FORTY-SECOND

ANNUAL REPORT

OF THE

# NATIONAL LABOR RELATIONS BOARD

FOR THE FISCAL YEAR

ENDED SEPTEMBER 30

1977

FORTY-SECOND

ANNUAL REPORT

OF THE

# NATIONAL LABOR RELATIONS BOARD

FOR THE FISCAL YEAR

ENDED SEPTEMBER 30

# 1977



UNITED STATES GOVERNMENT PRINTING OFFICE

WASHINGTON, D.C. • 1977

For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, D.C. 20402 - (paper cover)
Stock Number 031-000-00181-1

# NATIONAL LABOR RELATIONS BOARD

## Members of the Board

JOHN H. FANNING, *Chairman* [1]
HOWARD JENKINS, Jr.
BETTY SOUTHARD MURPHY
JOHN A. PENELLO
PETER D. WALTHER [2]

Chief Counsels to Board Members
WILLIAM C. BAISINGER
HARRY M. LEET
HELEN C. REINER
HENRY L. SEGAL
JEFFREY A. NORRIS

JOHN C. TRUESDALE, *Executive Secretary*
WILLIAM A. LUBBERS, *Solicitor* [3]
THOMAS N. KESSEL, *Chief Administrative Law Judge*
THOMAS W. MILLER, JR., *Director of Information*

## Office of the General Counsel

JOHN S. IRVING, *General Counsel*
JOHN E. HIGGINS, JR., *Deputy General Counsel*

JOSEPH DESIO
*Associate General Counsel*
*Division of Operations Management*

CARL L. TAYLOR
*Associate General Counsel*
*Division of Enforcement Litigation*

HAROLD J. DATZ
*Associate General Counsel*
*Division of Advice*

ERNEST RUSSELL
*Director*
*Division of Administration*

[1] Designated as Chairman April 14, 1977, to succeed Betty Southard Murphy.
[2] Resigned August 31, 1977
[3] Appointed July 3, 1977, to succeed John C Miller

# LETTER OF TRANSMITTAL

NATIONAL LABOR RELATIONS BOARD,
*Washington, D.C., March 10, 1978.*

SIR: As provided in section 3(c) of the Labor Management Relations Act, 1947, I submit herewith the Forty-Second Annual Report of the National Labor Relations Board for the fiscal year ended September 30, 1977, and, under separate cover, lists containing the cases heard and decided by the Board during this fiscal year and the transition quarter (July–September 1976).

Respectfully submitted.

JOHN H. FANNING, *Chairman.*

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

# TABLE OF CONTENTS


| CHAPTER | | Page |
|---|---|---|
| I. | Operations in Fiscal Year 1977 | 1 |
| | A. Summary | 1 |
| | 1. NLRB Administration | 2 |
| | 2. Case Activity Highlights | 8 |
| | B. Operational Highlights | 11 |
| | 1. Unfair Labor Practices | 11 |
| | 2. Representation Cases | 16 |
| | 3. Elections | 17 |
| | 4. Decisions Issued | 20 |
| | a. Five-Member Board | 20 |
| | b. Regional Directors | 21 |
| | c. Administrative Law Judges | 22 |
| | 5. Court Litigation | 23 |
| | C. Decisional Highlights | 23 |
| | 1. Exercise of Jurisdiction | 24 |
| | 2. Deferral of Individual Statutory Protections to Arbitration | 24 |
| | 3. Considerations of Race and Sex Discrimination and Campaign Misrepresentation Issues in Representation Cases | 25 |
| | 4. Picketing at Health Care Institutions | 26 |
| | 5. Interest Rate on Backpay and Monetary Remedies | 26 |
| | D. Financial Statement | 27 |
| II. | Jurisdiction of the Board | 28 |
| | A. Law Firms | 28 |
| | B. Accounting Firms | 29 |
| | C. Commercial Activities of Foreign Governments | 30 |
| | D. Other Issues | 32 |
| III. | Effect of Concurrent Arbitration Proceedings | 35 |
| IV. | Board Procedure | 41 |
| | A. Litigation of Issues of Union Discrimination | 41 |
| | B. Nature of Compliance Proceedings | 45 |
| V. | Representation Proceedings | 47 |
| | A. Contract Bar to Conduct of an Election | 47 |
| | B. Conduct of Election | 50 |
| | C. Conduct Affecting Elections | 54 |
| | 1. Misrepresentation of Material Facts | 54 |
| | 2. Union Policy of Prepayment of Initiation Fees | 57 |
| | 3. Other Conduct | 59 |
| | D. Unit Issues | 60 |
| | 1. Status as "Employee" | 60 |
| | a. Agricultural Workers | 60 |
| | b. Independent Contractors | 61 |
| | 2. Health Care Institution Maintenance Units | 65 |
| | 3. Other Issues | 68 |

| CHAPTER | | Page |
|---|---|---|
| VI. | Unfair Labor Practices | 75 |
| | A. Employer Interference With Employee Rights | 75 |
| | 1. Forms of Employee Activities Protected | 75 |
| | a. Picket Line Activities | 76 |
| | b. Communications Concerning Working Conditions | 78 |
| | 2. Union Representation at Disciplinary Interviews | 80 |
| | 3. Other Forms of Interference | 84 |
| | B. Employer Assistance to Labor Organizations | 87 |
| | C. Employer Discrimination in Conditions of Employment | 88 |
| | 1. Failure To Recall Discriminatees | 89 |
| | 2. Hiring in Anticipation of Referral Change | 89 |
| | 3. Discrimination for Participation in Board Proceedings | 91 |
| | D. Employer Bargaining Obligation | 93 |
| | 1. Card Majority Bargaining Orders | 94 |
| | 2. Duration of Bargaining Obligation | 98 |
| | 3. Change in Identity of Representative | 103 |
| | 4. Successor Employer Issues | 106 |
| | 5. Duty To Furnish Information | 108 |
| | 6. Subject Matter for Bargaining | 110 |
| | 7. Other Issues | 113 |
| | E. Union Interference With Employee Rights | 114 |
| | 1. Duty of Fair Representation | 115 |
| | 2. Enforcement of Restrictions on Resignation From Membership | 117 |
| | a. Employees | 117 |
| | b. Supervisors | 119 |
| | F. Union Causation of Employer Discrimination | 120 |
| | 1. Priority of Referral for Employment | 120 |
| | 2. Seniority Preference for Union Representatives | 121 |
| | G. Union Bargaining Obligation | 124 |
| | 1. Subjects for Bargaining | 124 |
| | 2. Unilateral Change in Contract Conditions | 128 |
| | 3. Notice Required by Section 8(d) | 128 |
| | H. Prohibited Strikes and Boycotts | 129 |
| | 1. Ambulatory Picketing | 130 |
| | 2. Consumer Picketing | 131 |
| | I. Jurisdictional Dispute Proceedings | 133 |
| | J. Exactions for Work Not Performed | 136 |
| | K. Recognitional Picketing | 137 |
| | L. Unit Work Preservation Issues | 138 |
| | M. Picketing of Health Care Institutions | 141 |
| | 1. Notice Requirements | 141 |
| | 2 Informational Picketing | 144 |
| | N. Remedial Order Provisions | 145 |
| | 1. Computation of Backpay | 145 |
| | 2. Obligation of Discharged Strikers to Apply for Reinstatement | 147 |
| | 3. Time for Response to Reinstatement Offers and Applications | 147 |
| | 4. Bargaining Orders and Certifications of Unions | 149 |
| | 5. Remedy for Violation by Causing Arrest of an Employee | 151 |

| Chapter | | Page |
|---|---|---|
| VII. | Supreme Court Litigation | 152 |
| | A. "Right To Control" Test in Secondary Boycott Cases | 152 |
| | B. Employee Status of Feed Drivers | 154 |
| | C. Effect of Preemption Doctrine on State Court Suit for Intentional Infliction of Emotional Distress Arising Out of Incidents Covered by the Act | 155 |
| VIII. | Enforcement Litigation | 157 |
| | A. Board and Court Procedure | 157 |
| | B. Deferral to Other Means of Adjustment | 159 |
| | C. Representation Case Issues | 162 |
| | D. Unfair Labor Practices | 165 |
| | 1. Employer Interference With Employee Rights | 165 |
| | 2. Employer Discrimination Against Employees | 168 |
| | 3. The Bargaining Obligation | 170 |
| | a. Obligation To Bargain Upon Request | 170 |
| | b. Successor Bargaining Obligation | 173 |
| | 4. Union Interference With Employee Rights | 174 |
| | 5. Union Coercion of Employers in Selection of Representatives | 175 |
| | 6. Union Causation of Employer Discrimination | 175 |
| | 7. Secondary Boycotts and Strikes | 176 |
| | a. The Ally Doctrine | 176 |
| | b. Other Issues | 177 |
| | 8. Recognitional Picketing | 180 |
| | 9. Hot Cargo Agreement | 181 |
| | 10. Union Compliance With Health Care Amendments | 182 |
| | E. Remedial Order Provisions | 184 |
| IX. | Injunction Litigation | 185 |
| | A. Injunctive Litigation Under Section 10(j) | 185 |
| | B. Injunctive Litigation Under Section 10(l) | 188 |
| X | Contempt Litigation | 193 |
| XI. | Special and Miscellaneous Litigation | 197 |
| | A. Litigation Involving the Board's Jurisdiction | 197 |
| | B. Litigation Involving the Freedom of Information Act | 199 |
| Index of Cases Discussed | | 203 |
| Appendix. | | |
| | Statistical Tables for Transition Quarter (July–September 1976) and Fiscal Year 1977 | 209 |
| | Glossary of Terms Used in Statistical Tables | 209 |
| | Subject Index to Annual Report Tables | 217 |


## TABLES FOR TRANSITION QUARTER (JULY–SEPTEMBER 1976)


| Table | | Page |
|---|---|---|
| 1. | Total Cases Received, Closed, and Pending, Transition Qtr (July–September 1976) | 218 |
| 1A. | Unfair Labor Practice Cases Received, Closed, and Pending, Transition Qtr (July–September 1976) | 219 |
| 1B. | Representation Cases Received, Closed, and Pending, Transition Qtr (July–September 1976) | 220 |

| TABLE | | Page |
|---|---|---|
| 2. | Types of Unfair Labor Practices Alleged, Transition Qtr (July–September 1976) | 221 |
| 3A. | Formal Actions Taken in Unfair Labor Practice Cases, Transition Qtr (July–September 1976) | 222 |
| 3B. | Formal Actions Taken in Representation and Union Deauthorization Cases, Transition Qtr (July–September 1976) | 223 |
| 3C. | Formal Actions Taken in Amendment of Certification and Unit Clarification Cases, Transition Qtr (July–September 1976) | 225 |
| 4. | Remedial Actions Taken in Unfair Labor Practice Cases Closed, Transition Qtr (July–September 1976) | 226 |
| 5. | Industrial Distribution of Cases Received, Transition Qtr (July–September 1976) | 228 |
| 6A. | Geographic Distribution of Cases Received, Transition Qtr (July–September 1976) | 230 |
| 6B. | Standard Federal Administrative Regional Distribution of Cases Received, Transition Qtr (July–September 1976) | 232 |
| 7. | Analysis of Methods of Disposition of Unfair Labor Practice Cases Closed, Transition Qtr (July–September 1976) | 234 |
| 7A. | Analysis of Methods of Disposition of Jurisdictional Dispute Cases Closed Prior to Unfair Labor Practice Proceedings, Transition Qtr (July–September 1976) | 236 |
| 8. | Disposition by Stage of Unfair Labor Practice Cases Closed, Transition Qtr (July–September 1976) | 237 |
| 9. | Disposition by Stage of Representation and Union Deauthorization Cases Closed, Transition Qtr (July–September 1976) | 238 |
| 10. | Analysis of Methods of Disposition of Representation and Union Deauthorization Cases Closed, Transition Qtr (July–September 1976) | 239 |
| 10A. | Analysis of Methods of Disposition of Amendment of Certification and Unit Clarification Cases Closed, Transition Qtr (July–September 1976) | 240 |
| 11. | Types of Elections Resulting in Certification in Cases Closed, Transition Qtr (July–September 1976) | 240 |
| 11A. | Analysis of Elections Conducted in Representation Cases Closed, Transition Qtr (July–September 1976) | 241 |
| 11B. | Representation Elections in Which Objections and/or Determinative Challenges Were Ruled On in Cases Closed, Transition Qtr (July–September 1976) | 242 |
| 11C. | Objections Filed in Representation Cases Closed, by Party Filing, Transition Qtr (July–September 1976) | 243 |
| 11D. | Disposition of Objections in Representation Cases Closed, Transition Qtr (July–September 1976) | 243 |
| 11E. | Results of Rerun Elections Held in Representation Cases Closed, Transition Qtr (July–September 1976) | 244 |
| 12. | Results of Union-Shop Deauthorization Polls in Cases Closed, Transition Qtr (July–September 1976) | 245 |
| 13. | Final Outcome of Representation Elections in Cases Closed, Transition Qtr (July–September 1976) | 246 |
| 14. | Valid Votes Cast in Representation Elections, by Final Results of Election, in Cases Closed, Transition Qtr (July–September 1976) | 249 |
| 15A. | Geographic Distribution of Representation Elections Held in Cases Closed, Transition Qtr (July–September 1976) | 252 |

TABLE Page
15B. Standard Federal Administrative Regional Distribution of Representation Elections Held in Cases Closed, Transition Qtr (July–September 1976) 254
16. Industrial Distribution of Representation Elections Held in Cases Closed, Transition Qtr (July–September 1976) 256
17. Size of Units in Representation Election Cases Closed, Transition Qtr (July–September 1976) 258
18. Distribution of Unfair Labor Practice Situations Received, by Number of Employees in Establishments, Transition Qtr (July–September 1976) 260
19. Litigation for Enforcement and/or Review of Board Orders, Transition Qtr (July–September 1976); and Cumulative Totals, Fiscal Years 1936 through Transition Qtr (July–September 1976) 261
19A. Proceedings Decided by Circuit Courts of Appeals on Petitions for Enforcement and/or Review of Board Orders, Transition Qtr 1976, Compared With 5-Year Cumulative Totals, Fiscal Years 1972 through 1976 262
20. Injunction Litigation Under Section 10(e), 10(j), and 10(l), Transition Qtr (July–September 1976) 263
21. Miscellaneous Litigation Involving NLRB; Outcome of Proceedings in Which Court Decisions Issued in Transition Qtr (July–September 1976) 264
22. Advisory Opinion Cases Received, Closed, and Pending, Transition Qtr (July–September 1976) 265
22A. Disposition of Advisory Opinion Cases, Transition Qtr (July–September 1976) 265

## TABLES FOR FISCAL YEAR 1977

TABLE Page
1. Total Cases Received, Closed, and Pending, Fiscal Year 1977 266
1A. Unfair Labor Practice Cases Received, Closed, and Pending, Fiscal Year 1977 267
1B. Representation Cases Received, Closed, and Pending, Fiscal Year 1977 268
2. Types of Unfair Labor Practices Alleged, Fiscal Year 1977 269
3A. Formal Actions Taken in Unfair Labor Practice Cases, Fiscal Year 1977 270
3B. Formal Actions Taken in Representation and Union Deauthorization Cases, Fiscal Year 1977 271
3C. Formal Actions Taken in Amendment of Certification and Unit Clarification Cases, Fiscal Year 1977 273
4. Remedial Actions Taken in Unfair Labor Practice Cases Closed, Fiscal Year 1977 274
5 Industrial Distribution of Cases Received, Fiscal Year 1977 276
6A. Geographic Distribution of Cases Received, Fiscal Year 1977 278
6B. Standard Federal Administrative Regional Distribution of Cases Received, Fiscal Year 1977 280
7. Analysis of Methods of Disposition of Unfair Labor Practice Cases Closed, Fiscal Year 1977 282
7A. Analysis of Methods of Disposition of Jurisdictional Dispute Cases Closed Prior to Unfair Labor Practice Proceedings, Fiscal Year 1977 284

TABLE Page

8. Disposition by Stage of Unfair Labor Practice Cases Closed, Fiscal Year 1977 285
9. Disposition by Stage of Representation and Union Deauthorization Cases Closed, Fiscal Year 1977 286
10. Analysis of Methods of Disposition of Representation and Union Deauthorization Cases Closed, Fiscal Year 1977 287
10A. Analysis of Methods of Disposition of Amendment of Certification and Unit Clarification Cases Closed, Fiscal Year 1977 288
11. Types of Elections Resulting in Certification in Cases Closed, Fiscal Year 1977 288
11A. Analysis of Elections Conducted in Representation Cases Closed, Fiscal Year 1977 289
11B. Representation Elections in Which Objections and/or Determinative Challenges Were Ruled On in Cases Closed, Fiscal Year 1977 290
11C. Objections Filed in Representation Cases Closed, by Party Filing, Fiscal Year 1977 291
11D. Disposition of Objections in Representation Cases Closed, Fiscal Year 1977 291
11E. Results of Rerun Elections Held in Representation Cases Closed, Fiscal Year 1977 292
12. Results of Union-Shop Deauthorization Polls in Cases Closed, Fiscal Year 1977 293
13. Final Outcome of Representation Elections in Cases Closed, Fiscal Year 1977 294
14. Valid Votes Cast in Representation Elections, by Final Results of Election, in Cases Closed, Fiscal Year 1977 297
15A. Geographic Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1977 300
15B. Standard Federal Administrative Regional Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1977 302
16. Industrial Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1977 304
17. Size of Units in Representation Election Cases Closed, Fiscal Year 1977 306
18. Distribution of Unfair Labor Practice Situations Received, by Number of Employees in Establishments, Fiscal Year 1977 308
19. Litigation for Enforcement and/or Review of Board Orders, Fiscal Year 1977; and Cumulative Totals, Fiscal Years 1936–77 309
19A. Proceedings Decided by Circuit Courts of Appeals on Petitions for Enforcement and/or Review of Board Orders, Fiscal Year 1977, Compared With 5-Year Cumulative Totals, Fiscal Years 1972 through 1976 310
20. Injunction Litigation Under Section 10(e), 10(j), and 10(l), Fiscal Year 1977 311
21. Miscellaneous Litigation Involving NLRB; Outcome of Proceedings in Which Court Decisions Issued in Fiscal Year 1977 312
22. Advisory Opinion Cases Received, Closed, and Pending, Fiscal Year 1977 313
22A. Disposition of Advisory Opinion Cases, Fiscal Year 1977 313

# CHARTS IN CHAPTER I


| CHART | | Page |
|---|---|---|
| 1. | Case Intake by Unfair Labor Practice Charges and Representation Petitions | 2 |
| 2. | ULP Case Intake | 4 |
| 3. | Disposition Pattern for Unfair Labor Practice Cases | 5 |
| 3A. | Disposition Pattern for Meritorious Unfair Labor Practice Cases | 6 |
| 3B. | Disposition Pattern for Unfair Labor Practice Cases After Trial | 7 |
| 4. | Number and Age of Unfair Labor Practice Cases Pending Under Preliminary Investigation, Month to Month | 8 |
| 5. | Unfair Labor Practice Merit Factor | 9 |
| 6. | Complaints Issued in Unfair Labor Practice Proceedings and Median Days From Filing to Complaint | 10 |
| 7. | Unfair Labor Practice Cases Settled | 12 |
| 8 | Administrative Law Judge Hearings and Decisions | 13 |
| 9. | Amount of Backpay Received by Discriminatees | 14 |
| 10. | Time Required To Process Representation Cases From Filing of Petition to Issuance of Decision | 15 |
| 11. | Contested Board Decisions Issued | 16 |
| 12. | Representation Elections Conducted | 18 |
| 13. | Regional Director Decisions Issued in Representation and Related Cases | 19 |
| 14. | Cases Closed | 21 |
| 15. | Comparison of Filings of Unfair Labor Practice Cases and Representation Cases | 22 |

# I

# Operations in Fiscal Year 1977

## A. Summary

The steadily growing caseload of the National Labor Relations Board topped the 50,000 mark in fiscal 1977 in the 42d year of the independent agency's administration of the basic U.S. labor relations law.

The NLRB initiates no cases. It acts upon those brought to it.

All segments of the public covered by the National Labor Relations Act—workers, unions, employers—utilized the services of the NLRB in record numbers. They filed 52,943 cases of all types, principally charges that business enterprises or labor organizations, or both, had committed unfair labor practices prohibited by the Act. There were 37,828 such charges.

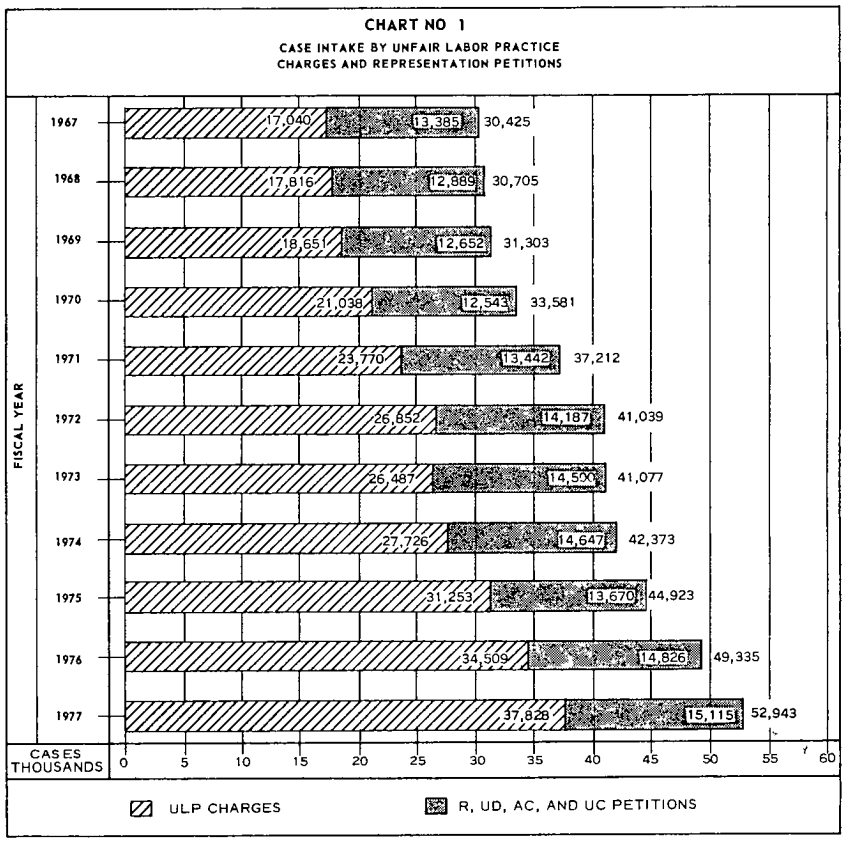
Both figures were historic highs. So was the total of 14,358 petitions asking the NLRB to conduct secret ballot elections among employees to settle questions of worker representation. An additional 757 petitions were filed in related matters.

