the Board is not now free to decide the contrary." Although there was substantial evidence that the buyers here were not sufficiently high in the hierarchy to constitute managerial employees, the court could not be sure the Board's decision rested on such a factual determination rather than on its "new and, in our view, erroneous holding that it was free to regard *all* managerial employees as covered by the Act" except when their duties as employees created a possible conflict of interest with their union membership. In the court's view, reversal and remand under *SEC* v. *Chenery Corp.*, 318 U.S. 80, 95 (1943), was required. Moreover, in view of the longstanding precedent that buyers are managerial employees, the court stated that the Board here should have reversed itself only through the "quasi-legislative promulgation of rules to be applied in the future," citing *SEC* v. *Chenery Corp.*, 332 U.S. 194, 202 (1947); *N.L.R.B.* v. *Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly the case

was remanded to the Board for disposition by rule-making proceeding.[16]

In *Wichita Eagle*,[17] the Tenth Circuit rejected the Board's finding that an editorial writer on a newspaper staff was an employee within the meaning of the Act since she executed, rather than formulated, editorial policy. Recognizing that the employee was not involved in her employer's labor policies, in the court's view she nevertheless was an active participant in formulating, determining, and effectuating the newspaper's journalistic policies, and consequently, regardless of terminology, was so closely aligned with management as to be properly excluded from the unit of news department employees. The court therefore found no violation of the Act by the employer in transferring the employee to other duties rather than treat her as within the certified bargaining unit.

2. Eligibility to Vote

In *Caravelle Wood Products* [18] the Seventh Circuit denied enforcement of the Board's bargaining order based on certification of a union after an election and remanded the case for an additional factual determination of whether the ballots of relatives of the employer's stockholders were properly rejected. The court questioned the Board's exclusion from the unit of eight relatives of stockholders who held 70 percent of the shares in the employer, a closed corporation. The court concluded that the Board's decision in *Foam Rubber City #2 of Florida,* 167 NLRB 623 (1967), on which the Board relied, reflected an impermissible expansion of section 2(3) which excludes from "employee" status "any individual employed by his parent or spouse." The court disapproved of the Board's rationale for excluding family members from the unit, i.e., that such persons "have interests more closely identified with management than with their fellow employees,"[19] as an attempt by the Board to use its discretion under section 9(b) to determine the appropriate unit to accomplish what it could not do under section 2(3). While the court declined to "allow the Board to apply an automatic or per se rule to exclude spouses and children under section 9(b)," it agreed with the many precedents justifying the exclusion from a unit of relatives who enjoys a "special status," such as privileges or more favorable working conditions than other employees on a case-by-case basis. The court noted that the regional director had

[16] The Board's petition for certiorari was granted Oct. 9, 1973

[17] *N.L.R B.* v. *Wichita Eagle & Beacon Publishing Co.*, 480 F 2d 52

[18] *N.L.R.B.* v *Caravelle Wood Products*, 466 F 2d 675

[19] 167 NLRB at 624

found no such enjoyment of "special status" in this case and remanded it for consideration of other factors under which the family members' eligibility to vote might be determined.

In *Dalton Sheet Metal Co.* [20] the company challenged the Board's bargaining order based on a certification on grounds, *inter alia*, that three striker replacement employees, hired prior to the eligibility date, told not to report for work as of that date, but working on the day of the election, should have been entitled to vote but were improperly excluded. In enforcing the Board's order and sustaining application of its rule that an individual must be employed and working on both the established eligibility date and on the day of the election in order to be eligible to vote, the court distinguished *Tampa Sand & Material Co.*,[21] where, unlike the case at bar, the strike began after the election was called and replacements found eligible to vote were employed after the eligibility deadline but before the election. Nor did the court find the *H. & F. Binch Co.*[22] exception appliable, there being no understanding here between the employer and the replacement that the latter accepted the vacant position before the replaced striker offered to return to work. Finally, the court found no reason to make a distinction between new hires and striker replacements.

In another case [23] the court denied enforcement of a Board bargaining order, rejecting its holding that an employee discharged for cause at the close of work on election day but before he cast a ballot was nevertheless eligible to vote in the election. The Board's argument that the dischargee was eligible to vote because he was employed during the eligibility payroll period and on election day was rejected. The court noted that the dischargee had not been fired because of a current labor dispute or an unfair labor practice; was no longer sufficiently concerned with terms and conditions of employment in the unit and no longer had a community of interest with unit employees or any reasonable expectation of reemployment. Accordingly, he was "well outside the ambit of the term 'employee.' " Thus, to the well-established requirement that to be eligible a voter must be employed during the eligibility payroll period and on election day, the court adds the requirement "that he still be an employee at the time he attempts to vote."

[20] *N.L.R.B.* v. *Dalton Sheet Metal Co.*, 472 F 2d 257 (C A 5)

[21] 129 NLRB 1273 (1961)

[22] In *H. & F. Binch Co* v *N.L.R.B.*, 456 F.2d 357 (1972), the Second Circuit sustained a Board ruling which recognized the status as employees of striker replacements upon acceptance by them of vacant positions although they had not actually started to work until after strikers applied for reinstatement.

[23] *Choc-Ola Bottlers, Inc* v. *N.L.R.B.*, 478 F 2d 461 (C A 7)

3. Election Procedures

In *Schwartz Brothers*,[24] the District of Columbia Circuit considered the circumstances under which a Board agent, pursuant to a union request, might properly state challenges of the union when there was no union election observer present at the election. In this case, the employee the union planned to use as an observer at the election was illegally fired a few days before the election, and the company refused to allow him on its premises except to cast a challenged ballot. The union informed the company and the Board agent that it would not have an observer at the election, but gave the Board agent a list containing the names of the employees it wished to challenge and the basis for the challenges. At the election, the Board agent stated to each of the employees on the union's list that the union had challenged his right to vote and added the specific basis for the challenge. The court sustained the Board's finding that although a departure from the literal mandate of a provision in the Board's field manual that Board agents would not make challenges on behalf of a party had occurred, it was justified under the circumstances of this case. It concluded that the provisions of the field manual were not contravened in that the Board agent did not make any challeges on behalf of the union, but merely stated challenges made by the union which it was precluded by the employer from making through its own observer. The court expressed the view that in assessing whether laboratory conditions in the conduct of representation elections had been maintained in situations similar to this case, three guidelines should be used, namely: (1) The Board agent must be completely impartial and show no favoritism in any manner in stating the challenge; (2) he must not state a challenge made by any party except where necessitated by an unexpected occurrence; and (3) if a charge is levied that the Board agent was not completely impartial, the burden shall be on the alleging party to prove the partiality.

In another case involving election procedures [25] some electioneering occurred during a mail-ballot election while some ballots were outstanding, contrary to the Board's standard written instructions to voters in mail-ballot elections. The Ninth Circuit sustained the Board, holding that where, as here, the supervision of an election is carried out within the administrative discretion of the Board, the Board need not void every mail-ballot election upon the showing that some electioneering occurred while bal-

[24] *N.L.R.B.* v. *Schwartz Brothers, Inc.*, 475 F 2d 926
[25] *N.L.R.B.* v. *Samson Tug & Barge Co.*, F.2d 71 LC ¶13,827

lots were outstanding, since the Board never intended such a result and it would merely breed protracted litigation.

In a third case involving election procedures,[26] the Board refused to count a ballot in an election which contained no marking except the word "no" written on the "yes" side of the ballot. The Second Circuit held, however, in denying enforcement of the Board's order, that the ballot should have been counted since the only question was whether the employee wished union representation and he clearly indicated a preference against the union even though he had only written "no" on the "yes" side of the ballot.

4. Election Propaganda

In *N.L.R.B.* v. *Savair Mfg. Co.*,[27] the Sixth Circuit, relying on its own precedent, refused to follow the Board's change of policy announced in *DIT–MCO, Inc.*, 163 NLRB 1019 (1967), enfd. 428 F.2d 775 (C.A. 8, 1970), and accordingly refused to enforce a Board bargaining order, where the election underlying the certification was challenged on the ground that the union had engaged in impermissible actions when it offered to waive initiation fees for those employees who signed authorization cards prior to the election. The court noted that in *N.L.R.B.* v. *Gilmore Industries*, 341 F.2d 240 (C.A. 6, 1965), it had adopted the Board's reasoning in *Lobue Bros.*, 109 NLRB 1182 (1954), and found that such a waiver of initiation fees was coercive in the context of a union election. Moreover the court noted that although the Board had subsequently overruled *Lobue* in *DIT–MCO*, the court believed *Gilmore* and *Lobue* constituted decisions, and that the Board in the instant case abused its discretion in declining to follow *Gilmore*. The Sixth Circuit also noted that neither the Eighth Circuit in *N.L.R.B.* v. *DIT–MCO*, *supra*, nor the Ninth Circuit in *N.L.R.B.* v. *G. K. Turner Associates*, 457 F.2d 484 (C.A. 9, 1972), were called upon to overrule a controlling precedent of its own.[28]

In *Walled Lake Door Co.* v. *N.L.R.B.*,[29] the Fifth Circuit declined to enforce a Board bargaining order, where it found that a union letter sent to the employees a day or so before the election misrepresented that the employees at the company's other four locations were all represented by unions. The court pointed out that the record showed that the misrepresentation in the letters was within the knowledge of the union, that the letter was so timed as to prevent an effective reply by the company, and

[26] *Mycalex Div of Spaulding Fibre Co* v *N.L.R.B*, 481 F.2d 1044
[27] 470 F.2d 305.
[28] The Board's petition for cert was granted, 93 S.Ct. 2147 (1973)
[29] 472 F 2d 1010

that it had the impact on a number of employees that one might expect and many employees believed the misrepresentations in the letter. In the court's view of fair campaigning, on these undisputed facts the Board should have set the election aside.

5. Circumstances Requiring an Evidentiary Hearing on Postelection Issues

Judicial decisions have long recognized that the Board is not always required to hold an evidentiary hearing to resolve issues raised by objections to election conduct or challenges to ballots. Section 102.69(c) of the Board's Rules and Regulations, Series 8, as amended, permits the disposition of such issues on the basis of an administrative investigation unless "substantial and material factual issues exist which can be resolved only after a hearing." This standard was discussed by the Fifth Circuit in the *Gulton Industries* case,[30] where the court remanded the proceeding to the Board for a hearing on the employer's objections that the union on the day prior to the election made material misrepresentations as to wages. The court observed that to be entitled to an evidentiary hearing the objector "must supply the Board with specific evidence which, *prima facie*, would warrant setting aside the election," and the objections must not be "nebulous and declamatory assertions, wholly unspecified, nor equivocal hearsay." [31] Finding that the employer met this standard of specificity in the objections and in the affidavits submitted to the regional director, raising a question of material fact regarding his opportunity to correct the misrepresentation, the court concluded that a hearing was required. The same circuit in another case,[32] however, held that the employer failed to make a *prima facie* showing that the election should be set aside and hence failed to raise substantial and material issues of fact. Acknowledging that it was the employer's duty to supply specific evidence of specific events from or about specific people, the court found that the employer had failed to carry that burden. The employer failed to show any adverse effect on the atmosphere necessary to the conduct of a free and fair election.

The Eighth Circuit also reached different results, in part, in two cases it decided on the same day involving this issue. In *Georgia-Pacific*,[33] which involved alleged misrepresentations concerning wage rates and other matters contained in a union hand-

[30] *Luminator Div. of Gulton Industries* v. *N L R B.*, 469 F 2d 1371.

[31] The court quoted its own decision in *U S Rubber Co* v. *N L R.B*, 373 F 2d 602, 606 (C A 5, 1967).

[32] *N.L R.B.* v *White Knight Mfg Co*, 474 F.2d 1064

[33] *N L.R.B.* v. *Georgia-Pacific Corp*, 473 F 2d 206

bill distributed to employees on the day preceding the election, the court held that the employer by its objections did not raise substantial and material factual issues necessitating a hearing but, rather, merely questioned the inferences drawn from known facts which were largely undisputed. In the other case,[34] the court, applying the same standard that it applied in the *Georgia-Pacific* case, agreed with the Board that four of the employer's objections to the election, which also concerned misrepresentations as to wages, did not raise substantial and material factual issues necessitating an evidentiary hearing. It found that the alleged misrepresentations either did not involve a substantial departure from the truth, or the employer had an opportunity to reply to them, or they were capable of evaluation by employees. However, the court held that substantial and material factual issues were raised by two other objections of the employer, necessitating a hearing to resolve them. One objection involved statements to employees of loss of jobs, property damage, and physical violence unless they continued to support the union. The court, reversing the Board, held that since the statements were specific and provocative, and were communicated to at least 15 employees out of a total work force of 170, an adversary hearing would be required to determine whether the threats were made, how broadly they were committed, and whether they created an atmosphere of fear and reprisal so as to render a free expression of choice impossible. The employer's final objection involved a union representative's statement that the employer's president had taken bonus money due the employees and had used the money to finance a trip to Europe. The court stated that it was "simply unwilling to accept the Board's conclusion that such an *ad hominem* accusation at a time when [the employer] was unable to respond was, nevertheless, permissible campaign propaganda which employees could be expected to evaluate for themselves." The court concluded that it is imperative that the disputed factual issues of whether or not the statement was made and whether or not the employer had an opportunity to respond be resolved in an adversary hearing.

Another case in which allegations raising substantial and material factual issues were found to exist was decided by the Eighth Circuit during the year.[35] Contrary to the employer's contention, the Board found that an employee who on the morning of the election spread false rumors concerning the wage rate of a new employee was not a union agent, that no union agent dis-

[34] *N.L.R B.* v *Southern Paper Box Co.*, 473 F 2d 208
[35] *N.L.R.B.* v. *Skelly Oil Co.*, 473 F.2d 1079

seminated that misrepresentation or any other, that the union could not be held responsible for disseminating the misrepresentation, and that the misrepresentation could not constitute grounds to set aside the election under either the Board's customary test or the court's test concerning employees' subjective reactions. In the court's view, however, even assuming the union's nonliability for the employee's conduct, the facts raised certain questions as to the validity of the election either under the Board's objective test or under a subjective test which would rely on evidence of the subjective reaction of employees who were exposed to the misrepresentation prior to the election. The court, pointing out the closeness of the election results, concluded that a full hearing before the Board was warranted, since the employer's objections to the election raised issues of fact that required further exploration as to the subjective effect of the misrepresentation on the minds of the voters.

In *Cascade*,[36] the Sixth Circuit, acknowledging that exceptions to the regional director's report should specify the findings that are controverted and show what evidence will be produced to support a contrary finding, remanded the case to the Board for an evidentiary hearing even though the employer's exceptions to the regional director's report on their face did not literally comply with this standard. The employer had filed objections to the election alleging misrepresentations of fact in circulars distributed by the union to employees immediately prior to the election. The court held that the employer's exceptions to the report, in the context of its objections filed to the election and considered by the regional director, did raise factual issues primarily going to the circulars. The court concluded that the equities of the case could be resolved only by remanding it to the Board with directions to conduct an evidentiary hearing to determine all issues pertaining to the circular.

C. Unfair Labor Practices

1. Employer Interference with Employee Rights

Courts of appeals decisions during the fiscal year included several of significance respecting employer actions viewed as interfering with employee rights protected by section 7 of the Act. Of particular interest were an employer's alleged discrimination in promotion on account of race, the right of off-duty employees to solicit or distribute for a union on employer premises,

[36] *Cascade Corp* v. *N.L.R.B.*, 466 F.2d 748.

the right of nonemployee organizers to have access to parking lots for such purposes absent alternative means, and union waiver of the right to such access.

In the racial discrimination case [37] the District of Columbia Circuit remanded to the Board for further proceedings a Board majority holding that the "exclusivity" principle of section 9(a) forecloses splinter groups of employees from engaging in concerted activity to protest alleged denials of promotion on the basis of race. The Board found that where a San Francisco department store union sought to reduce racial discrimination in employment through contract grievance procedures, picketing and handbilling by two employees dissatisfied with the union's progress forced the employer to "bargain on two fronts" and was unprotected because in derogation of the Union's exclusive status as bargaining representative. The Board therefore dismissed a complaint charging that the employer terminated the two dissenters for engaging in concerted activity.

The court, while affirming the exclusivity principle as necessary for orderly bargaining, drew a clear line between concerted activity involving ordinary working conditions and that involving racially descriminatory employment practices. The court emphasized that the concept underlying exclusivity—that in the usual disagreements over working conditions what is best for the group is best for the individual—has no application to racial discrimination because union members are not legally free to disagree on that issue. The court cited Title VII of the Civil Rights Act of 1964 as endowing splinter activity involving race with a unique status superior to that stemming from other working condition controversies and warranting protection under section 7 even where disruptive of established procedures or inconvenient to the employer. The court distinguished the *Tanner* case [38] pointing out that here, unlike *Tanner,* the minority first sought to deal through normal channels and its actions were less disruptive of bargaining than in *Tanner,* where no attempt was made to utilize either the union or the contract. The court, recognizing that the handbills were intemperate, invited the Board on remand to consider possible disloyalty to the employer [39] but cautioned that the facts should be combed to insure that neither racial discrimination nor animus toward the minority concerted activity motivated the two discharges.

In the first of the "parking lot" cases, *McDonnell Douglas Corp.*

[37] *Western Addition Community Organization* v. *N.L.R.B.*, 485 F 2d 917

[38] *N L R B* v. *Tanner Motor Livery Ltd.*, 419 F 2d 216 (C A. 9, 1969)

[39] See *N.L R B* v. *Loc. 1229, Electrical Workers [Jefferson Standard Broadcasting Co.]*, 34[illegible] S 464 (1953)

v. *N.L.R.B.*, 472 F.2d 539 (C.A. 8), a St. Louis defense contractor with 31,000 employees and security, traffic, and litter problems, issued a plant rule limiting literature distribution and solicitation of off-duty employees to a "reasonable time" before and after their shifts. At other times off-duty employees were to be treated as "nonemployees." The Eighth Circuit remanded for further consideration the Board's findings that the phrase "reasonable time" was too vague and that the employer advanced no justification for its "nonemployee" classification. The court held that the Board had not properly balanced the employees' right of self-organization with the employer's need for security and discipline. It suggested that the Board consider (1) permitting day-shift as opposed to night-shift parking lot distribution, (2) the availability of alternative means of communication, and (3) the section 7 status of an employee once he has left the plant; i.e., whether upon returning to engage in union activity his status is more nearly that of nonemployee than an employee.

In *Scholle Chemical Corp.* v. *N.L.R.B.*, F.2d, 82 LRRM 2410, the Seventh Circuit enforced a Board order requiring an employer, whose 350-employee Chicago plant adjoined an 11,000-employee plant whose shifts overlapped the smaller plant's, to permit nonemployee organizers to solicit on company parking lots. The court agreed with the Board that the wide dispersion of employee residences, the difficulty of distinguishing Scholle employees from those of the neighboring firm, the employer's refusal of an up-to-date mailing list, the inability of the union to acquire an accurate list, and heavy traffic required that Scholle's property rights yield to employee organizational rights.[40]

In the third case—*Magnavox Co. of Tenn.* v. *N.L.R.B.*, 474 F.2d 1269—the Sixth Circuit refused to overturn its *Armco Steel* ruling [41] that an incumbent union has authority to contractually waive *all* on-premises distribution and solicitation rights of employees absent special circumstances. The court thus rejected the Board's holding that an incumbent union could not waive employee rights to distribute literature on the employer parking lot or other premises either on behalf of or in opposition to *any* union. The Board's holding amended its *Gale Products* rule [42] which had permitted an incumbent *to waive solicitation* on its own behalf but prohibited waiver to freeze out other unions.

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[40] Citing *N.L.R.B.* v. *Babcock & Wilcox*, 351 U.S. 105 (1956), and *Central Hardware Co* v *N.L.R B.*, 407 U.S 539 (1972).

[41] *Armco Steel Corp.* v *N.L.R.B.*, 344 F 2d 621 (C.A 6, 1965), *General Motors Corp* v *N.L R B.*, 345 F.2d 516 (C A. 6, 1965).

[42] *Gale Products Div. of Outboard Marine Corp*, 142 NLRB 1246 (1963), enforcement denied 337 F 2d 390 (C.A. 7, 1964)

2. Employer Assistance to Labor Organizations

The courts had occasion to consider a number of cases involving application of the Board's *Midwest Piping* doctrine,[43] which imposes a duty of neutrality upon an employer faced with competing union claims which raise a real question concerning representation.

In the *Playskool* case [44] the Seventh Circuit, in a split decision, rejected the Board's position that knowledge of a rival union's continuing organizational campaign was sufficient to raise a question concerning representation in the face of the contracting party's purported card majority, which had been verified by an independent state agency. For 20 years the rival union had unsuccessfully attempted to organize the company's employees at several of its plants. In its latest endeavor the rival union had obtained the required minimum number of signatures to support a petition for election, polled almost 30 percent of the eligible voters in the election, and thereafter continued to solicit members. On these facts, the Board found that the union had raised a question concerning representation which precluded the company from recognizing the competing union even after a majority showing based on authorization cards. In so holding, the Board noted that as the rival union's claim was not "clearly unsupportable and lacking in substance" the union had established the "sole requirement necessary to raise a question concerning representation within the meaning of the *Midwest Piping* doctrine." However, the court, acknowledging that the courts "usually take a different approach," observed that the primary inquiry is whether the recognized union "has made a valid demonstration of majority support" obtained without coercion or deception. While agreeing with the Board that some of the cards were forged or otherwise altered, the court held that substantial evidence did not support any finding that the union represented less than a majority of the employees. In short, the company was justified in concluding that the rival union was not a "genuine contender."

Finally, in the court's view, the company's admitted preference for the recognized union, a "good" union, and the failure to disclose to the state agency the rival union's continuing representation interest did not taint the contracting union's attainment of majority status. One judge dissented, finding that the

[43] See *Midwest Piping & Supply Co., Inc.*, 63 NLRB 1060 (1945), and *William Penn Broadcasting Co.*, 93 NLRB 1104 (1951).

[44] *Playskool, Inc.* v *N.L.R.B.*, 477 F.2d 66.

company's admitted partiality and deception had "unfairly" contributed to the union's majority showing.

In *N.L.R.B.* v. *Peter Paul, Inc.*,[45] the Ninth Circuit held that the company did not breach its duty of neutrality by executing an agreement with an incumbent union although, at the time, no disposition had been made of a rival union's representation petition. The rival union filed its petition, supported by authorization cards from 45 of the company's 141 employees, after the company and the incumbent union commenced bargaining on a new contract in advance of expiration of the current contract. The company received the petition, together with a letter requesting a list of all unit employees in order to determine the validity of the petitioner's claim. The company failed to furnish the list and asked the Board whether the rival union's showing was sufficient to support the petition. The Board replied in the affirmative and again requested the list. The company did not respond. In the meantime, the incumbent union delivered to the company 134 new checkoff authorizations and requested that negotiations be expedited. Thereafter, the company and the incumbent union discussed the rival union's petition and continued to bargain. The Board then notified the company that the rival union had filed a charge, alleging violations of section 8(a)(2) and (1) of the Act, and that the representation case would be held in abeyance pending disposition of the alleged unfair labor practices. Nonetheless, the company continued to negotiate and executed a new contract with the incumbent union.

In denying enforcement, the court found that there was "no real question concerning representation" as "an overwhelming majority of the employees" had demonstrated their support of the incumbent union. Moreover, the court held that the Board had made no "formal finding" that such a question ever existed and absent such a determination the company was not obligated to furnish the employee list. In this posture, the court reasoned, the Board was precluded from entertaining the unfair labor practices charge unless it gave, as it did, an unwarranted " 'presumptive effect' " to the company's failure to provide the list.

In a strongly worded dissenting opinion, one judge noted that the Board had already decided as a matter of law that there was a question concerning representation. Therefore, the "true issue" was whether "one of our most responsible governmental agencies" or a "contemptuous" employer had the power to determine the existence of a question concerning representation. Foreseeing "disasterous consequences" inherent in the court's

[45] 467 F.2d 700.

decision, the dissenting judge stated that, "[i]t opens a way by which an employer can unilaterally frustrate those free democratic processes through which employees are supposed to be able to select their bargaining representative."

3. Employer Bargaining Obligation

Two cases decided during fiscal 1973 by the Sixth and Seventh Circuits, respectively,[46] involved the Supreme Court's *Burns* decisions,[47] that although a successor employer has a duty to bargain with the certified representative of his employees, he is bound neither by the predecessor's contract nor by his terms of employment.[48] In *Wayne Convalescent Center*, approximately 1 month after the new owner assumed control, vacation pay, sick pay, and overtime rates were unilaterally altered, and a wage increase was conferred on some of the employees. In failing to uphold the Board's finding that these unilateral changes in terms of employment constituted a violation of the Act, the court, relying on *Burns, supra,* held that the new employer was free to establish initially his own terms of employment,[49] and the changes, instituted shortly after the successor assumed the business, presented a factual situation similar to *Burns.*

In *Bachrodt*, on the other hand, the Seventh Circuit reached an opposite position. There, the employer's automobile service department employees were offered new application forms on the Friday (November 7) before the new owner assumed the business. On the day of takeover, the following Monday (November 10), the new owner instituted variohs changes in the employees' terms of employment. Again relying on *Burns*, the Seventh Circuit upheld the Board's finding of an 8(a)(5) violation holding that the changes had not been a part of the initial terms of rehiring. Since the new owner intended, on the day he passed out the applications, to hire all of the predecessor's employees, he falls into the "perfectly clear" exception of *Burns,*[50] and should have announced any changes to his prospective employees on that date.

[46] *N.L.R.B.* v. *Wayne Convalescent Center*, 465 F.2d 1039, and *N.L.R.B.* v. *Bachrodt Chevrolet Co.*, 468 F.2d 963.

[47] *N.L.R.B.* v. *Burns Intl. Security Services*, 406 U.S. 272 (1972)

[48] In both cases the courts upheld the Board's successor findings.

[49] Since there was some question as to whether the new owners were continuing the nursing facility or converting the premises to a "bed and board" facility, the Sixth Circuit found that this was not the type of exception in which it was "perfectly clear" at the time of the changes that the new employer was going to retain all of the predecessor's employees, thereby making it appropriate for him to consult the union prior to changing the terms of employment.

[50] Judge Stevens, dissenting in part, stated that an automobile agency was not the type of exceptional situation the court envisaged in its "perfectly clear" dictum, and that, moreover, the new employer could not have set his initial terms prior to taking over the business on November 10.

Since the Seventh Circuit decision, however, the Supreme Court granted certiorari on *Bachrodt*, 82 LRRM 2998 (1973), and remanded the case to the Board for further proceedings in the light of *Burns*.

In the *General Motors* case,[51] the District of Columbia Circuit confronted the question of whether the Act imposes a duty to bargain over a decision to *sell* a portion of an employing enterprise. The court sustained the Board's dismissal of a complaint that the employer had violated section 8(a)(5) and (1) of the Act by failing to bargain over its decision to convert its self-owned and operated retail outlet into an independently owned and operated franchise dealership. The court held that the employer's decision was not subject to statutory mandatory bargaining requirements since transfer of its retail outlet to a dealership constituted a sale, the decision being part of its national policy and "fundamental to the basic direction of a corporate enterprise"—at the very core of entrepreneurial control. The court noted, moreover, that there was no claim of antiunion bias on the part of the employer. The court rejected the union's contention that *Fibreboard*,[52] which requires bargaining over certain types of subcontracting, must be read so as to require whenever a management decision results in termination of employment. Quite apart from the fact that the employer was under no duty to bargain about its *decision to sell* its retail outlet, it is well settled that the employer was obliged to bargain about the *effects* of its decision. The court again sustained the Board's finding that the employer had bargained in good faith over the effects of its decision to sell a portion of its enterprise.

One case decided during the report year considered the bargaining obligations of an employer who was relocating the operations of 1 plant, where different units of the 300 employees were represented by 3 different unions, into a plant 25 miles away where 85 employees were represented by a fourth union.[53] The employer maintained that it was legally required to recognize the fourth union as exclusive bargaining representative of all the employees in the relocated plant, and on this basis advised the three unions that it could neither agree to their requests to transfer the 300 employees nor continue to recognize them pursuant to their existing contracts. Further, the company maintained that it had taken a survey of the 300 employees and most were not interested in transfers. However, when the three unions presented petitions showing that a majority did wish to transfer,

[51] *Intl. Union, UAW, Loc. 864 [General Motors Corp.]* v. *N.L.R.B.*, 470 F.2d 422.