During the year the NLRB marked a milestone. Since the agency was created in 1935, 30 million working Americans have cast votes in some 300,000 representation elections. In a message to the NLRB banquet commemorating the event, President Carter hailed the continuation of "this exercise of industrial democracy" as "a key element in our industrial relations system."

A 2-year study of NLRB procedures by a group of 27 expert labor law attorneys, the Chairman's Task Force on the National Labor Relations Board, offered valuable suggestions to speed and modernize NLRB procedures. Many were adopted.

Despite the upward spiral of new cases, the NLRB closed a record number in the fiscal period. In its busiest year, the five-member Board issued a record 1,848 formal decisions.

In April, John H. Fanning, the Board's senior Member who has served since 1957, was designated by President Carter to serve as Chairman. He succeeded Betty Southard Murphy, who remains a




Board Member. Member Peter D. Walther resigned in August after 2 years' service and John C. Truesdale, the NLRB's Executive Secretary, was nominated by President Carter in September to succeed him.

In fiscal 1977, the NLRB recovered a record $17.5 million for American workers who suffered monetary losses because of unfair labor practices; interest rates on such reimbursements were increased in the first such action in 15 years, a vote-and-impound procedure was adopted for cases in which the Board grants a request for review of a regional director's decision, thus insuring that virtually all employee elections will be held on the dates scheduled, and the 32d NLRB regional office was opened in Oakland, California, to provide improved service for an area of growing labor relations activity.

## 1. NLRB Administration

The National Labor Relations Board is an independent Federal agency created in 1935 by Congress to administer the basic law governing relations between labor unions and business enterprises engaged

in interstate commerce. This statute, the National Labor Relations Act, came into being at a time when labor disputes could and did threaten the Nation's economy.

Declared constitutional by the Supreme Court in 1937, the Act has been substantially amended in 1947, 1959, and 1974, each amendment increasing the scope of the NLRB's regulatory powers.

NLRB Members are Chairman John H. Fanning of Rhode Island, Howard Jenkins, Jr., of Colorado, John A. Penello of Maryland, Betty Southard Murphy of New Jersey, and John C. Truesdale of Maryland. John S. Irving of New Jersey is General Counsel.

The purpose of the Nation's primary labor relations law is 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 goal through administration, interpretation, and enforcement of the Act.

In its statutory assignment, the NLRB has two principal 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 in dealing with their employers and, if so, by which union, and (2) to prevent and remedy unlawful acts, called unfair labor practices, by either employers or unions or both.

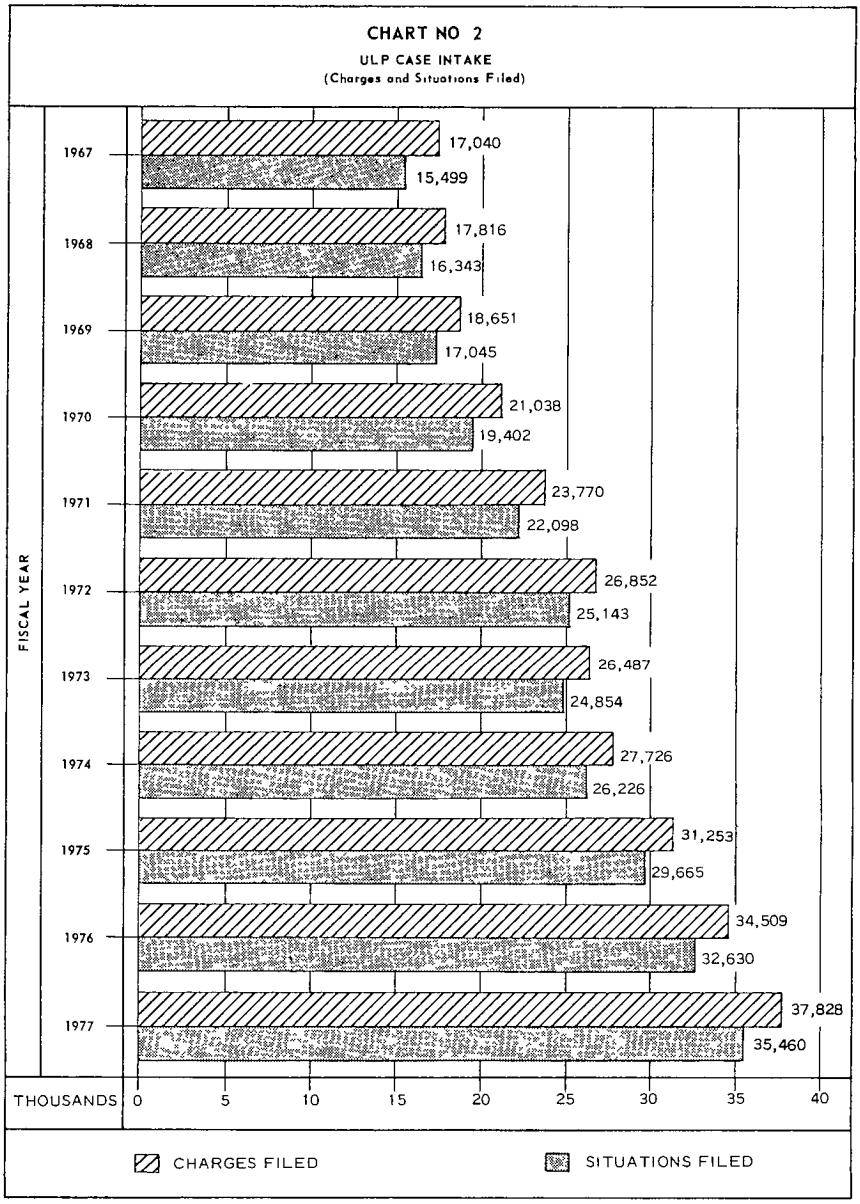
The NLRB does not act on its own motion in either function. It processes only those charges of unfair labor practices and petitions for employee elections which are filed in the NLRB's 48 regional, subregional, and resident offices.

The Act's unfair labor practice provisions place certain restrictions on actions of employers and labor organizations in their relations with employees, as well as with each other. Its election provisions provide mechanics for conducting and certifying results of representation elections to determine collective-bargaining wishes of employees, including balloting 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 election petitions, the NLRB is concerned with the adjustment of labor disputes either by way of settlements or through its quasi-judicial proceedings, or by way of secret ballot employee elections.

The NLRB has no independent statutory power of enforcement of its decisions and orders. It may, however, seek enforcement in the U.S. courts of appeals, and parties to its cases also may seek judicial review.

NLRB authority is divided by law and by delegation. The five-member Board primarily acts as a quasi-judicial body in deciding cases on formal records. The General Counsel, who, like each Mem-

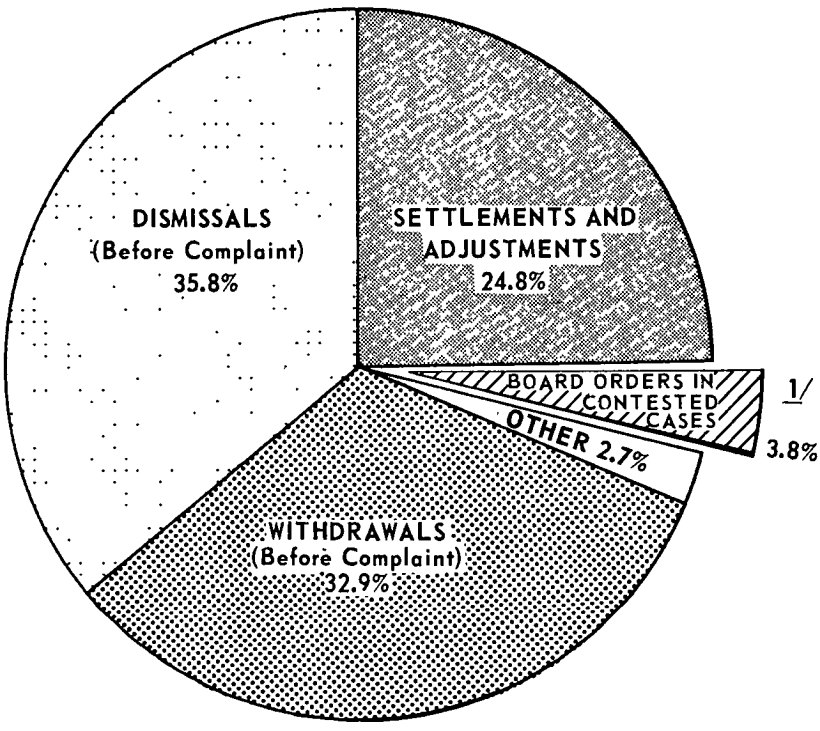



ber of the Board, is appointed by the President, is responsible for the issuance and prosecution of formal complaints in cases leading to Board decision. He has general supervision of the NLRB's nationwide network of field offices.

## CHART NO. 3

### DISPOSITION PATTERN FOR UNFAIR LABOR PRACTICE CASES
(Based on Cases Closed)

FISCAL YEAR 1977




1/ Contested cases reaching Board Members for Decisions.

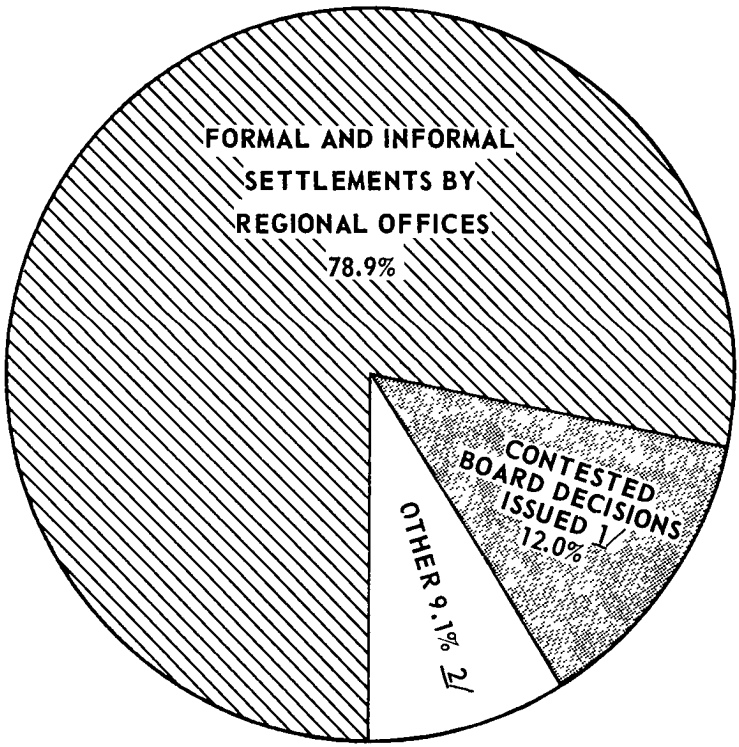
For the conduct of its formal hearings in unfair labor practice cases, the NLRB employs administrative law judges who hear and decide cases. Administrative law judges' decisions may be appealed to the Board by the filing of exceptions. If no exceptions are taken, the administrative law judges' orders become orders of the Board. Due to its growing caseload of unfair labor practice proceedings, the need for additional administrative law judges is an acute operational problem.

# CHART NO. 3A

## DISPOSITION PATTERN FOR MERITORIOUS UNFAIR LABOR PRACTICE CASES

(Based on Cases Closed)

FISCAL YEAR 1977



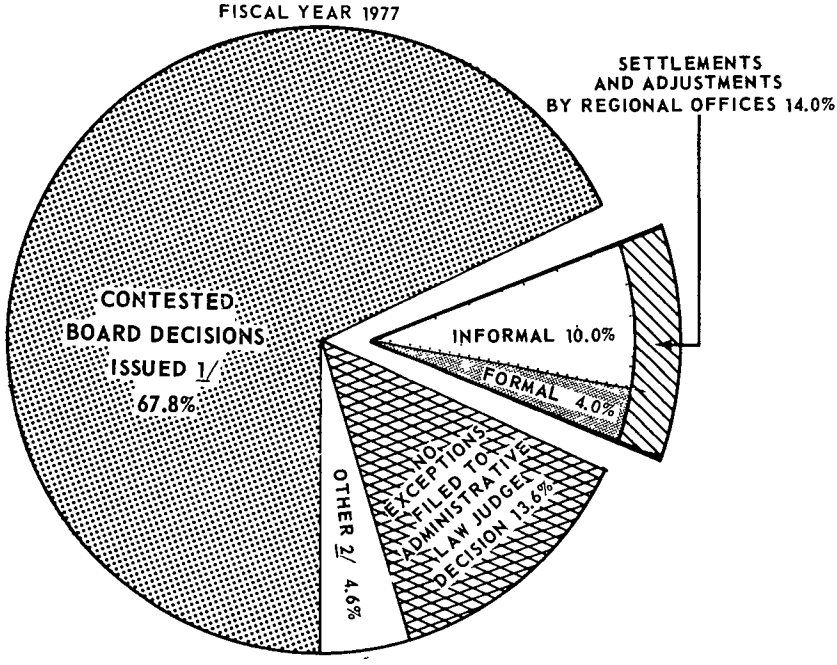

1/ Following Administrative Law Judge Decision, stipulated record or summary judgment ruling.

2/ Dismissals, withdrawals, compliance with Administrative Law Judge Decision, stipulated record or summary judgment ruling.

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

## CHART NO. 3B

### DISPOSITION PATTERN FOR UNFAIR LABOR PRACTICE CASES AFTER TRIAL
(Based on Cases Closed)



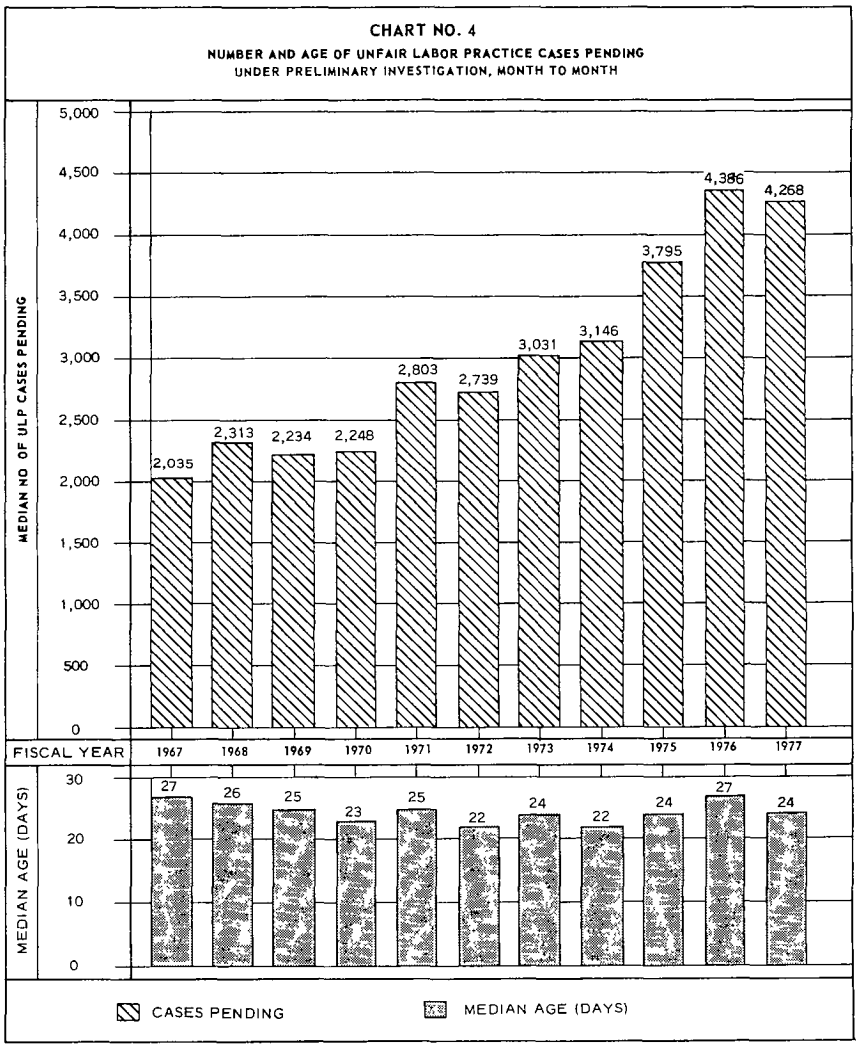

1/ Following Administrative Law Judge Decision, stipulated record or summary judgment ruling.

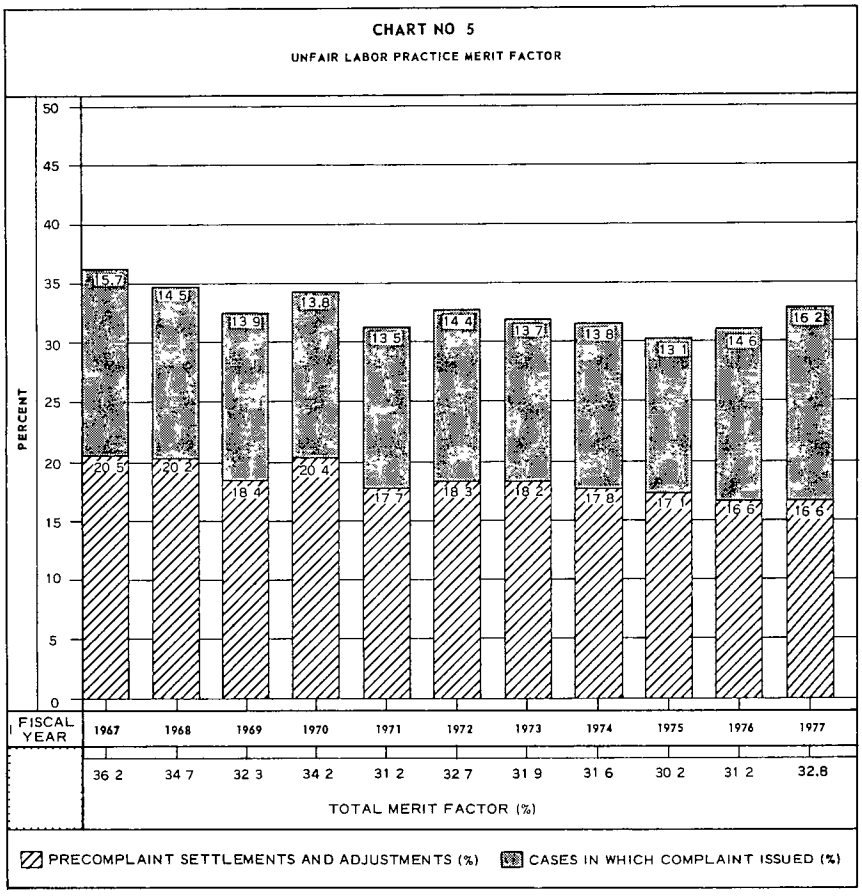
2/ Dismissals, withdrawals, and other dispositions.

## 2. Case Activity Highlights

Workers, unions, and employers made use of NLRB processes and services at a record rate during fiscal 1977. For example:

- More new cases—52,943—of all types were filed than ever before. Charges that employers, unions, or both committed unfair labor practices totaled a record 37,828; petitions for the NLRB to conduct employee representation elections were a record 14,358.



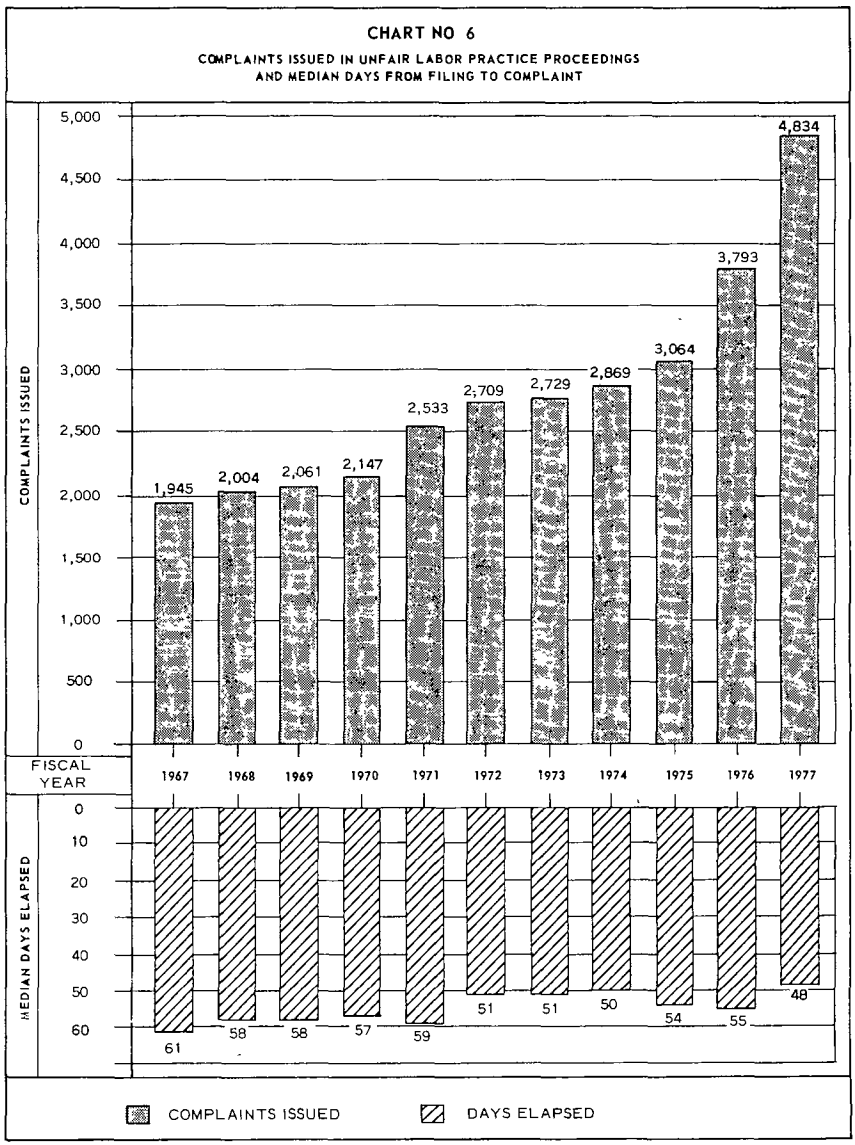



• More cases—53,908—were handled to conclusion than ever before by decision, settlement, withdrawal, or dismissal. Of the total, 37,602 were unfair labor practice cases; 15,768 were representation cases and union-shop deauthorization polls; and 538 were amendment of certification and unit clarification cases.

• More contested decisions were issued by the five-member Board—1,848. There were 1,127 decisions in contested unfair labor practice cases, and 721 decisions in contested representation and related proceedings.

• More decisions were issued by administrative law judges—1,245. These were findings and recommendations following hearings by the judges in unfair labor practice cases.

• More formal complaints in unfair labor practice cases were issued by the General Counsel—4,834. For a complaint to be issued, investigation by professional regional office staff must show the allegation to have merit.




• More settlements of unfair labor practice charges were accomplished in regional offices (before issuance of administrative law judge's decision)—9,349. The General Counsel emphasizes settlement efforts before proceeding to trial with meritorious complaint cases.

• More backpay, reimbursement for lost earnings plus interest, was collected—$17,372,680—for employees discharged unlawfully. Job reinstatement was offered to 4,458 individuals discriminated against under provisions of the labor relations law.

## B. Operational Highlights

### 1. Unfair Labor Practices

In fiscal 1977, 37,828 unfair labor practice cases were filed with the NLRB, an increase of 3,319 above the 34,509 filed in fiscal 1976. In situations in which related charges are counted as a single unit, there was a 9-percent increase from fiscal 1976. (Chart 2.)

Alleged violations of the Act by employers increased to 26,105 cases, an 11-percent increase from the 23,496 of 1976. Charges against unions increased 6.5 percent to 11,601 from 10,898 in 1976.

There were 122 charges of violations of section 8(e) of the Act, which bans hot cargo agreements; 118 against unions, 2 against employers, and 2 against unions and employers jointly. (Tables 1A and 2.)

Regarding charges against employers, 16,697, or 64 percent of the 26,105 total, alleged discrimination or illegal discharge of employees. There were 7,848 refusal-to-bargain allegations, about 30 percent of the charges. (Table 2.)

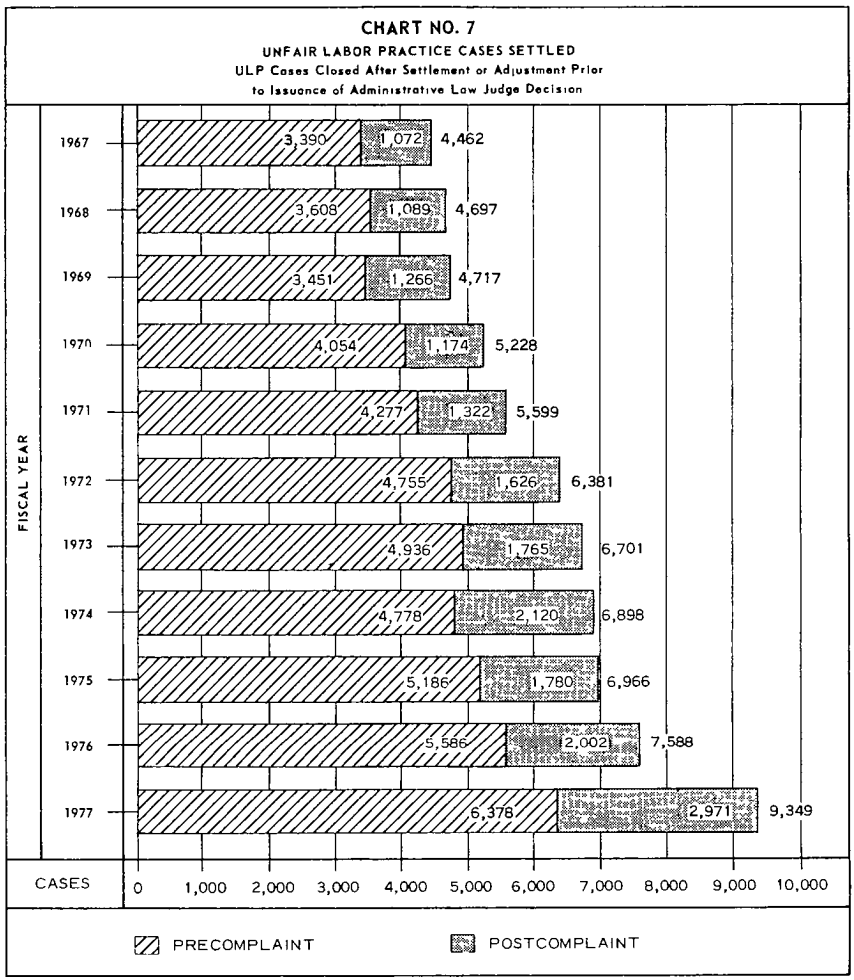
Of charges against unions, there were 8,109 alleging illegal restraint and coercion of employees, about 70 percent as compared with the 67 percent of similar filings in 1976. There were 2,128 charges against unions for illegal secondary boycotts and jurisdictional disputes, 6 percent less than the 2,265 of 1976.

There were 1,749 charges of illegal union discrimination against employees, down from 1,921 in 1976. There were 449 charges that unions picketed illegally for recognition or for organizational purposes, compared with 444 charges in 1976. (Table 2.)

In charges against employers, unions led by filing 56 percent. Unions filed 14,693 charges, individuals filed 11,374, and employers filed 38 charges against other employers.

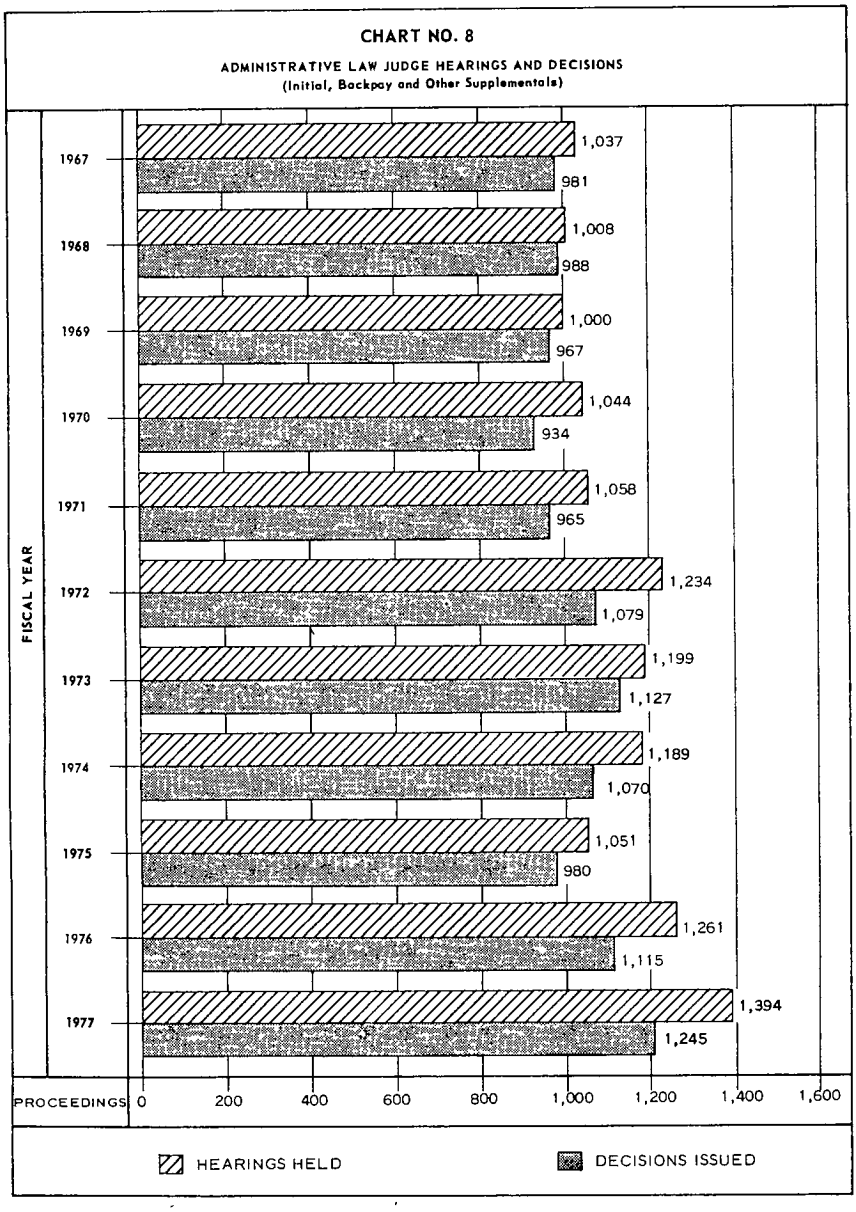
As to charges against unions, 7,518 were filed by individuals, or 65 percent of the total of 11,601. Employers filed 3,801, and other unions filed the 282 remaining charges. There were 122 hot cargo charges against unions and/or employers: 102 were filed by employers, 7 by individuals, and 13 by unions.

A record 37,602 unfair labor practice charges were closed. Some 94 percent were closed by NLRB regional offices as compared with 95




percent in 1976. In 1977, 25 percent of the cases were settled or adjusted before issuance of administrative law judges' decisions, 33 percent by withdrawal before complaint, and 36 percent by administrative dismissal. In 1976 the percentages were 23 percent, 36 percent, and 36 percent, respectively.

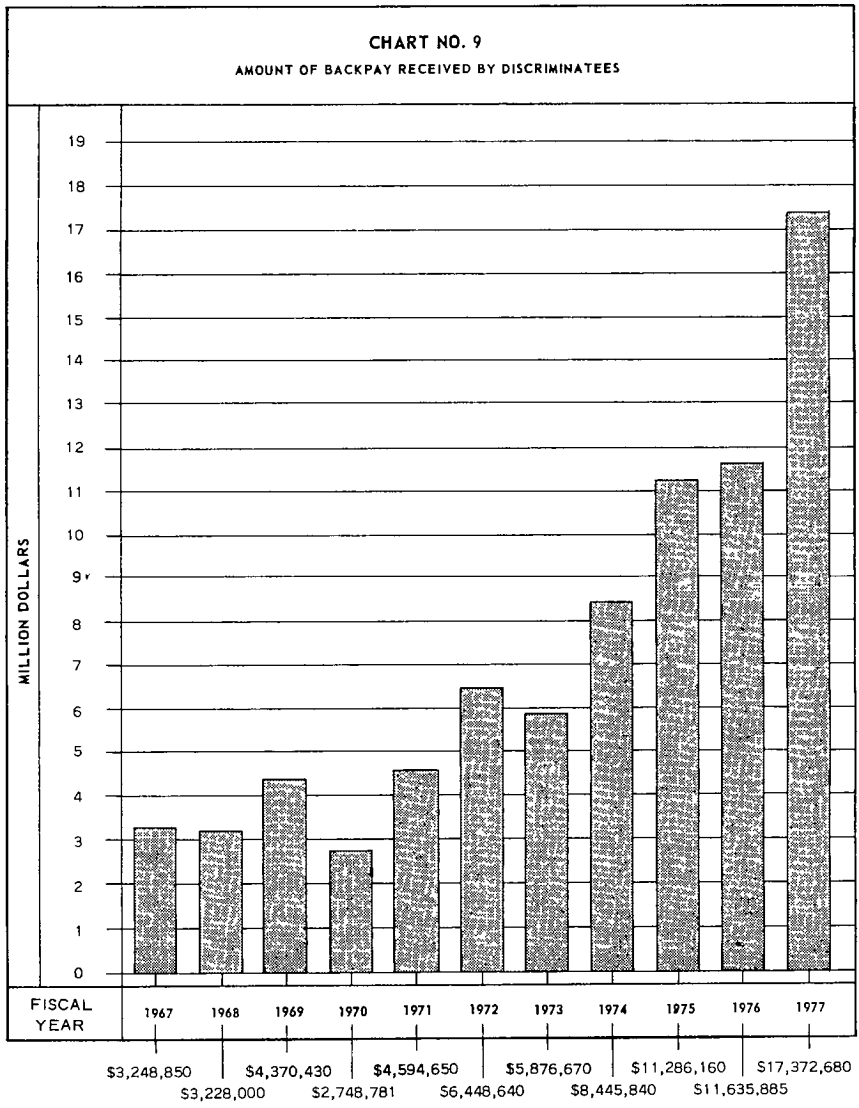
In evaluation of the regional workload, the number of unfair labor practice charges found to have merit is important. The higher the merit factor the more litigation required. The highest level of cases found to have merit was 36.6 percent in fiscal 1966. In fiscal 1977 it was 32.8 percent. (Chart 5.)




The merit factor in charges against employers was 36.0 percent as compared with 33.2 percent in 1976. In charges against unions, the merit factor was 26.1 percent, compared with 27.0 percent in 1976.

Since 1962, more than 50 percent of merit charges have resulted in precomplaint settlements and adjustments; these amounted to 51 percent in fiscal 1977.

There were 6,247 merit charges which caused issuance of complaints, and 6,378 precomplaint settlements or adjustments of meritorious charges. The two totaled 12,625 or 32.8 percent of the unfair labor practice cases. (Chart 5.)




NLRB regional offices, acting on behalf of the General Counsel, issued 4,834 complaints, a 27-percent increase over the 3,793 issued in 1976. (Chart 6.)

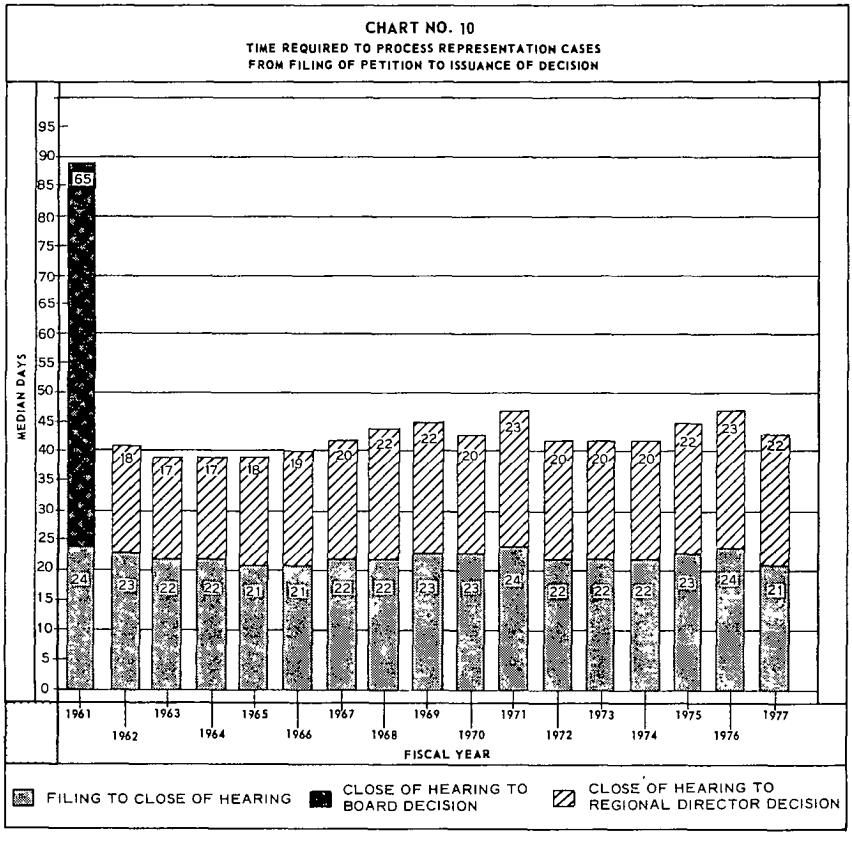
Of complaints issued, 83 percent were against employers, 14 percent against unions, and 3 percent against both employers and unions.

NLRB regional offices processed cases from filing of charges to issuance of complaints in a median of 48 days, compared with 55 days in 1976. The 48 days included days in which parties had the opportunity to adjust charges and remedy violations without resort to formal NLRB processes. (Chart 6.)

Administrative law judges issued 1,245 decisions in 1,795 cases. The judges conducted 1,336 initial hearings, compared with 1,207 in 1976. Administrative law judges conducted 58 additional hearings in supplemental matters. (Chart 8 and Table 3A.)

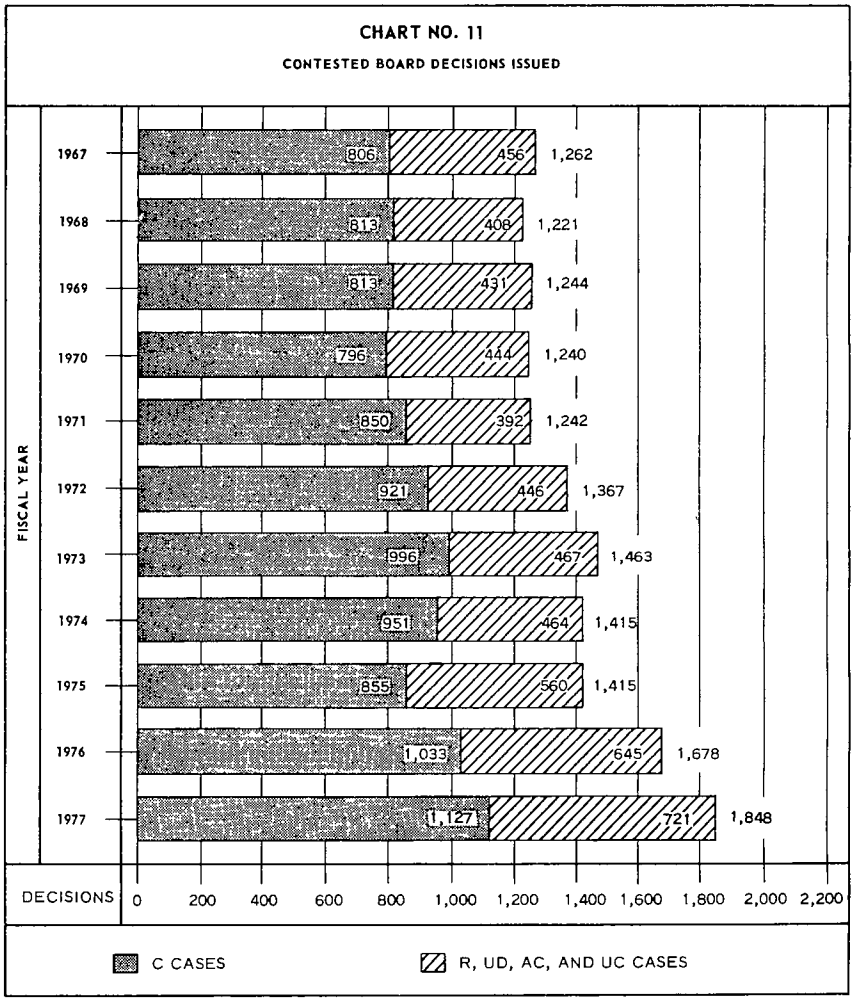
At the end of fiscal 1977, there were 14,482 unfair labor practice cases being processed in all stages by the NLRB. This compared with 13,259 cases pending at the close of fiscal 1976. At the beginning of fiscal 1977, there were 14,256 cases pending.

The NLRB awarded backpay to 7,552 workers, amounting to $17.4 million. (Chart 9.)



Some 4,458 employees were offered reinstatement and 67 percent accepted. In fiscal 1976, about 67 percent accepted offers of reinstatement.

Work stoppages ended in 111 of the cases closed in fiscal 1977. Collective bargaining was begun in 1,487 cases. (Table 4.)




## 2. Representation Cases

The NLRB received 15,115 representation and related case petitions in fiscal 1977. These included 12,565 collective-bargaining cases; 1,793 decertification petitions; 305 union-shop deauthorization petitions; 65 petitions for amendment of certification; and 387 petitions for unit

clarification. The NLRB's total representation intake was 2 percent or 289 cases more than the 14,826 of fiscal 1976.

There were 16,306 representation and related cases closed, about 19 percent more than the 13,730 closed in fiscal 1976. Cases closed included 13,569 collective-bargaining petitions; 1,867 petitions for elections to determine whether unions should be decertified; 332 petitions for employees to decide whether unions should retain authority for making union-shop agreements with employers; and 538 unit clarification and amendment of certification petitions. (Chart 14 and Tables 1 and 1B.)

NLRB regional directors ordered elections following hearings in 1,846 cases, or 18 percent of those closed by elections. There were 25 cases which resulted in expedited elections pursuant to the Act's 8(b)(7)(C) provisions pertaining to picketing. Board-directed elections in 61 cases in 1977, about 1 percent of election closures, came after appeals or transfers from regional offices. (Table 10.)

## 3. Elections

A total of 511,336 employees exercised their right to vote in 9,626 conclusive representation and related elections conducted by the NLRB in cases closed in 1977, compared with 422,635 voters in conclusive elections in 1976. Unions won 4,424 of these, or 46 percent.

These conclusive ballotings were made up of collective-bargaining elections in which employees selected or rejected labor organizations as their bargaining agents, decertification elections to determine whether incumbent unions would continue to represent employees, and deauthorization polls to decide whether unions would maintain their authority to make union-shop agreements with employers.

In the category of collective-bargaining elections, which numbered 8,635, unions won majority designation in 4,159, or 48 percent.

There were an additional 311 inconclusive representation elections which resulted in withdrawal or dismissal of petitions before certification, or required a rerun or runoff election.

Decertification elections totaled 849, and deauthorization polls numbered 142. The decertification results brought continued representation by unions in 204 elections or 24 percent, covering 19,452 employees. Unions lost representation rights for 22,398 employees in elections they did not win. Unions won in bargaining units averaging 95 employees, and lost in units averaging 35 employees. (Table 13.)

Labor organizations lost the right to make union-shop agreements in 81 elections, 57 percent, while they maintained the right in the other 61 such elections which covered 6,089 employees. (Table 12.)