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

[53] *Fraser & Johnston Co.* v. *N.L.R.B.*, 469 F.2d 1259 (C.A. 9).

the company did not alter its position and, in fact, proceeded to enter into a union-security contract with the fourth union covering the relocated operations. On these facts the Ninth Circuit, in agreement with the Board, found that the company failed to bargain in good faith over the effects of the relocation on the 300 employees and unlawfully entered into a union-security contract with the fourth union. Noting that the bargaining units represented by three unions would have continued if a majority of the 300 employees had transferred, the court rejected that employer's claim that it had an obligation to the fourth union which prevented it from agreeing to transfers. Further the court noted that the company entered the union-security contract with the fourth union at a time when it must have known that the fourth union did not represent a substantial and representative number of the employees who would eventually be employed in the relocated operations. However, while the court has agreed with the Board that the company had misconceived its obligations to the various unions, the court was not convinced that the company's unfair labor practices were sufficient to explain the failure of a majority of the employees represented by the three unions to seek work at the new location. Thus, although the court enforced the Board's order requiring the company to offer to reinstate the dislocated employees at the new plant, it refused to order the company to bargain with the three unions as exclusive representative of all the employees at the new plant. Rather, the court indicated that the issue of exclusive recognition should be determined after the company had offered reinstatement to the dislocated employees.

In *Fairmont Foods*,[54] the Eighth Circuit held that an employer had not violated section 8(a)(5) by refusing to sign a contract negotiated by a multiemployer bargaining association with a Teamsters local even though the employer withdrew from the association after negotiations had begun. The court disagreed with the Board's view that no impasse in negotiations had been reached and that the union had not consented to the employer's withdrawal from multiemployer bargaining. Before bargaining commenced, the employer made known to the union its position that certain limits on wholesale loads contained in prior contracts in the past placed it at a competitive disadvantage and had conditioned its rejoining the association for the contract negotiations on the association's insistence on the elimination of load limits in the forthcoming negotiations. The parties met for negotiations but could not agree on at least 15 issues, including load limits,

[54] *Fairmont Foods Co.* v *N.L.R.B.*, 471 F.2d 1170.

by the contract termination date, after which the union struck the association members' plants. After the union had reached separate agreements with three association members, which left load limits as they were in prior contracts unless subsequently altered by an association contract, several other members expressed willingness to do so. However, the employer refused to compromise on the load-limit issue. The union was informed that the employer had "walked out" of negotiations and refused to be bound by the terms of any agreement reached thereafter. The next day, a contract including a compromise on the load-limit issue was signed by the union and all association members except the employer. The court based its finding that no impasse had been reached on the fact that both the union and the association had considered "final" offers, on the fact that upon their rejection the union had bargained separately with three individuals, and on the testimony of a union representative that the union and association were so far apart at the termination of the prior contract that the union "would be forced to have a work stoppage." The court reasoned that, so long as the employer remained a member of the association, "the parties were irreconcilable on the load limit issue." In view of the fact that the union and association did sign an agreement containing a compromise on load limits only after the employer withdrew from the association, the court concluded that the withdrawal was made while the negotiations were at an impasse which was removed by the employer's withdrawal. In finding that the Union's conduct constituted "implied consent" to the employer's withdrawal from the association, the court noted that the union had made no objection to the employer's withdrawal when verbally informed of it prior to reaching an agreement with the association. The court reasoned that the union was willing to "accept quietly the benefit" of the employer's "withdrawal, in the form of a quick agreement" without indicating to anyone at the time that "[it] expected [the employer] to be bound" by the agreement. Additionally, the court viewed the union's willingness to bargain with the employer even after reaching an agreement with the association as well as its willingness to bargain with individual association members during the impasse as additional evidence of such consent.

In another case[55] involving withdrawal from multiemployer bargaining, the court of appeals remanded the case for determination by the Board of whether withdrawal was permissible after impasse in negotiations. In that case the company was a

[55] *N.L.R.B.* v. *Hi-Way Billboards, Inc.*, 473 F.2d 649 (C A 5)

member of an employers' association, which for about 17 years had negotiated labor agreements for most but not all of its member-employers. In the first 13 bargaining sessions during the negotiations for a new contract a company representative was present at the association's bargaining with the union. Two days after the union's membership voted to strike, the company notified the union that it was withdrawing from multiemployer bargaining but offered to stand by the association's existing offers in separate bargaining with the union. The Board concluded that by attempting over the union's objections to withdraw from multiemployer bargaining 3 months after negotiations had commenced and refusing to ratify the subsequent collective-bargaining agreement, the company violated section 8(a)(5) and (1). On the "singular evidence presented," the court disagreed with the Board's findings that the company withdrew because it disagreed with the "bargaining fibre" of the association's team just when bargaining was about to result in an agreement and found instead that the company withdrew just after a genuine impasse in negotiations had been reached. It remanded the case to the Board for consideration of whether such an impasse excuses the company from withdrawing after substantial negotiations had taken place.

In a case [56] involving the employer's unilateral change of insurance carrier the court affirmed the Board's finding that the company violated section 8(a)(5) and (1) by unilaterally substituting a self-insurance health program for a contractually established plan in force through a commercial insurance carrier. While emphasizing that its holding did not mean "that the naming of an insurance carrier for an employee group benefit plan, in the absence of other considerations, is a mandatory subject for bargaining," the court here could not find "a way to separate the carrier from the benefits" because the "peculiar terms of the bargaining contract here, obviously incorporate by reference or necessary implication important sections of the Aetna contract. . . . [B]argaining on health insurance historically was related to the Aetna contract." The company's self-insurance program altered certain benefits, such as Aetna's administration and funding of the program, a conversion privilege without evidence of insurability, certainty of coverage of new-born babies under the $20,000 major medical benefit, and enforceability of the master contract.

In another case [57] involving the selection of an insurance carrier the court overturned the Board's conclusion that the company

[56] *Bastian-Blessing, Div. of Golconda Corp.* v. *N.L.R.B.*, 474 F.2d 49 (C.A. 6).

[57] *Connecticut Light & Power Co.* v *N.L.R.B*, 476 F.2d 1079 (C.A 2).

violated section 8(a)(5) and (1) by refusing to bargain as to selection of an insurance carrier for its employee medical-surgical benefits plan. For several years the company had provided employees with a noncontributory, company-paid, medical-surgical insurance plan. As a result of the union's complaint in 1969 as to the carrier's administration of the plan, the company secured various changes from the carrier. In 1971 the union expressed further dissatisfaction with the carrier and demanded that the company substitute a new carrier for the current one. The company bargained as to coverage, benefits, and administration of the plan but refused to negotiate as to selection of the carrier. The court noted that mandatory subjects of bargaining are those that relate to "wages, hours, and other terms and conditions of employment," section 8(d) of the Act; "settle an aspect of the relationship between the employer and employees," *Allied Chemical Workers, Loc. 1* v. *Pittsburg Plate Glass Co.*, 404 U.S. 157, 178 (1971); and "vitally affects the 'terms and conditions of employment,' " *id.* at 179. Under this standard, although benefits, coverage, and administration of the plan "clearly are proper bargaining subjects," the identity of the carrier is not. The union merely expressed general "dissatisfaction" with the carrier but did not allege that the carrier made changes in matters that are mandatory subjects. *Bastian-Blessing, Div. of Golconda Corp.* v. *N.L.R.B.*, 474 F.2d 49 (C.A. 6), is distinguishable because there, unlike here, the court could not "separate the carrier from the benefits" so that the unilateral substitution of a self-insurance plan for the carrier counsel *"changes* in the *terms* of the insurance plan."

4. Union Interference With Employee Rights

In *Natl. Cash Register* [58] the Sixth Circuit agreed with the Board that a union violates section 8(b)(1)(A) by threatening members and nonmembers with violence unless they agree to pay the union one-third of all wages earned for work performed during an economic strike. The union agreed to permit employees performing defense work to continue working during an economic strike and to provide passes to enable these employees to cross the picket line. Thereafter, the union conditioned issuance of these passes upon employee agreement to pay the union one-third of their earnings. The court upheld the Board's finding of restraint and coercion on substantial evidence grounds and rejected the union's contention that *Scofield* v. *N.L.R.B.*, 394 U.S. 423 (1969),

[58] *National Cash Register Co.* v *N L R B*, 466 F.2d 945, cert denied 410 U S 966

placed the union's conduct within the proviso to section 8(b)(1)(A).

5. Union Coercion of Employer in Selection of Representatives

Several decisions by courts of appeals during the fiscal year involved the question whether fines assessed by a union against supervisor-members are coercive within the meaning of section 8(b)(1)(B). This section makes it an unfair labor practice for a union "to restrain or coerce . . . an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances." In *IBEW*,[59] the District of Columbia Circuit, sitting *en banc*, refused to enforce two separate Board orders[60] which required the union to rescind and refund all fines and other discipline imposed upon supervisor-members who crossed lawful union picket lines to perform struck work during economic strikes. The five-judge majority held that "Section 8(b)(1)(B) cannot reasonably be read to prohibit discipline of union members—supervisors though they be—for performance of rank-and-file struck work." The court majority considered the performance of rank-and-file work during a lawful strike to be outside the scope of normal supervisory duties and thus not a legitimate "management function" insulated from union discipline. Therefore, the court rejected the Board's view that union discipline for performing such work would tend to make the supervisors less loyal to the employer in performing grievance adjustment or collective-bargaining tasks in the future. The four dissenting judges agreed with the Board that a supervisor-member who supports his employer during a strike is acting as a management representative and that union discipline for such support would undermine the supervisor's loyalty to the employer in the performance of grievance resolution responsibilities after the strike.

In *AGC*[61] the Seventh Circuit agreed with two dissenting Board members that section 8(b)(1)(B) prohibits a union from using strike pressure to compel a group of employers to submit jurisdictional disputes to a tripartite tribunal on which none of the employers were represented. The Board majority had concluded that the union's demand was a mandatory subject of bargaining, and thus a demand which the union could insist

[59] *Intl. Brotherhood of Electrical Workers, Loc. 134 [Florida Power & Light Co.]* v. *N.L.R.B.*, 487 F 2d 1113. The *en banc* decision reversed on earlier panel decision in *Ill Bell*, 192 NLRB 85, which had sustained the Board by a divided vote

[60] *Intl. Brotherhood of Electrical Workers, Loc. 134 (Illinois Bell Telephone Co.)*, 192 NLRB 85 (1971); *Intl. Brotherhood of Electrical Workers Systems Council U-4 (Florida Power & Light Co.)*, 193 NLRB 30 (1971).

[61] *Associated Gen. Contractors of Amer., Evansville Chapter, Inc.* v. *N.L.R.B.*, 465 F 2d 327.

upon by strike pressure. The court, however, considered the management members of the tripartite panel to be "management representatives" within the scope of section 8(b)(1)(B), and the union's demand to require acceptance of management representatives not of the employers' choosing.

6. Union Bargaining Obligation

In *Loc. 1170*,[62] the Second Circuit sustained the Board's finding that the union violated section 8(b)(3) and 8(d) of the Act by unilaterally altering an existing collective-bargaining agreement in midterm through an embargo which precluded unit employees from accepting company assignments as temporary supervisors and also affirmed the Board's findings that the sanctions imposed by the union to enforce the embargo violated section 8(b)(1)(A). In the court's view, the contract's silence on this matter reflected the parties' agreement to continue the company's practice of assigning employees to temporary supervisory positions, for the record showed that this subject had been discussed in prior contract negotiations but never had been embodied in the contract. Hence the court applied to the instant case the principle enunciated by the Supreme Court in *Scofield* that a party is not entitled to "a better bargain than he has been able to strike at the bargaining table." [63]

7. Prehire Agreements

Section 8(f) allows prehire agreements in the construction industry by permitting a building and construction industry employer to enter into a collective agreement with a union representing construction industry employees notwithstanding the fact that the majority status of such labor organization had not been established under the provisions of section 9 of the Act prior to the making of such agreement with the proviso, however, that such an agreement is not a bar to a petition filed pursuant to section 9(c) or 9(e). The scope of this exemption was explored by two cases in particular during fiscal 1972. In *Loc. 150, Intl. Union of Operating Engineers*,[64] the District of Columbia Circuit could find no sanction in the language, history, or policy of section 8(f) for permitting an employer to unilaterally abrogate a validly executed prehire agreement even though the union has not achieved majority status and stated that the proviso to section 8(f) was the exclusive means by which a

[62] *N.L.R.B. v. Communications Workers, Loc. 1170 [Rochester Telephone Corp.]*, 474 F.2d 778

[63] *Scofield v. N.L.R.B.*, 394 U.S. 423, 432–433 (1969).

[64] *Loc. 150, Intl Union of Operating Engineers [R. J Smith Construction Co.] v N.L.R.B.*, 480 F 2d 1186.

construction industry employer could challenge a minority union. Hence, it rejected the Board's view that Congress' intention in enacting section 8(f) was limited to immunizing the preliminary steps surrounding the execution of a prehire agreement and overturned its conclusion that a construction industry employer does not violate section 8(a)(5) of the Act by refusing to abide by a prehire agreement entered into with a union which never attained majority status.[65]

On the other hand, the Board's view that Congress did not intend to exempt construction industry employers from the basic requirements of the Act once they passed the initial prehire stage and were dealing with a representative which could demonstrate majority support was accepted by the Third Circuit in *Irvin-McKelvy*[66] which affirmed that portion of the Board's decision which found that a construction industry employer violated section 8(a)(5) of the Act by repudiating an agreement entered into pursuant to section 8(f) with a union which in fact later obtained majority support.[67] However, the Third Circuit in contradistinction to the Board, held the *Midwest Piping* doctrine, 63 NLRB 1060 (1945), to be inapposite for an employer in the construction industry and therefore found that at its expiration of a section 8(f) agreement a construction industry employer was thereafter free to enter into new prehire agreements with whatever union it wished.

8. Remedial Order Provisions

The Eighth Circuit in *Harper & Row*[68] refused to enforce a *Gissel-type*[69] bargaining order. Although the court approved the Board's findings that the union had possessed an appropriate card majority and the company had violated section 8(a)(1), (3), and (5) of the Act in its attempt to defeat unionization,[70] the court denied enforcement to the bargaining order portion of the Board-ordered relief. The court noted that there was not only no substantial evidence that the company's labor practices had had any undermining effect on unionization or the election machinery but indeed there was positive evidence that the company's actions *did not* undermine the union's efforts and had

[65] The Board is petitioning for a writ of certiorari in this matter

[66] *N.L.R.B.* v. *Irvin-McKelvy Co.*, 475 F.2d 1265

[67] However, the Third Circuit expressly reserved the question of how it would rule on the question presented by the repudiation by an employer of a section 8(f) agreement entered into with a union which did not thereafter obtain majority status, i.e., the question presented in *Loc. 150, Operating Engineers, supra.*

[68] *Harper & Row Publishers* v *N.L.R.B.*, 476 F.2d 430.

[69] *N.L.R.B.* v. *Gissel Packing Co.*, 395 U.S. 575 (1969).

[70] Violations included threats, coercion, interrogations, promises of benefits, granting of wage increases, institution of discriminatory work changes, discharges, layoffs, refusal to reinstate, and refusal to bargain

little or no impact on the employees' allegiance. The facts showed that most of the company's violations occurred before the union obtained its card majority. The court noted as an additional reason for its reluctance to grant the bargaining order a shift of allegiance by the employees away from the originally selected union. The employees by vote at a union meeting made a genuine and unconditional shift to another local of the same union. When the second local refused to represent the employees, the union president informed the employees that they would be represented by the initially selected local. No new vote was taken. The court found, on these facts, that the union did indeed lose its majority support but through the voluntary disaffiliation of its members and not as a result of the company's unfair labor practices.

The District of Columbia Circuit in *Ship Shape Maintenance Co.*[71] similarly found that the facts of that case did not support the Board's issuance of a bargaining order, although the court approved the Board's findings of 8(a)(1) and (3) violations. The company performed janitorial work for office buildings on a contract basis. The union attempted to organize the employees at one of the company's buildings and secured cards from 17 employees.[72] The company and union entered into a stipulation for certification agreement which limited voter eligibility in the January 9 election to those employed by the company during the week ending November 22, excluding employees who quit or were discharged for cause. The company's *Excelsior*[73] list contained 32 names. By January 2, 16 of the employees had left the company's employ and on that same day 3 employees quit, 2 were fired for cause, and the 11 remaining people were transferred by the company out of the unit to other office buildings ostensibly for business reasons. The court agreed with the Board that the company's action in transferring all of the remaining voters in the unit violated section 8(a)(1) and (3) of the Act but disagreed with the Board as to the conclusions drawn from that finding. Noting that an election is a preferable means (as compared to a bargaining order) to determine employee sentiment, the court did not feel that the company's actions were of such a substantial nature as to render a fair election impossible. The court pointed to the fact that no overt union animus had been demonstrated to the employees (as the transfers had been ostensibly for business reasons) and the company did not have a history of antiunion

[71] *N.L.R.B.* v. *Ship Shape Maintenance Co.*, 474 F.2d 434.

[72] Because the court did not think that bargaining order was appropriate it did not resolve the controversy as to whether the union did possess sufficient valid cards to claim majority representation.

[73] *Excelsior Underwear Inc.*, 156 NLRB 1236 (1966)

behavior. The company's actions therefore could effectively be erased in time for the holding of an election free of adverse influence. The court further noted, in this regard, that due to the extraordinarily high employee turnover the company's actions would rapidly be dissipated. The court therefore felt that a bargaining order would not be appropriate because a fair election could be held. Further considerations, in fact, would militate against a bargaining order. Due to the rapid employee turnover, those presently employed by the company neither signed cards for the union nor were affected by the company's unfair labor practice. The Act requires that the remedies granted further and not defeat the rights of these employees, including their right to refrain from selecting a union. The only function a bargaining order would accomplish, therefore, in this case would be to punish the company and the Board's grant of power is to act remedially, not punitively.

The Ninth Circuit, in *Golden State*,[74] upheld a Board ruling requiring a successor employer to participate in remedying violations of the Act committed by its predecessor. While *Golden State* owned and operated Pepsi-Cola, the Board found that the company had violated section 8(a)(3) and (1) of the Act and ordered the company to offer reinstatement to the discriminatee and make him whole for losses suffered. The issue had not been resolved by compliance when *Golden State* sold Pepsi-Cola to All American. After that sale the Board issued a supplementary order imposing financial liability on both parent companies for the amount due the discriminatee from before and after the sale.[75] The court upheld All American's responsibility for Pepsi-Cola's prepurchase violations on the basis that Pepsi was a self-contained corporation, retaining through the sale all its employees and managerial and supervisory personnel and maintaining the same product and customers. Additionally All American purchased Pepsi with knowledge of its participation in unfair labor practice litigation. The court also approved the scope of the Board's order which required that the discriminatee be offered reinstatement to a position including promotions within the company that he would have occupied except for the discrimination and that the compensation must therefore be on the basis of that new position. Because this position would be that of a distributor, an independent contractor, the amount owed him must be based on a compu-

[74] *Golden State Bottling Co.* v. *N.L.R.B.*, 467 F.2d 164.

[75] The court affirmed *Golden State* post-sale liability on the basis of an indemnity agreement it had signed with All American.

tation of his probable earnings in that job, which were assessed by the Board as being those of the most successful distributor.

In *Loc. 347*,[76] the District of Columbia Circuit expanded upon the remedy provided by the Board. The court earlier [77] had approved the Board's finding that the company had violated section 8(a)(1) of the Act by unlawful questioning, threats, and polls, and section 8(a)(5) by its refusal to bargain when presented with a valid showing of a card majority. The court, however, remanded the case to the Board to expand on the conventional bargaining and cease-and-desist orders. The Board on remand expanded its order to include the requirement that the company mail to all of its employees the notices required to be posted, allow the union use of the company bulletin board for 1 year, and give the union updated lists of its employees for 1 year. The union petitioned the court in the present case to expand the Board's order even further.[78] The court granted the union's petition as to legal fees, litigation expenses, and excess organizational costs. The court reasoned that the granting of legal fees is one way to discourage employers from pursuing frivolous litigation as a means of delaying or avoiding their bargaining obligation. For the same reason any excessive organizational costs experienced because of the company's intransigences and violations should be recaptured by the union. The court did agree with the Board's disallowance of reimbursement for lost union dues or fees, holding that the determination as to how many persons would have joined the union but for the company's violation was too speculative to be the basis for an award. The court also agreed with the Board that the company's actions in this case were not sufficiently egregious and its refusal to bargain was not so patently frivolous that an order to compensate the employees for lost benefits would be appropriate.

The District of Columbia Circuit in *Madison Courier* [79] remanded to the Board for further consideration the Board's

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[76] *Food Store Employees Union, Loc. 347, Meat Cutters [Heck's Inc.]* v. *N.L.R.B.*, 476 F 2d 546.

[77] *Food Store Employees Union, Loc. 347, Meat Cutters [Heck's Inc.]* v *N.L.R.B.*, 433 F 2d 541 (1970).

[78] The court agreed with the Board's denial of a union request to have the bargaining order expanded to include a company obligation to bargain with the union for all of the company's stores. The union had organized one of the company's stores and the unfair labor practices had occurred there. The court felt that not only did sec. 7 give the employees at the other stores the right to join or refrain from joining on their own but that the facts did not indicate that the union would be unable to organize those stores in the future.

[79] *N.L.R.B.* v. *Madison Courier*, 472 F.2d 1307

backpay findings.[80] The court felt that the Board had failed to adequately explain the reasons for its backpay decision and in this regard had the doctrine of mitigation. The court stated that public policy demanded a mitigation doctrine limiting the award to a discriminatee to actual loss, deducting from the amount lost not only amounts actually earned but also amounts representing losses willfully incurred. The court felt in this regard that the Board in overstating the employee's right to engage in strike activity during the backpay period understated the employee's obligation to mitigate his losses. Additionally the Board did not appropriately apply the lowered-sights doctrine, the necessity at some point of accepting a lower paying or lower skilled job.[81] Nor did the Board appropriately consider each employee's obligation to search for employment. The Board treated all the employees as a group in considering whether they had searched sufficiently. Finally the court stated that given all these considerations the Board had not adequately explained its decision.

[80] The court had approved in *Louisville Typographical Union No. 10, International Union, AFL–CIO* v. *N.L.R.B.*, 67 LRRM 2462 (C.A. D.C. (1967)), the Board's findings of 8(a)(5) and (1) violations and the designation of the employees' strike as an unfair labor practice strike. In this regard it ordered the employees reinstated and made whole.

[81] The Board had stated that the lowered-sights doctrine did not apply because these strikers were receiving high strike benefits and the doctrine only required those with no money coming in to secure lesser employment. The court branded this a *non sequitur* since strike benefits are not included in diminishing the amount of a backpay award.

IX

Injunction Litigation

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

A. Injunctive Litigation Under Section 10(j)

Section 10(j) empowers the board, in its descretion, 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 1973, the Board filed nine petitions for temporary relief under the discretionary provisions of Section 10(j): three against employers, four against unions, and two against both employer and union.[1] Injunctions were granted by the courts in five cases and denied in three and two cases were pending at the close of the report period.[2]

Injunctions were obtained against employers in two cases, against unions in two cases, and ran against both employer and unions in one case. The cases against the employers variously involved alleged refusals to bargain with labor organizations representing their employees, runaway shop, refusals to reinstate employees, unlawful assistance to union, threats, and other alleged violations of section 8(a)(1). The cases against the unions involved allegations of refusal to bargain with employers, threatening reprisals, and harassment by engaging in strikes and picketing. The only case where the injunction was directed against both employer and union involved the employer's recognition of a union alleged to have been assisted in violation of the Act.

1. Alleged Refusal to Bargain Cases

In one of the cases involving an alleged refusal to bargain

[1] In addition one petition filed during fiscal 1972 was pending at the beginning of fiscal 1973.
[2] See table 20 in appendix.

and a "runaway shop," [3] the employer closed his plant in New York, discharged the employees, and without notice to the union, the collective-bargaining agent of the employees, moved the plant to New Jersey where he maintained the same business under another name. Thereafter, the employer refused to rehire the discharged employees, executed a new contract with another union to cover the employees at the new plant, and refused to bargain with the union that represented the employees in New York relative to the new plant. The court found reasonable cause to believe that the employer had violated the Act, issued a temporary injunction, and ordered the employer to bargain with the union and reinstate the discharged employees. In the *Old Angus* case [4] the district court found that the regional director had reasonable cause to believe that the employer had violated the Act by refusing to bargain with the union that represented a majority of the employees, by threats and other acts of restraint and coercion, and by the discriminatory discharges of several employees for union activity. Accordingly, the court issued a temporary injunction and ordered the employer to bargain.

2. Other 10(j) Litigation

Applications for temporary injunctions were denied in three cases. In *Steel-Fab*,[5] the court concluded that the regional director did not have reasonable cause to believe that the employer violated the Act by unlawfully refusing to bargain with the union that lost a representation election, and by denying a higher rate of pay to a union employee, where there was a 4-month delay in filing the action, and the director had neither shown that extraordinary circumstances existed warranting injunctive relief nor that irreparable harm would occur if relief was denied. In the *Lenkurt* case [6] the court in denying injunctive relief concluded that the evidence introduced did not support reasonable cause to believe that the employer violated the Act by its refusal to reinstate discharged employees, and by the assignment of employees to certain types of work. And in a case involving a union as respondent,[7] the court denied injunctive relief on the ground that there was no showing of discriminatory motivation and consequently no reasonable cause to believe that the union violated

[3] *Balicer* v. *Helrose Bindery*, 82 LRRM 2891 (D.C N.J.).

[4] *Smith* v. *Old Angus, Inc. of Maryland*, 82 LRRM 2930 (D.C.Md.).

[5] *Fuchs* v. *Steel-Fab, Inc.*, 83 LRRM 2635 (D.C.Mass.).

[6] *Greene* v. *G.T.E. Lenkurt, Inc.*, Civ. No. 9520 (D.C.N M.), decided Sept. 29, 1972 (unreported)

[7] *Henderson* v. *United Industrial Workers of North America of Seafarers Intl. Union* [*Sea-Land Service*], 83 LRRM 2991 (D.C.Alaska).

the Act by its method of dispatching longshoremen to work in the particular area.

Enforcement of a union's bargaining obligation was secured through section 10(j) proceedings in *Teamsters Local 79*,[8] where the court enjoined the union from its striking activities for the object of forcing the employer to extend the terms of the nationwide master agreement, to which the employer was a signatory, to employees at new terminals who were not shown to be represented by the union. The union's attempt to invoke arbitral machinery of the contract to carry out this unlawful objective was also enjoined. And in the *Electrical Workers* case[9] the court enjoined the actions of the unions in inducing the employees to engage in a work stoppage at four of the employer's installations, and from insisting as a condition precedent to executing new contracts that the four contracts have a common expiration date and equal employment benefits.

The actions of an employer and a union were enjoined by the court in *Hi Temp*[10] based on evidence that the parties executed a contract containing union-security provisions at a time when the union did not represent an uncoerced majority of the employees and furthermore had committed other acts of restraint and coercion.

3. Standard for Injunctive Relief Under Section 10(j)

In *Pilot Freight Carriers*[11] the court of appeals affirmed an order of the district court granting a 10(j) injunction based on its findings that (1) there was reasonable cause to believe the Teamsters and four of its local unions violated their bargaining obligation under section 8(b)(3) of the Act by insisting and demanding over the protest of *Pilot*, an interstate trucking firm, that Pilot extend the provisions of their collective-bargaining contract to its four newly established Florida terminals, and by invoking the grievance-arbitration provisions of the contract and then striking and picketing Pilot on a systemwide basis to enforce the award, and threatening to resume the strike, all in order to force compliance with their demand, and (2) an order enjoining the charged unlawful conduct pending litigation of the unfair labor practice case before the Board was just and proper to prevent frustration of the remedial purposes of the Act, protect

[8] *Boire* v *Intl. Brotherhood of Teamsters, Locs. 79, 885, 890 & 512*, 69 LC ¶13172 (D.C.Fla.).