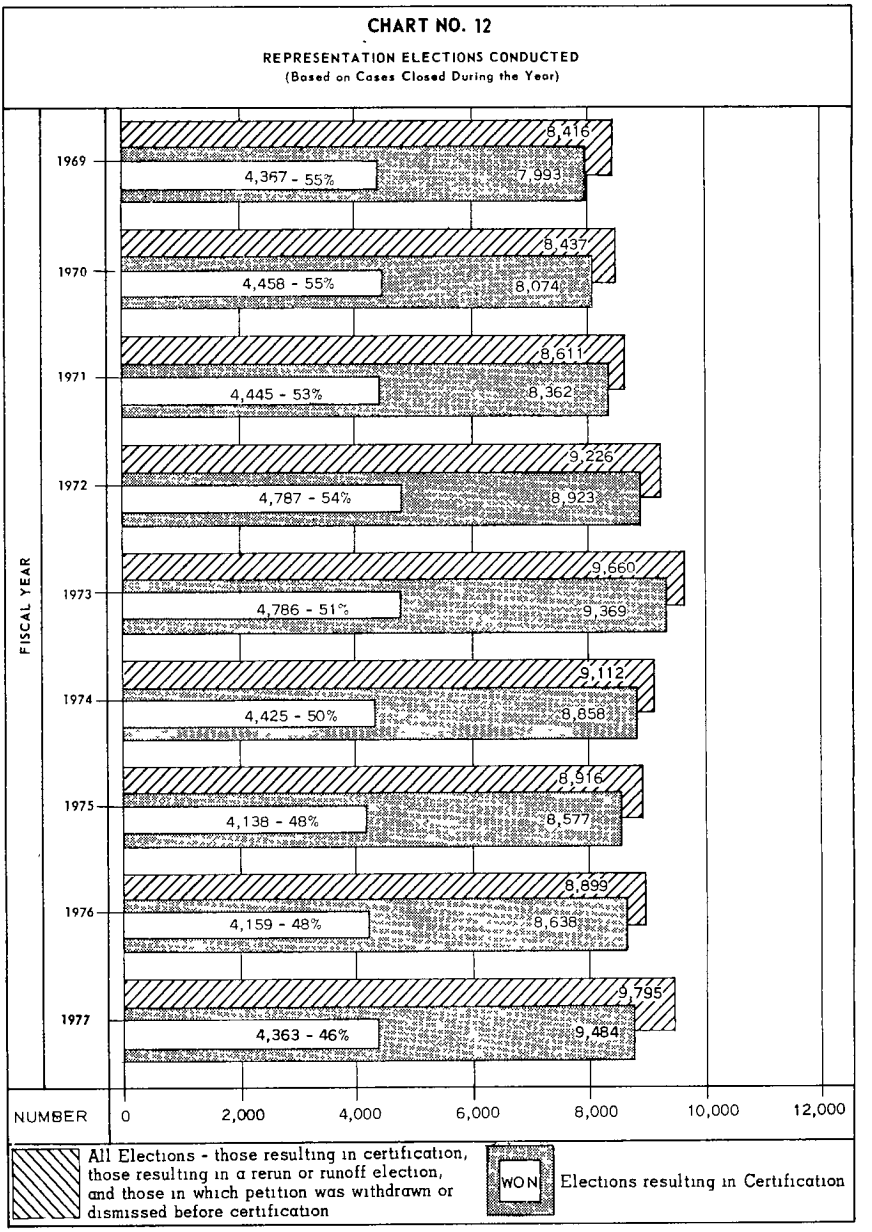
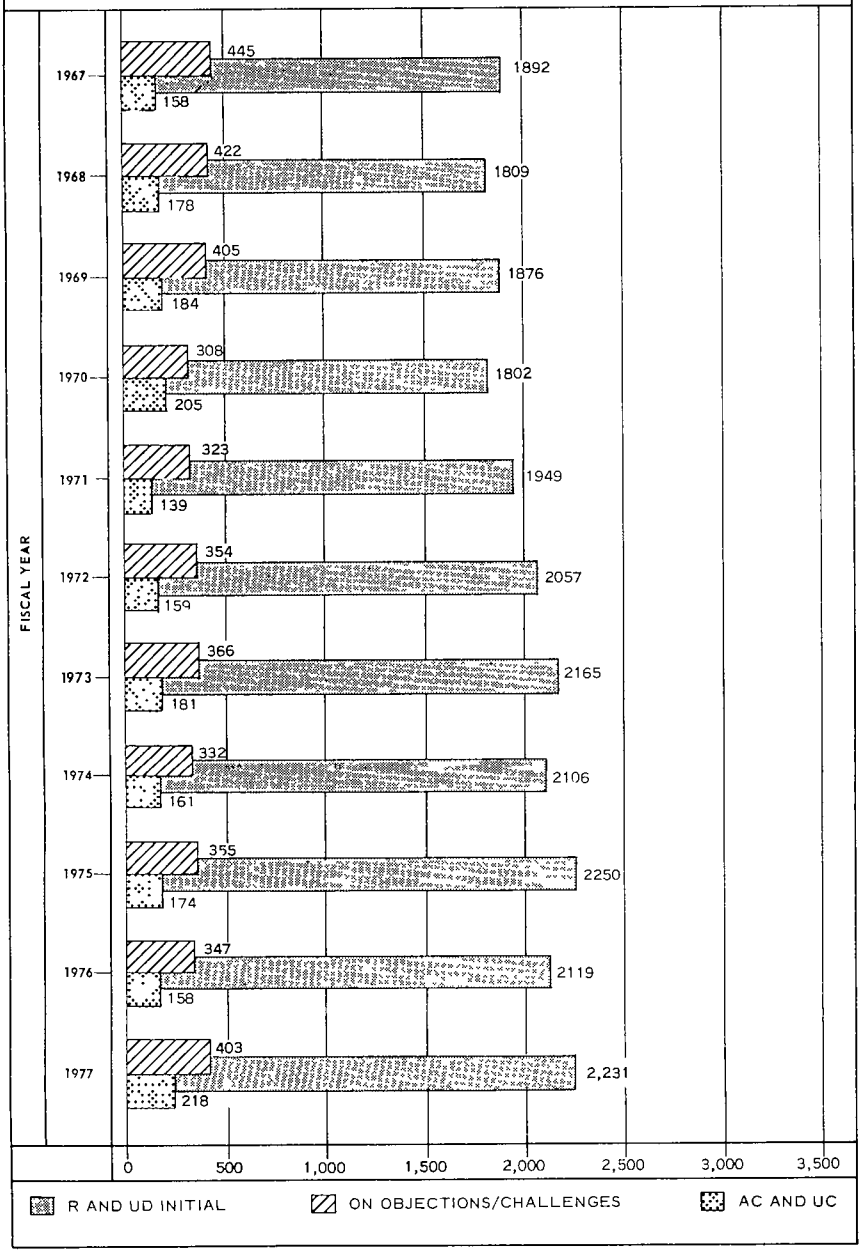


CHART NO. 12
REPRESENTATION ELECTIONS CONDUCTED
(Based on Cases Closed During the Year)
FISCAL YEAR
1969
8,416
4,367 - 55%
7,993
1970
8,437
4,458 - 55%
8,074
1971
8,611
4,445 - 53%
8,362
1972
9,226
4,787 - 54%
8,923
1973
9,660
4,786 - 51%
9,369
1974
9,112
4,425 - 50%
8,858
1975
8,916
4,138 - 48%
8,577
1976
8,899
4,159 - 48%
8,638
1977
9,795
4,363 - 46%
9,484
NUMBER
0
2,000
4,000
6,000
8,000
10,000
12,000
All Elections - those resulting in certification, those resulting in a rerun or runoff election, and those in which petition was withdrawn or dismissed before certification
WON
Elections resulting in Certification

CHART NO. 13

REGIONAL DIRECTOR DECISIONS ISSUED IN REPRESENTATION AND RELATED CASES



For all types of elections in 1977, the average number of employees voting, per establishment, was 53, compared with 48 in 1976. About three-quarters of the collective-bargaining and decertification elections involved 59 or fewer employees. (Tables 11 and 17.)

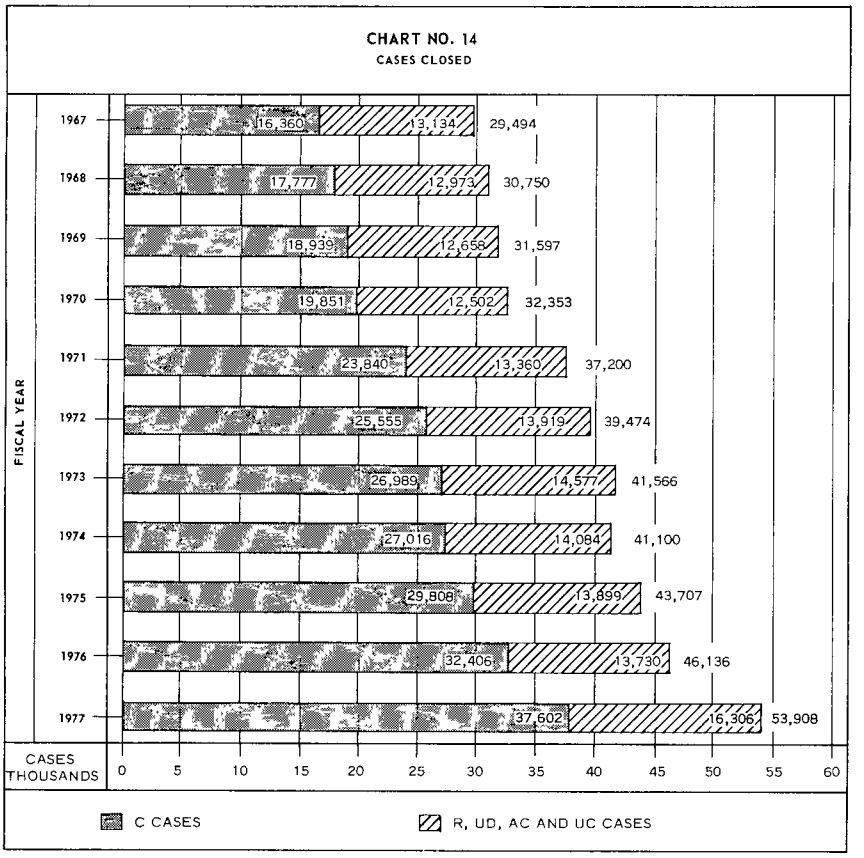
## 4. Decisions Issued

### a. Five-Member Board

Dealing effectively with the remaining cases reaching it from nationwide filings after dismissals, settlements, and adjustments in earlier processing stages, the Board handed down 2,887 decisions concerning allegations of unfair labor practices and questions relating to employee representation. This was a fiscal year record, up from the 2,685 decisions rendered during fiscal 1976.

A breakdown of Board decisions follows:

| | | | |
|---|---|---|---|
| Total Board decisions | | | 2,887 |
| Contested decisions | | | 1,848 |
| Unfair labor practice decisions | | 1,127 | |
| Initial (includes those based on stipulated record) | 1,020 | | |
| Supplemental | 16 | | |
| Backpay | 46 | | |
| Determinations in jurisdictional disputes | 45 | | |
| Representation decisions | | 700 | |
| After transfer by regional directors for initial decision | 79 | | |
| After review of regional director decisions | 108 | | |
| On objections and/or challenges | 513 | | |
| Other decisions | | 21 | |
| Clarification of bargaining unit | 16 | | |
| Amendment to certification | 2 | | |
| Union-deauthorization | 3 | | |
| Noncontested decisions | | | 1,039 |
| Unfair labor practice | | 469 | |
| Representation | | 563 | |
| Other | | 7 | |




Thus, it is apparent that the great majority, 64 percent, of Board decisions resulted from cases contested by the parties as to the facts and/or application of the law. (Tables 3A, 3B, and 3C.)

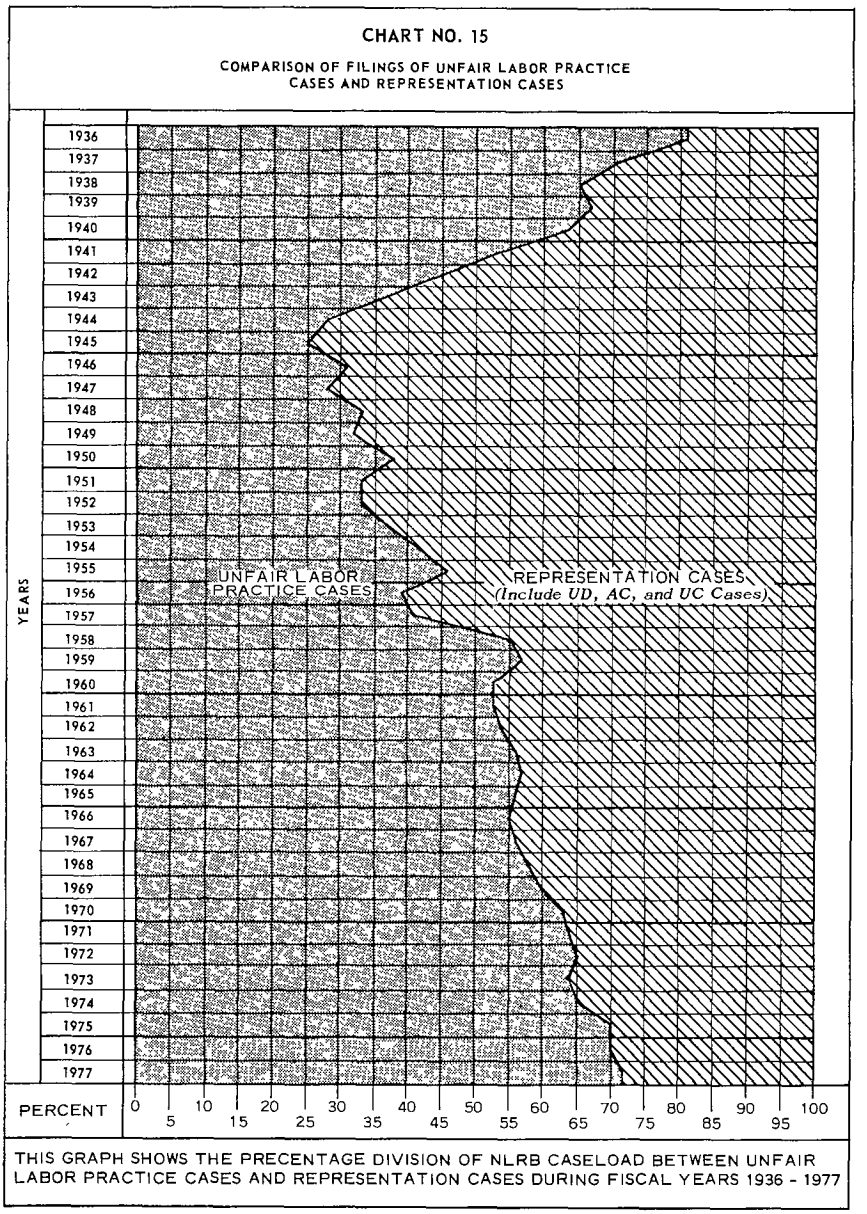
Emphasizing the steadily mounting unfair labor practice caseload facing the Board was the fact that in fiscal 1977 approximately 12 percent of all meritorious charges and 68 percent of all cases in which a hearing was conducted reached the five-member Board for decision. (Charts 3A and 3B.) These high proportions are even more significant considering that unfair labor practice cases in general require about two and one-half times more processing effort than do representation cases.

### b. Regional Directors

Meeting the challenge of a climbing workload, NLRB regional directors issued 2,852 decisions in fiscal 1977, compared with 2,624 in 1976. (Chart 13 and Tables 3B and 3C.)

### c. Administrative Law Judges

Again reflecting increased case filings, the administrative law judges issued a record 1,245 decisions. They also conducted an all-time 1-year total of 1,394 hearings. (Chart 8 and Table 3A.)



### 5. Court Litigation

The National Labor Relations Board conducts the most extensive litigation in the United States courts of appeals of any Federal agency. In fiscal 1977, appeals court decisions in NLRB-related cases numbered 260. In these rulings, the NLRB was affirmed in whole or in part in 81 percent. The prior year it was 84 percent.

A breakdown of appeals courts rulings in fiscal 1977:

| | |
|---|---|
| Total NLRB cases ruled on | 260 |
| Affirmed in full | 177 |
| Affirmed with modification | 31 |
| Remanded to NLRB | 10 |
| Partially affirmed and partially remanded | 2 |
| Set aside | 40 |

In the 29 contempt cases before the appeals courts, the respondents complied with NLRB orders after the contempt petition had been filed but before decisions by courts in 6 cases and in 23 cases the respondents were held in contempt. (Table 19.)

The U.S. Supreme Court affirmed the Board in both NLRB cases that it heard.

The NLRB sought injunctions pursuant to section 10(j) and 10(l) in 229 petitions filed with the U.S. district courts, compared with 163 in fiscal 1976. (Table 20.) Injunctions were granted in 119, or 89 percent, of the 134 cases litigated to final order.

NLRB injunction activity in district courts in 1977:

| | |
|---|---|
| Granted | 119 |
| Denied | 15 |
| Withdrawn | 8 |
| Dismissed | 4 |
| Settled or placed on courts' inactive lists | 68 |
| Awaiting action at end of fiscal year | 32 |

There were 63 additional cases involving miscellaneous litigation decided by appellate and district courts. The NLRB's position was upheld in 55 cases. (Table 21.)

## C. Decisional Highlights

In the course of the Board's administration of the Act during the report period, 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 those developments. Chapter

II on "Jurisdiction of the Board," Chapter III on "Effect of Concurrent Arbitration Proceedings," Chapter IV on "Board Procedure," Chapter V on "Representation Proceedings," and Chapter VI on "Unfair Labor Practices" discuss some of the more significant decisions of the Board during the report period. The following summarizes briefly some of the decisions establishing basic principles in significant areas.

## 1. Exercise of Jurisdiction

The longstanding Board policies of declining jurisdiction over law firms, and over instrumentalities of foreign governments engaged in commerce in the United States, were reversed in decisions issued during the report year. In *Foley, Hoag & Eliot*,[1] the Board concluded that its previously held view that law firms as a class were not subject to the Board's statutory jurisdiction, since not engaged in commerce within the meaning of the Act, was no longer substantiable in view of a recent Supreme Court decision holding that law firms were engaged in "commerce" within the meaning of section 1 of the Sherman Act. The Board concluded that the holding of that decision was equally applicable to the word "commerce" as used in section 2 (6) and (7) of the National Labor Relations Act, wherefore it held that jurisdiction should be asserted over law firms as a class, subject to appropriate jurisdictional standards.[2] Upon examination of its policy of declining jurisdiction over instrumentalities of foreign sovereign governments engaged in commerce in the United States, the Board in the *State Bank of India* case[3] concluded that it had statutory authority to exercise such jurisdiction, since there was no public policy or policy or provision of the National Labor Relations Act which proscribed it, and that as a matter of discretion such jurisdiction should be exercised. On the latter aspect, the Board noted that such commercial activity affects employees in the United States who would be denied the protection of the Act if jurisdiction were declined, and that the exercise of jurisdiction would be consistent with the sense of Congress in enacting the Sovereign Immunities Act of 1976, which manifests an intent to deny sovereign immunity to a foreign state's commercial activities within the United States.

## 2. Deferral of Individual Statutory Protections to Arbitration

In the *General American Transportation Corp.* case,[4] the Board determined that it would no longer defer in advance to contractual

[1] 229 NLRB No 80, *infra* at p 29

[2] In *Camden Regional Legal Services*, 231 NLRB No. 47, the jurisdictional standard was established as $250,000 in gross annual revenues See *infra* at p 29

[3] 229 NLRB No 137, *infra* at p. 30.

[4] 228 NLRB No. 102, *infra* at p 36.

arbitration procedures the adjudication of individual statutory rights that arise solely by virtue of the National Labor Relations Act. It was the consensus of the majority that deferral in advance of situations where the dispute is between the contracting parties and where there is no alleged interference with individual basic rights should continue, but that where the dispute is between the employee on the one hand, and the employer and/or union on the other, over issues comprehended within the protection against discrimination or interference and coercion accorded the individual by the statute, considerations of statutory interpretation and policy, as well as the experience during the recent deferral of such issues under prior decisions, warranted the Board's discontinuance of the policy of advance deferral in such situations.

## 3. Consideration of Race and Sex Discrimination and Campaign Misrepresentation Issues in Representation Cases

The Board policy of considering in a postelection proceeding issues of disqualification of a labor organization as an employee representative because of discrimination on its part on the basis of race or sex was discontinued by the Board in the *Handy Andy* case,[5] where it was determined that resolution of such issues would be more appropriately made in an appropriate unfair labor practice proceeding, including any seeking to require the employer to recognize and bargain in accordance with the certification. The Board concluded that its prior policy, based upon the view that constitutional considerations required resolution of the invidious discrimination disqualification issue prior to issuance of the certification, was incorrect, and that in fact "the contrary is true; namely, that the Board is not authorized to withhold certification of a labor organization duly selected by a majority of the unit employees." In its view, to handle such issues in unfair labor practice proceeding would not only give the Board far greater remedial flexibility, but would recognize the substantive and procedural differences between representation and unfair labor practice proceedings, and afford the charged party the full panoply of due process of law without at the same time denying or delaying the employees' right to the services of their designated representative.

In *Shopping Kart Food Market*,[6] the Board determined that it "will no longer probe into the truth or falsity of the parties' campaign statements," and accordingly overruled the line of cases establishing Board evaluation of misrepresentations concerning material issues in election campaigns. The Board concluded that its prior policy was based upon assumptions of employee behavior and lack of sophis-

[5] 228 NLRB No 59, *infra* at p. 41.
[6] 228 NLRB No. 190, *infra* at p 55.

tication, which were dubious at best, and productive of extensive litigation, having an adverse effect on the finality of election results. It therefore reverted to its "earlier policy of setting an election aside not on the basis of the *substance* of the representation, but the deceptive *manner* in which it was made," as in the case of the use of forged documents.

### 4. Picketing at Health Care Institutions

Interpreting the 1974 amendments to the Act regulating picketing at health care institutions, the Board concluded that the legislative history of the amendments established that they were applicable only to strikes or picketing by labor organizations, but were not applicable to regulate all forms of picketing, including what might under other circumstances be informational picketing. In holding the amendments' notice requirements inapplicable to a half-hour work stoppage by two nurses aides waiting to discuss a grievance concerning working conditions,[7] the Board held that the limitation to labor organization activity was not only explicit in the terms of the amendments but clearly supported by the legislative history. In *District 1199, RWDSU (United Hospitals of Newark)*,[8] the Board found that the legislative history supported its literal construction of the statute to find a violation where no notice was given before off-duty employees engaged in peaceful picketing at the hospital's main entrance with signs supportive of the union then engaged in negotiations, and designed to advise the public of the contract dispute.