[9] *Johnston* v. *Intl. Brotherhood of Electrical Workers, Locs. 289, 2035, 1431, & 1087*, Civil No. C-240-D-72 (D.C.N.C), decided Aug. 28, 1972 (unreported).

[10] *Madden* v. *Hi Temp, Inc.*, Civil No. 72-C-2095 (D.C.Ill.), decided Jan. 22, 1973 (unreported).

[11] *Boire* v. *Intl. Brotherhood of Teamsters, Locs. 79, 885, 890 & 512*, 81 LRRM 2888 (D.C.Fla.), affd. 479 F.2d 778 (C.A 5)

the public interest, and prevent irreparable injury. The court found it unnecessary to consider the Board's contention that the unions' conduct was also violative of section 8(b)(1)(A) of the Act in that it restrained or coerced the Florida personnel in the exercise of their right to choose or reject collective representation freely. On appeal, the court of appeals, addressing itself first to the propriety of injunctive relief, held that while the standard was unsettled, the case, by any standard, met the "just and proper" requirement of section 10(j). The court noted that if Pilot resisted the unions' demands, there would be widespread strike activity which would result in severe financial loss and impairment of important public services; and that if Pilot capitulated to the demands, the unions would thereby become so entrenched that any ultimate Board decision would be of no value to Pilot or the Florida personnel. The court further concluded that the injunction was also warranted to preserve the *status quo*, i.e., the nonunion status of the personnel, pending Board litigation. Turning to the Board's burden of proof, i.e., reasonable cause to believe that a violation was being committed, the court of appeals concluded that as in section 10(l) proceedings, the legal theories upon which the Board predicates its case need only be substantial and not frivolous, and the fact that they may be novel does not negate their substantiality. The court further held that the standard of review of orders granting 10(j) and 10(l) injunctions is whether the district court's findings were "clearly erroneous," but that because of the congressional policy favoring such relief a more stringent standard has been applied to the denial of injunctions. Applying these criteria, the court found reasonable cause to believe that the unions were violating both section 8(b)(1)(A) and 8(b)(3; and specifically that there was reasonable cause to believe that the Board would not defer to the arbitration award in favor of the union, that the accretion of the Florida operation to the systemwide bargaining unit would not be appropriate under Board standards, and that the pursuit of contractual grievance procedures in these circumstances, even when no contrary Board ruling exists, could in itself constitute an unfair labor practice.

B. Injunctive Litigation Under Section 10(l)

Section 10(l) imposes a mandatory duty on the Board to petition for "appropriate injuctive relief" against a labor organization or its agent charged with a violation of section

8(b)(4)(A), (B), and (C),[12] or section 8(b)(7),[13] and against an employer or union charged with a violation of section 8(e),[14] 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 8(b)(4)(D) violations, which section 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 1973, the Board filed 242 petitions for injunctions under section 10(l). Of the total caseload, comprised of this number together with the 11 cases pending at the beginning of the period, 99 cases were settled, 11 dismissed, 14 continued in an inactive status, 23 withdrawn, and 23 were pending court action at the close of the report year. During this period, 83 petitions went to final order, the courts granting injunctions in 78 cases and denying them in 5 cases. Injunctions were issued in 54 cases involving alleged secondary boycott action proscribed by section 8(b)(4)(B) as well as 8(b)(4)(A) violations, which section proscribes certain conduct to obtain hot cargo agreements barred by section 8(e). Injunctions were granted in 14 cases involving jurisdictional disputes in violation of section 8(b)(4)(D), of which 3 also involved proscribed activities under section 8(b)(4)(B). Injunctions were issued in nine cases to proscribe al-

[12] 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).

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

[14] 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

leged recognitional or organizational picketing in violation of section 8(b)(7). The remaining case in which an injunction was granted arose out of charges involving alleged 8(e) violations.

Of the five injunctions denied under section 10(l), three involved alleged secondary boycott situations under section 8(b)(4)(A) and (B,) one involved alleged jurisdictional disputes under section 8(b)(4)(D), and one was predicated upon alleged violations of section 8(b)(7)(C).

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

Three of the cases decided during the year, however, are noteworthy in that they involved interpretation by courts of appeals of the standards for injunctive relief in a 10(l) proceeding; namely, that the Board demonstrate "reasonable cause to believe" that an unfair labor practice is being committed, and, if so, that the district court grant "just and proper" relief. In *Samuel E. Long, Inc.*,[15] the court of appeals reversed the judgment of the district court which denied a temporary injunction on the ground that the regional director did not have reasonable cause to believe that the council engaged in proscribed recognitional picketing by picketing a general contractor in the construction industry for the purpose of compelling him to execute a "subcontractors agreement" which would require him to subcontract work only to firms which recognized labor unions affiliated with the council. The district court, in a lengthy analysis, concluded that such picketing, as a matter of law, was not recognitional within the meaning of section 8(b)(7)(C) of the Act and that section 10(l) did not require him "to grant relief based upon legal theories advanced by the Board which, while thoughtfully presented and not frivolous, are, in the view of the Court, erroneous." However, the court of appeals held that this approach misconstrued its earlier holding in *Northern Metals*,[16] that the Board's theory need only be "substantial and not frivolous; and if it is, it does not matter whether the District Court ultimately agrees with it

[15] *Samoff* v. *Bldg. & Construction Trades Council of Philadelphia*, 346 F.Supp. 1071 (D.C.Pa., 1972), reversed 475 F 2d 203 (C.A. 3, 1973).

[16] *Schauffler* v. *Loc. 1291, Intl. Longshoremen's Assn.*, 292 F 2d 182 (C.A. 3, 1961).

or not." In concluding that the Board's theory met this test, the court of appeals noted the Board's contention that subcontracting of work was a matter which would have a substantial impact on the general contractor's employees, the Board's reliance on pertinent Board and court decisions, and the district court's own acknowledgment that the Board's theory was, in essence, a substantial one.

In *Urban Distributors,*[17] the court of appeals reversed the judgment of the district court denying the Board's petition for an order enjoining the union, acting in furtherance of a dispute with a franchise distributor of snack products, from engaging in alleged secondary boycott picketing of various retail stores which sold those products with "On Strike" signs, and from making unqualified threats to picket such stores. The district court concluded, as a matter of law, that the picketing was "in conformity with the applicable standards" set down by the Supreme Court in its *Tree Fruits* and *Servette* decisions,[18] and therefore that "no grounds exist that would justify a finding that there has been a violation of . . . the Act." The court did not address itself to the Board's contention that the union's threats to picket the stores also constituted an unfair labor practice. However, the court of appeals held that the Board has reasonable cause to believe that the picketing did not meet the *Tree Fruits* standards in that the signs failed to identify the retailers as neutrals, unconnected with the wholesaler. In this regard, the court of appeals noted that the signs did not specifically request the public not to buy the struck foods, they bore "On Strike" legends, and the signs and accompanying handbills did not clarify the nature of the dispute. The court further concluded that there was reasonable cause to believe that the union's unqualified threats to picket stores were also unlawful, and that injunctive relief was just and proper in light of evidence that the picketing and threats had resulted in loss of business to the franchise distributor and to the charging party (Urban), a route distributor of the foods.

In *S.B. Apartments,* the district court found reasonable cause to believe that picketing of a general contractor at a construction site by five building trades unions had a recognitional and organizational object. However, the court concluded that injunctive

[17] *Kaynard* v. *Independent Routemen's Assn.*, 83 LRRM 2439 (D.C.N.Y.), reversed 479 F.2d 1070 (C.A. 2).

[18] *N.L.R.B.*, v. *Fruit & Vegetable Packers* [*Tree Fruits*], 377 U.S. 58 (1964), relating to consumer picketing and handbilling; *N.L.R.B.*, v. *Servette, Inc.*, 377 U.S. 46 (1964), relating only to handbilling.

[19] *Danielson* v. *Local 275, Laborers*, 83 LRRM 2321 (D.C.N.Y.), reversed 479 F.2d 1033 (C.A. 2).

relief "would not be "just and proper" because the Board had failed to prove that "irreparable harm or damage" would result to the contractor if an injunction were not granted, noting that the picketing did not threaten to interfere with construction work and that there were no current work stoppages or interruptions to deliveries. On appeal, the court of appeals reversed the denial of injunctive relief. The court of appeals held that the district court's obligation to be guided by general equitable principles in granting injunctive relief did not necessarily require a finding of irreparable injury to the employer. The court concluded that, in any event, it need not decide whether such irreparable injury was a prerequisite to 10(l) injunctive relief because the evidence in the case demonstrated irreparable harm and, therefore, that injunctive relief was warranted under any interpretation of the Act. In this regard, the court noted that "irreparable injury" does require a total work stoppage, that there was evidence that the picketing had caused some delay in construction and had caused the employer to incur additional costs in excess of $4,000, although the amount of such damage is difficult to measure and therefore irreparable. The court further concluded that injunctive relief was warranted to preserve the *"status quo,"* i.e., the employer's right to be free from the charged unlawful picketing, and that the picketing and accompanying acts of vandalism attributable to the unions were the kind of conduct which section 10(l) was designed to prevent.

Two other 10(l) cases are noteworthy in that they involved novel issues of law in an unusual factual context. In *Los Alamos Constructors,*[20] the district court denied injunctive relief on the ground that the Board did not have reasonable cause to believe that the Sheet Metal Workers Union engaged in unlawful coercion of an employer in furtherance of a jurisdictional dispute by attempting to impose a fine or penalty upon the employer for an alleged breach of contract, under the guise of processing a grievance through the procedures provided in its collective-bargaining agreement with the employer, to which the competing union was not a party, where an object was to force a reassignment of the disputed work. The court concluded that the charged unfair labor practice did not constitute the kind of conduct proscribed by section 8(b)(4)(D) of the Act, e.g., strikes, picketing, work stoppages, and threats or inducements thereof, and that, in any event, the alleged fine or penalty sought by Sheet Metal Workers Union, i.e., that the employer pay into its pension fund the amount of $8.88 per hour for each hour worked by em-

[20] *Price* v. *Sheet Metal Workers, Loc 49,* 83 LRRM 2967 (D.C.N Mex)

ployees other than sheet metal workers on the disputed work, was not punitive in nature, but constituted a proposed measure of compensatory damages. The court further concluded that injunctive relief was not just and proper because an injunction would infringe on sheet metal workers' contractual rights and because the charged unfair labor practice presented no "obstructions to commerce" which would warrant injunctive relief.

Irish Welding Supply Corp. [21] involved the applicability of the "struck work" doctrine to charged secondary boycott picketing. The facts were as follows: Burdox, Inc., supplied Irish with compressed gas obtained from Strate Welding Supply Co., and shipped to Irish either in Irish cylinders, which were white, or Burdox cylinders, which were red. Normally, the Irish cylinders, comprising 40 percent of the total deliveries, were transported from Strate to Irish by Irish's trucks and drivers and the remaining 60 percent, i.e., the Burdox cylinders, were picked up at Strate by Burdox drivers, taken to Burdox where they were placed in inventory, and then picked up and transported to Irish by its own drivers. Thereafter, Burdox picked up and transported the empty cylinders to Strate. However, Burdox, in anticipation of a strike by the Union against Irish, and in order to insulate Strate from the dispute, arranged to have all gas delivered to Irish by the second method, and Irish agreed to reimburse Burdox for a portion of the overtime pay for Burdox's drivers which would be incurred as a result of this arrangement. After the strike began, the union picketed Burdox's premises and its trucks which were engaged in loading Irish cylinders at State's premises, with signs stating in substance that Burdox was an ally of Irish.

The district court concluded that Burdox was engaged in "struck work" which but for the strike would have been performed by Irish's employees, and therefore was amenable to primary picketing. The court found that the work performed by Irish employees prior to the strike, which the court viewed as not only the loading and unloading, but also the transport of cylinders from Strate, was being supplanted and not merely duplicated by Burdox employees, and that therefore the *Priest Logging* case was inapplicable.[22] The court concluded that in any event, *Priest Logging*, in making this distinction, represented an unduly restrictive view of the struck work doctrine. Accordingly, the district court refused to enjoin the picketing.

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[21] *Seeler* v. *Loc. 375, Teamsters*, 81 LRRM 2575 (D.C.N.Y.).

[22] *N.L.R.B.* v *Western States Regional Council No. 3, Woodworkers*, 319 F.2d 655 (C.A. 9, 1963).

X

Contempt Litigation

During fiscal 1973, petitions for adjudication in civil contempt for noncompliance with decrees enforcing Board orders were filed in 22 cases. In five of these, petition was granted and civil contempt adjudicated.[1] Three were discontinued upon full compliance.[2] In eight cases the courts referred the issues to special masters for trials and recommendations, four to U.S. district judges,[3] and the others to various experienced triers.[4] Two cases await referral to a special master.[5] Of the remaining four cases, two remain before the courts in various stages of litigation,[6] in

[1] *N.L.R.B.* v *Latin Quarter Cafe*, order of Apr. 25, 1973, No. 35,655 (C.A. 2), in civil contempt of judgment of July 8, 1971, enfg. 182 NLRB 997; *N.L.R.B.* v. *Hickman Garment Co.*, order of Dec 18, 1972, 82 LRRM 2399 (C.A 6), in civil contempt of the bargaining provisions of 437 F.2d 956, *N.L.R.B.* v *Loc 14055, Steelworkers*, order of May 17, 1973, No 72-2105 (C A. 6), in civil contempt of judgment of February 5, 1973; *N.L.R.B* v. *Carpenters Loc. 22*, order of Mar 9, 1973, No. 72-1548 (C A 9), in civil contempt of judgment of Sept 15, 1972, enfg 195 NLRB 1; *N.L.R.B.* v. *Trans Ocean Export Packing*, 473 F.2d 612 (C A 9), affg. master's report in 82 LRRM 2251.

[2] Upon obtaining protective order and stipulation for deferred payments in full and guaranteed by escrow agreement in *N.L.R.B.* v *United States Tube and Foundry*, in civil contempt of judgment of Feb. 16, 1972, No. 71-2199 (C.A. 2); Upon full reinstatement of discriminatees and posting of notices in *N L.R B.* v *Brandis Aircraft*, in civil contempt of judgment of June 30, 1972, No. 72-1452 (C.A 7); Upon stipulation for deferred payments in full, guaranteed by stockholders in *N.L R B.* v. *Central Machine & Tool Works*, in civil contempt of judgment of Jan 4, 1972, No. 71-1715 (C A. 10).

[3] *N.L.R.B.* v. *Transit Mix Corp.*, in civil contempt of 8(a)(1) and (3) judgment of Mar 5, 1969, in No. 33,331 (C.A. 2), referred to U.S. Dist. Judge John F. Dooling Jr. (E.D N Y.); *N L R.B* v. *Loc 98, Pipefitters*, in civil contempt of 8(b)(4)(i) and (ii)(B) judgment of Jan 25, 1972, No. 71-1413 (C A 6), referred to U.S. Dist. Judge Thomas P. Thornton (E.D. Mich); *N.L R B.* v *Matlock Truck Body & Trailer Corp.*, in civil contempt of reinstatement and posting provisions of 454 F 2d 1172 (C.A. 6), referred to U.S. Dist. Judge Frank Gray, Jr. (M.D. Tenn); *N.L.R.B.* v. *Kansas Refined Helium Co.*, in civil contempt of 445 F.2d 237 (C.A D.C), referred to U.S Dist Judge Arthur J. Stanley, Jr. (D. Ka).

[4] *N.L.R.B.* v. *Amalgamated Loc. Union 355*, in civil contempt of judgment of Jan. 6, 1964, Jan. 11, 1966, and Mar 28, 1966, in Nos. 28,451, 30,263, 30,405, respectively (C.A. 2); *N.L.R.B* v. *Russell Motors*, in civil contempt of judgment of Mar. 22, 1968, in No 32,200 (C.A 2), *N.L.R B.* v. *Johnson Mfg. Co. of Lubbock*, application for writs of body attachment for violations of contempt adjudication in 458 F.2d 453 (C.A. 5), *N L.R.B.* v *Loc. 860, IBT*, in civil contempt of 8(a)(1)(A)(2) judgment of June 11, 1968, in No. 22,968 (C A. 9).

[5] *N.L.R.B.* v. *Loc. 294, IBT*, in civil contempt of 8(b)(4)(i) and (ii)(B) judgments in 273 F.2d 696, 342 F.2d 18, and the judgment of Sept. 7, 1972, in No. 72-1437 (C.A. 2), *N.L.R.B.* v. *Renmuth, Inc.*, in civil contempt of the bargaining and reinstatement judgments of Dec. 6, 1972, Nos. 72-1445 and 72-1579 (C.A. 6).

[6] *N.L.R.B.* v. *Cosmopolitan Research & Medical Laboratories*, awaiting compliance with contempt order of Feb. 2, 1973, in No 72-1510 (C A 2); *N.L.R.B.* v. *Latin Quarter Cafe*, in civil contempt of reimbursement provisions of judgment of July 8, 1971, No 35, 665 (C.A 2)

one a stipulation providing for a civil contempt adjudication has been entered into after preliminary trial and issuance of a temporary restraining order;[7] and the fourth was discontinued with Board concurrence upon the total insolvency of the Company.[8]

Turning to cases which commenced prior to fiscal 1971 but were disposed of during this period, contempt was adjudicated in five civil proceedings,[9] three other proceedings were abated: one upon the signing of the agreed-upon contract and payment of the Board's costs,[10] one upon reinstatement of the discriminatee and payment of the Board's costs,[11] and the third, a writ of body attachment proceeding, upon good-faith bargaining to bona fide impasse.[12]

A number of opinions which were rendered during this fiscal period warrant comment. *J. P. Stevens,*[13] *Schill Steel,*[14] and *Metlox*[15] are noteworthy as evidencing a discernible judicial trend towards the imposition of purgation provisions somewhat more stringent than the traditional remedies for the violations found. In *J. P. Stevens,* in addition to the customary requirements of reinstating and reimbursing discriminatees, posting notices, and paying costs, the court also ordered the company to provide a Board agent with facilities to read the posted notice to the employees and to afford the union access to the company's plant for a 2-year period to deliver a 30-minute speech to employees if the Board schedules an election in which the union participates, and facilities to address the employees whenever the company convenes and addresses them on the question of union representation. In *Schill Steel,* the court enjoined the company from refusing to meet unless approved by the court and directed

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[7] *N.L.R.B.* v. *Loc. 295, IBT,* in civil contempt of 8(b)(4)(i) and (ii)(B) judgment of Dec. 31, 1968, in No 72–1975 (C A. 2). The trial resulting in a temporary injunction on May 25, 1973, was tried before U S. Dist. Judge Milton Pollack (So Dist N.Y.) as Special Master.

[8] *N.L.R.B.* v. *Art Fox Advertising Specialties,* discontinued by order of Jan. 22, 1973, No 72–1375 (C.A. 7).

[9] *N.L.R.B.* v. *J. P. Stevens,* 464 F 2d 1326 (C.A. 2). The contempt adjudication is set forth in full at 81 LRRM 2285, *N.L.R.B* v. *Schill Steel Products,* 480 F.2d 586 (C.A. 5) The contempt adjudication is set forth in full at p. 597; *N.L.R.B.* v *Flambeau Plastics Corp.,* order of Jan. 19, 1973, in No. 16,560 (C.A. 7), 82 LRRM 2391, adopting report of Special Master reported at 82 LRRM 2385; *N.L.R.B.* v. *Sinclair Glass Co.,* contempt of reinstatement judgment adjudicated June 2, 1973, in No. 71–1194 (C.A. 7); *N.L.R.B.* v. *Metlox Mfg. Co.,* contempt of bargaining judgment adjudicated Apr. 18, 1973, 83 LRRM 2346 (C.A. 9), adopting Master's Report reported at 83 LRRM 2331.

[10] *N.L.R.B.* v. *Triar, Inc.,* in civil contempt of bargaining judgment of Mar. 30, 1971, in No 71–1121 (C.A. 6). Abated Sept. 27,1972.

[11] *N.L.R.B.* v. *Galpin Motors,* in civil contempt of judgment of Apr. 6, 1972, in No. 71–1069 (C.A. 9). Abated Oct 6, 1972

[12] *N.L.R.B* v *Stafford Trucking,* pending writ of attachment authorized by order of Apr. 7, 1972 See fn 8, 37 NLRB Ann. Rep 196 (1972). Abated Jan. 8, 1973.

[13] 81 LRRM 2285. See fn. 9 above.

[14] 480 F.2d 586, 599. See fn. 9 above.

[15] 83 LRRM 2346, 2347. See fn. 9 above.

bargaining sessions to be held for at least 15 hours per week. Concentrated bargaining was also ordered by the court in *Metlox*, the court requiring the company to bargain upon consecutive days unless otherwise agreed to by the union. *Schill Steel* is also noteworthy because the court approved the Board's action in seeking contempt even though it had already issued Board orders involving the same facts and violations alleged in the contempt petition. In holding relitigation desirable where the Board seeks to invoke the court's contempt powers, rather than the court's enforcement powers, the Fifth Circuit acted in notable contrast to the refusal of the Sixth Circuit to entertain contempt jurisidiction where the Board's General Counsel had already issued a complaint involving the same facts. See *N.L.R.B.* v. *Murray Ohio Mfg. Co.*, 60 LRRM 2257 (1965).

In *Trans Ocean Export Packing*,[16] the Ninth Circuit adjudged the company and its president in civil contempt for failing to comply with a provision of its order directing the production of payroll records and other documents necessary to enable the Board's Regional Office to calculate backpay owing unfair labor practice discriminatees. By way of defense, the respondents claimed that the records had been stolen and asserted that the Board has the burden of pleading and proving that they had the capacity to comply. The court rejected this position and concluded that respondents, and not the Board, must show "categorically and in detail" why they were unable to comply. In adjudging respondents in contempt, the court also rejected the contention that Rule 69(a) of the Federal Rules of Civil Procedure required the application of state law to contempt proceedings and that under California law such proceedings are criminal in nature. The court concluded that Rule 69(a) related only to procedures on execution of a district court money judgment and that neither the Rule nor California criminal law applied to contempt proceedings instituted by the Board.

[16] See fn. 1 above.

XI

Special and Miscellaneous Litigation

A. Judicial Intervention in Board Proceedings

In *James E. Braden, Jr.* v. *Herman*,[1] plaintiff brought suit in the district court to compel the General Counsel to issue a complaint. He had filed charges with the Board's regional director alleging that the Sheet Metal Workers' International Union, AFL–CIO, Local 146, had violated section 8(b)(1)(A) and (2) of the Act by causing his employer to discharge him for reasons other than his failure to tender periodic dues and initiation fees, and that the company had violated section 8(a)(1) and (3) by acquiescing in the union's demand.[2] Specifically, he contended that the union had failed to carry out its duty of advising plaintiff of his obligation under the union-security provision of the contract, that he had tendered all monies which were claimed to be owed before the union had made a discharge demand upon the company, and that the union demanded his discharge not because of dues delinquency, but because of his loss of formal union membership. However, the General Counsel's investigation had revealed that plaintiff was well aware of his obligation under the union-security provision and of his delinquency before the union requested his discharge, that the union's discharge request was made before, not after, petitioner tendered the full amount of his past dues, and that the discharge was requested solely becuase of such delinquency. Under these circumstances, the General Counsel had refused to issue a complaint. Before the court, the General Counsel contended that this refusal was not subject to review, and therefore that the complaint should be dismissed for lack of jurisdiction. The district court dismissed the complaint,

[1] 468 F.2d 592 (C.A. 8), affg. —— F.Supp.——, 79 LRRM 2114 (D.C.Mo., 1971), cert. denied 411 U.S. 916.

[2] Board Case 17–CA–4242

the court of appeals affirmed this dismissal, and the Supreme Court denied certiorari.[3]

In *Gem International* v. *Hendrix*,[4] plaintiff company sought to enjoin the Board from holding an unfair labor practice hearing, and also to compel the Board to process a representation petition which the Board had dismissed because of the "blocking charge" which had precipitated the unfair labor practice proceeding. In so doing, the company relied primarily on the Fifth Circuit's decision in *Templetion* v. *Dixie Color Printing Co.*[5] and *Algie Surratt* v. *N.L.R.B.*,[6] wherein the Fifth Circuit held that, under the particular circumstances there presented, the Board's application of its "blocking charge" rule contravened section 9(c)(1) of the Act. The Board filed a motion to dismiss on grounds that the district court lacked jurisdiction over the subject matter of the complaint. The court agreed with the Board that, on the facts presented in this case, the Board had not contravened the requirements of section 9(c)(1), and therefore that the court had no jurisidction over the subject matter of the complaint.[7] In so doing, the court noted that in both *Templeton* and *Algie Surratt, supra,* the Board had blocked elections on petitions filed by employees because of charges directed against the employer, whereas here the employer against whom the 8(a)(5) charges had been filed was the party filing the representation petition.[8] Moreover, the court noted that in both *Templeton* and *Algie Surratt,* the court had found that the Board had applied its "blocking charge" practice in a mechanical fashion, whereas here the regional director had conducted a careful investigation before determining that the "blocking charge" rule should be applied. Under these circumstances, the court determined that the Board had not violated the requirements of the Act, and that there accordingly was no basis for district court jurisdiction.

In *Waterway Terminals Co.* v. *N.L.R.B.*,[9] charges had been filed with the Board alleging a violation of section 8(b)(4)(D) of the Act; the regional director had obtained an injunction under

[3] See also *Vaca* v. *Sipes*, 386 U S. 171, 182 (1967).

[4] —— F. Supp. ——, 80 LRRM 3302 (D.C.Mo.)

[5] 444 F 2d 1064 (C A. 5, 1971), petition for rehearing denied 444 F.2d at 1070 See 36 NLRB Ann Rep 129 (1971).

[6] 463 F 2d 378 (C A. 5, 1972) See 37 NLRB Ann. Rep 199 (1972)

[7] Compare *Leedom* v. *Kyne*, 358 U.S 184 (1958).

[8] Some of the company's employees had filed a decertification petition in this case, seeking an election in one of the company's two stores. The regional director dismissed the petition on grounds that the unit sought was not coextensive with the two-store unit previously recognized in the recently expired contract The employees did not request review of this decision; the company did, and the Board denied review on grounds that the company was not a proper party to seek review The court found that the Board's actions regarding the decertification petition did not violate sec. 9(c)(1), and also noted that the company had no standing to challenge the legality of those actions

[9] 467 F.2d 1011 (C.A. 9), petition for rehearing denied Nov 28, 1972.

section 10(l), and a hearing had been held pursuant to section 10(k). Thereafter, the Board concluded that no jurisdictional dispute existed within the meaning of section 10(k), and quashed the notice of 10(k) hearing previously issued. Waterway petitioned the court of appeals to review the Board's decision quashing the 10(k) notice. The court rejected the Board's threshold argument that the quashing of a 10(k) notice of hearing is not a final order within the meaning of section 10(f) of the Act and therefore not subject to court review.[10] The court reasoned that, although no complaint ever formally issued, the 10(k) hearing was "tantamount to a hearing on a complaint issued by the Regional Counsel because the Board is required to make a determination . . . that . . . both completes the Section 10(k) proceedings, and resolves the Section 8(b)(4)(D) charge." [11] "To deny review of a refusal to proceed to award under a Section 10(k) proceeding," the court added, would "nullify the effectiveness of Section 8(b)(4)(D) [because] [t]he only avenue to relief from a dispute under that section is by way of a Section 10(k) proceeding." [12] The court distinguished cases in which a party seeks appellate review of "an actual award under Section 10(k),"[13] adhering to its earlier view that such an award can be reviewed only when it forms the basis for a subsequent 8(b)(4)(D) order.[14] It also distinguished cases upholding the nonappealability of section 9 representation determinations and decisions by the General counsel not to issue a complaint. Finally, reaching the merits, the court reversed the Board's finding that a jurisdictional dispute within the meaning of section 10(k) was not presented. The court acknowledged the " 'blurred line' that often exists between work assignment disputes and [representational] controversies," [15] but concluded that the dispute here, which involved "two discrete groups each insisting upon its sole right to perform the carloading duties," was a work assignment dispute even though it also contained "elements of representation." [16]

In *California Licensed Vocational Nurses Assn.* v. *N.L.R.B.*,[17]

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[10] Compare *Trane Co.* v. *N.L.R.B.*, —— F.2d —— 68 LRRM 3024 (C.A 6, 1968), *Rafel & Co.* v. *Local 9, I.B.E.W.*, —— F.2d ——, 48 LRRM 2897 (C.A. 7, 1961), cert. denied 366 U.S 948; *Manhattan Construction Co.* v. *N.L.R.B.*, 198 F 2d 320, 321–322 (C.A. 10, 1952).

[11] 467 F.2d at 1016.

[12] *Ibid.*

[13] 467 F 2d at 1015–16.

[14] See *N.L R.B.* v. *International Longshoremen's & Warehousemen's Union* [*U S. Steel Corp.*], 378 F.2d 33, 36 (C.A. 9, 1967), cert. denied 389 U.S. 1004; *Henderson* v. *International Longshoremen's & Warehousemen's Union, Local 50* [*Pacific Maritime Assn.*], 457 F.2d 572 (C.A. 9, 1972). See 37 NLRB Ann. Rep. 201 (1972).

[15] 467 F.2d at 1017.

[16] 467 F.2d at 1018.

[17] —— F.Supp. ——, 82 LRRM 2296 (D.C.Cal.), motion for reconsideration denied —— F.Supp ——, 88 LRRM 2834.

plaintiff sought district court review of the Board's dismissal of an election petition. The regional director had dismissed plaintiff's petition on grounds that the employees sought by the petition had been represented as part of a larger bargaining unit since approximately 1954, and it did not appear that their functions, skills, and working conditions were sufficiently distinct to warrant severance from the established bargaining unit. The Board had denied plaintiff's appeal from this decision, noting that the facts disclosed in the investigation and alleged in the appeal "are insufficient to warrant finding the requested unit . . . appropriate for severance . . . ." [18] The district court issued an order finding that the Board's ruling refusing to conduct an election was not within the jurisdiction of the court to review as it could not be said that the ruling was "in direct contravention of a clear and specific statutory mandate [or that] . . . the absence of jurisdiction in the federal courts would mean sacrifice or obliteration of a right created by Congress." [19] However, relying on *Fay* v. *Douds*,[20] the court denied the Board's motion to dismiss or for summary judgment on the ground that plaintiffs "have pleaded an unconstitutional deprivation of due process, and the defendant [Board] has not supported its motion . . . with facts to show the constitutionality of its procedures . . . ." [21] The showing of constitutional deprivation found by the court consisted of the allegations in the complaint which "on their face show" that the election petition was dismissed without "a hearing and its concomitant attributes of a record of evidence and the right of confrontation." [22]

B. Board Intervention in Court Proceedings

In *Loc. 1547, IBEW* v. *Loc. 959, Intl, Brotherhood of Teamsters [ITT Arctic Services]*,[23] Teamsters Local 959 began an organizational campaign to represent employees who were covered by a contract between the employer and IBEW Local 1547. The parent labor organizations had a "no-raiding" agreement, and Local 1547 brought suit in the district court under section 301 to enforce that agreement and for damages. On petition for representation filed with the Board by Local 959, the regional director ordered an election. The Board then moved to intervene in the district court action and to dismiss IBEW's complaint. The court

[18] Board Case 20–RC–10243.

[19] 82 LRRM at 2997. See *Leedom* v. *Kyne*, 358 U.S 184 (1958); *Boire* v *Greyhound Corp.*, 376 U.S. 473 (1964).

[20] 172 F.2d 720 (C.A. 2, 1949).

[21] 82 LRRM at 2998.

[22] *Ibid.*

[23] 356 F Supp. 636, 643 (D.C. Alaska), appeal pending C.A. 9, Dockets 73–1644, 73–2647.

granted both motions on the ground that enforcing a no-raiding agreement "which has been disregarded by the NLRB in ordering an election," or awarding damages for breach of that agreement, would be in conflict with the "superior authority" of the Board to resolve questions of representation.[24]

In *Confederated Independent Unions* v. *Rockwell-Standard Co.*,[25] plaintiff, asserting that it was a labor union representing a majority of the employees at the company's New Castle plant, sought to invalidate an existing collective-bargaining agreement between the United Steelworkers of America (USW) and its Local 4194 and the company insofar as the contract, which covered other plants of the company also, concerned employees of the New Castle plant. Shortly before institution of this suit, plaintiff had filed a representation petition with the Board for the same bagaining unit; the Board had dismissed the petition on the ground that the contract between the company and USW constituted a bar to the holding of an election, and also because the single-plant unit sought by plaintiff was inappropriate in view of the merger of that unit into a broader multiplant unit pursuant to the contractual arrangement between the company and USW.[26] The Board sought leave to intervene in the court proceedings, and also moved to dismiss the complaint, on grounds that the court lacked jurisdiction over the subject matter thereof. Specifically, the Board contended that plaintiff was attempting to obtain review of the Board's earlier dismissal of its election petition, which review is foreclosed by the Act. The district court agreed and dismissed the complaint, and the court of appeals affirmed that decision.

In *N.L.R.B.* v. *Washburn Woods Corp.*,[27] the General Counsel, pursuant to Board authorization, instituted a Federal district court suit to obtain a protective order nullifying state court interference with picketing and other activity arguably subject to regulation under, and hence preempted by, the National Labor Relations Act.[28] There, the Carpenters District Council had picketed the company, which employed nonunion carpenters, with placards stating "Washburn-Woods Corp. has sub-standard conditions for carpenters—Carpenters District Council of Denver and Vicinity." At no time did more than the one person carrying the placard picket the site, and at all times such picketing was both peaceful and nonobstructive. The company first filed

[24] 356 F.Supp. at 641, 83 LRRM at 2786.

[25] 465 F 2d 1137 (C.A 3), affg. —— F Supp ——, 78 LRRM 2096 (D.C Pa., 1971).

[26] Board Case 6–RD–5137.

[27] Docket C–4926 (D.C. Colo.).

[28] See *N.L.R B.* v. *Nash-Finch Co*, 404 U.S. 138 (1971), wherein the Supreme Court held that the Board may obtain such relief

a representation petition with the Board for a unit including all employees of the employer engaged in construction work at the site. The union disclaimed any representational interest, and when the region, after investigation, informed the company that there was insufficient evidence to establish a recognitional object, the election petition was voluntarily withdrawn. Meanwhile, the company had filed a complaint for injunctive relief and damages in the District Court in and for the City and County of Denver, State of Colorado.[29] That court found that the picketing did not involve a labor dispute, and entered a preliminary injunction prohibiting the union from further picketing. The union was unsuccessful in obtaining expedited relief from this order in the state courts, and requested the Board's regional director to initiate appropriate action in the Federal district court. The General Counsel filed a complaint and motion for preliminary injunction in the District Court for the District of Colorado, requesting that that court enjoin the company from enforcing or seeking to enforce the preliminary injunction which had been issued by the state court. Thereafter, the state court, on motion of the union, dismissed its earlier injunction on grounds that it lacked jurisdiction. The company advised the Board that it did not intend to appeal that dismissal, and the Board subsequently moved the district court to dismiss its proceedings without prejudice.

C. Freedom of Information Act Issues

There have been numerous actions during this fiscal year seeking to compel the Board and the General Counsel to disclose information pursuant to the Freedom of Information Act (5 U.S.C. 552). In *Sears, Roebuck & Co.* v. *N.L.R.B.*, plaintiff company, which had filed charges with the Board alleging that the Retail Clerks International Union had violated section 8(b)(3) of the Act,[30] sought access to any advice and appeals memoranda involved in the processing of those charges. The company also sought to enjoin further Board proceedings pending the production of the requested documents. The District Court for the District of Columbia (Corcoran, J.) found that plaintiff had demonstrated a "probable right" to the documents in question under the Freedom of Information Act (FIA), and entered a preliminary injunction enjoining any further Board proceedings until the dispute was resolved and plaintiff company had had a reasonable time to

[29] *Washburn Woods Corp.* v. *Carpenters District Council of Denver and Vicinity*, Civil Action C 302225.

[30] Board Case 19–CB–1673.

inspect and analyze those documents which might be made available.[31] The Board moved the Court of Appeals for the District of Columbia Circuit for summary reversal of that order, and the court of appeals granted the motion, finding that, although district courts have jurisdiction to enjoin agency proceedings pending resolution of a pending Freedom of Information Act claim, a "cogent showing of irreparable harm is an indispensable condition of such intervention," and plaintiff had not made such a showing merely by asserting that it would have to undergo a Board hearing without the aid of the requested documents.[32]

In the meantime, the district court found that the documents requested by plaintiff were in fact subject to disclosure under the Freedom of Information Act, and also that the Act required that the documents be indexed, and that such indexes be made available to the public.[33] In so doing, the court rejected the Board's contention that the documents fell within the purview of exemption 5 of the FIA (5 U.S.C. 552(b)(5)), which privileges from disclosure all "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." The Board moved the court for a stay of this order pending appeal, which motion the court granted.[34] As of the end of the fiscal year, the Board's appeal was still pending.[35]

However, in *Elsing Mfg. Co.* v. *N.L.R.B.*, the court found that advice and appeals memoranda are not subject to disclosure under the Freedom of Information Act.[36] There, plaintiff sought production of all advice and appeals memoranda prepared in connection with a pending unfair labor practice proceeding,[37] and also sought to enjoin the hearing which had been scheduled in that case. The Board opposed the request for injunctive relief, and filed a motion for summary judgment, contending that the memoranda were exempt from disclosure under exemptions 5 and 7 of the FIA. The court denied plaintiff's request for injunctive relief, and thereafter granted the Board's motion for summary judgment, on grounds that "the documents which plaintiff seeks

[31] —— F Supp ——, 79 LRRM 2942 (D C.D C , 1972).
[32] 473 F.2d 91 (C.A.D C.), citing *Myers* v. *Bethlehem Shipbuilding Corp.*, 303 U S 41 (1938)
[33] 346 F.Supp 751 (D C D.C.).
[34] —— F.Supp ——, 81 LRRM 2676 (D.C.D.C.)
[35] Docket 72-1870. The General Counsel, while not conceding that the FIA so requires, nonetheless announced on February 3, 1972, that he would make available all advice and appeals memoranda in completed cases.
[36] —— F.Supp. ——, 82 LRRM 3054 (D.C. Okla.).
[37] Board Case 16-CA-4100.

to be produced are exempt from disclosure during the pendency of litigation involving the documents."

Similarly, in *Seattle Bldg. & Construction Trades Council* v. *Henderson*,[38] plaintiff sought all advice and appeals memoranda in a pending Board proceeding,[39] and the Board moved for summary judgment on grounds that the documents were exempt from disclosure under exemptions 5 and 7 of the FIA. The court did not rule on the exemption 7 contention, but granted the Board's motion for summary judgment on grounds that the documents sought were privileged from disclosure under exemption 5.

In *Wellman Industries* v. *N.L.R.B.*,[40] plaintiff company, defendant in a pending 8(a)(5) proceeding before the Board,[41] requested that the Board be compelled to disclose affidavits obtained during its investigation of the underlying representation proceeding,[42] which documents the Board had refused to disclose at all stages of the proceedings before it. Plaintiff also sought to enjoin the unfair labor practice hearing pending such disclosure. The Board opposed the request for injunctive relief, and also moved for summary judgment on grounds that the affidavits in question were privileged from disclosure under both exemption 7 of the FIA, which protects "investigatory files compiled for law enforcement purposes," [43] and exemption 4, which protects "trade secrets and commercial or financial information obtained from any person as privileged or confidential." [44] The court expressed doubt as to whether either exemption applied to the affidavits in question, but nonetheless decided that it would "not assume jurisdiction to declare and adjudge the rights of the parties" because the Board's order in the pending 8(a)(5) proceeding would soon be before the court of appeals for enforcement, pursuant to section 10(e) and (f) of the Act, and plaintiff could litigate his rights under the Freedom of Information Act in that forum.[45]

Finally, in *Automobile Club of Missouri* v. *N.L.R.B.*,[46] plain-

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[38] —— F.Supp ——, 82 LRRM 2362 (D C Wash.)

[39] Board Case 19-CD-208.

[40] —— F.Supp. —— 82 LRRM 2857 (D.C.S.C), motion for stay pending appeal denied —— F.Supp. ——, 82 LRRM 3069, appeal pending, C A. 4, Docket 73-1581

[41] Board Case 11-CA-5091.

[42] Board Case 11-RC-3365

[43] In *Barceloneta Shoe Corp.* v. *Compton*, 271 F Supp. 591 (D.C.P.R., 1967), and in *Clement Brothers Co.* v. *N.L.R B.*, 282 F.Supp. 540 (D C. Ga., 1968), approved, *N.L.R B.* v. *Clement Brothers Co.*, 407 F.2d 1027 (C.A. 5, 1969), the courts held that investigatory files compiled during the investigation of unfair labor practice charges are exempt from disclosure under exemption 7 of the Freedom of Information Act.

[44] The Board also moved to dismiss for lack of jurisdiction those portions of the complaint seeking to compel the Board to hold a hearing on the objections to the underlying elections

[45] 82 LRRM at 2861

[46] —— F Supp. —— 84 LRRM 2422, 2423 (D C.D.C.), appeal pending, C.A D C , Docket 73-1659.

tiff, who was at the time engaged in a representation proceeding before the Board,[47] filed a suit to compel the Board and its executive secretary to make a subject-matter index of all regional directors' decisions made pursuant to the Board's delegation of authority to them under section 3(b) of the Act, and not reviewed by the Board. Plaintiff also sought to enjoin the holding of the representation hearing until the court had ruled on the merits of its complaint. The court (Gesell, J.) issued a temporary restraining order enjoining the Board from terminating the hearings before it until further order of the court, and scheduled a hearing on the merits of the complaint for 9 days later. At that hearing, the court determined that the Board was not in compliance with section 2 of the Freedom of Information Act, which provides that "[e]ach agency also shall maintain and make available for public inspection and copying a current index providing identifying information for the public as to any matter issued, adopted or promulgated after July 4, 1967, and required by this paragraph to be made available or published." In so doing, the court found that, even if the Board were correct in its argument that section 2, read as a whole and in conjunction with its legislative history, only requires indexing of decisions having precedential value, "Regional Directors' decisions and orders are by the preponderance of the evidence relied on and used and cited as precedent within the meaning of the Act." [48] Accordingly, the court ordered the Board to compile the requested index. However, the court refused to enjoin the Board proceedings pending the compilation, since "an injunction against further proceedings pending availability of the index would stultify the Board in this and by inference in other representation hearings and work hardship on parties entitled to prompt determination of the appropriate bargaining unit." [49] Instead, upon the Board's representation that it could within 1 week supply plaintiff with decisions by the regional director in the region where the representation proceeding was pending, the court entered a "limited injunction" requiring the Board to do that. The court then stayed its order pending appeal.[50]

[47] Board Case 14–RC–7331
[48] 84 LRRM at 2425
[49] 84 LRRM at 2426
[50] *Ibid*

INDEX OF CASES DISCUSSED

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APPENDIX

Statistical Tables for Fiscal Year 1973

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 specially 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 pay-

ment 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 format 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 representative is issued. If no union has received a majority vote, a certification of results of election is issued.

Challenges

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

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

tive 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 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 an administrative law judge 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 administrative law judge in his decision; as ordered by the Board in its decision and order; or as decreed by the court.

Dismissed Cases

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

Dues

See "Fees, Dues, and Fines."

Election, Consent

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

Election Directed

Board-Directed

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

Regional Director-Directed

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

Election, Expedited

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

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

Election, Rerun

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

Election, Runoff

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

Election, Stipulated

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

Eligible Voters

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

Fees, Dues, and Fines

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

Fines

See "Fees, Dues, and Fines."

Formal Action

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

Formal Agreement (in unfair labor practice cases)

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

Informal Agreement (in unfair labor practice cases)

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

Injunction Petitions

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

Jurisdictional Disputes

Controversies between unions or groupings of employees as to which employees will perform specific work. Cases involving jurisdictional disputes are received by the Board through the filing of charges alleging a violation of section 8(b)(4)(D). They are initially processed under section 10(k) of the Act which is concerned with the determination of the jurisdictional dispute itself rather than with a finding as to whether an unfair labor practice has been committed. Therefore, 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 representative 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 Deauthorizing Cases

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

Union-Shop Agreement

An agreement between an employer and a labor organization which requires membership in the union as a condition of employment on or after the 30th day following (1) the beginning of such employment or (2) the effective date of the agreement, whichever is the later.

Unit, Appropriate Bargaining

A grouping of employees in a plant, firm, or industry recognized by the employer, agreed upon by the parties to a case, or designated by the

Board or its regional director, as appropriate for the purposes of collective bargaining.

Valid Vote

A secret ballot on which the choice of the voter is clearly shown.

Withdrawn Cases

Cases are closed as "withdrawn" when the charging party or petitioner, for whatever reasons, requests withdrawal of the charge or the petition and such request is approved.

SUBJECT INDEX TO ANNUAL REPORT TABLES

Table 1.—Total Cases Received, Closed, and Pending, Fiscal Year 1973 [1]

	Total	Identification of Filing Party					
		AFL-CIO unions	Teamsters	Other national unions	Other local unions	Individuals	Employers
	All cases						
Pending July 1, 1972	12,797	5,424	1,508	519	501	3,435	1,410
Received fiscal 1973	41,077	14,345	6,015	1,181	1,162	13,299	5,075
On docket fiscal 1973	53,874	19,769	7,523	1,700	1,663	16,734	6,485
Closed fiscal 1973	41,566	14,681	6,073	1,320	1,308	13,290	4,894
Pending June 30, 1973	12,308	5,088	1,450	380	355	3,444	1,591
	Unfair labor practice cases [2]						
Pending July 1, 1972	9,503	3,706	730	331	310	3,202	1,224
Received fiscal 1973	26,487	7,374	2,096	591	540	11,908	3,978
On docket fiscal 1973	35,990	11,080	2,826	922	850	15,110	5,202
Closed fiscal 1973	26,989	7,780	2,105	674	655	11,934	3,841
Pending June 30, 1973	9,001	3,300	721	248	195	3,176	1,361
	Representation cases [3]						
Pending July 1, 1972	3,200	1,684	772	184	188	201	171
Received fiscal 1973	14,032	6,808	3,889	568	606	1,170	991
On docket fiscal 1973	17,232	8,492	4,661	752	794	1,371	1,162
Closed fiscal 1973	14,059	6,733	3,944	628	639	1,144	971
Pending June 30, 1973	3,173	1,759	717	124	155	227	191
	Union-shop Deauthorization cases						
Pending July 1, 1972	30	.....	.....	.....	.....	30	.....
Received fiscal 1973	213	.....	.....	.....	.....	213	.....
On docket fiscal 1973	243	.....	.....	.....	.....	243	.....
Closed fiscal 1973	202	.....	.....	.....	.....	202	.....
Pending June 30, 1973	41	.....	.....	.....	.....	41	.....
	Amendment of certification cases						
Pending July 1, 1972	14	7	2	3	1	1	0
Received fiscal 1973	78	39	14	13	6	0	6
On docket fiscal 1973	92	46	16	16	7	1	6
Closed fiscal 1973	66	38	6	11	4	1	6
Pending June 30, 1973	26	8	10	5	3	0	0
	Unit clarification cases						
Pending July 1, 1972	50	27	4	1	2	1	15
Received fiscal 1973	267	124	16	9	10	8	100
On docket fiscal 1973	317	151	20	10	12	9	115
Closed fiscal 1973	250	130	18	7	10	9	76
Pending June 30, 1973	67	21	2	3	2	0	39

[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 1973 [1]

	Total	Identification of Filing Party					
		AFL–CIO unions	Teamsters	Other national unions	Other local unions	Individuals	Employers
	CA cases						
Pending July 1, 1972	6,905	3,659	717	318	261	1,946	4
Received fiscal 1973	17,361	7,275	2,083	546	461	6,954	42
On docket fiscal 1973	24,266	10,934	2,800	864	722	8,900	46
Closed fiscal 1973	17,985	7,668	2,087	623	560	7,021	26
Pending June 30, 1973	6,281	3,266	713	241	162	1,879	20
	CB cases						
Pending July 1, 1972	1,703	34	11	4	23	1,239	392
Received fiscal 1973	6,052	60	9	9	26	4,820	1,128
On docket fiscal 1973	7,755	94	20	13	49	6,059	1,520
Closed fiscal 1973	5,975	68	13	8	42	4,793	1,051
Pending June 30, 1973	1,780	26	7	5	7	1,266	469
	CC cases						
Pending July 1, 1972	504	2	1	9	7	9	476
Received fiscal 1973	1,868	13	0	28	19	75	1,733
On docket fiscal 1973	2,372	15	1	37	26	84	2,209
Closed fiscal 1973	1,780	13	1	35	19	72	1,640
Pending June 30, 1973	592	2	0	2	7	12	569
	CD cases						
Pending July 1, 1972	227	9	1	0	6	3	208
Received fiscal 1973	627	23	3	2	5	21	573
On docket fiscal 1973	854	32	4	2	11	24	781
Closed fiscal 1973	665	27	4	2	9	18	605
Pending June 30, 1973	189	5	0	0	2	6	176
	CE cases						
Pending July 1, 1972	65	0	0	0	7	0	58
Received fiscal 1973	104	3	0	0	19	16	66
On docket fiscal 1973	169	3	0	0	26	16	124
Closed fiscal 1973	84	2	0	0	9	4	69
Pending June 30, 1973	85	1	0	0	17	12	55
	CP cases						
Pending July 1, 1972	99	2	0	0	6	5	86
Received fiscal 1973	475	0	1	6	10	22	436
On docket fiscal 1973	574	2	1	6	16	27	522
Closed fiscal 1973	500	2	0	6	16	26	450
Pending June 30, 1973	74	0	1	0	0	1	72

[1] See Glossary for definitions of terms

Table 1B.—Representation Cases Received, Closed, and Pending, Fiscal Year 1973 [1]

	Total	Identification of Filing Party					
		AFL–CIO unions	Teamsters	Other national unions	Other local unions	Individuals	Employers
	RC cases						
Pending July 1, 1972	2,829	1,683	770	184	188	4	-------
Received fiscal 1973	11,897	6,800	3,888	567	603	39	-------
On docket fiscal 1973	14,726	8,483	4,658	751	791	43	-------
Closed fiscal 1973	11,970	6,724	3,941	627	636	42	-------
Pending June 30, 1973	2,756	1,759	717	124	155	1	-------
	RM cases						
Pending July 1, 1972	171	-------	-------	-------	-------	-------	171
Received fiscal 1973	991	-------	-------	-------	-------	-------	991
On docket fiscal 1973	1,162	-------	-------	-------	-------	-------	1,162
Closed fiscal 1973	971	-------	-------	-------	-------	-------	971
Pending June 30, 1973	191	-------	-------	-------	-------	-------	191
	RD cases						
Pending July 1, 1972	200	1	2	0	0	197	-------
Received fiscal 1973	1,144	8	1	1	3	1,131	-------
On docket fiscal 1973	1,344	9	3	1	3	1,328	-------
Closed fiscal 1973	1,118	9	3	1	3	1,102	-------
Pending June 30, 1973	226	0	0	0	0	226	-------

[1] See Glossary for definitions of terms.

Table 2.—Types of Unfair Labor Practices Alleged, Fiscal Year 1973

	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	17,361	100.0
8(a)(1)	2,150	12.4
8(a)(1)(2)	285	1.6
8(a)(1)(3)	8,808	50 7
8(a)(1)(4)	97	0.6
8(a)(1)(5)	3,745	21.6
8(a)(1)(2)(3)	205	1.2
8(a)(1)(2)(4)	1	0.0
8(a)(1)(2)(5)	98	0 6
8(a)(1)(3)(4)	295	1.7
8(a)(1)(3)(5)	1,503	8.7
8(a)(1)(4)(5)	6	0.0
8(a)(1)(2)(3)(4)	14	0.1
8(a)(1)(2)(3)(5)	102	0 6
8(a)(1)(3)(4)(5)	41	0 2
8(a)(1)(2)(3)(4)(5)	11	0.0
Recapitulation [1]		
8(a)(1)[2]	17,361	100 0
8(a)(2)	716	4.1
8(a)(3)	10,979	63.2
8(a)(4)	465	2.7
8(a)(5)	5,506	31.7
B. Charges filed against unions under Sec. 8(b)		
Subsections of Sec 8(b): Total cases	9,022	100.0
8(b)(1)	3,873	42.9
8(b)(2)	208	2.3
8(b)(3)	394	4.4
8(b)(4)	2,495	27 7
8(b)(5)	5	0 1
8(b)(6)	9	0 1
8(b)(7)	475	5 3
8(b)(1)(2)	1,301	14 4
8(b)(1)(3)	174	1 9
8(b)(1)(5)	7	0 1
8(b)(2)(3)	11	0 1
8(b)(2)(5)	2	0.0
8(b)(3)(6)	1	0 0
8(b)(1)(2)(3)	58	0 6
8(b)(1)(2)(5)	5	0.1
8(b)(1)(2)(6)	1	0 0
8(b)(1)(3)(5)	1	0.0
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)	5,422	60.1
8(b)(2)	1,587	17 6
8(b)(3)	641	7 1
8(b)(4)	2,495	27.7
8(b)(5)	20	0 2
8(b)(6)	13	0.1
8(b)(7)	475	5.3
B1. Analysis of 8(b)(4)		
Total cases 8(b)(4)	2,495	100.0
8(b)(4)(A)	141	5.7
8(b)(4)(B)	1,640	65.7
8(b)(4)(C)	26	1.0
8(b)(4)(D)	627	25.1
8(b)(4)(A)(B)	49	2 0
8(b)(4)(B)(C)	12	0.5
Recapitulation [1]		
8(b)(4)(A)	190	7 6
8(b)(4)(B)	1,701	68.2
8(b)(4)(C)	38	1 5
8(b)(4)(D)	627	25.1
B2. Analysis of 8(b)(7)		
Total cases 8(b)(7)	475	100 0
8(b)(7)(A)	127	26.7
8(b)(7)(B)	31	6 5
8(b)(7)(C)	304	64.1
8(b)(7)(A)(B)	4	0.8
8(b)(7)(A)(C)	1	0.2
8(b)(7)(B)(C)	8	1 7
Recapitulation [1]		
8(b)(7)(A)	132	27 8
8(b)(7)(B)	43	9.1
8(b)(7)(C)	313	65 9
C Charges filed under Sec. 8(e)		
Total cases 8(e)	104	100.0
Against unions alone	76	73.1
Against employers alone	1	0 9
Against unions and employers	27	26.0

[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] Sec. 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 1973 [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 disputes	Unfair labor practices					
10(k) notices of hearings issued	170	141				141						
Complaints issued	3,709	2,729	2,026	284	147		11	3	38	96	88	36
Backpay specifications issued	127	72	59	0	0		0	0	0	3	10	0
Hearings completed, total	1,762	1,272	874	119	44	73	7	1	15	49	73	17
Initial ULP hearings	1,645	1,205	822	111	44	73	6	1	15	47	71	15
Backpay hearings	78	38	28	7	0		0	0	0	1	2	0
Other hearings	39	29	24	1	0		1	0	0	1	0	2
Decisions by administrative law judges, total	1,543	1,127	810	112	44		5	1	17	43	78	17
Initial ULP decisions	1,420	1,058	752	108	44		4	1	17	41	75	16
Backpay decisions	81	40	32	4	0		0	0	0	1	3	0
Supplemental decisions	42	29	26	0	0		1	0	0	1	0	1
Decisions and orders by the Board, total	1,972	1,432	984	142	66	93	4	4	20	44	53	22
Upon consent of parties:												
Initial decisions	246	130	63	27	23		0	1	2	4	3	7
Supplemental decisions	0	0	0	0	0		0	0	0	0	0	0
Adopting administrative law judge's decisions (no exceptions filed)												
Initial ULP decisions	381	300	224	30	18		1	1	4	7	13	2
Backpay decisions	9	6	4	2	0		0	0	0	0	0	0
Contested:												
Initial ULP decisions	1,258	930	643	79	23	93	2	2	12	32	32	12
Decisions based upon stipulated record	17	12	5	3	1		0	0	2	0	1	0
Supplemental ULP decisions	25	22	17	1	1		1	0	0	1	0	1
Backpay decisions	36	32	28	0	0		0	0	0	0	4	0

[1] See Glossary for definitions of terms

Table 3B.—Formal Actions Taken in Representation and Union Deauthorization Cases, Fiscal Year 1973 [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	2,790	2,530	2,295	73	162	15
Initial hearings	2,524	2,267	2,041	70	156	5
Hearings on objections and/or challenges	266	263	254	3	6	10
Decisions issued, total	2,458	2,282	2,059	75	148	5
By regional directors	2,318	2,160	1,946	69	145	5
Elections directed	2,007	1,872	1,690	61	121	4
Dismissals on record	311	288	256	8	24	1
By Board	140	122	113	6	3	0
After transfer by regional directors for initial decision	106	88	79	6	3	0
Elections directed	67	54	40	2	2	0
Dismissals on record	39	34	29	4	1	0
After review of regional directors' decisions	34	34	34	0	0	0
Elections directed	26	26	26	0	0	0
Dismissals on record	8	8	8	0	0	0
Decisions on objections and/or challenges, total	1,253	1,232	1,136	52	44	11
By regional directors	364	357	328	12	17	9
By Board	889	875	808	40	27	2
In stipulated elections	851	838	777	37	24	2
No exceptions to regional directors' reports	551	539	500	22	17	2
Exceptions to regional directors' reports	300	299	277	15	7	0
In directed elections (after transfer by regional directors)	16	16	14	1	1	0
In directed elections after review of regional directors' supplemental decisions	22	21	17	2	2	0

[1] See Glossary for definitions of terms.