### 5. Interest Rate on Backpay and Monetary Remedies

In *Florida Steel Corp.*,[9] the Board considered the problem of adjusting the interest rate awarded on backpay and other monetary remedies to bring it in line with current economic conditions. Upon reviewing the disparity between statutory interest rates generally and interest rates in the private money markets, and the effect such disparity had upon the incentive to promptly comply with Board orders, the Board decided to adopt the "adjusted prime rate" sliding interest scale charged or paid by the Internal Revenue Service on the underpayment or overpayment of Federal taxes as applicable to backpay and monetary remedies under its orders. Factors leading to that choice included its direct tie to the interest rates in the private money market, that it is subject to periodic semiautomatic adjustment, and that changes are announced well in advance.

---

[7] *Walker Methodist Residence and Health Care Center*, 227 NLRB No. 238, *infra* at p 141

[8] 232 NLRB No 67, *infra* at p. 144.

[9] 231 NLRB No. 117, *infra* at p 145.

## D. Financial Statement

The obligations and expenditures of the National Labor Relations Board for the fiscal year ended September 30, 1977, are as follows:

| | |
|---|---|
| Personnel compensation | $55,537,793 |
| Personnel benefits | 5,605,552 |
| Travel and transportation of persons | 3,956,497 |
| Transportation of things | 155,111 |
| Rent, communications, and utilities | 7,958,370 |
| Printing and reproduction | 476,429 |
| Other services | 4,745,781 |
| Supplies and materials | 857,187 |
| Equipment | 790,395 |
| Insurance claims and indemnities | 19,300 |
| Penalties and interest | 100,187 |
| Total obligations and expenditures | [1] 80,202,602 |

[1] Includes reimbursable obligations distributed as follows

| | |
|---|---|
| Personnel compensation | $2,615 |

The obligations and expenditures of the Board for the transition quarter (July–September 1976) are as follows:

| | |
|---|---|
| Personnel compensation | $12,491,307 |
| Personnel benefits | 1,241,085 |
| Travel and transportation of persons | 786,103 |
| Transportation of things | 18,619 |
| Rent, communications, and utilities | 2,276,553 |
| Printing and reproduction | 144,929 |
| Other services | 1,112,264 |
| Supplies and materials | 314,813 |
| Equipment | 144,920 |
| Insurance claims and indemnities | 11,589 |
| Total obligations and expenditures | [1] 18,542,182 |

[1] Includes reimbursable obligations distributed as follows

| | |
|---|---|
| Personnel compensation | $265 |

## II

# Jurisdiction of the Board

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

## A. Law Firms

Two cases decided during this report year presented questions involving the Board's assertion of jurisdiction over law firms. In a

[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 person subject to the Railway Labor Act, or any labor organization other than when acting as an employer The exclusion of nonprofit hospitals from the definition of employer was deleted by the health care amendments to the Act (Public Law 93–360, 88 Stat 395, effective August 25, 1974). Nonprofit hospitals, as well as convalescent hospitals, health maintenance organizations, health clinics, nursing homes, extended care facilities, and other institutions "devoted to the care of sick, infirm, or aged person" are now included in the definition of "health care institution" under the new sec 2(14) of the Act "Agricultural laborers" and others excluded from the term "employee" as defined by sec 2(3) of the Act are discussed, *inter alia*, at 29 NLRB Ann Rep. 52–55 (1964), and 31 NLRB Ann Rep 36 (1966).

[2] See 25 NLRB Ann Rep. 18 (1960)

[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 23 NLRB Ann Rept 18 (1958) 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 the Board's "outflow-inflow" standards are met 25 NLRB Ann Rep 19–20 (1960) But see *Sioux Valley Empire Electric Assn*, 122 NLRB 92 (1958), as to the treatment of local public utilities.

Ruling on Administrative Appeal from the regional director's dismissal of a representation petition on jurisdictional grounds, the Board, in the leading case, *Foley, Hoag & Eliot*,[6] overruled *Bodle, Fogel, Julber, Reinhardt & Rothschild*,[7] and asserted jurisdiction over law firms as a class. Relying, in part, on the Supreme Court's holding in *Goldfarb* v. *Virginia State Bar*,[8] wherein the Court held that "the activities of lawyers play an important part in commercial intercourse" and rejected the view that wholly intrastate "legal services . . . are essentially local in nature" and "can never substantially affect interstate commerce," the Board concluded that law firms have an impact on interstate commerce sufficient to warrant assertion of the Board's jurisdiction over law firms as a class as required by section 14(c) of the Act.[9] Accordingly, the petition was reinstated and remanded to the regional director for a hearing after which the Board's posthearing decision would determine whether the law firm in question met the appropriate jurisdictional standard.

In *Camden Regional Legal Services*,[10] the Board asserted jurisdiction over a legal services corporation, relying on its prior decision in *Wayne County Neighborhood Legal Services*,[11] wherein the Board determined that such legal organizations would be treated as law firms for purposes of jurisdiction and that it would therefore assert jurisdiction over them for the reasons set forth in *Foley, Hoag & Eliot*. The Board also concluded "that it will effectuate the policies of the Act to limit our assertion of jurisdiction over law firms in general and legal assistance programs such as is involved herein to those that receive at least $250,000 in gross annual revenues." [12]

## B. Accounting Firms

In *Ernst & Ernst Natl. Warehouse*,[13] a Board panel was confronted with the question of whether to assert jurisdiction over accounting firms. The panel initially noted that employers providing services rather than tangible goods do have a substantial impact on commerce and that "the services provided by accounting firms are directly and

[6] 229 NLRB No 80 (Chairman Fanning and Members Jenkins, Penello, Murphy, and Walther)

[7] 206 NLRB 512 (1973).

[8] 421 U S 773, 783, 788 (1975)

[9] Member Jenkins agreed that the Supreme Court's *Goldfarb* decision undercut the underlying rationale of the *Bodle* decision that furnishing legal services is not a commercial activity

[10] 231 NLRB No. 47 (Chairman Fanning and Members Jenkins, Penello, Murphy, and Walther)

[11] 229 NLRB No. 171 (1977).

[12] The employer's annual gross revenue was approximately $900,000

[13] 228 NLRB No 68 (Chairman Murphy and Members Fanning and Jenkins)

inextricably related to the efficient functioning of commercial activity in this country." The panel rejected the employer's arguments that the extensive control provided by the professional code for accountants and the Securities and Exchange Commission regulations warrant denial of jurisdiction and that the assertion of jurisdiction might require the employer to make public certain information that Securities and Exchange regulations and the professional code for accountants require be kept confidential. The Board panel noted that it had, in the past, determined that accountants are employees within the meaning of the Act and that the existence of a professional code for accountants had not acted as a bar to the assertion of the Board's jurisdiction.[14] The Board panel concluded that the employer did not provide sufficient cause to overturn this policy. Accordingly, jurisdiction was asserted over this employer.

## C. Commercial Activities of Foreign Governments

Among the noteworthy cases decided this report year, two presented questions concerning the Board's jurisdiction over employers related to foreign governments.

In *State Bank of India*,[15] the Board overruled its past policy of declining jurisdiction over commercial activities of foreign governments and their agents within the United States.[16] The Board found that, inasmuch as the employer, a foreign organization largely owned and controlled by the Government of India, was authorized to conduct business within the United States, traditional standards should be applied to determine whether the Board could properly assert statutory jurisdiction. The Board determined that, based on the stipulated facts, it had statutory jurisdiction over the employer's operations, whose impact on interstate commerce warranted the assertion of jurisdiction. In response to the employer's argument that it was a government instrumentality not included within the definition of "employer" as defined in section 2(2) of the Act, the Board concluded that the exclusion referred only to the United States or any wholly owned government corporation or any state or political subdivision thereof. While acknowledging that the Supreme Court has held that, absent statutory language expressing a specific affirmative intent, the Board is without authority to assert jurisdiction over foreign flag vessels which are owned by a subsidiary of a wholly owned American corporation,[17]

---

[14] *Southern Alkali Corp*, 84 NLRB 120 (1949)

[15] 229 NLRB No. 137 (Chairman Fanning and Members Jenkins, Penello, Murphy, and Walther).

[16] See *British Rail-International*, 163 NLRB 721 (1967); *AGIP, USA*, 196 NLRB 1144 (1972), and related cases

[17] See *Benz* v *Compania Naviera Hidalgo*, 353 U S 138 (1957), and *McCulloch* v *Sociedad Nacional de Marineros de Honduras* [*United Fruit Co.*], 372 U S 10 (1963)

the Board noted that neither case before the Supreme Court involved the issue of foreign governments or their agents acting as employers doing business within the territorial United States.

Having determined that the Board had statutory jurisdiction over the employer, the Board concluded that there was no public policy or policy of the Act to justify its continuing to decline to assert jurisdiction over an employer found to be an agency or instrumentality of a foreign state where such employer is engaged in commercial activity which meets the Board's discretionary jurisdictional standards.[18] Accordingly, the Board concluded that it would effectuate the policies of the Act to assert jurisdiction over such an employer whose commercial activities meet the Board's jurisdictional standards for such enterprises.

In *S K Products Corp.*,[19] the Board was again confronted with a question of asserting jurisdiction over an American corporation established by an "entity" of a foreign state. Reaffirming its position set forth in *State Bank of India*, *supra*, the Board asserted jurisdiction over the employer, a New Jersey corporation, wholly owned, controlled, and managed by a foreign wood products operation which was allegedly an integral part of the Government of Yugoslavia. The Board concluded that, as the employer was an American corporation, this case was a stronger one for the assertion of jurisdiction than *State Bank of India*, which involved a foreign corporation. According to the Board, when a foreign government engages in private industry in another country, such as becoming a stockholder in a domestic corporation, that government is not exercising its sovereignty but, "[o]n the contrary, as an incorporator it has consented to the corporation being treated, under our laws, as a citizen of the state of incorporation invested with such rights, privileges, immunities, and duties as other corporate citizens and entitled to 'equal protection under the law.' " By asserting jurisdiction over the employer, the Board determined that it was fulfilling its statutory responsibility to insure that employees in this country are afforded the freedom, rights, and duties specified by the Act and that such action was the proper exercise of national sovereignty in accord with generally accepted principles of international law.

---

[18] In reaching this determination to treat foreign state enterprises coming within the Board's statutory jurisdiction the same as private individuals under like circumstances, the Board also relied on the Foreign Sovereign Immunities Act of 1976 (P L 94–58, enacted Oct 21, 1976, 90 Stat 2891), which revealed congressional intent to deny sovereign immunity to a foreign state's private or commercial acts occurring within the United States.

[19] 230 NLRB No 186 (Chairman Fanning and Members Jenkins, Penello, Murphy, and Walther)

## D. Other Issues

In a case of first impression, a Board panel in *Fort Apache Timber Co.*,[20] was faced with determining whether an Indian tribal council, directing economic activity on behalf of the tribe, was an employer within the meaning of the Act. The employer was a wholly owned company of the White Mountain Apache Tribe located within the confines of the reservation. Its affairs were handled by the Tribal Council, a duly elected political body whose powers were delineated in the Tribe's constitution which included, *inter alia*, a full range of self-governing provisions. Citing authority, deeply rooted in United States history,[21] the panel found that Indian tribes on reservations possess the right of internal sovereignty and that such tribal governments are generally free from state intervention and, unless provided otherwise by Congress, are immune from Federal regulation. Thus, the Board panel concluded that as a separate political community, tantamount to a state or integral part of the United States as a whole, the Tribal Council was specifically excluded from the definition of "employer" found in section 2(2) of the Act and exempt as an employer within the meaning of the Act. Consequently, the panel dismissed the petition for a representation election.

A Board majority voted to decline jurisdiction over the employer, a religious order, in *Motherhouse of the Sisters of Charity of Cincinnati, Ohio.*[22] The union sought to represent a unit of 73 lay employees who worked at the employer's complex, known as the Motherhouse. Among the facilities in this partially cloistered convent was Mother Margaret Hall, which the Motherhouse leased to a private nonprofit hospital for operation as a nursing home. The Motherhouse provided the Hall with food and housekeeping services, and all but 9 of the 73 employees spent the bulk of their working time at the nursing home. The remaining nine employees worked on a part-time basis providing a nearby college with housekeeping and food services, which the Motherhouse had agreed to furnish.

While rejecting the employer's contention that application of the Act would be an infringement upon the exercise of religious freedom guaranteed by the first amendment of the Constitution, the majority found merit in the employer's argument that the services rendered by the employer were supplied on a noncommercial basis in connection with, and in furtherance of, religious objectives. Relying primarily on the fact that the nursing home's occupants were, in the main,

---

[20] 226 NLRB 503 (Members Fanning Jenkins and Walther)
[21] See *Worcester* v *State of Georgia*, 6 Pet 515 (1832), and *Rice* v *Olson, Warden*, 324 U S 786 (1945).
[22] 232 NLRB No 44 (Chairman Fanning and Members Penello and Murphy; Member Jenkins dissenting).

sisters belonging to the religious order, the majority found that the nursing home facility existed to enable infirm members of the order to participate in the religious community. The majority concluded that, since the housekeeping services provided were ancillary to this objective, such activities were noncommercial in nature. The Board majority thus found that it would not effectuate the policies of the Act to assert jurisdiction.

Member Jenkins, dissenting, concluded that the majority's holding ignored clear Board precedent establishing the test for assertion of jurisdiction over eleemosynary institutions, citing *Rhode Island Catholic Orphan Asylum a/k/a St. Aloysius Home.*[23] He noted that in *St. Aloysius*, the Board held that the commercial character of the activities of charitable organizations is not pivotal in determining the question of whether or not to assert jurisdiction. Rather, it is the impact of said activities on interstate commerce, applying the same criteria applicable to noncharitable organizations, which is determinative. Member Jenkins argued that the attempt to distinguish *St. Aloysius* focused on irrelevant class distinctions, and that once an employer has met the Board's discretionary standards, regardless of the charitable nature of the enterprise, jurisdiction should be asserted. Accordingly, since the employer did meet the applicable standards, he would have asserted jurisdiction.

In *Pickle Bill's*,[24] the Board considered the question of asserting jurisdiction over an employer who did not meet the Board's monetary standards for discretionary jurisdiction over restaurants, but which had previously been found to have violated section 8(a)(4) of the Act. Chairman Fanning and Member Jenkins concluded that, even if such an employer failed to satisfy the requisite jurisdictional standard, it was proper for the Board to assert jurisdiction in order "to give scope and effect to our protective order issued in the unfair labor practice proceedings." Member Murphy, concurring, noted that she would assert jurisdiction over an employer whenever an employer violated section 8(a)(4) of the Act in order to protect employees from retaliation for invocation of, or participation in, Board processes or because of the activity which led to their effort to invoke those processes.

Members Penello and Walther, dissenting, found it improper for the Board to assert jurisdiction in a representation proceeding based solely on a prior totally unrelated unfair labor practice proceeding in which the Board asserted jurisdiction for "the limited purpose of remedying the unlawful interference with the employees' statutory rights to resort to and participate in the Board's processes." They noted

[23] 224 NLRB 1344 (1976).
[24] 229 NLRB No. 150.

that the majority failed to explain why the Board's order in the unfair labor practice proceeding was inadequate to protect the employees affected therein. The dissent would have found departure from the Board's discretionary standards justified only where "extraordinary circumstances" existed, but that such extraordinary circumstances were not present. Accordingly, as the employer failed to satisfy the Board's discretionary monetary standards for restaurants, Members Penello and Walther would have dismissed the petition for lack of jurisdiction.[25]

[25] See *City Line Open Hearth,* 141 NLRB 799 (1963).

## 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 so in other such cases.[5]

In the *Collyer* decision, the Board established standards for deferring to contract grievance procedures before arbitration has been had with respect to a dispute over contract terms which was also, arguably, a violation of section 8(a)(5) of the Act. In *National Radio*,[6] the Board extended the *Collyer* rationale to cases which involved

[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*, 120 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).

[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] *National Radio Co*, 198 NLRB 527 (1972)



253-831 O—78——4

claims that employees' section 7 rights had been abridged in violation of section 8(a)(3). During the report year, a number of cases have been decided which involve the modification of the *Collyer* doctrine and the overruling of *National Radio.*

In *General American Transportation Corp.*,[7] the Board was presented with the question of whether the layoff of an employee had been for "just cause" in accordance with the collective bargaining agreement, or for union activity and therefore discriminatory in violation of section 8(a) (3) and (1) of the Act. The employer asserted the defense that the case should be deferred to arbitration pursuant to the contractual grievance-arbitration procedure.

A majority of the Board, consisting of Members Fanning and Jenkins with Chairman Murphy concurring, held that they would not defer to arbitration cases which involve certain unfair labor practice allegations affecting individual rights guaranteed to employees by section 7 of the Act and proceeded to adjudicate the 8(a) (3) and (1) allegations of the complaint which, it found, were established. Members Fanning and Jenkins reasserted their consistently held position taken in their dissenting opinions in *Collyer.* In their view, the Board lacks the power to defer to private tribunals the adjudication of rights arising solely from the Act. They further expressed the opinion that the *Collyer* doctrine has failed on practical and policy grounds, resulting in an insignificant reduction of the Board's workload and a substantial sacrifice of statutory protection of employees.

Chairman Murphy, concurring, disagreed with the assertion of her majority colleagues that the Board lacks statutory authority to defer *any* unfair labor practice allegations to arbitration. She noted that, in her concurring opinion in *Roy Robinson*,[8] discussed *infra*, she indicated that the Board should stay its processes in favor of the parties' grievance-arbitration machinery only in those situations where the dispute is essentially between the contracting parties and where there is no alleged interference with individual employees' basic rights under section 7 of the Act. In her view, complaints alleging violations of section 8(a)(5) and 8(b)(3) fall squarely into this category, while complaints alleging violations of section 8(a)(3), 8(a)(1), 8(b)(2), and 8(b)(1)(A) clearly do not. She stated that in the former category the dispute is principally between the contracting parties—the employer and the union—while in the latter the dispute is between the employee on the one hand and the employer and/or the union on the other. In cases alleging violations of section 8(a)(5) and 8(b)(3), based on conduct assertedly in derogation of the contract, the

[7] 228 NLRB No 102

[8] *Roy Robinson, d/b/a Roy Robinson Chevrolet,* 228 NLRB No 103 (Members Penello and Walther, Chairman Murphy concurring, Members Fanning and Jenkins dissenting)

principal issue is whether the complained-of conduct is permitted by the parties' contract, and such issues are eminently suited to the arbitral process. However, in cases alleging violations of section 8(a)(1), 8(a)(3), 8(b)(1)(A), and 8(b)(2), where a contractual determination may arguably also be involved, the determinative issue is not whether the conduct is permitted by the contract, but whether the conduct was unlawfully motivated or whether it otherwise interfered with, restrained, or coerced employees in the exercise of their section 7 rights.

Chairman Murphy's concurrence with Members Fanning and Jenkins resulted therefore in the majority overruling *National Radio* and significantly modifying the *Collyer* doctrine.

Members Penello and Walther adhered to the *Collyer* principles of deferral in their joint dissenting opinion. In response to Chairman Murphy's concurrence, they took the position that the section 7 public rights of individuals include the right "to bargain collectively through representatives of their own choosing," and that this right was protected by section 8(a)(5) and 8(b)(3) of the Act. Thus, they found Chairman Murphy's reliance on section 10(a) as a reason for refusing to defer cases involving allegations of interference with the section 7 rights of individual employees to be contradictory to her willingness to defer cases involving allegations of violations of section 8(a)(5) and 8(b)(3). Citing the Board's statistics with respect to deferral, the dissent further concluded that the *Collyer* doctrine had encouraged the use of contractual grievance-arbitration procedures, speeded up the disposition of some disputes, and lessened the workload of the Board.

In *Roy Robinson*, *supra*, a majority of the Board consisting of Members Penello and Walther, with Chairman Murphy concurring, upheld the *Collyer* doctrine of deferring allegations of violations of section 8(a)(5) and (1) to arbitration. The complaint alleged that the employer violated section 8(a)(5) and (1) by unilaterally closing its body shop and discharging certain employees without prior notice to and bargaining with the collective-bargaining representative of the unit employees. The employer contended that the collective-bargaining contract in effect between the parties justified its conduct. Members Penello and Walther held that the issue in dispute should be deferred to arbitration for the reasons stated in the majority opinion in *Collyer*. They asserted that the *Collyer* doctrine had received "massive judicial approval . . . including approval by the highest court in the land,"[9] and that it must be accepted as law binding upon the Board.

[9] *William E Arnold Co v Carpenters District Council of Jacksonville & Vicinity*, 417 U S. 12 (1974).

Chairman Murphy concurred with Members Penello and Walther that the Board has the discretionary authority to defer disputes to arbitration and agreed that this dispute was appropriate for deferral. She stated as her view that issues involving purely the interpretation of rights and obligations under a collective-bargaining agreement are particularly suited to the arbitral process, and the instant case fell squarely into the area of contract interpretation. She noted that, although the employer laid off employees, there was no allegation that this action constituted a violation of section 8(a)(3) or 8(a)(1), and the issue before the arbitrator was only whether the employer had a right under the contract to eliminate its body shop and, consequently, to discharge the employees.

Members Fanning and Jenkins, in a joint dissenting opinion, adhered to the position taken in their separate dissents in *Collyer* that the Board lacked power to defer to arbitration rights arising under the Act. In addition, they asserted that, even under the majority's rationale, the case should not be deferred because there was no specific contract provision relating to the employer's conduct. In this connection, they argued that the majority was merely relying upon the fact that the collective-bargaining agreement contained a grievance-arbitration procedure. Members Fanning and Jenkins further contested the majority's conclusion that the *Collyer* doctrine enjoyed "massive judicial approval." Thus, they stated that the Supreme Court's alleged endorsement of the doctrine in *Arnold*, *supra*, was nothing more than dicta in a section 301 suit rather than an unfair labor practice proceeding, and that two other cases where the Supreme Court refused to defer were more analogous and persuasive.[10]

In *U.S. Postal Service*,[11] a decision prior to *General American*, the panel majority held that allegations of violations of section 8(a)(1), (3), and (4) were not appropriate for deferral to arbitration and proceeded to adjudicate them. In so holding, Member Fanning indicated that he would not defer to arbitration for the reasons stated in his dissenting opinion in *Collyer*. Chairman Murphy indicated that she would not defer because, in her view, 8(a)(4) issues are exclusively within the Board's province to decide and further stated that, in any event, she would not defer because the 8(a)(3) and (1) issues were inextricably connected with the 8(a)(4) allegations.

Member Penello dissented, adhering to the principles of *Collyer* and *National Radio*. He noted that the collective-bargaining agreement

[10] *Alexander v. Gardner-Denver Co.*, 415 U.S. 36 (1974), and *Amalgamated Assn. of Sheet, Electric Railway & Motor Coach Employees of America v. Lockridge*, 403 U.S. 274 (1971).