Table 3C.—Formal Actions Taken in Amendment of Certification and Unit Clarification Cases, Fiscal Year 1973 [1]

Types of formal actions taken	Cases in which formal actions taken	Formal actions taken by type of case	
		AC	UC
Hearings completed	88	9	65
Decisions issued after hearing	111	15	83
By regional directors	96	13	76
By Board	15	2	7
After transfer by regional directors for initial decision	10	2	2
After review of regional directors' decisions	5	0	5

[1] See Glossary for definitions of terms.

Table 4.—Remedial Actions Taken in Unfair Labor Practice Cases Closed, Fiscal Year 1973 [1]

Action taken	Total all	Remedial action taken by—											
		Employer						Union					
		Pursuant to—						Pursuant to—					
		Total	Agreement of parties		Recommendation of administrative law judge	Order of—		Total	Agreement of parties		Recommendation of administrative law judge	Order of—	
			Informal settlement	Formal settlement		Board	Court		Informal settlement	Formal settlement		Board	Court
A. By number of cases involved	[2] 7,851	----	----	----	----	----	----	----	----	----	----	----	----
Notice posted	3,641	2,627	1,704	103	4	482	334	1,014	683	81	1	133	116
Recognition or other assistance withdrawn	61	61	34	10	1	11	5	----	----	----	----	----	----
Employer-dominated union disestablished	24	24	12	2	0	3	7	----	----	----			
Employees offered reinstatement	1,162	1,162	731	33	0	234	164	----	----	----	----	----	----
Employees placed on preferential hiring list	76	76	48	3	1	7	17	----	----	----	----	----	----
Hiring hall rights restored	19	----	----	----	----	----	----	19	14	0	0	1	4
Objections to employment withdrawn	54	----	----	----	----	----	----	54	29	2	0	11	12
Picketing ended	623	----	----	----	----	----	----	623	575	13	1	25	9
Work stoppage ended	225	----	----	----	----	----	----	225	206	6	0	11	2
Collective bargaining begun	1,773	1,595	1,269	45	1	133	147	178	129	3	0	7	39
Backpay distributed	1,732	1,600	1,168	51	2	241	138	132	78	6	0	16	32
Reimbursement of fees, dues, and fines	100	51	37	3	0	5	6	49	39	1	0	4	5
Other conditions of employment improved	1,542	946	939	3	0	2	2	596	582	5	0	7	2
Other remedies	0	0	0	0	0	0	0	0	0	0	0	0	0

B. By number of employees affected: Employees offered reinstatement, total	5,407	5,407	3,414	52	0	728	1,213	----	----	----	----	----	----
Accepted	3,879	3,879	2,586	39	0	452	802	----	----	----	----	----	----
Declined	1,528	1,528	828	13	0	276	411	----	----	----	----	----	----
Employees placed on preferential hiring list	250	250	150	30	3	29	38	----	----	----	----	----	----
Hiring hall rights restored	47	----	----	----	----	----	----	47	42	0	0	1	4
Objections to employment withdrawn	129	----	----	----	----	----	----	129	66	5	0	43	15
Employees receiving backpay:													
From either employer or union	6,741	6,215	3,776	303	4	1,027	1,105	526	155	15	0	27	329
From both employer and union	17	1	1	0	0	0	0	16	6	1	0	7	2
Employees reimbursed for fees, dues, and fines:													
From either employer or union	2,249	1,235	590	91	0	181	373	1,014	893	6	0	13	102
From both employer and union	576	340	236	0	0	0	104	236	236	0	0	0	0
C. By amounts of monetary recovery, total	$5,989,010	$5,714,390	$3,400,070	$275,520	$6,770	$426,530	$1,605,500	$274,620	$130,880	$43,730	0	$31,820	$68,190
Backpay (includes all monetary payments except fees, dues, and fines)	5,876,670	5,642,190	3,367,910	272,380	6,770	417,740	1,577,390	234,480	99,940	42,760	0	30,350	61,430
Reimbursement of fees, dues, and fines	112,340	72,200	32,160	3,140	0	8,790	28,110	40,140	30,940	970	0	1,470	6,760

[1] See Glossary for definitions of terms. Data in this table are based on unfair labor practice cases that were closed during fiscal year 1973 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 1973 [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
Food and kindred products	2,009	1,227	848	333	28	8	0	10	764	656	43	65	5	2	11
Tobacco manufacturers	23	17	12	5	0	0	0	0	6	5	1	0	0	0	0
Textile mill products	519	374	300	60	4	0	0	10	140	116	19	5	3	0	2
Apparel and other finished products made from fabric and similar materials	567	405	290	101	5	1	2	6	159	136	10	13	3	0	0
Lumber and wood products (except furniture)	737	395	311	63	12	5	2	2	335	300	16	19	5	0	2
Furniture and fixtures	549	340	253	76	4	1	0	6	202	180	12	10	4	0	3
Paper and allied products	605	359	243	103	9	1	0	3	237	213	10	14	4	2	3
Printing, publishing, and allied products	1,250	738	536	159	12	16	9	6	489	381	38	70	4	3	16
Chemicals and allied products	782	436	327	86	20	1	0	2	324	271	23	30	7	4	11
Petroleum refining and related industries	281	165	121	30	10	2	0	2	106	78	9	19	1	5	4
Rubber and miscellaneous plastic products	829	451	349	83	14	0	2	3	360	318	12	30	11	1	6
Leather and leather products	173	118	84	31	3	0	0	0	55	51	2	2	0	0	0
Stone, clay, glass, and concrete products	875	538	347	133	33	14	0	11	317	271	19	27	7	7	6
Primary metal industries	1,049	709	475	213	11	7	0	3	328	294	13	21	4	3	5
Fabricated metal products (except machinery and transportation equipment)	1,855	1,246	883	309	30	11	4	9	591	515	31	45	6	4	8
Machinery (except electrical)	1,673	1,003	754	202	38	5	0	4	647	577	20	50	4	8	11
Electrical and electronic machinery, equipment, and supplies	1,161	783	565	203	5	8	0	2	363	337	9	17	7	2	6
Aircraft and parts	313	235	140	93	1	0	0	1	71	61	4	6	0	3	4
Ship and boat building and repairing	129	101	70	31	0	0	0	0	26	23	0	3	0	0	2
Automotive and other transportation equipment	1,349	948	652	270	17	3	1	5	384	333	20	31	5	5	7
Professional, scientific, and controlling instruments	306	187	129	52	3	1	0	2	115	93	5	17	2	0	2
Miscellaneous manufacturing industries	996	638	404	216	9	3	1	5	342	300	15	27	9	0	7
Manufacturing	18,030	11,413	8,093	2,852	268	87	21	92	6,361	5,509	331	521	91	49	116
Metal mining	95	69	48	21	0	0	0	0	24	23	0	1	0	1	1
Coal mining	139	117	75	25	16	0	0	1	22	20	1	1	0	0	0
Oil and gas extraction	56	36	24	8	4	0	0	0	20	15	2	3	0	0	0
Mining and quarry of nonmetallic minerals (except fuels)	117	67	43	16	6	0	0	2	50	39	7	4	0	0	0
Mining	407	289	190	70	26	0	0	3	116	97	10	9	0	1	1

Construction	4,534	3,954	1,296	976	1,059	410	17	196	556	450	86	20	3	3	18
Wholesale trade	2,500	1,252	904	222	86	9	9	22	1,212	993	115	104	23	2	11
Retail trade	4,632	2,555	1,981	353	120	11	9	81	2,006	1,580	215	211	36	4	31
Finance, insurance, and real estate	454	210	161	29	14	2	1	3	235	213	7	15	6	0	3
U.S. Postal Service	836	760	685	75	0	0	0	0	76	73	2	1	0	0	0
Local and suburban transit and interurban highway passenger transportation	388	288	197	78	10	1	2	0	92	78	4	10	6	0	2
Motor freight transportation and warehousing	2,716	1,810	1,189	450	92	34	11	34	884	764	57	63	7	5	10
Water transportation	316	266	99	123	19	19	4	2	47	40	2	5	2	1	0
Other transportation	141	81	65	13	2	1	0	0	56	48	7	1	3	0	1
Communication	937	608	367	205	26	8	1	1	313	255	27	31	3	0	13
Electric, gas, and sanitary services	506	271	185	54	16	13	1	2	213	183	11	19	2	5	15
Transportation, communication, and other utilities	5,004	3,324	2,102	923	165	76	19	39	1,605	1,368	108	129	23	11	41
Hotels, rooming houses, camps, and other lodging places	554	375	274	79	8	5	4	5	174	138	19	17	4	0	1
Personal services	315	185	127	44	8	2	0	4	124	105	9	10	1	0	5
Automotive repair, services, and garages	376	155	128	22	4	0	0	1	215	188	14	13	4	1	1
Amusement and recreation services (except motion pictures)	456	346	168	99	40	10	20	9	106	93	7	6	1	1	2
Health services	944	511	408	83	10	3	0	7	414	358	25	31	15	1	3
Educational services	240	106	87	16	3	0	0	0	129	118	8	3	0	0	5
Membership organizations	183	135	86	48	0	0	1	0	43	38	3	2	0	0	5
Business services	1,275	728	536	125	48	7	3	9	520	455	27	38	5	3	19
Miscellaneous repair services	142	80	66	11	1	1	0	1	59	51	1	7	1	0	2
Legal services	8	3	3	0	0	0	0	0	5	5	0	0	0	0	0
Museums, art galleries, and botanical and zoological gardens	6	4	2	1	1	0	0	0	2	2	0	0	0	0	0
Miscellaneous services	181	102	64	24	7	4	0	3	74	63	4	7	0	2	3
Services	4,680	2,730	1,949	552	130	32	28	39	1,865	1,614	117	134	3	8	46
Total, all industrial groups	41,077	26,487	17,361	6,052	1,868	627	104	475	14,032	11,897	991	1,144	213	78	267

[1] See Glossary for definitions of terms
[2] Source: Standard Industrial Classification, Statistical Policy Division, Office of Management and Budget, Washington, 1972

Table 6A.—Geographic Distribution of Cases Received, Fiscal Year 1973 [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	116	68	47	16	2	3	0	0	47	41	1	5	0	0	1
New Hampshire	96	48	36	7	2	3	0	0	48	41	5	2	0	0	0
Vermont	26	17	6	4	7	0	0	0	8	7	0	1	0	1	0
Massachusetts	1,165	786	472	187	84	33	0	10	357	326	16	15	5	1	16
Rhode Island	149	103	47	30	17	4	0	5	45	38	6	1	0	0	1
Connecticut	432	255	169	60	16	6	2	2	168	147	6	15	1	1	7
New England	1,984	1,277	777	304	128	49	2	17	673	600	34	39	6	3	25
New York	3,533	2,497	1,312	841	170	76	27	71	992	839	90	63	19	4	21
New Jersey	1,638	989	601	272	69	23	2	22	619	550	28	41	22	2	6
Pennsylvania	2,309	1,468	906	358	106	63	1	34	808	697	44	67	6	5	22
Middle Atlantic	7,480	4,954	2,819	1,471	345	162	30	127	2,419	2,086	162	171	47	11	49
Ohio	2,644	1,768	1,135	418	142	46	3	24	839	746	40	53	19	3	15
Indiana	1,555	1,118	746	305	42	11	4	10	423	366	22	35	6	2	6
Illinois	2,673	1,959	1,180	604	98	47	3	27	680	536	52	92	23	6	5
Michigan	1,987	1,219	845	234	108	9	2	21	735	610	49	76	10	3	20
Wisconsin	875	493	393	81	14	5	0	0	372	304	28	40	2	1	7
East North Central	9,734	6,557	4,299	1,642	404	118	12	82	3,049	2,562	191	296	60	15	53
Iowa	390	185	134	24	18	8	0	1	203	176	9	18	0	0	2
Minnesota	496	218	142	34	25	7	1	9	269	230	28	11	8	0	1
Missouri	1,478	1,030	714	196	75	25	0	20	425	360	28	37	8	3	12
North Dakota	74	33	29	2	1	1	0	0	41	34	4	3	0	0	0
South Dakota	108	47	39	5	1	0	0	2	58	44	9	5	1	0	2
Nebraska	187	106	79	22	3	1	0	1	79	71	1	7	0	0	2
Kansas	269	185	134	42	8	1	0	0	82	69	4	9	1	0	1
West North Central	3,002	1,804	1,271	325	131	43	1	33	1,157	984	83	90	18	3	20
Delaware	88	49	28	8	6	4	0	3	38	30	6	2	1	0	0
Maryland	622	371	247	68	34	11	6	5	245	224	8	13	1	0	5
District of Columbia	209	109	82	11	12	3	1	0	94	84	6	4	4	0	2
Virginia	390	245	179	34	24	1	6	1	145	128	7	10	0	0	0
West Virginia	381	259	172	66	12	7	0	2	116	102	4	10	0	2	4

North Carolina	485	335	296	34	3	1	1	0	145	125	8	12	0	2	3
South Carolina	198	119	103	16	0	0	0	0	79	72	5	2	0	0	0
Georgia	630	386	313	52	19	1	0	1	244	214	21	9	0	0	0
Florida	924	616	440	111	33	23	1	8	304	260	19	25	0	0	4
South Atlantic	3,927	2,489	1,860	400	143	51	15	20	1,410	1,239	84	87	6	4	18
Kentucky	628	419	325	64	12	7	2	9	202	181	6	15	2	1	4
Tennessee	813	550	414	108	17	7	1	3	259	221	16	22	0	1	3
Alabama	579	374	264	62	32	7	1	8	200	181	10	9	0	0	5
Mississippi	199	112	90	11	9	0	0	2	86	84	0	2	0	0	1
East South Central	2,219	1,455	1,093	245	70	21	4	22	747	667	32	48	2	2	13
Arkansas	250	139	114	20	4	1	0	0	109	95	2	12	0	0	2
Louisiana	495	313	205	80	23	3	0	2	177	144	9	24	2	2	1
Oklahoma	297	161	125	7	22	2	1	4	133	107	10	16	0	1	2
Texas	1,636	1,169	780	247	93	33	3	13	448	378	19	51	0	10	9
West South Central	2,678	1,782	1,224	354	142	39	4	19	867	724	40	103	2	13	14
Montana	176	107	61	27	14	2	1	2	68	45	17	6	1	0	0
Idaho	143	80	56	14	7	0	1	2	61	45	13	3	1	1	0
Wyoming	55	30	16	6	5	1	0	2	24	22	0	2	0	1	0
Colorado	526	347	243	58	26	13	0	7	177	149	8	20	0	1	1
New Mexico	209	153	101	27	16	3	1	5	54	46	4	4	1	0	1
Arizona	356	226	138	56	22	5	0	5	127	114	6	7	0	0	3
Utah	119	60	34	9	13	4	0	0	59	53	4	2	0	0	0
Nevada	262	192	117	57	10	3	0	5	69	51	5	13	1	0	0
Mountain	1,846	1,195	766	254	113	31	3	28	639	525	57	57	4	3	5
Washington	1,129	657	430	132	61	13	1	20	452	357	56	39	6	4	10
Oregon	529	259	150	27	53	21	3	5	258	176	43	39	8	0	4
California	5,387	3,463	2,237	792	238	75	29	92	1,832	1,480	195	157	38	7	47
Alaska	160	105	58	28	10	4	0	5	53	41	5	7	0	0	2
Hawaii	361	246	195	33	17	0	0	1	99	91	3	5	2	11	3
Guam	5	0	0	0	0	0	0	0	5	4	0	1	0	0	0
Pacific	7,571	4,730	3,070	1,012	379	113	33	123	2,699	2,149	302	248	54	22	66
Puerto Rico	616	233	173	43	13	0	0	4	363	352	6	5	14	2	4
Virgin Islands	20	11	9	2	0	0	0	0	9	9	0	0	0	0	0
Outlying Areas	636	244	182	45	13	0	0	4	372	361	6	5	14	2	4
Total, all states and areas	41,077	26,487	17,361	6,052	1,868	627	104	475	14,032	11,897	991	1,144	213	78	267

[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 6B.—Standard Federal Administrative Regional Distribution of Cases Received, Fiscal Year 1973 [1]

Standard Federal regions [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
Connecticut	432	255	169	60	16	6	2	2	168	147	6	15	1	1	7
Maine	116	68	47	16	2	3	0	0	47	41	1	5	0	0	1
Massachusetts	1,165	786	472	187	84	33	0	10	357	326	16	15	5	1	16
New Hampshire	96	48	36	7	2	3	0	0	48	41	5	2	0	0	0
Rhode Island	149	103	47	30	17	4	0	5	45	38	6	1	0	0	1
Vermont	26	17	6	4	7	0	0	0	8	7	0	1	0	1	0
Region I	1,984	1,277	777	304	128	49	2	17	673	600	34	39	6	3	25
Delaware	88	49	28	8	6	4	0	3	38	30	6	2	1	0	0
New Jersey	1,638	989	601	272	69	23	2	22	619	550	28	41	22	2	6
New York	3,533	2,497	1,312	841	170	76	27	71	992	839	90	63	19	4	21
Puerto Rico	616	233	173	43	13	0	0	4	363	352	6	5	14	2	4
Virgin Islands	20	11	9	2	0	0	0	0	9	9	0	0	0	0	0
Region II	5,895	3,779	2,123	1,166	258	103	29	100	2,021	1,780	130	111	56	8	31
District of Columbia	209	109	82	11	12	3	1	0	94	84	6	4	4	0	2
Maryland	622	371	247	68	34	11	6	5	245	224	8	13	1	0	5
Pennsylvania	2,309	1,468	906	358	106	63	1	34	808	697	44	67	6	5	22
Virginia	390	245	179	34	24	1	6	1	145	128	7	10	0	0	0
West Virginia	381	259	172	66	12	7	0	2	116	102	4	10	0	2	4
Region III	3,911	2,452	1,586	537	188	85	14	42	1,408	1,235	69	104	11	7	33
Alabama	579	374	264	62	32	7	1	8	200	181	10	9	0	0	5
Florida	924	616	440	111	33	23	1	8	304	260	19	25	0	0	4
Georgia	630	386	313	52	19	1	0	1	244	214	21	9	0	0	0
Kentucky	628	419	325	64	12	7	2	9	202	181	6	15	2	1	4
Mississippi	199	112	90	11	9	0	0	2	86	84	0	2	0	0	1
North Carolina	485	335	296	34	3	1	1	0	145	125	8	12	0	2	3
South Carolina	198	119	103	16	0	0	0	0	79	72	5	2	0	0	0
Tennessee	813	550	414	108	17	7	1	3	259	221	16	22	0	1	3
Region IV	4,456	2,911	2,245	458	125	46	6	31	1,519	1,338	85	96	2	4	20

Illinois	2,673	1,959	1,180	604	98	47	3	27	680	536	52	92	23	6	5
Indiana	1,555	1,118	746	305	42	11	4	10	423	366	22	35	6	2	6
Michigan	1,987	1,219	845	234	108	9	2	21	735	610	49	76	10	3	20
Minnesota	496	218	142	34	25	7	1	9	269	230	28	11	8	0	1
Ohio	2,644	1,768	1,135	418	142	46	3	24	839	746	40	53	19	3	15
Wisconsin	875	493	393	81	14	5	0	0	372	304	28	40	2	1	7
Region V	10,230	6,775	4,441	1,676	429	125	13	91	3,318	2,792	219	307	68	15	54
Arkansas	250	139	114	20	4	1	0	0	109	95	2	12	0	0	2
Louisiana	495	313	205	80	23	3	0	2	177	144	9	24	2	2	1
New Mexico	209	153	101	27	16	3	1	5	54	46	4	4	1	0	1
Oklahoma	297	161	125	7	22	2	1	4	133	107	10	16	0	1	2
Texas	1,636	1,169	780	247	93	33	3	13	448	378	19	51	0	10	9
Region VI	2,887	1,935	1,325	381	158	42	5	24	921	770	44	107	3	13	15
Iowa	390	185	134	24	18	8	0	1	203	176	9	18	0	0	2
Kansas	269	185	134	42	8	1	0	0	82	69	4	9	1	0	1
Missouri	1,478	1,030	714	196	75	25	0	20	425	360	28	37	8	3	12
Nebraska	187	106	79	22	3	1	0	1	79	71	1	7	0	0	2
Region VII	2,324	1,506	1,061	284	104	35	0	22	789	676	42	71	9	3	17
Colorado	526	347	243	58	26	13	0	7	177	149	8	20	0	1	1
Montana	176	107	61	27	14	2	1	2	68	45	17	6	1	0	0
North Dakota	74	33	29	2	1	1	0	0	41	34	4	3	0	0	0
South Dakota	108	47	39	5	1	0	0	2	58	44	9	5	1	0	2
Utah	119	60	34	9	13	4	0	0	59	53	4	2	0	0	0
Wyoming	55	30	16	6	5	1	0	2	24	22	0	2	0	1	0
Region VIII	1,058	624	422	107	60	21	1	13	427	347	42	38	2	2	3
Arizona	356	226	138	56	22	5	0	5	127	114	6	7	0	0	3
California	5,387	3,463	2,237	792	238	75	29	92	1,832	1,480	195	157	38	7	47
Hawaii	361	246	195	33	17	0	0	1	99	91	3	5	2	11	3
Guam	5	0	0	0	0	0	0	0	5	4	0	1	0	0	0
Nevada	262	192	117	57	10	3	0	5	69	51	5	13	1	0	0
Region IX	6,371	4,127	2,687	938	287	83	29	103	2,132	1,740	209	183	41	18	53
Alaska	160	105	58	28	10	4	0	5	53	41	5	7	0	0	2
Idaho	143	80	56	14	7	0	1	2	61	45	13	3	1	1	0
Oregon	529	259	150	27	53	21	3	5	258	176	43	39	8	0	4
Washington	1,129	657	430	132	61	13	1	20	452	357	56	39	6	4	10
Region X	1,961	1,101	694	201	131	38	5	32	824	619	117	88	15	5	16
Total, all Federal regions	41,077	26,487	17,361	6,052	1,868	627	104	475	14,032	11,897	991	1,144	213	78	267

[1] See Glossary for definitions of terms
[2] The States are grouped according to the 10 Standard Federal Administrative regions

Table 7.—Analysis of Methods of Disposition of Unfair Labor Practice Cases Closed, Fiscal Year 1973 [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	26,989	100.0	-------	17,985	100.0	5,975	100 0	1,780	100.0	665	100.0	84	100.0	500	100.0
Agreement of the parties	6,416	23.8	100.0	4,488	25 0	960	16.1	781	43 9	1	0 2	27	32.1	159	31 8
Informal settlement	6,209	23.0	96.8	4,372	24.4	914	15 3	747	42 0	1	0 2	20	23 8	155	31 0
Before issuance of complaint	4,651	17 2	72 5	3,141	17 6	727	12.2	630	35 5	([2])	------	17	20 2	136	27 2
After issuance of complaint, before opening of hearing	1,434	5 3	22.4	1,123	6.2	175	2 9	113	6 3	1	0 2	3	3 6	19	3 8
After hearing opened before issuance of administrative law judge's decision	124	0 5	1 9	108	0 6	12	0 2	4	0 2	0	------	0	------	0	------
Formal settlement	207	0.8	3 2	116	0.6	46	0.8	34	1 9	0	------	7	8 3	4	0 8
After issuance of complaint, before opening of hearing	144	0.6	2.2	73	0.4	35	0.6	25	1.4	0	------	7	8.3	4	0 8
Stipulated decision	15	0.1	0.2	9	0.1	3	0.1	3	0.2	0	------	0	------	0	------
Consent decree	129	0.5	2 0	64	0.3	32	0.5	22	1 2	0	------	7	8 3	4	0 8
After hearing opened	63	0 2	1 0	43	0 2	11	0 2	9	0.5	0	------	0	------	0	------
Stipulated decision	1	0.0	0 0	1	0.0	0	------	0	------	0	------	0	------	0	------
Consent decree	62	0 2	1 0	42	0 2	11	0 2	9	0.5	0	------	0	------	0	------
Compliance with	1,150	4.3	100 0	908	5 0	154	2.5	53	3.0	13	2 0	3	3 6	19	3 8
Administrative law judge's decision	6	0 0	0 5	5	0.0	0	------	0	------	0	------	0	------	1	0 2
Board decision	698	2.6	60 7	537	3.0	96	1.6	37	2 1	10	1 5	3	3 6	15	3 0

Adopting administrative law judge's decision (no exceptions filed)	160	0 6	13.9	120	0 7	27	0.4	9	0.5	0	------	1	1 2	3	0.6
Contested	538	2.0	46 8	417	2 3	69	1 2	28	1.6	10	1.5	2	2.4	12	2.4
Circuit court of appeals decree	391	1 5	34 0	322	1 8	50	0.8	15	0 8	1	0 2	0	------	3	0.6
Supreme Court action	55	0 2	4.8	44	0 2	8	0.1	1	0.1	2	0.3	0	------	0	------
Withdrawal	9,421	34 9	100.0	6,204	34.5	2,311	38.7	666	37.4	7	1 1	26	31 0	207	41.4
Before issuance of complaint	9,186	34 0	97.5	6,030	33 6	2,280	38 2	648	36.4	(2)	------	26	31 0	202	40 4
After issuance of complaint, before opening of hearing	203	0 8	2 2	151	0.8	27	0 4	15	0 8	6	0 9	0	------	4	0 8
After hearing opened, before administrative law judge's decision	20	0 1	0 2	14	0.1	3	0 1	2	0 1	0	------	0	------	1	0.2
After administrative law judge's decision, before Board decision	7	0.0	0.1	6	0.0	0	------	1	0 1	0	------	0	------	0	------
After Board or court decision	5	0 0	0.0	3	0 0	1	0.0	0	------	1	0.2	0	------	0	------
Dismissal	9,347	34 6	100 0	6,372	35 4	2,549	42 7	280	15 7	3	0.4	28	33 3	115	23 0
Before issuance of complaint	8,888	32 9	95 2	6,036	33.6	2,460	41 2	262	14.7	(2)	------	22	26.1	108	21 6
After issuance of complaint, before opening of hearing	14	0 1	0.1	7	0.0	6	0 1	1	0 1	0	------	0	------	0	------
After hearing opened, before administrative law judge's decision	4	0 0	0 0	3	0 0	1	0 0	0	------	0	------	0	------	0	------
By administrative law judge's decision	3	0 0	0.0	1	0.0	2	0 0	0	------	0	------	0	------	0	------
By Board decision	389	1 4	4.2	285	1 6	77	1.3	14	0.7	3	0.4	3	3 6	7	1 4
Adopting administrative law judge's decision (no exceptions filed)	77	0 3	0 8	58	0.3	18	0.3	1	0 1	0	------	0	------	0	------
Contested	312	1 1	3 4	227	1.3	59	1.0	13	0 6	3	0.4	3	3 6	7	1.4
By circuit court of appeals decree	46	0 2	0 5	38	0 2	3	0 1	2	0.1	0	------	3	3 6	0	------
By Supreme Court action	3	0 0	0 0	2	0 0	0	------	1	0 1	0	------	0	------	0	------
10(k) actions (see table 7A for details of dispositions)	641	2 3	------	------	------	------	------	------	------	641	96.3	--	------	---	------
Otherwise (compliance with order of administrative law judge or Board not achieved—firms went out of business)	14	0 1	------	13	0 1	1	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.

Table 7A.—Analysis of Methods of Disposition of Jurisdictional Dispute Cases Closed Prior to Unfair Labor Practice Proceedings, Fiscal Year 1973 [1]

Method and stage of disposition	Number of cases	Percent of total closed
Total number of cases closed before issuance of complaint	641	100.0
Agreement of the parties—informal settlement:	243	37.9
Before 10(k) notice	214	33.4
After 10(k) notice, before opening of 10(k) hearing	25	3.9
After opening of 10(k) hearing, before issuance of Board decision and determination of dispute	4	0.6
Compliance with Board decision and determination of dispute	42	6.6
Withdrawal:	256	39.9
Before 10(k) notice	217	33.8
After 10(k) notice, before opening of 10(k) hearing	21	3 3
After opening of 10(k) hearing, before issuance of Board decision and determination of dispute	0	----
After Board decision and determination of dispute	18	2 8
Dismissal:	100	15.6
Before 10(k) notice	74	11 5
After 10(k) notice, before opening of 10(k) hearing	0	----
After opening of 10(k) hearing, before issuance of Board decision and determination of dispute	0	----
By Board decision and determination of dispute	26	4 1

[1] See Glossary for definitions of terms.

Table 8.—Disposition by Stage of Unfair Labor Practice Cases Closed, Fiscal Year 1973 [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	26,989	100.0	17,985	100.0	5,975	100 0	1,780	100.0	665	100.0	84	100.0	500	100.0
Before issuance of complaint	23,366	86.6	15,207	84.6	5,467	91.5	1,540	86.5	641	96.3	65	77.4	446	89.2
After issuance of complaint, before opening of hearing	1,795	6.6	1,354	7.5	243	4.1	154	8 7	7	1 1	10	11 9	27	5.4
After hearing opened, before issuance of administrative law judge's decision	211	0 8	168	0 9	27	0.4	15	0.8	0	----	0	----	1	0 2
After administrative law judge's decision, before issuance of Board decision	16	0.1	12	0.1	2	0 0	1	0.1	0	----	0	----	1	0.2
After Board order adopting administrative law judge's decision in absence of exceptions	238	0.9	179	1.0	45	0.8	10	0.5	0	----	1	1 2	3	0 6
After Board decision, before circuit court decree	863	3 2	654	3 6	130	2 2	41	2.3	14	2.1	5	5.9	19	3.8
After circuit court decree, before Supreme Court action	441	1 6	364	2.0	53	0 9	17	1.0	1	0 2	3	3 6	3	0.6
After Supreme Court action	59	0 2	47	0.3	8	0.1	2	0.1	2	0.3	0	----	0	----

[1] See Glossary for definitions of terms

Table 9.—Disposition by Stage of Representation and Union Deauthorization Cases Closed, Fiscal Year 1973 [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	14,059	100 0	11,970	100 0	971	100.0	1,118	100.0	202	100 0
Before issuance of notice of hearing	5,645	40 2	4,358	36 4	630	64 9	657	58.8	133	65 8
After issuance of notice before close of hearing	5,918	42 1	5,371	44 9	237	24 4	310	27.7	6	3.0
After hearing closed before issuance of decision	150	1 0	132	1 1	10	1.0	8	0 7	0	----
After issuance of regional director's decision	2,226	15.8	1,999	16.7	89	9 2	138	12 3	63	31.2
After issuance of Board decision	120	0 9	110	0 9	5	0 5	5	0 5	0	----

[1] See Glossary for definitions of terms

Table 10.—Analysis of Methods of Disposition of Representation and Union Deauthorization Cases Closed, Fiscal Year 1973 [1]

Method and stage of disposition	All R cases		RC cases		RM cases		RD cases		UD cases	
	Number	Percent	Number	Percent	Percent	Number	Number	Percent	Number	Percent
Total, all	14,059	100 0	11,970	100.0	971	100 0	1,118	100.0	202	100.0
Certification issued, total	9,493	67.5	8,556	71.5	477	49 2	460	41.1	109	54.0
After.										
Consent election	1,551	11 0	1,360	11 4	94	9 7	97	8.7	32	15 9
Before notice of hearing	932	6 6	794	6.7	77	7 9	61	5.5	30	15 0
After notice of hearing, before hearing closed	616	4.4	563	4 7	17	1.8	36	3.2	2	0 9
After hearing closed, before decision	3	0 0	3	0.0	0	----	0	----	0	----
Stipulated election	6,145	43 7	5,582	46 6	289	29.8	274	24.5	15	7 4
Before notice of hearing	2,378	16 9	2,072	17.3	170	17 5	136	12.2	14	6.9
After notice of hearing, before hearing closed	3,729	26 5	3,478	29 1	118	12.2	133	11 9	1	0 5
After hearing closed, before decision	38	0 3	32	0 2	1	0 1	5	0.4	0	----
Expedited election	30	0 2	4	0 0	26	2.7	0	----	0	----
Regional director-directed election	1,695	12 1	1,544	12 9	65	6 7	86	7 7	62	30.7
Board-directed election	72	0 5	66	0 6	3	0 3	3	0 2	0	----
By withdrawal, total	3,375	24 0	2,628	22 0	348	35 8	399	35 7	72	35.6
Before notice of hearing	1,680	11 9	1,152	9 6	250	25 7	278	24 9	70	34.7
After notice of hearing, before hearing closed	1,429	10 2	1,246	10.4	86	8 9	97	8 7	2	0 9
After hearing closed, before decision	63	0 4	55	0 5	5	0 5	3	0 2	0	----
After regional director's decision and direction of election	192	1 4	164	1.4	7	0 7	21	1 9	0	----
After Board decision and direction of election	11	0 1	11	0 1	0	----	0	----	0	----
By dismissal, total	1,191	8 5	786	6 5	146	15.0	259	23 2	21	10.4
Before notice of hearing	630	4 5	337	2 8	111	11 4	182	16 3	19	9 4
After notice of hearing, before hearing closed	143	1 0	84	0 7	15	1.5	44	3 9	1	0 5
After hearing closed, before decision	42	0 3	41	0.3	1	0 1	0	----	0	----
By regional director's decision	339	2 4	291	2.4	17	1 8	31	2 8	1	0.5
By Board decision	37	0 3	33	0 3	2	0 2	2	0 2	0	----

[1] See Glossary for definitions of terms

Table 10A.—Analysis of Methods of Disposition of Amendment of Certification and Unit Clarification Cases Closed, Fiscal Year 1973

	AC	UC
Total, all	66	250
Certification amended or unit clarified	37	36
Before hearing	31	13
By regional director's decision	31	13
By Board decision	0	0
After hearing	6	23
By regional director's decision	6	22
By Board decision	0	1
Dismissed	12	119
Before hearing	8	53
By regional director's decision	8	53
By Board decision	0	0
After hearing	4	66
By regional director's decision	2	61
By Board decision	2	5
Withdrawn	17	95
Before hearing	16	91
After hearing	1	4

Table 11.—Types of Elections Resulting in Certification in Cases Closed, Fiscal Year 1973 [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	9,472	1,544	6,084	56	1,750	38
Eligible voters	546,086	52,364	360,568	6,217	125,693	1,244
Valid votes	484,090	45,057	323,506	5,363	109,233	931
RC cases:						
Elections	8,526	1,351	5,564	50	1,553	8
Eligible voters	506,387	46,986	336,102	5,969	116,904	426
Valid votes	450,102	40,409	302,200	5,167	102,034	292
RM cases						
Elections	390	75	231	2	52	30
Eligible voters	15,051	1,423	11,025	102	1,683	818
Valid votes	13,089	1,239	9,747	88	1,367	639
RD cases						
Elections	453	95	273	3	82	0
Eligible voters	20,007	3,191	12,446	130	4,240	0
Valid votes	17,112	2,793	10,750	94	3,475	0
UD cases						
Elections	103	23	16	1	63	----
Eligible voters	4,641	764	995	16	2,866	----
Valid votes	3,787	616	809	14	2,348	----

[1] See Glossary for definitions of terms

Table 11A.—Analysis of Elections Conducted in Representation Cases Closed, Fiscal Year 1973

Type of election	All R elections				RC elections				RM elections				RD elections			
	Elections conducted				Elections conducted				Elections conducted				Elections conducted			
	Total elections	Withdrawn or dismissed before certification	Resulting in a rerun or runoff	Resulting in certification [1]	Total elections	Withdrawn or dismissed before certification	Resulting in a rerun or runoff	Resulting in certification	Total elections	Withdrawn or dismissed before certification	Resulting in a rerun or runoff	Resulting in certification	Total elections	Withdrawn or dismissed before certification	Resulting in a rerun or runoff	Resulting in certification
All types	9,660	70	221	9,369	8,800	64	210	8,526	401	3	8	390	459	3	3	453
Rerun required	----	----	164	----	----	----	155	----	----	----	7	----	----	----	2	----
Runoff required	----	----	57	----	----	----	55	----	----	----	1	----	----	----	1	----
Consent elections	1,553	9	23	1,521	1,380	9	20	1,351	78	0	3	75	95	0	0	95
Rerun required	----	----	17	----	----	----	14	----	----	----	3	----	----	----	0	----
Runoff required	----	----	6	----	----	----	6	----	----	----	0	----	----	----	0	----
Stipulated elections	6,247	38	141	6,068	5,733	34	135	5,564	238	3	5	231	275	1	1	273
Rerun required	----	----	108	----	----	----	103	----	----	----	4	----	----	----	1	----
Runoff required	----	----	33	----	----	----	32	----	----	----	1	----	----	----	0	----
Regional director-directed	1,765	23	55	1,687	1,627	21	53	1,553	52	0	0	52	86	2	2	82
Rerun required	----	----	37	----	----	----	36	----	----	----	0	----	----	----	1	----
Runoff required	----	----	18	----	----	----	17	----	----	----	0	----	----	----	1	----
Board-directed	57	0	2	55	52	0	2	50	2	0	0	2	3	0	0	3
Rerun required	----	----	2	----	----	----	2	----	----	----	0	----	----	----	0	----
Runoff required	----	----	0	----	----	----	0	----	----	----	0	----	----	----	0	----
Expedited—Sec 8(b) (7) (C)	38	0	0	38	8	0	0	8	30	0	0	30	0	0	0	0
Rerun required	----	----	0	----	----	----	0	----	----	----	0	----	----	----	0	----
Runoff required	----	----	0	----	----	----	0	----	----	----	0	----	----	----	0	----

[1] The total of representation elections resulting in certification excludes elections held in UD cases, which are included in the totals in table 11

Table 11B.—Representation Elections in Which Objections and/or Determinative Challenges Were Ruled On in Cases Closed, Fiscal Year 1973

	Total elections	Objections only		Challenges only		Objections and challenges		Total objections [1]		Total challenges [2]	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
All representation elections	9,660	731	7.6	402	4.2	177	1.8	908	9 4	579	6.0
By type of case											
In RC cases	8,800	669	7 6	363	4.1	166	1.9	835	9 5	529	6 0
In RM cases	401	32	8 0	22	5 5	7	1 7	39	9.7	29	7 2
In RD cases	459	30	6 5	17	3 7	4	0 9	34	7 4	21	4 6
By type of election											
Consent elections	1,553	59	3.8	38	2 5	16	1 0	75	4 8	54	3.5
Stipulated elections	6,247	442	7 1	252	4.0	118	1 9	560	9.0	370	5 9
Expedited elections	38	5	13.2	0	----	0	----	5	13.2	0	----
Regional director-directed elections	1,765	216	12.2	104	5.9	40	2 3	256	14 5	144	8 2
Board-directed elections	57	9	15 8	8	14 0	3	5 3	12	21 1	11	19 3

[1] Number of *elections* in which objections were ruled on, regardless of number of allegations in each election
[2] Number of *elections* in which challenges were ruled on, regardless of number of individual ballots challenged in each election

Table 11C.—Objections Filed in Representation Cases Closed, By Party Filing, Fiscal Year 1973 [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	1,138	100.0	422	37 1	687	60 4	29	2.5
By type of case:								
RC cases	1,050	100 0	400	38 1	626	59.6	24	2.3
RM cases	49	100.0	15	30.6	32	65.3	2	4.1
RD cases	39	100.0	7	17.9	29	74.4	3	7 7
By type of election:								
Consent elections	106	100.0	41	38.7	62	58.5	3	2.8
Stipulated elections	712	100.0	260	36.5	440	61 8	12	1.7
Expedited elections	7	100 0	2	28.6	4	57 1	1	14.3
Regional director-directed elections	301	100 0	116	38.5	172	57.2	13	4 3
Board-directed elections	12	100.0	3	25.0	9	75.0	0	----

[1] See Glossary for definitions of terms
[2] Objections filed by more than one party in the same cases are counted as one.

Table 11D.—Disposition of Objections in Representation Cases Closed, Fiscal Year 1973 [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	1,138	230	908	717	79.0	191	21.0
By type of case:							
RC cases	1,050	215	835	656	78.6	179	21.4
RM cases	49	10	39	31	79 5	8	20 5
RD cases	39	5	34	30	88.2	4	11 8
By type of election.							
Consent elections	106	31	75	55	73 3	20	26.7
Stipulated elections	712	152	560	441	78.8	119	21.2
Expedited elections	7	2	5	5	100.0	0	----
Regional director-directed elections	301	45	256	207	80.9	49	19 1
Board-directed elections	12	0	12	9	75 0	3	25.0

[1] See Glossary for definitions of terms
[2] See table 11E for rerun elections held after objections were sustained. In 27 elections in which objections were sustained, the cases were subsequently withdrawn. Therefore, in these cases no rerun elections were conducted

Table 11E.—Results of Rerun Elections Held in Representation Cases Closed, Fiscal Year 1973 [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	155	100.0	64	41 3	91	58 7	60	38.7
By type of case.								
RC cases	147	100.0	60	40.8	87	59.2	58	39 5
RM cases	6	100 0	3	50.0	3	50.0	1	16 7
RD cases	2	100.0	1	50.0	1	50.0	1	50.0
By type of election:								
Consent elections	15	100.0	6	40.0	9	60.0	4	26 7
Stipulated elections	101	100.0	42	41.6	59	58 4	42	41.6
Expedited elections	0	----	0	----	0	----	0	----
Regional director-directed elections	37	100.0	16	43.2	21	56.8	13	35.1
Board-directed elections	2	100.0	0	----	2	100 0	1	50 0

[1] See Glossary for definitions of terms.

[2] Includes only final rerun elections; i.e., those resulting in certification. Excluded from the table are 9 rerun elections which were conducted and subsequently set aside pursuant to sustained objections. The nine 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 1973

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	103	56	54.4	47	45 6	4,641	1,791	38 6	2,850	61 4	3,787	81 6	1,537	40 6
AFL–CIO unions	63	34	54 0	29	46 0	3,178	1,061	33 4	2,117	66 6	2,559	80.5	874	34 2
Teamsters	27	16	59 3	11	40 7	817	344	42 1	473	57 9	701	85 8	300	42 8
Other national unions	4	1	25 0	3	75 0	396	198	50 0	198	50 0	301	76 0	193	64 1
Other local unions	9	5	55 6	4	44 4	250	188	75 2	62	24 8.	226	90 4	170	75 2

[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 1973 [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	In units won by Teamsters	In units won by Other national unions	In units won by Other local unions	
A. All representation elections															
AFL–CIO	4,982	48.4	2,409	2,409	-----	-----	-----	2,573	310,650	121,146	121,146	-----	-----	-----	189,504
Teamsters	2,952	48 5	1,432	-----	1,432	-----	-----	1,520	92,679	34,356	-----	34,356	-----	-----	58,323
Other national unions	498	52.6	262	-----	-----	262	-----	236	43,319	15,157	-----	-----	15,157	-----	28,162
Other local unions	307	59.9	184	-----	-----	-----	184	123	18,274	8,694	-----	-----	-----	8,694	9,580
1-union elections	8,739	49.1	4,287	2,409	1,432	262	184	4,452	464,922	179,353	121,146	34,356	15,157	8,694	285,569
AFL–CIO v. AFL–CIO	148	66.2	98	98	-----	-----	-----	50	15,335	8,049	8,049	-----	-----	-----	7,286
AFL–CIO v. Teamsters	190	77.4	147	75	72	-----	-----	43	22,032	13,785	7,137	6,648	-----	-----	8,247
AFL–CIO v national	53	86.8	46	11	-----	35	-----	7	7,123	4,768	693	-----	4,075	-----	2,355
AFL–CIO v. local	102	88.2	90	40	-----	-----	50	12	15,824	14,020	8,742	-----	-----	5,278	1,804
Teamsters v. national	17	76.5	13	-----	3	10	-----	4	1,176	684	-----	56	628	-----	492
Teamsters v local	36	91.7	33	-----	15	-----	18	3	2,763	2,629	-----	1,490	-----	1,139	134
Teamsters v. Teamsters	8	100 0	8	-----	8	-----	-----	0	186	186	-----	186	-----	-----	0
National v. local	12	75 0	9	-----	-----	4	5	3	2,344	2,040	-----	-----	294	1,746	304
National v national	3	100 0	3	-----	-----	3	-----	0	692	692	-----	-----	692	-----	0
Local v. local	14	100.0	14	-----	-----	-----	14	0	1,392	1,392	-----	-----	-----	1,392	0
2-union elections	583	79 1	461	224	98	52	87	122	68,867	48,245	24,621	8,380	5,689	9,555	20,622
AFL–CIO v AFL–CIO v. AFL–CIO	9	77.8	7	7	-----	-----	-----	2	565	319	319	-----	-----	-----	246
AFL–CIO v AFL–CIO v Teamsters	9	88 9	8	4	4	-----	-----	1	1,662	1,544	556	988	-----	-----	118
AFL–CIO v. AFL–CIO v local	7	85.7	6	4	-----	-----	2	1	1,183	1,041	668	-----	-----	373	142
AFL–CIO v Teamsters v. Teamsters	4	75 0	3	1	2	-----	-----	1	37	30	8	22	-----	-----	7
AFL–CIO v. Teamsters v. national	4	50 0	2	1	0	1	-----	2	1,396	916	865	0	51	-----	480
AFL–CIO v Teamsters v local	4	100 0	4	0	4	-----	0	0	775	775	0	775	-----	0	0
AFL–CIO v national v. national	1	100 0	1	0	-----	1	-----	0	219	219	0	-----	219	-----	0
AFL–CIO v national v. local	2	50 0	1	1	-----	0	0	1	280	17	17	-----	0	0	263
AFL–CIO v. local v. local	3	100 0	3	0	-----	-----	3	0	292	292	0	-----	-----	292	0
Teamsters v. local v. local	1	100 0	1	-----	0	-----	1	0	101	101	-----	0	-----	101	0
AFL–CIO v. AFL–CIO v. AFL–CIO v AFL–CIO	1	0 0	0	0	-----	-----	-----	1	124	0	0	-----	-----	-----	124
AFL–CIO v. AFL–CIO v Teamsters v. local	1	100 0	1	0	1	-----	0	0	992	992	0	992	-----	0	0

Table 13.—Final Outcome of Representation Elections in Cases Closed, Fiscal Year 1973 [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	
Teamsters v. Teamsters v Teamsters	1	100 0	1	-----	1	----	----	0	30	30	------	30	-----	-----	0
3(or more)-union elections	47	80 9	38	18	12	2	6	9	7,656	6,276	2,433	2,807	270	766	1,380
Total representation elections	9,369	51.1	4,786	2,651	1,542	316	277	4,583	541,445	233,874	148,200	45,543	21,116	19,015	307,571
B. Elections in RC cases															
AFL–CIO	4,504	50.4	2,272	2,272	-----	----	----	2,232	291,268	113,177	113,177	-----	-----	-----	178,091
Teamsters	2,704	50 2	1,358	-----	1,358	----	----	1,346	86,688	32,556	------	32,556	-----	-----	54,132
Other national unions	450	54 0	243	-----	-----	243	----	207	41,024	14,703	------	-----	14,703	-----	26,321
Other local unions	288	60.4	174	-----	-----	----	174	114	17,888	8,516	------	-----	-----	8,516	9,372
1-union elections	7,946	50.9	4,047	2,272	1,358	243	174	3,899	436,868	168,952	113,177	32,556	14,703	8,516	267,916
AFL–CIO v. AFL–CIO	139	65 5	91	91	-----	----	----	48	14,419	7,270	7,270	-----	-----	-----	7,149
AFL–CIO v. Teamsters	174	75.3	131	67	64	----	----	43	20,351	12,104	6,563	5,541	-----	-----	8,247
AFL–CIO v. national	52	86 5	45	10	-----	35	----	7	7,064	4,709	634	-----	4,075	-----	2,355
AFL–CIO v local	92	88 0	81	37	-----	----	44	11	12,826	11,072	6,200	-----	-----	4,872	1,754
Teamsters v. national	14	78.6	11	-----	2	9	----	3	841	626	------	25	601	-----	215
Teamsters v. local	35	91 4	32	-----	15	----	17	3	2,757	2,623	------	1,490	-----	1,133	134
Teamsters v. Teamsters	7	100 0	7	-----	7	----	----	0	132	132	------	132	-----	-----	0
National v. local	12	75 0	9	-----	-----	4	5	3	2,344	2,040	------	-----	294	1,746	304
National v. national	3	100 0	3	-----	-----	3	----	0	692	692	------	-----	692	-----	0
Local v. local	12	100 0	12	-----	-----	----	12	0	1,109	1,109	------	-----	-----	1,109	0
2-union elections	540	78 1	422	205	88	51	78	118	62,535	42,377	20,667	7,188	5,662	8,860	20,158
AFL–CIO v AFL–CIO v. AFL–CIO	9	77 8	7	7	-----	----	----	2	565	319	319	-----	-----	-----	246
AFL–CIO v AFL–CIO v Teamsters	9	88 9	8	4	4	----	----	1	1,662	1,544	556	988	-----	-----	118
AFL–CIO v. AFL–CIO v. local	5	80 0	4	3	-----	----	1	1	467	325	292	-----	-----	33	142
AFL–CIO v. Teamsters v national	4	50 0	2	1	0	1	----	2	1,396	916	865	0	51	----	480
AFL–CIO v Teamsters v. local	4	100 0	4	0	4	----	0	0	775	775	0	775	-----	0	0
AFL–CIO v national v national	1	100.0	1	0	-----	1	----	0	219	219	0	-----	219	-----	0

AFL–CIO v. national v. local	1	0.0	0	0	-----	0	0	1	263	0	0	-----	0	0	263
AFL–CIO v. local v. local	3	100.0	3	0	-----	-----	3	0	292	292	0	-----	-----	292	0
Teamsters v. local v. local	1	100.0	1	-----	0	-----	1	0	101	101	-----	0	-----	101	0
AFL–CIO v. AFL–CIO v. AFL–CIO v. AFL–CIO	1	0.0	0	0	-----	-----	-----	1	124	0	0	-----	-----	-----	124
AFL–CIO v. AFL–CIO v. Teamsters v. local	1	100 0	1	0	1	-----	0	0	992	992	0	992	-----	0	0
Teamsters v. Teamsters v. Teamsters	1	100.0	1	-----	1	-----	-----	0	30	30	-----	30	-----	-----	0
3(or more)-union elections	40	80.0	32	15	10	2	5	8	6,886	5,513	2,032	2,785	270	426	1,373
Total RC elections	8,526	52 8	4,501	2,492	1,456	296	257	4,025	506,289	216,842	135,876	42,529	20,635	17,802	289,447

C. Elections in RM cases

AFL–CIO	217	31.8	69	69	-----	-----	-----	148	7,184	3,187	3,187	-----	-----	-----	3,997
Teamsters	128	39.8	51	-----	51	-----	-----	77	3,337	920	-----	920	-----	-----	2,417
Other national unions	17	41.2	7	-----	-----	7	-----	10	1,180	50	-----	-----	50	-----	1,130
Other local unions	11	63.6	7	-----	-----	-----	7	4	257	134	-----	-----	-----	134	123
1-union elections	373	35.9	134	69	51	7	7	239	11,958	4,291	3,187	920	50	134	7,667
AFL–CIO v. AFL–CIO	5	80.0	4	4	-----	-----	-----	1	336	307	307	-----	-----	-----	29
AFL–CIO v. Teamsters	3	100.0	3	2	1	-----	-----	0	129	129	123	6	-----	-----	0
AFL–CIO v. national	1	100.0	1	1	-----	0	-----	0	59	59	59	-----	0	-----	0
AFL–CIO v. local	4	75.0	3	1	-----	-----	2	1	1,976	1,926	1,750	-----	-----	176	50
Teamsters v. national	2	50.0	1	-----	1	0	-----	1	308	31	-----	31	0	-----	277
2-union elections	15	80.0	12	8	2	0	2	3	2,808	2,452	2,239	37	0	176	356
AFL–CIO v. AFL–CIO v. local	1	100.0	1	1	-----	-----	0	0	376	376	376	-----	-----	0	0
AFL–CIO v. Teamsters v. Teamsters	1	0.0	0	0	0	-----	-----	1	7	0	0	0	-----	-----	7
3(or more)-union elections	2	50.0	1	1	0	0	0	1	383	376	376	0	0	0	7
Total RM elections	390	37.7	147	78	53	7	9	243	15,149	7,119	5,802	957	50	310	8,030

D. Elections in RD cases

AFL–CIO	261	26.1	68	68	-----	-----	-----	193	12,198	4,782	4,782	-----	-----	-----	7,416
Teamsters	120	19.2	23	-----	23	-----	-----	97	2,654	880	-----	880	-----	-----	1,774
Other national unions	31	38.7	12	-----	-----	12	-----	19	1,115	404	-----	-----	404	-----	711
Other local unions	8	37 5	3	-----	-----	-----	3	5	129	44	-----	-----	-----	44	85
1-union elections	420	25.2	106	68	23	12	3	314	16,096	6,110	4,782	880	404	44	9,986
AFL–CIO v. AFL–CIO	4	75 0	3	3	-----	-----	-----	1	580	472	472	-----	-----	-----	108
AFL–CIO v. Teamsters	13	100 0	13	6	7	-----	-----	0	1,552	1,552	451	1,101	-----	-----	0
AFL–CIO v. local	6	100 0	6	2	-----	-----	4	0	1,022	1,022	792	-----	-----	230	0
Teamsters v. national	1	100 0	1	-----	0	1	-----	0	27	27	-----	0	27	-----	0
Teamsters v. local	1	100 0	1	-----	0	-----	1	0	6	6	-----	0	-----	6	0

Table 13.—Final Outcome of Representation Elections in Cases Closed, Fiscal Year 1973 [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	
Teamsters v Teamsters	1	100.0	1	-----	1	-----	-----	0	54	54	------	54	-----	-----	0
Local v. local	2	100 0	2	-----	-----	-----	2	0	283	283	------	-----	-----	283	0
2-union elections	28	96 4	27	11	8	1	7	1	3,524	3,416	1,715	1,155	27	519	108
AFL–CIO v. AFL–CIO v local	1	100 0	1	0	-----	-----	1	0	340	340	0	-----	-----	340	0
AFL–CIO v Teamsters v. Teamsters	3	100.0	3	1	2	-----	-----	0	30	30	8	22	-----	-----	0
AFL–CIO v national v. local	1	100 0	1	1	-----	0	0	0	17	17	17	-----	0	0	0
3(or more)-union elections	5	100 0	5	2	2	0	1	0	387	387	25	22	0	340	0
Total RD elections	453	30 5	138	81	33	13	11	315	20,007	9,913	6,522	2,057	431	903	10,094

[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 1 election in a single case, or several cases may have been involved in 1 election unit.