[11] *U.S. Postal Service*, 227 NLRB No. 267 (Chairman Murphy and Member Fanning; Member Penello dissenting).

between the parties contained a "just cause" provision and a clause prohibiting the employer from taking actions affecting employment which were "inconsistent with its obligations under law." He concluded that the alleged 8(a)(4) discrimination as well as the alleged 8(a)(3) discrimination could be fairly settled under the arbitration procedures and therefore he would defer to arbitration and dismiss the complaint.

During the report year, the Board had occasion to consider two cases involving deferral under the principles stated in *Spielberg* [12] to an arbitration award in which the arbitrator decided issues concerning alleged violations of section 8(a) (1), (3), and (4). In *Filmation Associates*,[13] the majority decided not to apply the *Spielberg* doctrine, noting that section 8(a)(4) operates to safeguard the integrity of the Board's processes by guaranteeing to employees that they may participate in Board procedures without fear of reprisal. They concluded that preservation of the Board's processes from abuse should not be delegated to an arbitrator. Accordingly, the majority remanded the proceeding for a hearing not only on the 8(a)(4) allegations, but also on the closely related 8(a) (3) and (1) allegations.

Members Penello and Walther dissented, contending that the *Spielberg* doctrine applied and that, therefore, the arbitration award should be considered. They noted that the majority did not argue that the arbitration award failed to conform with *Spielberg* requirements, but rather refused deferral on the basis of the special function of section 8(a)(4) in protecting the integrity of the Board's processes. In response, the dissenters asserted that the protection afforded employees by section 8(a) (3) and (1) was as important as that afforded by section 8(a)(4); thus, if deferral were appropriate for the former it must also be for the latter. They concluded that deferral was appropriate because the arbitrator had decided the same issues that the Board would have to have decided; i.e., whether the discharge was for just cause, for having engaged in concerted or union activities, or for having filed unfair labor practice charges with the Board, and because the arbitration proceedings and award conformed to the *Spielberg* standards.[14]

---

[12] *Spielberg Mfg Co*, 112 NLRB 1080 (1955) In *Spielberg*, the Board held that it would accept an arbitration award as dispositive of unfair labor practice allegations "where 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"

[13] *Filmation Associates*, 227 NLRB No 237 (Chairman Murphy and Members Fanning and Jenkins, Members Penello and Walther dissenting)

[14] The majority, in response to their dissenting colleagues, reasoned that simply because the conclusion that an unlawful reason played no part in the discharge statutory issue concerning a violation of sec 8(a)(4) was resolved; both lawful and unlawful reasons might be present, and the existence of a lawful reason would not warrant the conclusion that an unlawful reason played no part in the discharge

In *Clara Barton Terrace Convalescent Center*,[15] the Board was presented with the issue of whether deferral to an arbitrator's award was appropriate, under the *Spielberg* requirements, where the arbitrator found that a union steward was properly laid off for insubordination. The union steward had written an abrupt letter to a supervisor stating that no union members were to sign any notes or letters. The letter was written in response to the supervisor's requirement that employees acknowledge in writing the receipt of extra work assignments.

A majority of the Board affirmed the administrative law judge's conclusion that deferral was inappropriate and that the union steward was laid off in violation of section 8(a) (3) and (1). They stated that the arbitrator had evaluated the steward's conduct in a "strict contractual context, without once examining or discussing the statutory protections accorded by our Act," and that the award could discourage use of the grievance procedure by instilling fear that "an inartfully or overzealously worded grievance" might result in disciplinary action against the grievant. The majority concluded that for these reasons, *inter alia*, the award was contrary to the policies of the Act and inappropriate for deferral under *Spielberg* standards.

Members Penello and Walther dissented, contending that deferral was appropriate under the *Spielberg* doctrine. In their view, the arbitrator justifiably concluded that the steward did not correctly interpret her powers under the contract and that she interfered with management prerogatives. Accordingly, they found that since the arbitrator's award was not "clearly repugnant" to the policies of the Act it should be accepted as dispositive of the issues in the case.

---

[15] *Clara Barton Terrace Convalescent Center, Div of Natl Health Enterprises—Delfern*, 225 NLRB 1028 (Chairman Murphy and Members Fanning and Jenkins, Members Penello and Walther dissenting)

# IV

# Board Procedure

## A. Litigation of Issues of Union Discrimination

During fiscal year 1974, a Board majority issued a decision in *Bekins*,[1] which held that the Board is constitutionally required to consider alleged invidious discrimination by a union prior to issuance of a Board certification of representative, and, if the allegation has merit, to disqualify the union.

In *Handy Andy*,[2] issued during the report year, a Board majority, in a representation proceeding, overruled the *Bekins* decision and held that allegations concerning discrimination by a labor organization based on race, sex, alienage or national origin, or other forms of invidious discrimination will be considered in appropriate unfair labor practice proceedings rather than representation proceedings. Accordingly, in the view of Chairman Murphy and Members Fanning and Penello, neither the Constitution nor the Act requires the Board to consider allegations of invidious discrimination before it may certify a union as the exclusive bargaining agent of employees in an appropriate unit. They took the position that a certification is an acknowledgment that a majority of employees in an appropriate unit have selected the union as their exclusive bargaining representative; and that it does not constitute enforcement or approval of a union's activities. In this connection, they pointed out that the union's status as a bargaining agent imposes a statutory duty upon it to represent unit employees fairly in a nondiscriminatory manner and the breach of this duty constitutes an unfair labor practice under the doctrine first enunciated by the Board in *Miranda Fuel Co.*[3] Thus, the majority reasoned, the Board's certification of a union which allegedly engaged in invidious discrimination should not be construed as "state action" in support of discrimination, as defined by the Supreme Court in *Shelley* v. *Kraemer*,[4] and applied to the Federal Government in

[1] *Bekins Moving & Storage Co of Florida*, 211 NLRB 138; 40 NLRB Ann Rep 48–49 (1974).

[2] 228 NLRB No 59 (Chairman Murphy and Members Fanning and Penello, Member Walther concurring, Member Jenkins dissenting)

[3] 140 NLRB 181 (1962)

[4] 334 U S. 1 (1948)

*Bolling* v. *Sharpe* under the due process clause of the fifth amendment to the Constitution.[5]

The Board majority further pointed out that the issue of invidious discrimination is best resolved in an unfair labor practice proceeding where the disputed conduct is subject to the adversary process and to remedial orders, and where the allegation of discrimination is confined to the specific unit involved. They noted that under the *Bekins* approach such issues were considered in nonadversary representation proceedings where a union could be denied certification solely on the presumption that it would discriminate against employees in the unit involved because it had discriminated against employees in some other bargaining unit. In addition, the majority stated that questions concerning representation must be resolved expeditiously in order to achieve the Act's stated purpose of fostering the collective-bargaining process and that the *Bekins* doctrine impaired the achievement of this purpose by increasing the duration of representation cases and by denying unit employees the right, guaranteed them by the Act, to choose their representative for the purpose of collective bargaining. However, the majority stated that issues concerning invidious discrimination could be appropriately raised in a representation proceeding when they involved the integrity of the Board's processes or the fairness of the election process.

Member Walther, concurring, agreed with his colleagues in the majority that claims of invidious discrimination should be considered in unfair labor practice proceedings and that such claims could be raised in representation proceedings only when they involved the integrity of the Board's processes. In addition, he would consider disqualifying a petitioning union from access to the Board's election process if it could be established, through documentary evidence, that the petitioner restricted access to membership on the basis of race, alienage, national origin, or sex.

Member Jenkins, dissenting, adhered to the majority position in *Bekins*. He stated that Board certification results in (1) a requirement that the employer bargain with the union as exclusive bargaining representative of the unit employees; (2) the insulation from challenge to the union's status for a year; (3) the presumption that its status continues after a year; and (4) the impossibility of other representation for minority employees who voted against the union. Thus, in his view, Board certification constitutes assistance to the union's discrimination when the union represents unit employees in accordance with its discriminatory policies. That an unfair labor practice may be alleged after the union has carried out its policy

[5] 347 U.S. 497 (1954)

does not, in his view, absolve the Board's initial assistance to the union's practices. Further, he argued, the Board cannot initiate unfair labor practice proceedings and such proceedings may never be instituted even though the union engages in invidious discrimination against unit employees. Finally, Member Jenkins pointed out that a hearing allowing cross-examination may be held in a representation proceeding and that review by the Board and courts is available in an 8(a)(5) test of certification. Thus, he argued, the due process safeguards of an adversary proceeding are available in the certification process of the representation proceeding.

In *Bell & Howell Co.*,[6] the Board was presented with an 8(a)(5) test of certification in a summary judgment proceeding where the employer asserted the defense that the union's certification was invalid because the Board, in the representation proceeding, had refused to consider whether the union engaged in invidious sex discrimination. A majority of the Board, contrary to the employer, held that the Board is not constitutionally proscribed from ordering an employer to bargain with a certified union which allegedly engages in discriminatory practices. Accordingly, it found no merit in the employer's defense to the 8(a)(5) allegations.

Chairman Fanning and Members Penello and Murphy were of the view that the certification of the union was valid under the principles set forth in *Handy Andy*. They noted that the employer admitted its failure and refusal to bargain with the union. Thus, they concluded, a violation of section 8(a)(5) had been established. Further, they concluded that the Board's issuance of a bargaining order to remedy this violation does not constitute governmental assistance in or encouragement of invidious discrimination by the union because such discrimination is forbidden by the Act and may be remedied in an appropriate unfair labor practice proceeding.

Member Walther, in his concurring opinion, noted that the employer alleged that the certification was invalid for the reason, *inter alia*, that the union discriminated against women with respect to membership rules. Reasserting the position he took in *Handy Andy*, Member Walther stated that since the allegation involved sexually discriminatory membership rules he would consider it at the very outset of the representation proceeding. He concluded, however, that even if the issue had been considered in the representation proceeding he would not have found the allegations to be supported by the record, because no documentary evidence was submitted.

Member Jenkins dissented for the reason set forth in his dissenting opinion in *Handy Andy*. In his view, the Board is constitutionally

[6] 230 NLRB No 57 (Chairman Fanning and Members Penello and Murphy; Member Walther concurring, Member Jenkins dissenting).

proscribed from issuing a certification or a bargaining order without considering claims that the union engages in invidious discrimination.

In *R. C. Cobb*,[7] the Board panel held, for the reasons stated in *Bell & Howell*, that a claim of invidious race and sex discrimination by the union does not constitute an affirmative defense in an 8(a)(5) proceeding where the union has been voluntarily recognized by the employer, rather than certified by the Board.

In *Murcel Mfg. Corp.*,[8] the employer contended that the union, which had established its majority status on the basis of authorization cards, was not entitled to a bargaining order because it allegedly engaged in discrimination on the basis of race and sex. The full Board rejected this contention and issued the bargaining order on the ground that the employer's unfair labor practices prevented the holding of a fair election.

Chairman Fanning and Members Penello and Murphy took the position that the issuance of a bargaining order was appropriate for the reasons set forth in their opinions in *Handy Andy* and *Bell & Howell*. Member Jenkins, concurring, agreed that a bargaining order was warranted, but only for the reason that the employer's assertion of union discrimination was merely conclusionary and not supported by the alleged facts. Member Walther in his concurring opinion agreed with the majority that issues of invidious discrimination should be considered in an 8(b) proceeding rather than as affirmative defenses in 8(a)(5) cases. His reasons for agreement were based, *inter alia*, on the facts that an 8(b) proceeding affords greater due process protections to the charged union and "allows for the tailoring of the remedy to fit the nature of the discrimination found."

In *Hall-Way Contracting Co.*,[9] the Board was presented with the question of whether the issue of alleged union discrimination could be raised in a 10(k) proceeding. One union contended that the disputed work could not be awarded to the employees represented by the other union because that union engaged in invidious discrimination. A majority of the Board held that the Board was neither constitutionally nor statutorily required to consider such allegations in a 10(k) proceeding. They stated that the purpose of the 10(k) proceeding is to try to prevent wasteful work stoppage due to jurisdictional disputes. In its view, the consideration of issues of union discrimination would hinder this purpose, especially in light of the fact that the issues may be appropriately considered under section 8(b) of the Act. Furthermore, they concluded that the Board's action in making the award

[7] 231 NLRB No 19 (Chairman Fanning and Members Penello and Walther)

[8] 231 NLRB No 80 (Chairman Fanning and Members Penello and Murphy, Members Jenkins and Walther concurring separately)

[9] *Local 393, Plumbers (Hall-Way Contracting Co.)*, 232 NLRB No 83 (Chairman Fanning and Members Penello and Murphy; Member Jenkins dissenting)

did not constitute governmental authorization of the alleged discriminatory practices because the award is based on factors indicating which group of employees is best suited to do the work; it does not indicate Board approval of the activities of the union representing the favored employees. Finally, the majority noted that refusal to award work on the basis of union discrimination would penalize the employees seeking the work, but would only indirectly affect the discriminating union. For these reasons, in addition to those set forth in *Handy Andy* and *Bell & Howell*, *supra*, they concluded that issues concerning alleged invidious discrimination by a union were irrelevant to a 10(k) proceeding and should instead be raised in an appropriate unfair labor practice proceeding. Accordingly, the majority made an award determining the dispute.

Member Jenkins, dissenting, took the position that the Board must consider issues concerning union discrimination in a 10(k) proceeding, in order to avoid unconstitutional governmental authorization of discrimination. In his view, the Board's determination of the award constitutes governmental action because, *inter alia*, the award confers such benefits on the union as the control of access to jobs.

## B. Nature of Compliance Proceedings

In an unusual and complex case,[10] a Board panel found that the regional director acted in the name of the Board and not as a representative of the General Counsel, when he supervised the compliance agreement process. In an earlier case, *Jacobs Transfer*,[11] the Board found that the employer violated section 8(a) (3) and (1) by discharging an employee, and ordered reinstatement and backpay to the employee. As a result of noncompliance with the Board order, a backpay specification and notice of hearing was issued by the regional director. A compliance agreement was reached requiring the employer to reinstate the employee at a different location and the case was closed by the regional director. The incumbent union had sought arbitration of the employer's right under their contract to reinstate the employee at the specified location. An arbitration award determined that the employee was not so entitled to reinstatement. The union then sought to enforce the award in Federal district court. Although stating that the compliance agreement did not automatically preclude enforcement of the arbitration award despite the fact that it was in direct contravention of the compliance agreement, the court stayed final determination in view of current unfair labor practice proceed-

[10] *Jacobs Transfer*, 227 NLRB No 181 (Chairman Murphy and Members Fanning and Jenkins)

[11] 201 NLRB 210 (1973).

ings pending against the union,[12] and noted that the Board could choose to amend its original reinstatement order to provide for reinstatement in accordance with the compliance agreement.

The Board panel held that it was unnecessary to amend its previous order to encompass the terms of the compliance agreement reached after the backpay specification was issued. It noted that the backpay specification is distinguishable from a General Counsel's complaint insofar as it is based on a Board decision in which a violation of the Act has been found and the necessary remedy ordered. The panel stated that when the regional director supervised the compliance agreement process he acted in the name of the Board with the purpose of carrying out the Board's intent that its order be properly implemented. Thus, the panel concluded: "We consider the compliance agreement in this proceeding to be Board action, and action, such as this, taken to effectuate a Board order and to remedy the violation of the Charging Party's statutory rights, must take precedence over an arbitrator's decision limited to contractual rights."

[12] In the instant case, the union was charged with unfair labor practices in connection with its efforts to frustrate the compliance agreement

# 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. Contract Bar to Conduct of an Election

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.

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

One such circumstance 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 effective 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 a contract must be signed by all parties before the rival petition is filed.

In *Westinghouse Electric Corp.*,[4] a case decided during the report year, a panel of the Board held that a petition seeking to decertify the union as representative of production and maintenance employees at one of the employer's plants should be dismissed because it was not coextensive with the recognized bargaining unit. In so holding, the Board panel concluded that the record established a controlling history of multiplant bargaining which warranted a finding that the employees at the single location in issue had been merged into a multiplant unit.

In this regard, the panel noted that the union had long utilized a Conference Board composed of delegates from each of the locals within its jurisdiction for the purpose of coordinating the collective-bargaining activities of its locals. The Conference Board negotiated with the employer for a national agreement covering such substantive terms as general wage increases, overtime pay, and seniority rules. The then current national agreement provided for supplemental agreements negotiated locally which were subordinate to the national agreement and subject to review and approval by the Conference Board when there was conflict with the national agreement. The national agreement also contained a provision recognizing the union, on behalf of and in conjunction with its locals, as the exclusive bargaining agent. Finally, the agreement provided that the local could assent to the inclusion of a newly certified unit under the national agreement as of the certification date. In accordance with this provision, the local at the plant in issue here assented to the application of the national agreement and joined the units covered by the national agreement.

The Board panel noted that certain local supplements covering employees at the plant had been negotiated in the 14-month timespan between the certification and the filing of the decertification petition. However, this fact was not sufficient to establish that here the local retained a sufficiently independent bargaining position from other

[4] 227 NLRB No 282 (Chairman Murphy and Members Fanning and Jenkins)

locals comprising the Conference Board for employees at this particular plant to be considered a separate unit. Finally, it was uncontroverted that coverage under the national agreement was a key issue in the representation campaign at the plant and there was no evidence of resistance to amalgamation with other groups. Hence, the Board panel found that employees at the plant had sufficient notice that the unit's inclusion under the national agreement would entail a merger with the multiplant unit.

In two cases, panels of the Board considered the application of the general principle that the question whether a collective-bargaining agreement constitutes a bar is ordinarily determined from the face of the contract and not from extrinsic evidence.[5] In *Jet-Pak Corp.*,[6] a Board panel concluded that a stipulation entered into by the parties at the representation hearing, although arguably a form of "uncontroverted evidence," is precisely the type of extrinsic evidence which the Board has refused to consider in determining contract-bar questions. The stipulation raised the possibility that the union-security provision of the contract claimed as a bar might have been unlawful in denying some new employees the statutory 30-day grace period within which to become union members. However, inasmuch as the union-security clause was clearly lawful on its face and the contract otherwise met the requirements for contract bar set forth in *Appalachian Shale Products Co.*,[7] the Board panel held that the contract served as a bar to the petition, which was dismissed.

On the other hand, in *Frank Hager, Inc.*,[8] another panel of the Board concluded that it was proper to consider extrinsic evidence which revealed that a purported collective-bargaining agreement was not the product of collective-bargaining negotiations. The panel noted that, although the contract in question appeared valid on its face, the general principle that the validity of such an agreement for contract-bar purposes will not be determined by extrinsic evidence is subject to certain exceptions. One such exception occurs when the extrinsic evidence establishes that the alleged contract is not "one imparting sufficient stability to the bargaining relationship to justify our withholding a present determination of representation."[9]

In concluding that the agreement in question did not constitute a contract bar, the Board panel pointed out that it was undisputed that the employer assembled a complete agreement only after securing the signatures of employee representatives of the Employee Independent Union on a separate piece of paper which later became the signatory

[5] *Paragon Products Corp*, 134 NLRB 662 (1961), *St Louis Cordage Mills, Div of American Mfg Co*, 168 NLRB 981 (1967)

[6] 231 NLRB No 93 (Members Jenkins, Penello, and Walther)

[7] 121 NLRB 1160 (1958)

[8] 230 NLRB No 50 (Chairman Fanning and Members Penello and Murphy)

[9] *Raymond's*, 161 NLRB 838 (1966)

page of the purported contract. Not only were the signatories effectively precluded from commenting on the contract's provisions or from making counterproposals, but the signature of at least one employee was procured only after the employer threatened to discharge him. Under these circumstances, the panel found the contract did not reflect an agreement reached through collective bargaining, and hence did not constitute a bar to a petition.

Another circumstance which will ordinarily preclude the raising of a question concerning representation arises when a petition is filed prior to the "open period" of an existing collective-bargaining agreement. In one such case decided during the report year, *W. A. Foote Memorial Hospital*,[10] a panel found that a decertification election among maintenance employees at one of the employer's two locations could not be conducted because the decertification petition was not coextensive with the contract unit recognized by the employer, a health care institution. In this connection, the panel found that the employer, on the basis of an arbitration award, had properly recognized the union as bargaining representative of maintenance employees at its two locations in a single overall unit.

Because the petitioner had expressed a willingness to go to an election in the overall unit and had a sufficient showing of interest in that unit, the panel directed an election in the appropriate overall maintenance unit. In directing the election, the panel pointed out that the decertification petition had been filed in the mid-term of the then current collective-bargaining agreement between the employer and the union, and hence the contract barred the petition as of the date it was filed.[11] However, the panel cited precedents applicable to nonhealth care institutions that "a petition will not be dismissed, even though prematurely filed, if a hearing is directed despite the prematurity of the petition and the Board's decision issues on or after the 90th day preceding the expiration date of the contract." [12] The panel found that this rationale was equally applicable to cases involving health care institutions. Because the decision would issue after the 120th day preceding the expiration date of the contract, the panel concluded that it was proper not to dismiss the petition, but instead to direct an election.

## B. Conduct of Election

Section 9(c)(1) of the Act provides that, where a question concerning representation is found to exist pursuant to the filing of a

[10] 230 NLRB No 88 (Members Penello, Murphy, and Walther)

[11] See *Trinity Lutheran Hospital, et al*, 218 NLRB 199 (1975) There the Board determined that the "open period" for a petition for an election involving a health care institution within the meaning of sec 2(14) of the Act is the period from 90 to 120 days before the expiration date of the existing collective-bargaining agreement

[12] *Royal Crown Cola Bottling Co of Sacramento*, 150 NLRB 1624, 1625 (1965)

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.[13] 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 which is subject to exceptions by the parties and decision by the Board.[14] However, if the election was originally directed by the Board,[15] 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.[16]

In *Norwestern Products*,[17] the Board reaffirmed the general principle that stipulations by the parties as to the use or non-use of bilingual notices and ballots will be upheld unless it is established that failure to provide multilingual ballots had an adverse impact on the employees' ability to cast an informed vote. On the facts of the case, a majority of the Board concluded that no such adverse impact had been made out and, accordingly, overruled the intervening union's objection and certified the petitioning union. In so doing, the majority noted that the intervenor had responded in the negative when asked if it wanted materials for a bilingual election and had specifically joined with the petitioner and employer in a stipulation to conduct the election in English only.[18] The parties had also stipulated that if they all had observers fluent in a particular language and an employee who spoke in that language had a question, all three ob-

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

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

[15] Rules and Regulations, secs 102 62 and 102.67

[16] Rules and Regulations, sec 102 69 (c) and (a)

[17] 226 NLRB 653 (Chairman Murphy and Members Fanning and Jenkins, Member Penello dissenting).

[18] On these facts the majority distinguished prior decisions in *Fibre Leather Mfg Corp*, 167 NLRB 393 (1967), and *Marriott In-Flite Services, Div of Marriott Corp*, 171 NLRB 742 (1968)

servers would be present when the ballot was explained in that language. The majority agreed that the Board agent correctly interpreted this part of the stipulation by refusing to permit translators provided by the employer and the intervenor to participate in the election when the petitioning union did not provide a translator.

In addition to the stipulations, the Board majority also relied upon the relevant bargaining history. Thus, the majority observed that the intervenor had represented unit employees for approximately 18 years and had been party to several successive collective-bargaining agreements, all of which had been printed in English only. Furthermore, all contacts with, and notices to, employees by both the intervenor and the employer had been in English only, as had been the intervenor's dues-checkoff authorizations. In light of this history and of the stipulations entered into by the parties, the majority found that the record showed that the use of notices and ballots in English only could not have had an adverse impact on the election.

In dissenting, Member Penello stated that, under well-established Board precedent,[19] an election is invalid when a substantial number of employees do not speak or read English, the Board is so informed, and neither the notice nor the ballots are in a language which the employees understand. In his view, when the particular arrangements intended to deal with this situation fail or are ineffective in assuring an opportunity for an informed expression by all employees of their wishes, then the Board cannot and should not accede to agreements by the parties to the use of English notices and ballots only. After noting that the Board agent's investigation indicated that at least 10 of the 29 employees who the intervenor claimed were unable to speak English in fact were unable to communicate whether they understood the Board's notice or the ballot, Member Penello concluded that the Board had failed to fulfill its duty to provide "the requisite laboratory conditions" [20] under which elections must be conducted and thereby failed to protect the integrity of the election processes.

Panels of the Board considered two cases during the report year dealing with the nature and extent of a Board agent's duty to challenge the eligibility of a voter. In *Laubenstein & Portz*,[21] a majority of the panel concluded that an election should be set aside and a second election directed where the Board agent failed to challenge the determinative ballot on behalf of the union. Prior to the events in issue, the employer and the petitioning union reached an informal settlement agreement of alleged violations of section 8(a) (3) and (5) of the Act. The agreement provided, *inter alia*, for an election to

[19] *Fibre Leather Mfg Corp*, *supra*, *Thomas A Nesion d/b/a Trio Metal Cap Div*, *Kerr Glass Mfg Corp*, 168 NLRB 802 (1967), *Marriott In-Flite Services*, *supra*

[20] *General Shoe Corp*, 77 NRLB 124 (1948)

[21] 226 NLRB 804 (Members Fanning and Penello, Member Walther dissenting)

Several weeks prior to the election, the Board agent was notified by another Board official that one voter was to be challenged in connection with the settlement agreement. On the day of the election, both the union's business representative and the employer's observer called the Board agent's attention to the terms of the settlement and raised the question of having the individual's ballot challenged. However, the union's observer failed to appear. When the individual whose ballot was supposed to be challenged presented himself, the employer's observer declined to challenge him, and the Board agent allowed him to vote without challenge.

The majority concluded that under these circumstances the Board agent's failure to challenge was unwarranted. In this connection the majority pointed out that, although section 11338 of the Board's Casehandling Manual states the general guidelines that the Board agent will not make challenges on behalf of the parties, the guidelines are not intended as inflexible and binding procedural rules. Moreover, the majority reasoned that, given the Board agent's knowledge of the settlement agreement, he had "good cause" to "state" the union's challenge consistent with the dictates of section 102.69(a) of the Board's Rules and Regulations.[22]

In dissenting, Member Walther urged that, because the name of the voter in question appeared on the eligibility list, it was the responsibility of the party who objected to his eligibility to challenge his ballot. On the facts, Member Walther found that the union was negligent in not having an observer present and in failing to make clear to the Board agent that it was asking him to challenge the voter. In his view it was this negligence on the union's part and not any overly strict interpretation of the Casehandling Manual instructions by the Board agent that occasioned the failure to challenge the ballot. Hence, Member Walther would have overruled the union's objection and certified the election results.

In *Fern Laboratories*,[23] a majority of the Board panel held that a Board agent was not obligated to "state" challenges noted in a preelection agreement. In *Fern*, the employer's observer failed to orally challenge the ballot of an individual before it was cast. The election eligibility agreement furnished to the Board agent provided that the ballot of that individual and one other would be "subject to challenge." When the employer's observer later asked why the ballot of that voter was not segregated, the Board agent replied that there had been no

[22] That section of the Rules and Regulations provides "Board agents may challenge, for good cause, the eligibility of any person to participate in the election."

[23] 232 NLRB No 84 (Members Jenkins and Penello, Chairman Fanning concurring in part and dissenting in part)

resolve the question concerning representation. There was also a "verbal understanding" of the parties that one individual whose supervisory status was in dispute would be included on the *Excelsior* list, but would vote under challenge.
proper challenge to the ballot and it was too late to make one because the ballot had already been cast.

In finding that the Board agent had no duty to "state" the employer's objection to the ballot, the majority observed that, absent an "unexpected occurrence," parties must state their own challenges. In the majority's view, an observer's mistake is not such an occurrence. Finally, the majority distinguished *Laubenstein & Portz*, *supra*, on its facts. According to the majority, deviation from an agreement settling rights and liabilities arising out of an unfair labor practice charge as in *Laubenstein* is not to be equated with deviation from an agreement resulting from a preelection agreement. Also, in *Laubenstein*, unlike the subject case, the party wishing to challenge did not have an observer, the Board agent appeared to have agreed that he would "state" the challenge, and the Board agent's attention was specifically directed to the agreement when the ballot was cast.

In dissenting on this point, Chairman Fanning argued that the decision in *Laubenstein* established a Board agent's duty to "state" a challenge pursuant to the parties' preelection agreement. Also, the Chairman would have required a hearing regarding the employer's contention that the Board agent, who was or should have been aware of the parties' agreement, did not give the observers clear instructions as to the proper challenge procedure.

## C. 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 at 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 employees' 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.

### 1. Misrepresentation of Material Facts

In *Hollywood Ceramics Co.*,[24] the Board enunciated the standard it would apply in determining whether electioneering statements or

[24] 140 NLRB 221 (1962)

propaganda amounted to misrepresentations sufficiently grave to require a rerun election or a hearing.[25] During the report year, a majority of the Board announced in *Shopping Kart Food Market*,[26] a case involving an erroneous statement by a union, that it would overrule *Hollywood Ceramics* and would no longer probe into the truth or falsity of the parties' campaign statements. The Board majority stated they were so holding for the reasons set forth by Member Penello in his dissents in *Medical Ancillary Services*[27] and *Ereno Lewis*.[28] Members Penello and Walther, in the majority opinion, stated that the Board's long experience with the rule of *Hollywood Ceramics* had demonstrated that the effort to regulate closely campaign propaganda had hindered rather than assisted the Board in achieving the goal of assuring employees free choice. In this connection, Members Penello and Walther pointed out that a number of scholarly writers in the field have had occasion to examine the Board's administration of the *Hollywood Ceramics* rule and have concluded that the rule gave rise to vague and inconsistent rulings which frequently baffled the parties, provoked further litigation, invited delay, and ultimately frustrated free choice. They noted that frequent differences of opinion between the Board and the courts in the application of the *Hollywood Ceramics* standards similarly served to delay the onset of collective bargaining. Members Penello and Walther also observed that their "fundamental disagreement" with those who would adhere to the *Hollywood Ceramics* approach lay in the assumption of the latter that employees are so "naive and unworldly" that their decision on the critical matter of a

[25] The Board in that case explicated the rule as follows

> We believe that an election should be set aside only where there has been a misrepresentation or other similar campaign trickery, which involves a substantial departure from the truth, at a time which prevents the other party or parties from making an effective reply, so that the misrepresentation, whether deliberate or not, may reasonably be expected to have a significant impact on the election However, the mere fact that a message is inartistically or vaguely worded and subject to different interpretations will not suffice to establish such misrepresentation as would lead us to set the election aside Such ambiguities, like extravagant promises, derogatory statements about the other party, and minor distortions of some facts, frequently occur in communication between persons But even where a misrepresentation is shown to have been substantial, the Board may still refuse to set aside the election if it finds upon consideration of all the circumstances that the statement would not be likely to have had a real impact on the election For example, the misrepresentation might have occurred in connection with an unimportant matter so that 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 [140 NLRB at 224 ]

[26] 228 NLRB No 190 (Members Penello and Walther, Chairman Murphy concurring, Members Fanning and Jenkins dissenting in part, Member Jenkins dissenting further)

[27] 212 NLRB 582 (1974).

[28] 217 NLRB 239 (1975)

bargaining agent is easily swayed by campaign propaganda.[29] Hence, they concluded that only in instances in which employees are unable to evaluate campaign material or claims by reason of the deceptive manner in which the representation is made, e.g., where there has been a forgery, should the Board set aside the election.

Chairman Murphy, in concurring, noted her reluctance to abandon *Hollywood Ceramics* because she agreed with the basic principles as there set forth, but stated her conviction that the ruling of that case "has been so expanded and misapplied as to have extended far from the original intent of the Board." She also agreed that the Board must recognize the ability of employees to evaluate campaign rhetoric for what it is. She departed from the position taken by Members Penello and Walther only in that she would also set aside an election where a party makes an "egregious mistake of fact," but only "in the most extreme situations."

In dissenting in part,[30] Members Fanning and Jenkins maintained that they were unable to discover the various ill effects of the *Hollywood Ceramics* policy asserted by the majority. They suggested that closer scrutiny of the studies relied on by the majority revealed that a significant percentage of voters in fact appear highly susceptible to campaign propaganda and rhetoric, thus undercutting the majority's assertion that the application of the *Hollywood Ceramics* rule is likely to have little effect on preserving the right of employees to the informed exercise of their franchise. As evidence of the efficacy of the Board's application of the *Hollywood Ceramics* standards, the dissenters pointed to the very large percentage of voter participation in Board-conducted elections and to the high degree of public confidence in the integrity of the election process. Finally, they argued that the approach urged by the majority was at odds with the quickening interest in reform at every level of public and political life, and that it represented a retreat to standards discarded for good reason in years past.[31]

A panel of the Board considered misleading campaign statements by an employer in light of the *Shopping Kart* rationale in another case decided during the report year, *Thomas E. Gates & Sons.*[32] There, the employer circulated a letter to employees 4 days before the election

[29] They cited the findings of an empirical study of NLRB elections to support their view that employees "are capable of recognizing campaign propaganda for what it is and discounting it."

[30] On the facts of the case—involving an erroneous statement made the day before the election by the union concerning the amount of the employer's yearly profit—Members Fanning and Jenkins agreed with the majority that no basis for setting aside the election was made out However, the dissenters reached this conclusion based on their application of the *Hollywood Ceramics* standard

[31] Member Jenkins, in his separate further dissenting opinion, stated the conviction that the study relied on by the majority was suspect both as to its conclusions and to the methods and logic employed by its authors to buttress those conclusions

[32] 229 NLRB No. 100 (Members Penello and Murphy, Chairman Fanning dissenting).

in which it misrepresented by approximately $2 an hour the wages they could expect to receive under the union's current contract. A majority of the panel, relying on the *Shopping Kart* rationale, declined to set aside the election since the content of the letter amounted to no more than misleading campaign statements.

Chairman Fanning, dissenting for the reasons set forth in the dissenting opinion in *Shopping Kart*, observed that it was "inconceivable" that a substantial wage misrepresentation made when no reply was possible would not have significant impact on the election.

## 2. Union Policy of Prepayment of Initiation Fees

In *Savair Mfg. Co.*,[33] the Supreme Court held a union's offer to waive its initiation fee for those employees who signed union authorization cards prior to a representation election is an impermissible campaign tactic and ground for setting aside the election. During the report year, the Board had occasion to consider the possible application of this holding in various factual contexts.

In *Aladdin Hotel Corp.*,[34] a union's organizing policy required the prepayment of a reduced initiation fee and 1 month's dues by a majority of prospective unit employees before the union would file a representation petition.[35] Under this policy, if the union filed a petition and lost the election, all amounts prepaid by employees were forfeited to help defray the union's campaign expenses. On the other hand, if the union won the election, the dues payments were applied for the first month after a contract was signed and the reduced initiation fee remained open to all employees until the signing of an agreement.

In finding this policy not objectionable, a majority of the Board concluded that the possibility of a forfeiture of the prepaid moneys had no unlawful impact on employees' freedom of choice in the election. Thus, because the union "has no legal obligation to seek to represent employees desiring organization" in the event a majority of unit employees declined to prepay and the union withdrew, it could not be said that employees had been denied any rights. However, if a majority chose to prepay, employees who elected not to do so were not prejudiced as they retained the right to pay the reduced initiation fee after the election.

The majority also found the principles of *Savair* clearly inapplicable to the union's conduct. The majority held that, if anything, the possibility of a forfeiture was a disadvantage for employees rather than an unlawful inducement for their support. In light of the record as a whole, the majority further concluded that the union's use of the term

[33] *N L R B v Savair Mfg Co*, 414 U S 270 (1973)

[34] 229 NLRB No 73 (Chairman Fanning and Members Jenkins and Murphy, Members Penello and Walther dissenting)

[35] All moneys were refunded if a majority did not prepay the advance and no petition was filed.

"organizing campaign," in explaining to employees the details of its policy as it related to a reduced initiation fee, created no ambiguity, but was reasonably understood by employees to refer to the periods both before and after the election. Hence, the majority distinguished *Inland Shoe Mfg. Co.*,[36] cited by the dissenters, where the Board found the use of the term "charter member" by a union created an ambiguity concerning the nature and extent of a fee reduction, and thus constituted ground for setting aside an election under the *Savair* principles.[37]

The dissent of Members Penello and Walther was based on their view that the union policy here created an obligation "which effectively hinders an employee's freedom of decision," and for that reason violated the Supreme Court's holding in *Savair*. Thus, the dissenters urged that the only way an employee could avoid the loss of his prepaid money was to vote for the union, notwithstanding that his sentiments may have changed during the campaign. In their view such a result was plainly at odds with the principle that employees are entitled to a free expression of their choice in the matter of selecting a collective-bargaining representative.

Members Penello and Walther also concluded that the manner in which the union offered the reduced initiation fee violated the *Savair* principles. They cited *Inland Shoe Mfg. Co.*, *supra*, for the proposition that any ambiguity as to the details of the offer of a reduced fee may make the offer invalid. In their opinion, the union's use of the term "organizing campaign," in the circumstances of this case, created just such an ambiguity, and, further, the postelection effort by the union to clarify the use of the term should not be sanctioned as it allowed the union to skirt the requirements of *Savair* and established an invalid legal principle.

In a second case, *Jarp Corp.*,[38] a majority of a Board panel, relying upon the decision in *Aladdin Hotel Corp.*, *supra*, found no *Savair* violation in a union's policy which provided for the return of initiation fees if the union withdrew its petition or if, after an election victory, the union was unable to negotiate an agreement, but which also provided that, if the union went to an election and lost, the fees would not be refunded.[39] The majority agreed that no *Savair* violation was made

[36] 211 NLRB 724 (1974)

[37] Nor was the majority persuaded that the union's policy was objectionable because, arguably, the prepayment of moneys might lead most employees to make an early—although not binding—commitment in the union's favor The majority observed that many voluntary actions taken by employees, such as agreeing to become inplant organizers for example, might influence their vote on election day, but would not thereby warrant setting aside the election

[38] 230 NLRB No. 97 (Members Jenkins and Murphy, Member Walther dissenting)

[39] The dissent noted that, unlike the union in *Aladdin Hotel*, the union here did not require, but merely encouraged, employees to pay the initiation fee before the election as a sign of their support

out, inasmuch as employees who had not paid the reduced initiation fee before the election, perhaps out of fear of no refund if the union lost, were still entitled to pay the reduced initiation fee after the election and until a contract was executed.

In dissenting, Member Walther stood on his dissenting opinion in *Aladdin Hotel*, *supra*. In his view, the initiation fee refund policy in issue here, like the refund policy considered in the earlier case, "serves to lock in the employees' previously expressed support of the [union] and to economically arm twist those who had prepaid the fee." Such a result, he maintained, contravenes the Supreme Court's proscription in *Savair* against "a coerced wellspring of support" and, accordingly, constitutes ground for setting aside the election.

## 3. Other Conduct

In the context of a consolidated unfair labor practice and representation proceeding, a majority of a panel decided in *Vegas Village Shopping Corp.*[40] that an employer's unlawful campaign against the union in a multistore unit of selling and nonselling employees required not only a new election in that unit, but also a new election in a second unit of the employer's warehouse employees which the same union sought to represent. The majority found that the employer's unfair labor practices, although directed only to store employees, "would tend to discourage all employees" in both units from voting for the union. In passing, the majority distinguished *Food Fair Stores of Florida*[41] on the basis that there a different union sought to represent each of two units. In addition, the employer's unlawful conduct in that case was directed against only one of the unions and largely concerned promises of wage increases for employees in the unit sought by that union.

Member Walther, in dissenting, found nothing but a "naked claim," unsupported by record evidence, to establish that the employer's unlawful conduct *vis-a-vis* the selling and nonselling unit would tend to interfere with the warehouse election. Further, he found unpersuasive the majority's effort to distinguish *Food Fair Stores* since the employer's antiunion campaign was not designed to establish that the union involved, in contrast with a different union, was unfit to represent employees and since there was no meaningful distinction in the different unfair labor practices in both cases.

---

[40] 229 NLRB No 40 (Chairman Fanning and Member Penello, Member Walther dissenting)

[41] 120 NLRB 1669 (1958)

# D. Unit Issues

## 1. Status as "Employee"

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 any one 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 Workers

A continuing rider to the Board's appropriation 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.

One case decided during the report year, *Employer Members of Grower-Shipper Vegetable Assn. of Central California, et al.*,[42] involved the determination of whether individuals engaged in driving or working on a variety of vehicles, including all types of mechanical harvesting machines, loaders, water wagons, and so forth, used to collect and transport harvested crops from the fields to coolers and processing sheds, were exempted "agricultural" workers within the meaning of section 2(3) of the Act, or nonagricultural employees properly included in any unit found appropriate.

In making its determination, the Board reviewed at length relevant precedent concerning the definition of "agriculture" and "agricultural laborer" under section 2(3). The Board also noted that, for purposes of section 3(f) of the Fair Labor Standards Act, "agriculture" has been held to include both farming in all its branches and work which, while not directly associated with the day-to-day operations of farming, is performed by a farmer or on a farm and is incident to, or done in conjunction with, such farming activities.[43] Furthermore, employees who engage in "any regular amount of nonagricultural work" have been held within the coverage of the National Labor Relations Act as to that part of the work which is nonagricultural.[44] And the Board

---

[42] 230 NLRB No 150 (Chairman Fanning and Members Jenkins, Penello, Murphy, and Walther)

[43] *Farmers Reservoir & Irrigation Co* v *McComb*, 337 U S 755 (1949)

[44] *Olaa Sugar Co , Ltd ,* 118 NLRB 1442 (1957)

has concluded that, if a substantial amount of a worker's time is spent in hauling or processing crops of a grower other than his own employer, then such a worker is not an "agricultural laborer" within the meaning of section 2(3) of the Act.[45]

In light of this authority, the Board concluded that the status of the employees involved "depends upon the extent to which their work relates to crops grown by their own employers or by independent growers." Hence, the Board rejected any contention that it should make a determination on a "category" or "industrywide" basis as urged by the employer association and the petitioning unions. In so doing, the Board observed that it was "not unmindful of the more than 30 years of bargaining history" between the association and the petitioning unions but that such voluntary participation in collective bargaining "cannot confer on the National Labor Relations Board jurisdiction which Congress has specifically denied."

After concluding that a multiemployer unit was appropriate, the Board proceeded to identify, based on the record evidence, employees of the individual employers who were not agricultural employees exempt under section 2(3) and therefore were properly included in the unit found appropriate.

### b. Independent Contractors

The Act excludes from the definition of "employee" any individual having the status of an independent contractor. A significant criterion in determining whether an individual is an independent contractor rather than an employee is the common law right-of-control test. Generally, where the person for whom the services are performed retains the right to control the manner and means by which the result is to be accomplished, the relationship is one of employment. On the other hand, where control is reserved only as to the result sought, the relationship is that of independent contractor. The resolution of this question depends on the facts of each case and the Board follows the ordinary tests of the law of agency in determining whether individuals are covered by the Act.[46]

Four cases considered by the Board during the report year dealt with this often vexatious issue. In the first case, *Young & Rubicam International*,[47] a panel agreed that a unit of freelance professional photographers was inappropriate because they were independent contractors and not employees within the meaning of the Act. In applying the "right-to-control" test, the panel rejected the assertion that in-

[45] *Garin Co.*, 148 NLRB 1499 (1964).

[46] See 37 NLRB Ann. Rep. 60 (1972), 40 NLRB Ann. Rep. 65 (1975); 41 NLRB Ann Rep 61 (1976)

[47] 226 NLRB 1271 (Chairman Murphy and Members Penello and Walther)

structions (as to lighting and placement of props and models, and so forth) given by the employer's art directors constituted the retention of control by the employer, a general advertising agency, over the manner and means by which the photographer completed his task. Comparing this aspect of the case to the facts in issue in several previous Board decisions,[48] the panel reasoned that here "what the Employer is contracting for is a photograph which will faithfully express the creative idea embodied in the layout," and that "the type of instructions given to a photographer by an art director properly relate to this end rather than to the technical means by which that goal is achieved."

In addition to the "right-to-control" issue, the panel found that virtually all other factors pointed to the conclusion that the freelance photographers were independent contractors rather than employees. Thus, in nearly all cases, photographers received a flat fee for their services, were not reimbursed for some of the expenses incurred on a job, were free to turn down a request to bid on a job, generally employed at least one assistant, and so on.