Table 14.—Valid Votes Cast in Representation Elections, by Final Results of Election, in Cases Closed, Fiscal Year 1973 [1]

Participating unions	Total valid votes cast	Valid votes cast in elections won						Valid votes cast in election 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	276,429	70,227	70,227	-----	-----	-----	35,921	58,999	58,999	-----	----	----	111,282
Teamsters	82,955	21,000	-----	21,000	-----	-----	9,667	16,984	-----	16,984	----	----	35,304
Other national unions	39,166	9,016	-----	-----	9,016	-----	4,598	9,186	-----	-----	9,186	----	16,366
Other local unions	15,233	5,289	-----	----	-----	5,289	1,807	2,687	----	-----	----	2,687	5,450
1-union elections	413,783	105,532	70,227	21,000	9,016	5,289	51,993	87,856	58,999	16,984	9,186	2,687	168,402
AFL–CIO v AFL–CIO	13,327	5,397	5,397	-----	-----	-----	1,301	2,531	2,531	-----	----	----	4,098
AFL–CIO v Teamsters	19,346	11,099	5,595	5,504	-----	-----	1,044	2,753	984	1,769	----	----	4,450
AFL–CIO v. national	6,298	3,960	1,256	-----	2,704	-----	293	627	161	-----	466	----	1,418
AFL–CIO v local	13,695	11,570	6,660	-----	-----	4,910	332	774	216	-----	----	558	1,019
Teamsters v national	1,007	528	-----	189	339	-----	26	137	-----	38	99	----	316
Teamsters v. local	2,258	2,104	-----	1,097	-----	1,007	45	42	-----	37	----	5	67
Teamsters v. Teamsters	171	166	-----	166	-----	-----	5	0	-----	0	----	----	0
National v local	2,155	1,872	-----	-----	855	1,017	23	87	-----	-----	78	9	173
National v national	627	609	-----	-----	609	-----	18	0	-----	-----	0	----	0
Local v. local	1,177	1,117	-----	-----	-----	1,117	60	0	-----	-----	----	0	0
2-union elections	60,061	38,422	18,908	6,956	4,507	8,051	3,147	6,951	3,892	1,844	643	572	11,541
AFL–CIO v. AFL–CIO v. AFL–CIO	474	236	236	-----	-----	-----	11	86	86	-----	----	----	141
AFL–CIO v. AFL–CIO v. Teamsters	1,428	1,162	568	594	-----	-----	165	45	45	0	----	----	56
AFL–CIO v. AFL–CIO v. local	929	719	455	-----	-----	264	86	38	38	-----	----	0	86
AFL–CIO v Teamsters v Teamsters	34	27	8	19	-----	-----	0	3	0	3	----	----	4
AFL–CIO v. Teamsters v national	1,166	736	392	226	118	-----	9	209	0	195	14	----	212
AFL–CIO v. Teamsters v local	677	673	36	448	-----	189	4	0	0	0	----	0	0
AFL–CIO v national v. national	186	185	15	-----	170	-----	-----	0	0	-----	0	----	0
AFL–CIO v national v local	252	11	11	-----	0	0	6	112	108	-----	4	0	123
AFL–CIO v. local v local	225	224	57	-----	-----	167	1	0	0	-----	----	0	0
Teamsters v local v local	94	94	-----	23	-----	71	0	0	-----	0	----	0	0
AFL–CIO v. AFL–CIO v. AFL–CIO v AFL–CIO	112	0	0	-----	-----	-----	0	52	52	-----	----	----	60
AFL–CIO v. AFL–CIO v. Teamsters v local	857	837	149	442	-----	246	20	0	0	0	----	0	0

Table 14.—Valid Votes Cast in Representation Elections, by Final Results of Election, in Cases Closed, Fiscal Year 1973 [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	
Teamsters v. Teamsters v. Teamsters	25	22	-----	22	-----	-----	3	0	-----	0	----	----	0
3 (or more)-union elections	6,459	4,926	1,927	1,774	288	937	306	545	329	198	18	0	682
Total representation elections	480,303	148,880	91,062	29,730	13,811	14,277	55,446	95,352	68,220	19,026	9,847	3,259	180,625
B Elections in RC cases													
AFL–CIO	259,804	65,383	65,383	-----	-----	-----	33,861	56,081	56,081	-----	----	----	104,479
Teamsters	77,681	19,899	-----	19,899	-----	-----	9,159	15,986	-----	15,986	----	----	32,687
Other national unions	37,222	8,746	-----	-----	8,746	-----	4,462	8,789	-----	-----	8,789	----	15,225
Other local unions	14,898	5,171	-----	-----	-----	5,171	1,770	2,643	-----	-----	----	2,643	5,309
1-union elections	389,600	99,199	65,383	19,899	8,746	5,171	49,252	83,499	56,081	15,986	8,789	2,643	157,650
AFL–CIO v. AFL–CIO	12,568	4,800	4,800	-----	-----	-----	1,268	2,485	2,485	-----	----	----	4,015
AFL–CIO v. Teamsters	17,888	9,663	5,054	4,609	-----	-----	972	2,753	984	1,769	----	----	4,450
AFL–CIO v. national	6,253	3,919	1,215	-----	2,704	-----	289	627	161	-----	466	----	1,418
AFL–CIO v. local	11,108	9,064	5,194	-----	-----	3,870	291	764	206	-----	----	558	989
Teamsters v. national	698	476	-----	163	318	-----	26	80	-----	32	48	----	116
Teamsters v. luocal	2,252	2,098	-----	1,097	-----	1,001	45	42	-----	37	----	5	67
Teamsters v. Teamsters	118	113	-----	113	-----	-----	5	0	-----	0	----	----	0
National v local	2,155	1,872	-----	-----	855	1,017	23	87	-----	-----	78	9	173
National v. national	627	609	-----	-----	609	-----	18	0	-----	-----	0	----	0
Local v. local	925	878	-----	-----	-----	878	47	0	-----	-----	----	0	0
2-union elections	54,542	33,492	16,263	5,982	4,481	6,766	2,984	6,838	3,836	1,838	592	572	11,228
AFL–CIO v. AFL–CIO v. AFL–CIO	474	236	236	-----	-----	-----	11	86	86	-----	----	----	141
AFL–CIO v. AFL–CIO v. Teamsters	1,428	1,162	568	594	-----	-----	165	45	45	0	----	----	56
AFL–CIO v. AFL–CIO v. local	411	278	254	-----	-----	24	9	38	38	-----	----	0	86
AFL–CIO v. Teamsters v. national	1,166	736	392	226	118	-----	9	209	0	195	14	----	212
AFL–CIO v. Teamsters v. local	677	673	36	448	-----	189	4	0	0	0	----	0	0
AFL–CIO v. national v. national	186	185	15	-----	170	-----	1	0	0	-----	0	----	0
AFL–CIO v. national v. local	235	0	0	-----	0	0	0	112	108	-----	4	0	123
AFL–CIO v. local v. local	225	224	57	-----	-----	167	1	0	0	-----	----	0	0

Teamsters v. local v. local	94	94	-----	23	-----	71	0	0	-----	0	-	0	0
AFL–CIO v. AFL–CIO v AFL–CIO v. AFL–CIO	112	0	0	-----	-----	-----	0	52	52	-----	----	----	60
AFL–CIO v. AFL–CIO v. Teamsters v local	857	837	149	442	-----	246	20	0	0	0	- -	0	0
Teamsters v Teamsters v. Teamsters	25	22	-----	22	-----	-----	3	0	- --	0	- -	----	0
3 (or more)-union elections	5,890	4,447	1,707	1,755	288	697	223	542	329	195	18	0	678
Total RC elections	450,032	137,138	83,353	27,636	13,515	12,634	52,459	90,879	60,246	18,019	9,399	3,215	169,556

C. Elections in RM cases

AFL–CIO	6,204	2,036	2,036	-----	-----	-----	745	999	999	-----	----	----	2,424
Teamsters	3,000	612	-----	612	-----	-----	230	621	-----	621	----	----	1,537
Other national unions	1,017	41	-----	-----	41	-----	8	225	-----	-----	225	----	743
Other local unions	227	94	-----	-----	-----	94	24	29	-----	--- -	---	29	80
1-union elections	10,448	2,783	2,036	612	41	94	1,007	1,874	999	621	225	29	4,784
AFL–CIO v. AFL–CIO	241	204	204	-----	-----	-----	13	4	4	-----	----	----	20
AFL–CIO v. Teamsters	118	116	89	27	-----	-----	2	0	0	0	---	----	0
AFL–CIO v. national	45	41	41	-----	0	-----	4	0	0	-----	0	---	0
AFL–CIO v. local	1,749	1,694	1,079	-----	-----	615	15	10	10	-----	---	0	30
Teamsters v. national	288	31	-----	20	11	-----	0	57	-----	6	51	----	200
2-union elections	2,441	2,086	1,413	47	11	615	34	71	14	6	51	0	250
AFL–CIO v. AFL–CIO v. local	263	188	170	-----	-----	18	75	0	0	-----	----	0	4
AFL–CIO v. Teamsters v. Teamsters	7	0	0	0	-----	-----	0	3	0	3	----	---	0
3 (or more)-union elections	270	188	170	0	0	18	75	3	0	3	0	0	4
Total RM elections	13,159	5,057	3,619	659	52	727	1,116	1,948	1,013	630	276	29	5,038

D Elections in RD cases

AFL–CIO	10,421	2,808	2,808	-----	-----	-----	1,312	1,919	1,919	-----	----	----	4,379
Teamsters	2,274	489	-----	489	-----	-----	278	377	-----	377	----	----	1,130
Other national unions	927	229	-----	-----	229	-----	128	172	-----	-----	172	----	398
Other local unions	113	24	-----	-----	-----	24	13	15	-----	--- -	----	15	61
1-union elections	13,735	3,550	2,808	489	229	24	1,734	2,483	1,919	377	172	15	5,968
AFL–CIO v. AFL–CIO	518	393	393	-----	-----	-----	20	42	42	----	----	----	63
AFL–CIO v. Teamsters	1,390	1,320	452	868	-----	-----	70	0	0	0	----	----	0
AFL–CIO v. local	838	812	387	-----	-----	425	26	0	0	-----	----	0	0
Teamsters v. national	21	21	-----	6	15	-----	0	0	-----	0	0	----	0
Teamsters v. local	6	6	-----	0	-----	6	0	0	-----	0	----	0	0
Teamsters v Teamsters	53	53	-----	53	-----	-----	0	0	-----	0	----	----	0

Table 14.—Valid Votes Cast in Representation Elections, by Final Results of Election, in Cases Closed, Fiscal Year 1973 [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	
Local v. local	252	239	-----	-----	-----	239	13	0	-----	-----	-----	0	0
2-union elections	3,078	2,844	1,232	927	15	670	129	42	42	0	0	0	63
AFL–CIO v. AFL–CIO v local	255	253	31	-----	-----	222	2	0	0	-----	-----	0	0
AFL–CIO v Teamsters v. Teamsters	27	27	8	19	-----	-----	0	0	0	0	-----	-----	0
AFL–CIO v. national v. local	17	11	11	-----	0	0	6	0	0	-----	0	0	0
3 (or more)-union elections	299	291	50	19	0	222	8	0	0	0	0	0	0
Total RD elections	17,112	6,685	4,090	1,435	244	916	1,871	2,525	1,961	377	172	15	6,031

[1] See Glossary for definitions of terms.

Table 15A.—Geographic Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1973

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 employee 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	30	12	9	3	0	0	18	2,037	1,898	798	665	133	0	0	1,100	348
New Hampshire	36	16	5	9	0	2	20	1,030	944	427	331	63	0	33	517	397
Vermont	6	3	2	1	0	0	3	156	138	65	26	39	0	0	73	97
Massachusetts	263	134	61	59	5	9	129	15,121	13,528	5,531	3,647	1,260	276	348	7,997	4,882
Rhode Island	30	14	9	3	0	2	16	1,519	1,312	629	485	34	0	110	683	477
Connecticut	105	40	24	11	2	3	65	6,378	5,773	2,466	1,628	400	164	274	3,307	1,912
New England	470	219	110	86	7	16	251	26,241	23,593	9,916	6,782	1,929	440	765	13,677	8,113
New York	485	273	145	66	25	37	212	24,433	20,966	11,767	7,276	1,591	736	2,164	9,199	12,859
New Jersey	364	190	80	68	7	35	174	14,245	12,577	6,871	3,714	2,239	97	821	5,706	6,430
Pennsylvania	582	278	158	86	21	13	304	33,577	30,662	14,668	9,031	2,838	1,165	1,634	15,994	10,155
Middle Atlantic	1,431	741	383	220	53	85	690	72,255	64,205	33,306	20,021	6,668	1,998	4,619	30,899	29,444
Ohio	626	342	191	112	25	14	284	30,031	27,235	14,897	7,095	2,671	3,357	1,774	12,338	14,076
Indiana	315	171	88	62	17	4	144	18,955	17,060	9,160	5,457	1,672	1,710	321	7,900	9,643
Illinois	407	204	107	61	22	14	203	24,071	21,200	10,404	5,048	1,914	2,746	696	10,796	8,647
Michigan	504	249	100	81	58	10	255	24,842	21,813	10,378	5,090	1,630	3,437	221	11,435	8,934
Wisconsin	299	154	82	56	11	5	145	14,829	12,755	6,135	3,790	1,258	662	425	6,620	5,553
East North Central	2,151	1,120	568	372	133	47	1,031	112,728	100,063	50,974	26,480	9,145	11,912	3,437	49,089	46,853
Iowa	141	81	42	30	8	1	60	5,283	4,793	2,538	1,498	593	385	62	2,255	2,754
Minnesota	206	120	60	41	17	2	86	7,086	6,290	3,229	1,777	910	469	73	3,061	3,391
Missouri	274	139	77	50	7	5	135	12,147	10,927	5,556	2,985	1,981	402	188	5,371	4,754
North Dakota	32	16	3	13	0	0	16	1,142	1,034	474	182	292	0	0	560	503
South Dakota	42	16	12	4	0	0	26	1,971	1,509	630	531	99	0	0	879	503
Nebraska	55	24	15	9	0	0	31	1,806	1,641	728	490	238	0	0	913	596
Kansas	77	34	20	12	0	2	43	3,542	3,241	1,434	939	345	4	146	1,807	1,030
West North Central	827	430	229	159	32	10	397	32,977	29,435	14,589	8,402	4,458	1,260	469	14,846	13,531
Delaware	25	13	3	9	0	1	12	2,758	2,489	1,285	781	233	5	266	1,204	1,045
Maryland	207	97	58	34	4	1	110	8,621	7,633	3,801	2,663	1,012	105	21	3,832	3,674

Table 15A.—Geographic Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1973—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		
District of Columbia	55	31	20	7	2	2	24	6,470	5,006	2,404	1,771	221	173	239	2,602	1,813
Virginia	94	47	30	14	2	1	47	10,776	9,722	5,651	3,862	910	604	275	4,071	6,537
West Virginia	86	58	31	22	2	3	28	3,554	3,316	1,861	1,332	412	85	32	1,455	1,905
North Carolina	112	49	36	12	0	1	63	22,051	19,611	9,221	8,380	485	317	39	10,390	7,983
South Carolina	48	25	19	6	0	0	23	7,823	7,029	3,582	2,984	598	0	0	3,447	4,092
Georgia	164	77	56	17	1	3	87	14,645	13,207	6,081	4,481	1,196	274	130	7,126	5,901
Florida	189	81	48	28	3	2	108	15,854	13,475	7,565	4,811	1,679	376	699	5,910	8,072
South Atlantic	980	478	301	149	14	14	502	92,552	81,488	41,451	31,065	6,746	1,939	1,701	40,037	41,022
Kentucky	142	73	40	26	5	2	69	9,938	9,163	4,845	2,794	1,223	595	233	4,318	4,604
Tennessee	189	97	57	27	6	7	92	21,371	19,295	9,281	6,819	1,260	850	352	10,014	6,497
Alabama	161	78	61	12	5	0	83	15,827	14,493	7,163	6,349	355	459	0	7,330	6,875
Mississippi	54	32	26	2	1	3	22	7,247	6,598	3,363	2,377	62	580	344	3,235	3,685
East South Central	546	280	184	67	17	12	266	54,383	49,549	24,652	18,339	2,900	2,484	929	24,897	21,661
Arkansas	95	49	32	14	3	0	46	9,182	8,027	3,351	2,278	450	623	0	4,676	2,927
Louisiana	141	66	42	18	2	4	75	8,564	7,712	4,274	3,088	622	149	415	3,438	4,504
Oklahoma	94	39	29	9	0	1	55	6,681	6,115	3,496	2,492	936	45	23	2,619	3,091
Texas	326	155	113	33	8	1	171	20,845	18,630	9,201	6,275	2,323	551	52	9,429	9,038
West South Central	656	309	216	74	13	6	347	45,272	40,484	20,322	14,133	4,331	1,368	490	20,162	19,560
Montana	44	22	9	12	0	1	22	1,127	919	535	299	220	0	16	384	573
Idaho	43	17	8	9	0	0	26	1,980	1,818	810	252	558	0	0	1,008	699
Wyoming	14	8	8	0	0	0	6	566	504	222	216	6	0	0	282	123
Colorado	130	61	39	16	4	2	69	6,569	5,848	2,884	2,306	206	132	240	2,964	2,488
New Mexico	43	27	22	5	0	0	16	2,567	2,328	1,238	1,149	89	0	0	1,090	1,275
Arizona	85	52	42	9	1	0	33	3,041	2,610	1,614	1,129	438	27	20	996	1,963
Utah	42	13	8	3	1	1	29	1,812	1,528	616	447	140	14	15	912	352
Nevada	47	23	6	15	2	0	24	1,375	1,164	685	199	466	20	0	479	796
Mountain	448	223	142	69	8	4	225	19,037	16,719	8,604	5,997	2,123	193	291	8,115	8,269

Washington	247	142	82	52	4	4	105	7,561	6,660	3,691	2,336	970	250	135	2,969	4,914
Oregon	147	77	46	29	0	2	70	5,437	4,784	2,396	1,858	323	11	204	2,388	2,458
California	1,168	594	318	215	33	28	574	54,712	47,625	25,087	14,727	6,951	1,771	1,638	22,538	28,113
Alaska	21	15	4	8	2	1	6	446	414	301	43	227	10	21	113	363
Hawaii	54	31	20	8	0	3	23	2,155	1,804	1,317	1,060	158	10	89	487	1,633
Guam	1	0	0	0	0	0	1	5	3	1	1	0	0	0	2	0
Pacific	1,638	859	470	312	39	38	779	70,316	61,290	32,793	20,025	8,629	2,052	2,087	28,497	37,481
Puerto Rico	216	124	45	34	0	45	92	15,232	13,157	7,470	2,883	1,827	12	2,748	5,687	7,641
Virgin Islands	6	3	3	0	0	0	3	452	320	155	155	0	0	0	165	299
Outlying Areas	222	127	48	34	0	45	95	15,684	13,477	7,625	3,038	1,827	12	2,748	5,852	7,940
Total, all states and areas	9,369	4,786	2,651	1,542	316	277	4,583	541,445	480,303	244,232	154,282	48,756	23,658	17,536	236,071	233,874

[1] The States are grouped according to the method used by the Bureau of the Census, U S Department of Commerce

Table 15B.—Standard Federal Administrative Regional Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1973

Standard Federal Regions [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		
Connecticut	105	40	24	11	2	3	65	6,378	5,773	2,466	1,628	400	164	274	3,307	1,912
Maine	30	12	9	3	0	0	18	2,037	1,898	798	665	133	0	0	1,100	348
Massachusetts	263	134	61	59	5	9	129	15,121	13,528	5,531	3,647	1,260	276	348	7,997	4,882
New Hampshire	36	16	5	9	0	2	20	1,030	944	427	331	63	0	33	517	397
Rhode Island	30	14	9	3	0	2	16	1,519	1,312	629	485	34	0	110	683	477
Vermont	6	3	2	1	0	0	3	156	138	65	26	39	0	0	73	97
Region I	470	219	110	86	7	16	251	26,241	23,593	9,916	6,782	1,929	440	765	13,677	8,113
Delaware	25	13	3	9	0	1	12	2,758	2,489	1,285	781	233	5	266	1,204	1,045
New Jersey	364	190	80	68	7	35	174	14,245	12,577	6,871	3,714	2,239	97	821	5,706	6,430
New York	485	273	145	66	25	37	212	24,433	20,966	11,767	7,276	1,591	736	2,164	9,199	12,859
Puerto Rico	216	124	45	34	0	45	92	15,232	13,157	7,470	2,883	1,827	12	2,748	5,687	7,641
Virgin Islands	6	3	3	0	0	0	3	452	320	155	155	0	0	0	165	299
Region II	1,096	603	276	177	32	118	493	57,120	49,509	27,548	14,809	5,890	850	5,999	21,961	28,274
District of Columbia	55	31	20	7	2	2	24	6,470	5,006	2,404	1,771	221	173	239	2,602	1,813
Maryland	207	97	58	34	4	1	110	8,621	7,633	3,801	2,663	1,012	105	21	3,832	3,674
Pennsylvania	582	278	158	86	21	13	304	33,577	30,662	14,668	9,031	2,838	1,165	1,634	15,994	10,155
Virginia	94	47	30	14	2	1	47	10,776	9,722	5,651	3,862	910	604	275	4,071	6,537
West Virginia	86	58	31	22	2	3	28	3,554	3,316	1,861	1,332	412	85	32	1,455	1,905
Region III	1,024	511	297	163	31	20	513	62,998	56,339	28,385	18,659	5,393	2,132	2,201	27,954	24,084
Alabama	161	78	61	12	5	0	83	15,827	14,493	7,163	6,349	355	459	0	7,330	6,875
Florida	189	81	48	28	3	2	108	15,854	13,475	7,565	4,811	1,679	376	699	5,910	8,072
Georgia	164	77	56	17	1	3	87	14,645	13,207	6,081	4,481	1,196	274	130	7,126	5,901
Kentucky	142	73	40	26	5	2	69	9,938	9,163	4,845	2,794	1,223	595	233	4,318	4,604
Mississippi	54	32	26	2	1	3	22	7,247	6,598	3,363	2,377	62	580	344	3,235	3,685
North Carolina	112	49	36	12	0	1	63	22,051	19,611	9,221	8,380	485	317	39	10,390	7,983
South Carolina	48	25	19	6	0	0	23	7,823	7,029	3,582	2,984	598	0	0	3,447	4,092
Tennessee	189	97	57	27	6	7	92	21,371	19,295	9,281	6,819	1,260	850	352	10,014	6,497
Region IV	1,059	512	343	130	21	18	547	114,756	102,871	51,101	38,995	6,858	3,451	1,797	51,770	47,709

Illinois	407	204	107	61	22	14	203	24,071	21,200	10,404	5,048	1,914	2,746	696	10,796	8,647
Indiana	315	171	88	62	17	4	144	18,955	17,060	9,160	5,457	1,672	1,710	321	7,900	9,643
Michigan	504	249	100	81	58	10	255	24,842	21,813	10,378	5,090	1,630	3,437	221	11,435	8,934
Minnesota	206	120	60	41	17	2	86	7,086	6,290	3,229	1,777	910	469	73	3,061	3,391
Ohio	626	342	191	112	25	14	284	30,031	27,235	14,897	7,095	2,671	3,357	1,774	12,338	14,076
Wisconsin	299	154	82	56	11	5	145	14,829	12,755	6,135	3,790	1,258	662	425	6,620	5,553
Region V	2,357	1,240	628	413	150	49	1,117	119,814	106,353	54,203	28,257	10,055	12,381	3,510	52,150	50,244
Arkansas	95	49	32	14	3	0	46	9,182	8,027	3,351	2,278	450	623	0	4,676	2,927
Louisiana	141	66	42	18	2	4	75	8,564	7,712	4,274	3,088	622	149	415	3,438	4,504
New Mexico	43	27	22	5	0	0	16	2,567	2,328	1,238	1,149	89	0	0	1,090	1,275
Oklahoma	94	39	29	9	0	1	55	6,681	6,115	3,496	2,492	936	45	23	2,619	3,091
Texas	326	155	113	33	8	1	171	20,845	18,630	9,201	6,275	2,323	551	52	9,429	9,038
Region VI	699	336	238	79	13	6	363	47,839	42,812	21,560	15,282	4,420	1,368	490	21,252	20,835
Iowa	141	81	42	30	8	1	60	5,283	4,793	2,538	1,498	593	385	62	2,255	2,754
Kansas	77	34	20	12	0	2	43	3,542	3,241	1,434	939	345	4	146	1,807	1,030
Missouri	274	139	77	50	7	5	135	12,147	10,927	5,556	2,985	1,981	402	188	5,371	4,754
Nebraska	55	24	15	9	0	0	31	1,806	1,641	728	490	238	0	0	913	596
Region VII	547	278	154	101	15	8	269	22,778	20,602	10,256	5,912	3,157	791	396	10,346	9,134
Colorado	130	61	39	16	4	2	69	6,569	5,848	2,884	2,306	206	132	240	2,964	2,488
Montana	44	22	9	12	0	1	22	1,127	919	535	299	220	0	16	384	573
North Dakota	32	16	3	13	0	0	16	1,142	1,034	474	182	292	0	0	560	503
South Dakota	42	16	12	4	0	0	26	1,971	1,509	630	531	99	0	0	879	503
Utah	42	13	8	3	1	1	29	1,812	1,528	616	447	140	14	15	912	352
Wyoming	14	8	8	0	0	0	6	566	504	222	216	6	0	0	282	123
Region VIII	304	136	79	48	5	4	168	13,187	11,342	5,361	3,981	963	146	271	5,981	4,542
Arizona	85	52	42	9	1	0	33	3,041	2,610	1,614	1,129	438	27	20	996	1,963
California	1,168	594	318	215	38	28	574	54,712	47,625	25,087	14,727	6,951	1,771	1,638	22,538	28,113
Hawaii	54	31	20	8	0	3	23	2,155	1,804	1,317	1,060	158	10	89	487	1,633
Guam	1	0	0	0	0	0	1	5	3	1	1	0	0	0	2	0
Nevada	47	23	6	15	2	0	24	1,375	1,164	685	199	466	20	0	479	796
Region IX	1,355	700	386	247	36	31	655	61,288	53,206	28,704	16,975	8,013	1,828	1,747	24,502	32,505
Alaska	21	15	4	8	2	1	6	446	414	301	43	227	10	21	113	363
Idaho	43	17	8	9	0	0	26	1,980	1,818	810	252	558	0	0	1,008	699
Oregon	147	77	46	29	0	2	70	5,437	4,784	2,396	1,858	323	11	204	2,388	2,458
Washington	247	142	82	52	4	4	105	7,561	6,660	3,691	2,336	970	250	135	2,969	4,914
Region X	458	251	140	98	6	7	207	15,424	13,676	7,198	4,489	2,078	271	360	6,478	8,434
Total, all Federal regions	9,369	4,786	2,651	1,542	316	277	4,583	541,445	480,303	244,232	154,282	48,756	23,658	17,536	236,071	233,874

[1] The States are grouped according to the 10 standard Federal administrative regions

Table 16.—Industrial Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1973

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 employee 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		
Food and kindred products	546	288	143	124	5	16	258	33,398	29,734	16,613	9,065	5,701	196	1,651	13,121	17,324
Tobacco manufacturers	5	3	3	0	0	0	2	766	711	337	44	293	0	0	374	49
Textile mill products	94	38	28	6	3	1	56	19,020	17,170	7,563	6,541	604	176	242	9,607	7,907
Apparel and other finished products made from fabric and similar materials	98	37	31	5	0	1	61	13,939	12,360	5,512	4,972	518	0	22	6,848	4,533
Lumber and wood products (except furniture)	248	120	77	36	4	3	128	20,317	18,163	9,197	7,692	835	382	288	8,966	6,732
Furniture and fixtures	144	64	42	13	3	6	80	16,501	14,860	6,922	5,416	1,043	282	181	7,938	6,452
Paper and allied products	172	82	46	31	1	4	90	13,025	11,907	6,048	3,930	1,544	75	499	5,859	4,840
Printing, publishing, and allied products	327	167	143	16	3	5	160	10,537	9,459	4,371	3,581	515	98	177	5,088	3,869
Chemicals and allied products	278	136	74	38	15	9	142	14,661	13,469	7,241	4,378	1,412	510	941	6,228	7,263
Petroleum refining and related industries	66	32	24	7	0	1	34	5,348	4,979	3,677	2,688	345	0	644	1,302	3,526
Rubber and miscellaneous plastic products	248	124	68	27	18	11	124	20,850	18,552	9,106	5,851	953	1,925	377	9,446	8,937
Leather and leather products	39	15	8	5	1	1	24	4,854	4,163	1,547	1,061	175	30	281	2,616	858
Stone, clay, glass, and concrete products	225	129	77	38	8	6	96	10,689	9,327	5,500	3,593	1,271	348	288	3,827	6,195
Primary metal industries	277	161	94	38	21	8	116	21,706	19,737	10,591	7,289	1,120	1,576	606	9,146	10,035
Fabricated metal products (except machinery and transportation equipment)	445	241	153	51	27	10	204	30,733	27,822	15,051	8,769	3,102	2,064	1,116	12,771	15,314
Machinery (except electrical)	519	249	152	36	36	25	270	37,729	34,263	16,270	9,504	2,714	3,237	815	17,993	11,667
Electrical and electronic machinery, equipment, and supplies	297	126	79	29	14	4	171	46,678	42,663	20,170	13,168	1,959	4,017	1,026	22,493	14,973
Aircraft and parts	229	109	39	27	36	7	120	17,804	15,969	7,706	3,559	968	2,527	652	8,263	6,796
Ship and boat building and repairing	20	7	5	2	0	0	13	3,591	2,833	1,923	1,588	216	61	58	910	2,440
Automotive and other transportation equipment	84	37	29	7	1	0	47	7,351	6,517	2,834	2,174	183	477	0	3,683	2,058
Professional, scientific, and controlling instruments	67	35	21	9	4	1	32	6,646	5,964	2,897	1,005	1,102	744	46	3,067	3,156
Miscellaneous manufacturing industries	208	93	38	37	10	8	115	13,864	12,588	6,028	3,056	1,768	951	253	6,560	4,673
Manufacturing	4,636	2,293	1,374	582	210	127	2,343	370,007	333,210	167,104	108,924	28,341	19,676	10,163	166,106	149,597

Metal mining	10	8	8	0	0	0	2	578	415	342	342	0	0	0	73	554
Coal mining	20	7	1	0	5	1	13	1,559	1,414	933	40	8	840	45	481	774
Oil and gas extraction	13	9	7	1	0	1	4	647	545	312	215	76	0	21	233	450
Mining and quarry of nonmetallic minerals (except fuels)	29	16	13	2	0	1	13	1,230	1,113	637	567	30	0	40	476	815
Mining	72	40	29	3	5	3	32	4,014	3,487	2,224	1,164	114	840	106	1,263	2,593
Construction	213	116	80	14	15	7	97	7,308	5,687	3,524	2,593	570	249	112	2,163	4,785
Wholesale trade	846	451	113	310	15	13	395	18,715	17,066	9,226	3,262	5,322	269	373	7,840	10,353
Retail trade	1,313	624	391	185	23	25	689	42,928	36,935	16,977	11,789	3,951	540	697	19,958	15,072
Finance, insurance, and real estate	147	73	58	9	6	0	74	7,070	6,006	3,020	2,443	106	283	188	2,986	3,899
U.S. Postal Service	26	18	0	4	0	14	8	2,212	1,665	1,195	9	120	4	1,062	470	1,666
Local and suburban transit and interurban highway passenger transportation	48	34	11	20	0	3	14	2,498	2,005	1,435	479	743	0	213	570	2,125
Motor freight transportation and warehousing	557	300	35	245	12	8	257	15,992	13,847	7,392	1,381	5,029	528	454	6,455	7,203
Water transportation	22	12	7	2	2	1	10	999	813	504	265	152	75	12	309	500
Other transportation	38	19	8	11	0	0	19	850	750	375	207	160	5	3	375	412
Communication	215	117	106	8	1	2	98	10,204	9,253	3,868	3,104	288	133	343	5,385	3,698
Electric, gas, and sanitary services	152	81	61	15	2	3	71	7,204	6,729	3,330	2,832	271	33	194	3,399	3,191
Transportation, communication, and other utilities	1,032	563	228	301	17	17	469	37,747	33,397	16,904	8,268	6,643	774	1,219	16,493	17,129
Hotels, rooming houses, camps, and other lodging places	81	41	31	9	0	1	40	4,342	3,540	1,926	1,687	191	12	36	1,614	2,076
Personal services	73	29	10	18	1	0	44	1,863	1,668	676	242	409	10	15	992	445
Automotive repair, services, and garages	136	84	28	47	4	5	52	3,516	3,095	1,737	424	843	117	353	1,358	1,896
Amusement and recreation services (except motion pictures)	50	16	12	3	0	1	34	1,654	1,424	609	382	87	87	53	815	294
Health services	254	164	130	4	1	29	90	15,586	12,826	7,450	6,340	154	8	948	5,376	9,321
Educational services	78	47	29	5	1	12	31	9,130	7,386	4,614	2,766	355	6	1,487	2,772	6,247
Nonprofit membership organizations	23	19	11	2	0	6	4	690	622	432	278	36	0	118	190	635
Business services	326	170	98	41	16	15	156	12,465	10,394	5,571	3,128	1,215	762	466	4,823	6,755
Miscellaneous repair services	37	19	13	4	2	0	18	973	908	404	151	232	21	0	504	274
Museums, art galleries, botanical and zoological gardens	1	1	1	0	0	0	0	29	26	20	20	0	0	0	6	29
Miscellaneous services	25	18	15	1	0	2	7	1,196	961	619	412	67	0	140	342	808
Services	1,084	608	378	134	25	71	475	51,444	42,850	24,058	15,830	3,589	1,023	3,616	18,792	28,780
Total, all industrial groups	9,369	4,786	2,651	1,542	316	277	4,583	541,445	480,303	244,232	154,282	48,756	23,658	17,536	236,071	233,874

[1] Source: Standard Industrial Classification, Statistical Policy Division, Office of Management and Budget, Washington, 1972

Table 17.—Size of Units in Representation Election Cases Closed, Fiscal Year 1973 [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 and RM)														
Total RC and RM elections	521,438	8,916	100 0	....	2,570	100 0	1,509	100 0	303	100 0	266	100 0	4,268	100 0
Under 10	12,625	2,224	24 9	24 9	610	23 8	635	42 2	59	19 5	38	14 3	882	20 8
10 to 19	27,298	1,957	21 9	46 8	551	21 4	402	26 6	56	18 5	59	22 2	889	20 9
20 to 29	27,154	1,128	12 7	59.5	348	13 5	174	11 5	39	12 9	28	10 5	539	12.6
30 to 39	23,475	688	7.7	67 2	213	8.3	77	5 1	15	5 0	28	10.5	355	8 3
40 to 49	22,069	499	5 6	72 8	150	5 8	50	3 3	21	6 9	20	7 5	258	6 0
50 to 59	19,943	368	4 1	76 9	119	4.6	22	1 5	16	5.3	11	4.1	200	4 7
60 to 69	17,071	266	3 0	79.9	89	3.5	23	1 5	10	3.3	12	4 5	132	3.1
70 to 79	16,071	217	2 4	82.3	67	2 6	22	1.5	7	2.3	9	3.4	112	2 6
80 to 89	16,187	193	2 2	84 5	70	2 7	9	0 6	13	4 3	6	2 3	95	2 2
90 to 99	13,823	147	1 6	86 1	37	1.4	11	0 7	8	2 6	8	3 0	83	1.9
100 to 109	12,778	123	1.4	87.5	39	1 5	9	0 6	7	2.3	7	2 6	61	1.4
110 to 119	13,587	119	1 3	88 8	30	1 2	14	0 9	3	1 0	3	1.1	69	1 6
120 to 129	9,878	80	0 9	89.7	17	0.7	2	0 1	5	1 7	4	1 5	52	1.2
130 to 139	11,283	84	0 9	90 6	24	0 9	3	0 2	6	2 0	1	0 4	50	1 2
140 to 149	9,361	65	0.7	91 3	20	0 8	3	0 2	3	1 0	1	0 4	38	0.9
150 to 159	9,112	59	0.7	92 0	20	0 8	3	0 2	0	....	1	0 4	35	0 8
160 to 169	8,218	50	0 6	92 6	11	0 4	5	0 3	3	1.0	2	0 7	29	0 7
170 to 179	8,047	46	0 5	93.1	14	0 5	5	0 3	5	1 7	3	1 1	19	0 4
180 to 189	9,379	51	0 6	93 7	9	0.4	3	0 2	2	0 7	3	1 1	34	0 8
190 to 199	6,032	31	0 3	94.0	7	0 3	6	0 4	3	1 0	1	0 4	14	0 3
200 to 299	56,353	234	2 6	96.6	56	2 2	15	1 0	11	3 6	12	4 5	140	3.3
300 to 399	39,488	117	1 3	97.9	30	1 2	6	0 4	4	1 3	5	1.9	72	1 7
400 to 499	21,859	49	0.5	98 4	14	0.5	2	0 1	3	1 0	1	0 4	29	0 7
500 to 599	20,196	37	0 4	98 8	10	0 4	3	0.2	1	0 2	0	---	23	0 5
600 to 799	23,996	35	0 4	99 2	4	0 2	4	0 3	1	0 2	1	0.4	25	0 6
800 to 999	17,427	20	0 3	99 5	1	0 0	1	0 1	2	0 7	1	0 4	15	0 4
1,000 to 1,999	28,808	22	0 3	99 8	8	0.3	0	....	0	....	1	0 4	13	0.3
2,000 to 2,999	11,702	5	0 2	100 0	2	0 1	0	....	0	....	0	....	3	0 1
3,000 to 9,999	8,218	2	0 0	100.0	0	....	0	....	0	....	0	....	2	0 0

B Decertification elections (RD)

Total RD elections	20,007	453	100.0	----	81	100.0	33	100 0	13	100.0	11	100 0	315	100 0
Under 10	650	106	23 4	23.4	5	6.2	7	21 2	0	----	1	9 1	93	29 4
10 to 19	1,610	116	25.6	49 0	14	17 4	7	21 2	3	23 1	3	27 2	89	28 3
20 to 29	1,407	58	12 8	61 8	5	6 2	4	12 1	2	15 4	1	9 1	46	14 6
30 to 39	1,161	34	7 5	69 3	7	8 6	2	6 1	4	30 7	0	----	21	6.7
40 to 49	1,289	29	6.4	75.7	13	16.0	2	6 1	3	23 1	1	9.1	10	3 2
50 to 59	891	17	3 8	79 5	3	3 7	2	6.1	0	----	0	----	12	3 8
60 to 69	1,386	22	4 9	84 4	6	7 4	4	12.1	1	7 7	1	9.1	10	3 2
70 to 79	744	10	2.2	86 6	4	4 9	1	3.0	0	----	0	----	5	1 6
80 to 89	597	7	1.5	88 1	3	3 7	0	----	0	----	0	----	4	1.3
90 to 99	1,310	14	3.1	91 2	4	4.9	1	3 0	0	----	2	18 2	7	2 2
100 to 109	734	7	1.5	92 7	3	3 7	0	----	0	----	0	----	4	1 3
110 to 119	228	2	0.4	93 1	1	1 2	0	----	0	----	0	----	1	0 3
120 to 129	618	5	1 1	94 2	2	2 5	0	----	0	----	0	----	3	1 0
130 to 139	260	2	0.4	94.6	0	----	1	3 0	0	----	0	----	1	0 3
140 to 149	152	1	0 2	94 8	0	----	1	3 0	0	----	0	----	0	----
150 to 159	160	1	0 2	95 0	0	----	0	----	0	----	0	----	1	0 3
160 to 169	489	3	0.7	95.7	3	3 7	0	----	0	----	0	----	0	----
170 to 199	1,470	8	1 9	97.6	2	2 5	0	----	0	----	1	9 1	5	1.6
200 to 299	721	3	0.7	98 3	2	2 5	0	----	0	----	0	----	1	0 3
300 to 399	1,748	5	1.1	99 4	3	3.7	0	----	0	----	1	9 1	1	0 3
500 to 799	1,517	2	0 4	99 8	1	1 2	0	----	0	----	0	----	1	0 3
800 and over	865	1	0 2	100 0	0	----	1	3 1	0	----	0	----	0	----

[1] See Glossary for definitions of terms

Table 18.—Distribution of Unfair Labor Practice Situations Received, by Number of Employees in Establishments, Fiscal Year 1973 [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] 23,560	100.0	----	15,283	100.0	4,411	100.0	1,520	100.0	482	100.0	83	100.0	428	100.0	1,116	100.0	237	100.0
Under 10	6,210	26.4	26.4	3,840	25.1	1,115	25.3	581	38.2	123	25.6	49	59 1	163	38.1	251	22.5	88	37.2
10–19	2,442	10.4	36 8	1,720	11 3	274	6 2	220	14.5	64	13.4	1	1.2	80	18.7	58	5.2	25	10.6
20–29	1,772	7 5	44.3	1,205	7 9	270	6.1	126	8.3	40	8.4	2	2.4	42	9.8	67	6.0	20	8.5
30–39	1,311	5.6	49.9	920	6.0	193	4.4	62	4.1	36	7.5	3	3.6	30	7.0	51	4.6	16	6.9
40–49	936	4.0	53.9	671	4 4	136	3 1	55	3 6	19	3.9	0	----	20	4 7	22	2 0	13	5.5
50–59	976	4.1	58.0	661	4.3	158	3.6	68	4.5	30	6.2	5	6.0	10	2.3	33	3.0	11	4.6
60–69	627	2.7	60.7	426	2.8	101	2.3	40	2 6	8	1.7	0	----	14	3.3	31	2.8	7	3.0
70–79	564	2.4	63.1	382	2.5	88	2.0	43	2.8	16	3.3	1	1 2	11	2.6	21	1.9	2	0.8
80–89	336	1.4	64.5	236	1.5	62	1.4	11	0.7	5	1.0	0	----	8	1.9	12	1.1	2	0.8
90–99	234	1.0	65.5	169	1.1	38	0 9	8	0.5	5	1.0	0	----	3	0.7	9	0.8	2	0.8
100–109	885	3 7	69.2	505	3.3	234	5.3	42	2.8	27	5.6	0	----	8	1.9	59	5 3	10	4 2
110–119	197	0.8	70.0	140	0.9	26	0.6	12	0.8	3	0.6	0	----	6	1.4	5	0.4	5	2.1
120–129	290	1.2	71 2	201	1.3	44	1.0	15	1 0	8	1.7	0	----	5	1 2	16	1.4	1	0.4
130–139	146	0.6	71.8	105	0.7	30	0.7	5	0.3	1	0 2	0	----	2	0 5	3	0.3	0	----
140–149	109	0.5	72.3	89	0.6	13	0.2	2	0.1	1	0.2	0	----	3	0.7	1	0.1	0	----
150–159	446	1.9	74.2	295	1.9	82	1.9	16	1.1	10	2.1	2	2.4	0	----	34	3.0	7	3.0
160–169	100	0 4	74.6	70	0.5	18	0.4	3	0.2	1	0.2	0	----	3	0 7	4	0.3	1	0 4
170–179	124	0.5	75.1	81	0.5	25	0 6	2	0.1	3	0 6	0	----	1	0.2	11	1.0	1	0.4
180–189	114	0.5	75.6	83	0.5	21	0.5	2	0 1	1	0.2	0	----	1	0.2	4	0.3	2	0 8
190–199	31	0.1	75 7	23	0.2	6	0 0	1	0.0	0	----	0	----	1	0.2	0	----	0	----
200–299	1,204	5.1	80.8	774	5.1	267	6.1	49	3 2	20	4 1	2	2 4	3	0.7	79	7.1	10	4.2
300–399	770	3 3	84.1	500	3.3	172	3 9	28	1.8	12	2.5	0	----	2	0.5	53	4.7	3	1.3
400–499	477	2.0	86.1	296	1.9	139	3.2	13	0.9	6	1.2	0	----	1	0.2	22	2.0	0	----
500–599	439	1.9	88.0	259	1.7	129	2.9	17	1.1	4	0.8	0	----	2	0 5	28	2.5	0	----
600–699	263	1.1	89 1	182	1 2	56	1.3	10	0.7	2	0.4	0	----	0	----	13	1.2	0	----
700–799	157	0.7	89 8	97	0.6	38	0.9	4	0.3	3	0 6	0	----	1	0.2	13	1.2	1	0.4
800–899	187	0.8	90.6	110	0 7	47	1.1	6	0.4	5	1.0	0	----	0	----	17	1 5	2	0.8
900–999	94	0 4	91.0	73	0.5	14	0 3	0	----	3	0 6	0	----	0	----	4	0.3	0	----
1,000–1,999	753	3.2	94.2	486	2 9	204	4.6	21	1.4	12	2.5	15	18.1	1	0.2	59	5 3	5	2.1
2,000–2,999	352	1.5	95.7	198	1.3	108	2.4	7	0.5	2	0 4	1	1 2	0	----	35	3 1	1	0.4
3,000–3,999	211	0.9	96.6	113	0.7	70	1 6	2	0.1	0	----	0	----	0	----	24	2.2	2	0.8
4,000–4,999	149	0.6	97 2	79	0 5	33	0.7	16	1.1	2	0.4	0	----	0	----	19	1 7	0	----
5,000–9,999	279	1.2	98.4	146	1 0	94	2 1	3	0.2	0	----	0	----	4	0.9	32	2.9	0	----
Above 9,999	375	1.6	100.0	198	1.3	106	2.4	30	2.0	10	2 1	2	2 4	3	0 7	26	2 3	0	----

[1] See Glossary for definition 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 1973; and Cumulative Totals, Fiscal Years 1936–73

	Fiscal Year 1973									July 5, 1935–June 30, 1973	
	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	368	307	55	1	5	----	----	----	----	----	--
On petitions for review and/or enforcement	350	292	52	1	5	100 0	100 0	100 0	100 0	5,399	100.0
Board orders affirmed in full	252	206	44	0	2	70 5	84 6	-- -	40 0	3,314	61.4
Board orders affirmed with modification	37	34	3	0	0	11 6	5 8	-- -	----	957	17 7
Remanded to Board	17	14	0	0	3	4 8	----	----	60 0	233	4 3
Board orders partially affirmed and partially remanded	2	1	1	0	0	0 4	1 9	----	----	77	1.4
Board orders set aside	42	37	4	1	0	12 7	7.7	100 0	----	818	15.2
On petitions for contempt	18	15	3	0	0	100 0	100 0	----	----	----	----
Compliance after filing of petition, before court order	13	11	2	0	0	73 3	66 7	----	----	----	- -
Court orders holding respondent in contempt	5	4	1	0	0	26.7	33 3	----	----	----	---
Court orders denying petition	0	0	0	0	0	----	----	----	----	----	---
Proceedings decided by U.S. Supreme Court	6	4	2	0	0	100.0	100.0	----	----	----	----
Board orders affirmed in full	3	1	2	0	0	25 0	100.0	----	----	----	----
Board orders affirmed with modification	0	0	0	0	0	----	----	----	----	----	----
Board orders set aside	0	0	0	0	0	----	----	----	----	----	----
Remanded to Board	3 [3]	3	0	0	0	75.0	----	----	----	----	----
Remanded to court of appeals	0	0	0	0	0	-- -	---	- --	- -	----	---
Board's request for remand or modification of enforcement order denied	0	0	0	0	0	----	----	----	----	----	-- -
Contempt cases remanded to courts of appeals	0	0	0	0	0	----	----	----	----	---	----
Contempt cases enforced	0	0	0	0	0	----	----	----	----	-- -	----

[1] "Proceedings" are comparable to "cases" reported in annual reports prior to fiscal year 1964 This term more accurately describes the data inasmuch as a single "proceeding" often includes more than one "case" See Glossary for definition of terms

[2] A proceeding in which the Board had entered an order dismissing the complaint and the charging party appealed such dismissal in the courts of appeals

[3] The courts of appeals was directed in turn, to remand these cases to the Board for reconsideration in the light of *N.L.R.B* v *Burns*, 406 U S 272

Table 19A.—Proceedings Decided by Circuit Courts of Appeals on Petitions for Enforcement and/or Review of Board Orders, Fiscal Year 1973 Compared With 5-Year Cumulative Totals, Fiscal Years 1968–1972 [1]

Circuit courts of appeals (headquarters)	Total fiscal year 1973	Total fiscal years 1968–72	Affirmed in full				Modified				Remanded in full				Affirmed in part and remanded in part				Set aside			
			Fiscal Year 1973		Cumulative fiscal years 1968–1972		Fiscal Year 1973		Cumulative fiscal years 1968–1972		Fiscal Year 1973		Cumulative fiscal years 1968–1972		Fiscal Year 1973		Cumulative fiscal years 1968–1972		Fiscal Year 1973		Cumulative fiscal years 1968–1972	
			Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Total all circuits	350	1,698	252	72.0	1,118	65.8	37	10.5	272	16 0	17	4.9	76	4 5	2	0.6	35	2.1	42	12 0	197	11.6
1. Boston, Mass.	10	63	9	90.0	43	68.2	0	0.0	5	7 9	0	0 0	2	3 2	0	0.0	2	3.2	1	10 0	11	17.5
2 New York, N Y.	34	133	28	82 4	97	72.9	1	2 9	20	15 0	0	0 0	3	2.3	0	0.0	2	1.5	6	14 7	11	8 3
3 Philadelphia, Pa.	19	75	16	84 2	54	72 0	2	10.5	5	6 7	0	0.0	8	10 7	0	0 0	1	1 3	1	5.3	7	9 3
4 Richmond, Va.	15	143	13	86 6	91	63 6	1	6 7	32	22.4	0	0.0	5	3 5	0	0 0	0	0 0	1	6 7	15	10 5
5 New Orleans, La.	51	329	39	76 5	218	66 3	4	7.8	54	16 4	3	5 9	12	3 6	0	0.0	8	2 4	5	9 8	37	11 3
6. Cincinnati, Ohio	58	296	39	67.2	178	60 1	7	12.2	57	19 3	2	3 4	7	2 4	1	1 7	5	1 7	9	15 5	49	16 5
7 Chicago, Ill.	41	132	29	70 7	98	74 2	5	12 2	19	14 4	2	4 9	1	0.8	0	0 0	1	0 8	5	12.2	13	9 8
8. St. Louis, Mo.	36	125	21	58.3	55	44.0	7	19 4	41	32.8	3	8 3	8	6.4	0	0 0	0	0 0	5	13 9	21	16.8
9 San Francisco, Calif.	50	206	35	70 0	153	74 3	6	12 0	14	6.7	3	6 0	17	8.3	0	0 0	3	1 5	6	12 0	19	9 2
10 Denver, Colo	9	78	8	88 9	50	64 1	0	0 0	15	19 2	0	0.0	2	2 6	0	0 0	2	2 6	1	11 1	9	11.5
Washington, D C	27	118	15	55 6	81	68.6	4	14.8	10	8 5	4	14 8	11	9 3	1	3 7	11	9.3	3	11 1	5	4 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 1973

	Total proceedings	Injunction proceedings		Total dispositions	Disposition of injunctions						Pending in district court June 30, 1973
		Pending in district court July 1, 1972	Filed in district court fiscal year 1973		Granted	Denied	Settled	Withdrawn	Dismissed	Inactive	
Under sec. 10(e), total	[1] 2	0	2	1	0	0	1	0	0	0	1
Under sec 10(j), total	10	1	9	8	5	3	0	0	0	0	2
8(a)(1)(2)(3)	1	1	0	1	0	1	0	0	0	0	0
8(a)(1)(2)(3)(5)	1	0	1	1	1	0	0	0	0	0	0
8(a)(1)(3)(5)	2	0	2	2	1	1	0	0	0	0	0
8(a)(1)(2)(3); 8(b)(1)(2)	1	0	1	1	1	0	0	0	0	0	0
8(a)(1)(2)(3), 8(b)(3)	1	0	1	0	0	0	0	0	0	0	1
8(b)(1)(2)	2	0	2	1	0	1	0	0	0	0	1
8(b)(1)(3)	1	0	1	1	1	0	0	0	0	0	0
8(b)(3)	1	0	1	1	1	0	0	0	0	0	0
Under sec. 10(l), total	253	11	242	230	78	5	99	23	11	14	23
8(b)(4)(A)	5	0	5	4	3	0	0	1	0	0	1
8(b)(4)(A)(B)	4	0	4	3	0	1	1	1	0	0	1
8(b)(4)(A)(B)(D)	1	0	1	0	0	0	0	0	0	0	1
8(b)(4)(A)(B), 8(e)	1	0	1	1	1	0	0	0	0	0	0
8(b)(4)(A)(C), 7(A)	1	0	1	0	0	0	0	0	0	0	1
8(b)(4)(B)	150	7	143	141	49	2	64	8	7	11	9
8(b)(4)(B)(C)	1	0	1	1	1	0	0	0	0	0	0
8(b)(4)(B)(D)	8	1	7	6	0	0	6	0	0	0	2
8(b)(4)(B); 7(B)	1	0	1	1	1	0	0	0	0	0	0
8(b)(4)(B)(D); 7(A)	1	0	1	0	0	0	0	0	0	0	1
8(b)(4)(D)	52	2	50	49	14	1	23	8	1	2	3
8(b)(7)(A)	4	1	3	4	0	0	0	2	1	1	0
8(b)(7)(B)	4	0	4	3	1	0	0	2	0	0	1
8(b)(7)(C)	17	0	17	15	8	1	3	1	2	0	2
8(e)	3	0	3	2	0	0	2	0	0	0	1

[1] In courts of appeals

Table 21.—Miscellaneous Litigation Involving NLRB; Outcome of Proceedings in Which Court Decisions Issued in Fiscal Year 1973

Type of litigation	Number of proceedings								
	Total—all courts			In courts of appeals			In district courts		
		Court determination			Court determination			Court determination	
	Number decided	Upholding Board position	Contrary to Board position	Number decided	Upholding Board position	Contrary to Board position	Number decided	Upholding Board position	Contrary to Board position
Totals—all types	51	49	2	11	10	1	40	39	1
NLRB-initiated actions	10	10	0	0	0	0	10	10	0
To enforce subpena	5	5	0	0	0	0	5	5	0
To restrain dissipation of assets by respondent	3	3	0	0	0	0	3	3	0
To defend Board's jurisdiction	2	2	0	0	0	0	2	2	0
Action by other parties	41	39	2	11	10	1	30	29	1
To restrain NLRB from	13	13	0	2	2	0	11	11	0
Proceeding in R case	5	5	0	2	2	0	3	3	0
Proceeding in unfair labor practice case	6	6	0	0	0	0	6	6	0
Proceeding in backpay case	2	2	0	0	0	0	2	2	0
Other	0	0	0	0	0	0	0	0	0
To compel NLRB to	28	26	2	9	8	1	19	18	1
Issue complaint	4	4	0	1	1	0	3	3	0
Seek injunction	0	0	0	0	0	0	0	0	0
Take action in R case	8	8	0	3	3	0	5	5	0
Other	7	5	2	1	0	1	6	5	1
Other	9	9	0	4	4	0	5	5	0

Table 22.—Advisory Opinion Cases Received, Closed, and Pending, Fiscal Year 1973 [1]

	Total	Number of cases			
		Identification of petitioner			
		Employer	Union	Courts	State boards
Pending July 1, 1972	2	1	0	0	1
Received fiscal 1973	5	4	1	0	0
On docket fiscal 1973	7	6	0	0	1
Closed fiscal 1973	6	5	0	0	1
Pending June 30, 1973	1	1	0	0	0

[1] See Glossary for definition of terms

Table 22A.—Disposition of Advisory Opinion Cases, Fiscal Year 1973 [1]

Action taken	Total cases closed
Total	6
Board would assert jurisdiction	0
Board would not assert jurisdiction	2
Unresolved because of insufficient evidence submitted	0
Dismissed	2
Withdrawn	2

[1] See Glossary for definition of terms.

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