In a second decision, *Joyce Sportswear Co.*,[49] the majority of a Board panel clarified a previously recognized, but uncertified, unit by excluding, as independent contractors, all straight commission salesmen. The salesmen were the employer's exclusive representatives in their respective territories and spent the great bulk of their time away from the employer's premises. However, they were required to attend sales meetings at the employer's headquarters conducted just prior to the employer's season releases of its line of women's sportswear. Salesmen were required to pay 50 percent of the wholesale price for samples used in selling. Salesmen developed their own accounts, assumed all the ordinary and necessary business expenses of a traveling salesman, paid for the cost of setting up their own offices, and, in the majority's view, generally were left to sell the employer's line of clothing "as they see fit." In compensating its commission salesmen, the employer made no deduction for social security, Federal or state taxes, or unemployment compensation. Under its agreement with the union which had represented the commission salesmen since 1969, the employer retained the right to replace salesmen for just cause. Many of the salesmen utilized their spare time to sell other lines of clothing or to operate their own businesses.

On this record, the majority found no "day-to-day" control over the commission salesmen. Although there was evidence of the em-

[48] *Associated Musicians of Greater Newark, Loc 16, American Fed of Musicians, AFL–CIO (The Manor)*, 206 NLRB 581 (1973), *American Broadcasting Co, Div of American Broadcasting—Paramount Theatres*, 117 NLRB 13 (1957), *Boston After Dark*, 210 NLRB 38 (1974)

[49] 226 NLRB 1231 (Members Penello and Walther, Member Fanning dissenting)

ployer's frequent communication with salesmen during the selling season, recommending, among other things, methods to show the line, the majority saw this as merely illustrating the basic relationship which involved "a common goal: selling." Finally, the majority noted the prior decision in *Bambury Fashions*,[50] ruling that traveling salesmen who participated in trade shows conducted by the National Association of Women's and Children's Apparel Salesmen, Inc. (NAWCAS), were independent contractors. The majority pointed out that the commission salesmen here participated in such shows.

Member Fanning's dissent was grounded on his finding that the employer in fact exercised "considerable control over the manner in which each salesman does his job," and his conclusion that the majority had improperly ignored the bargaining history between the employer and the union. He maintained that the record clearly established that the employer's officials "exhort, criticize, and direct their salesmen to sell not only more but to sell in a manner" determined by the employer. In Member Fanning's view, the degree of control exerted here was "such as only an employer can exercise" over the manner in which the result is achieved. Further, he found the bargaining history between the parties of great significance. He noted that there was no evidence that the employer had altered its method of operations since it first recognized the union in 1969. Finally, Member Fanning found *Bambury Fashions* wholly distinguishable on its facts. In this regard, he pointed out that the salesmen here were neither full members of NAWCAS nor operating under a NAWCAS-approved contract.

In *Standard Oil Co.*,[51] a Board panel furthe rexplained the criteria the Board utilizes in determining whether individuals are independent contractors or employees within the meaning of the Act. Chairman Fanning and Member Jenkins pointed out that application of the common law agency test, mandated in determining who are employees under the Act,[52] requires consideration of factors "not too obviously encompassed by the 'right to control' language." Included among these factors are: (1) whether individuals perform functions that are essential parts of the company's normal operations or operate independent businesses; (2) whether they have a permanent working arrangement with the company which continues as long as performance is satisfactory; (3) whether they do business in the company's name and sell only the company's products; (4) whether their agreement with the company is promulgated and changed unilaterally by

[50] 179 NLRB 447 (1969).

[51] 230 NLRB No. 137 (Chairman Fanning and Member Jenkins; Member Penello concurring)

[52] *N L R B* v *United Insurance Co of America*, 390 U S 254 (1968)

the company; (5) whether they account for funds collected in accordance with a regular procedure established by the company; (6) whether particular skills are required for the functions performed under the contract; (7) whether they have a proprietary interest in the work they perform; and (8) whether they have an opportunity to make decisions which involve risks that may result in profit and loss.

Upon consideration of the facts of the case in light of these factors, Chairman Fanning and Member Jenkins found that the individuals in question, single-truck owner/commission drivers, were employees rather than independent contractors. In so doing, they rejected as totally unpersuasive the contention that these drivers should be held to be independent contractors in view of the uniform "distributor agreement" separately executed between the company and each driver, and the company's practices under it. The agreements, drafted by the company, provided that the driver (denominated a distributor) was not an employee of the company, but rather was engaged in an independent business.

Member Penello, concurring, relied on the specific terms of the "distributor agreement" which, when coupled with the fact that the employer held mandatory and far-reaching weekly sales meetings for its distributors, indicated that "distributors have little or no economic latitude in which to engage in genuine entrepreneurial activity."

Finally, in *Yellow Cab Co.*,[53] cab lease drivers were found to be employees rather than independent contractors by a majority of the Board. Under the relevant lease agreement, the companies furnished the cabs and provided for insurance and for most items of maintenance and repair. Among its other provisions, the lease disclaimed any intention to create an employer-employee relationship and recited that the lessee cab drivers were not required to operate the taxicabs in any prescribed manner, nor to accept dispatches, report their location, or maintain the cab in any designated place.

However, in concluding that the drivers were employees, the Board majority placed particular emphasis on another term of the agreement which permitted the companies to terminate the lease at any time for any driver breach of law, ordinance, or governmental rule and regulation. After noting the "pervasive scheme" of municipal regulation and state law which governed the conduct of taxicab drivers and the operation of taxicabs, the Board majority concluded that, by requiring compliance with such regulations on pain of immediate cancellation of the lease, the companies involved "effectively have insured their control over the day-to-day operation and activities of their lease drivers."

---

[53] 229 NLRB No. 190 (Chairman Fanning and Members Jenkins and Murphy; Member Penello dissenting).

Given this conclusion, and in light of the other factors found to weigh in favor of employee status for drivers,[54] the majority observed that "only by ignoring business realities can it be said that these drivers exercise any real 'independence.'" In passing, the Board majority also expressed the view that the Board decisions in a line of cases including, *inter alia*, *Columbus Green Cabs, et al.*,[55] holding that groups of taxicab drivers were independent contractors rather than employees, were not in conflict with the finding here. In this connection, the majority pointed out that the right-of-control test turns on the specific and individual facts of each case.

Member Penello, dissenting, found the facts here "virtually indistinguishable" from those considered in *Columbus Green Cabs*. Furthermore, contrary to the majority, Member Penello viewed the lease requirement of compliance with municipal regulations not as evidence of the companies' effective control over all matters covered by the regulations but rather as "an abdication by the Companies of control over such matters in favor of the municipal authorities."

## 2. Health Care Institution Maintenance Units

Several cases decided by the Board this year concerned the appropriateness of separate maintenance units in health care institutions. In two cases, the Board found petitioned-for separate units of maintenance department employees or of maintenance and engineering department employees inappropriate for the purpose of collective bargaining.

Relying on its finding that the maintenance department employees in question were not generally skilled at performing work at the journeyman level, were not required by the employer to possess any particular craft or skill to be hired (nor to be certified or licensed thereafter), and were generally responsible for, and engaged in, routine maintenance work, the majority of the Board, in *Greater Bakersfield Memorial Hospital*,[56] concluded that a unit of maintenance and engineering department employees requested by one union was not separately appropriate so as to preclude their inclusion in the broader "all employees" unit sought by another union. The majority agreed with the regional director that the maintenance employees who comprised the petitioned-for separate unit "do not have the common bond

[54] Including, among other factors, the lack of an investment by the drivers in the instrumentalities of their work; the essential nature of the drivers' work to the companies' normal operations, the unilateral preparation of the lease by the companies, and restrictions placed on drivers by the companies with regard to miles driven daily and appropriate driver attire.

[55] 214 NLRB 751 (1974).

[56] 226 NLRB 971 (Members Jenkins, Penello, and Walther, Chairman Murphy and Member Fanning dissenting)

of a highly skilled craft [group]" to warrant inclusion in a separate unit. The Board majority also pointed out that the maintenance employees in the requested unit shared with other employees "essentially the same benefits, wage policies, and working conditions." Inasmuch as the requested unit was found to lack "true craft status" and, also, because maintenance employees were without "a distinct community of interest separate from the Employer's other 450 employees," the majority dismissed the petition.[57]

Member Penello agreed that the unit was inappropriate. However, he also noted that, in his view, a craft maintenance unit may be appropriate in the health care industry, as clarified in his separate concurring opinion in *St. Vincent's Hospital*,[58] when it meets all the criteria traditionally applied in determining the appropriateness of such units, and when its establishment is not in conflict with the congressional mandate against proliferation of units in the health care industry.

In view of the well-defined group of skilled employees at the "core" of the requested unit, as well as the separate supervision over the maintenance and engineering department, and its separate location in the hospital, Chairman Murphy and Member Fanning dissented from their colleagues' decision to dismiss the petition. In this connection, the dissenters noted that the employees in question were charged with maintaining "highly sophisticated and potentially dangerous equipment without which the hospital could not function." Furthermore, department employees wore distinctive uniforms and used separate locker and eating areas. Under the test of *American Cyanamid Co.*,[59] the dissenters pointed out, a maintenance unit is appropriate so long as "the operations of the employer are not so integrated as to merge the identity of the maintenance function with the nonmaintenance and the maintenance employees constitute a readily identifiable group." On the record facts, Chairman Murphy and Member Fanning were persuaded that the maintenance and engineering department retained its separate identity and hence that a unit of maintenance department employees was appropriate.

Similarly, in *Northeastern Hospital*,[60] a majority of the Board found inappropriate a separate bargaining unit limited to the hospital's maintenance department employees and dismissed a petition

[57] The majority noted that it had considered the contention of one of the petitioning unions that it represented numerous maintenance engineering units in the geographical area. The majority pointed out, however, that in most instances the units involved were confined to stationary engineers. And moreover, in no instance did it appear that the union represented "a group as diverse as the requested unit."

[58] 223 NLRB 638 (1976).

[59] 131 NLRB 909 (1961).

[60] 230 NLRB No. 162 (Members Jenkins, Penello, and Walther, Chairman Fanning and Member Murphy dissenting).

that requested that unit. The majority noted that the Board had previously summarized the criteria it would consider in making unit determinations in the health care industry.[61] Accordingly, it would apply to the record facts here the Board's traditional "community of interest" standards, taking into account the congressional admonition against proliferation of units in the health care industry. Applying this criteria to the facts, the majority noted that the duties of these maintenance employees were confined to routine tasks, they were not required by the hospital to have special training or skills, and none of them possessed journeyman or master craftsman status. In addition, maintenance department employees had regular and substantial contact with other employees, shared the same fringe benefits, used the same grievance procedures, etc. Accordingly, and despite some factors militating in favor of a separate unit, the majority found that maintenance department employees "do not comprise a distinct and homogeneous group," and dismissed the petition.

Chairman Fanning and Member Murphy predicated their dissent on the separate supervision and separate location of the maintenance department, and on the conclusion that maintenance department employees, as evidenced by their higher rates of pay, are highly skilled employees.

On the other hand, in *Mercy Center for Health Care Services*,[62] a Board majority found appropriate a requested unit of stationary (boiler) engineers, rejecting the employer's contention that such a unit would lead to fragmentation of its work force and that only a broad service and maintenance unit was appropriate. In so doing, the majority pointed out that the stationary engineers comprised one of three divisions of the employer's engineering and maintenance department; worked under separate immediate supervision; were required to be licensed; spent their time in the area of the power plant where the boilers were located; and had minimal contact with most other employees, including other engineering department employees. In light of these factors, as well as the absence of any bargaining history for employees of this employer, the majority concluded that the stationary engineers enjoyed a separate community of interest among themselves which entitled them to the opportunity for representation in a separate unit.[63]

---

[61] See *Riverside Methodist Hospital*, 223 NLRB 1084 (1976)

[62] 227 NLRB No 265 (Members Jenkins, Penello and Walther, Chairman Murphy concurring in part and dissenting in part, Member Fanning dissenting)

[63] Speaking for himself Member Jenkins found that an all engineering department unit would not be appropriate In this regard, Member Jenkins reasoned that engineering department employees, other than the stationary engineers, had such extensive contact with other nonprofessional hospital employees as to compel a finding that they did not share a sufficiently separate and distinct community of interest

Chairman Murphy, concurring and dissenting in part, agreed that the "all stationary engineers" unit was appropriate, but found that an engineering department unit, the alternative unit sought by the petitioning union, was also appropriate. Inasmuch as the intervening union was willing to represent employees in the broader unit, she would have established two voting groups in order to determine the employees' wishes as to representation and whether stationary engineers desired to be represented separately or as part of a unit of all engineering department employees.

Member Fanning, dissenting, pointed out that, although the petitioning union initially requested a stationary engineer unit, it urged at the hearing, and thereafter in its brief to the Board, that its "primary interest" was in representing a unit of all engineering department employees. Given that the stationary engineers were part of a "highly integrated engineering department," and for the reasons he expressed in *Jewish Hospital Assn. of Cincinnati* [64] and *West Suburban Hospital*,[65] he found the all engineering department unit appropriate and would have directed an election among employees in that unit.

In connection with the majority's unit determination, Member Fanning observed that if a smaller unit, limited to stationary engineers, was not inconsistent with the congressional mandate against "undue proliferation," then logic would dictate that the broader engineering department unit "faces no statutory impediment." Inasmuch as the record satisfied him that the engineering department at this hospital met the *American Cyanamid* test for a separate maintenance department,[66] he queried in what circumstances, if ever, would his colleagues find a separate maintenance department unit appropriate in a hospital.

### 3. Other Issues

In the report year, the Board reached a number of unit determinations in a variety of often interesting and novel circumstances. Several Board decisions involving such unit determinations are summarized below.

In *Dynalectron Corp.*,[67] a majority of the Board included in an overall plantwide unit at the employer's transportation test center technical employees whom the petitioning union would have excluded and the employer would have included. The majority noted that all employees at the center were engaged in a variety of test activities

[64] 223 NLRB 614 (1976)
[65] 224 NLRB 1349 (1976)
[66] 131 NLRB 909, 910
[67] 231 NLRB No 185 (Members Penello, Murphy, and Walther, Chairman Fanning and Member Jenkins dissenting).

which "are not separate steps in the production process, as in other types of manufacture, but constitute the production process itself." Moreover, according to the majority, the record established that all employees, including the technicals in question, shared common work hours, benefits, and skills, and, in many instances, worked under common supervision. In this connection, the majority stressed the record testimony which indicated instances when technicals worked with other test center employees in making preparations for particular tests. Finally, the majority responded to the dissent by suggesting that the dissenters' position marked a return to pre-*Sheffield* cases [68] which gave primacy to the parties' disagreement rather than to the community of interest technicals might share with other employees.

Chairman Fanning and Member Jenkins, in dissenting, asserted that the majority had departed from precedent by denying the requested unit limited to production and maintenance employees excluding technical employees and by concluding that an appropriate unit must include technical employees. They noted that a union need only seek to represent employees in an appropriate unit, not in the most appropriate unit.[69] Inasmuch as the union here requested a production and maintenance unit, "clearly an appropriate unit for collective bargaining," the dissenters found it "irrelevant" that the Board in other circumstances might apply the *Sheffield* criteria and find a unit including technicals also to be an appropriate unit. Nor were the dissenters persuaded that the case presented "special facts or circumstances" to warrant the majority's decision. Thus, they characterized the evidence as "at best sketchy" in establishing that technical classifications worked closely with other groups of employees on other than a sporadic basis.

Concluding that "physicians, as a class, possess a separate and distinctive community of interest apart from other professional employees," a Board majority excluded house physicians and emergency room doctors from a professional unit in *Ohio Valley Hospital Assn.*[70] The Board majority noted not only that physicians do perform a unique function, but that "the responsibility to direct all other professionals . . . is inherent in the physician's, and no other professional's, role."

Members Penello and Walther, dissenting on this point, conceded the unique role of physicians in a hospital but maintained that any

---

[68] *Sheffield Corp.*, 134 NLRB 1101 (1961). Therein the Board abandoned its previous practice of automatically excluding technicals from production and maintenance units whenever their placement was in issue, and announced that henceforth it would make a pragmatic judgment in each case on its facts.

[69] *Federal Electric Corp., Western Test Range,* 157 NLRB 1130, 1132 (1966).

[70] 230 NLRB No. 84 (Chairman Fanning and Members Jenkins and Murphy, Member Penello concurring in part and dissenting in part; Member Walther dissenting).

separate community of interest of these doctors "has been largely submerged in the broader community of interest" shared with other closely allied health care professionals included in the unit. In support of this view, Member Penello pointed out that the two classifications of doctors in issue were in constant contact with other professional employees, were included with other professionals in a designated wage category, and received no more nor higher benefits than other professionals.[71]

*Volt Technical Corp.*,[72] another case decided by a Board panel during the report year, concerned the appropriateness of a requested unit of technical employees temporarily supplied by the employer to a telephone company. The panel, after noting the precedent which establishes that employees in a labor pool hired out to the employer's customers are entitled to the protection of the Act,[73] concluded, on the record evidence, that the requested unit of temporary employees was an appropriate unit for bargaining.

The panel pointed out that the employer had entered into a standard "employment agreement" with all its employees. That agreement dealt with such matters as transportation and per diem expenses, holidays, and vacations. Under its "agreement for contract labor" with its customer, the telephone company, the employer agreed to the general terms of employment and working conditions covering the temporary workers to be furnished to the customer.

In view of the extensive terms and conditions of employment covered by this agreement, the panel concluded that the employer "sufficiently controls the employer-employee relation to enable effective and meaningful collective bargaining to take place." Further, the panel rejected the employer's contention that the unit was inappropriate because it did not include other temporary employees supplied to the telephone company by another employer. In this regard, the panel pointed out that the temporary employees in question wore the employer's identification badges, enjoyed different holidays and vacations, and were subject to a system of remuneration different from all other employees of the customer.

Accordingly, and in light of the "community of interest resulting from the unique position" of temporary employees supplied by the employer to its customer, as well as the absence of any bargaining history or any request to represent these employees in a different unit, the panel directed an election in the requested unit.

---

[71] Member Walther filed a separate dissenting opinion indicating his agreement with Member Penello on the inclusion of these classifications of doctors in a professional unit, but adding a dissent on placement issues not relevant here

[72] 232 NLRB No 46 (Chairman Fanning and Members Jenkins and Penello)

[73] *All-Work, Inc.*, 193 NLRB 918 (1971)

In three cases decided during the year the Board resolved unit issues in the setting of educational institutions. In the first such decision, *San Francisco Art Institute*,[74] a majority of the Board excluded part-time student janitors from the requested maintenance and nonclerical unit. The majority pointed out that, although the 12 part-time student janitors involved performed the same job functions as the single full-time janitor, they were treated differently than full-time regular employees in several respects. Thus, the student janitors were paid less than regular employees, had work schedules tailored to fit their academic commitments, and worked on a semester-by-semester basis. Moreover, there was high turnover and no student ever stayed on after graduation to assume a position as a full-time janitor. Given these factors, and in light of the realization that the "students' campus employment at the institution they were attending was incidental to their academic objectives," the majority concluded that the student janitors did not share a substantial community of interest with regular nonstudent full-time and part-time employees and, accordingly, excluded them from the unit.

Turning to the petitioning union's alternative request for a unit of student janitors only, the majority found that the student janitors "are best likened to temporary or casual employees" and that it would not effectuate the policies of the Act to direct an election in a separate unit of student janitors only.

Members Fanning and Jenkins, in dissenting, found it "absurd to evaluate the appropriateness of a unit of the 12 student janitors in terms of their community of interest with the single full-time janitorial employee." Hence, they found the majority's reliance on cases involving the exclusion of part-time students from units of full-time employees "essentially irrelevant." Further, Members Fanning and Jenkins read the majority's disinclination to direct an election in a unit of student janitors only as implying "the adoption of a *per se* rule that a student's limited stay at an educational institution precludes him from being a member of a bargaining unit." The dissenters found such a rule to be in conflict with established Board law and, on the facts of the case before them, concluded that the student janitors "have a sufficient interest in employment to warrant their inclusion in a unit for collective-bargaining purposes."

In *Teachers College, Columbia University*,[75] the majority of a Board panel found appropriate a requested unit of professional librarians contrary to the college's contention that the only appropriate unit

[74] 226 NLRB 1251 (Chairman Murphy and Members Penello and Walther, Members Fanning and Jenkins dissenting).

[75] 226 NLRB 1236 (Chairman Murphy and Member Jenkins, Member Walther dissenting).

consisted of all full-time faculty, including librarians. The majority noted that the professional librarians were not accorded faculty status and did not share in the policymaking role exercised by the faculty. Further, librarians, unlike faculty, were not entitled to tenure, were not eligible for sabbaticals, were not immediately covered by the college's pension and medical plans upon their initial hire, and worked on a 40-hour-a-week, 12-month basis. Premised on these factors, as well as various other factors which demonstrated that "the professional librarians' interests and treatment are . . . different from the faculty," the majority found that the professional librarians constituted an appropriate unit. The majority rejected the dissenter's contention that its decision departed from precedent. In this connection, the majority observed that in none of the cases cited in the dissent did the Board reject as inappropriate a unit of professional librarians separate from an overall unit of professional employees. "Rather, in those cases, [the Board] found no valid basis for excluding the professional librarians from an overall unit of professional employees."

Member Walther's dissent rested on his conviction that librarians and the other professional employees share a "complementary role" in the college's ultimate purpose, and are accorded similar benefits. He also warned that a "logical extension" of the majority's reasoning would lead to future findings that other small college departmental units are appropriate. The evils of such proliferated and fragmented units would, in Member Walther's view, "undermine stable and effective labor relations."

In the third decision, *President & Fellows of Harvard College*,[76] a majority of the Board held that a less than universitywide unit of unrepresented clerical and technical (including service) employees could constitute an appropriate unit for collective bargaining. The petitioned-for unit was limited to clerical and technical employees employed at the college's several Medical Area schools.[77] The majority, in finding the requested unit appropriate, pointed out that the Board had previously stated that it would apply "traditional principles for determining appropriate bargaining units" to universities operating several facilities.[78]

---

[76] 229 NLRB No 97 (Chairman Fanning and Members Jenkins and Murphy; Members Penello and Walther dissenting)

[77] The college's Medical Area is located some 3 miles distant from the main campus and consists of nine buildings housing a medical school, school of public health, and dental school Six other medical institutions are located within six blocks of the three medical schools Finally, two smaller facilities are located some 22 miles from the main Medical Area. The college had established a Medical Area personnel office exclusively to serve employees employed by the three schools and their related facilities

[78] *Cornell University*, 183 NLRB 329 (1970).

Applying such principles, which include the degree of geographic proximity of employees in the requested unit, the nature of the work performed by such employees, the extent of transfers and interchange between these employees and other college employees, the existence of separate supervision and of a separate personnel office to serve these employees, and the lack of prior bargaining history, the Board majority found that employees of the Medical Area schools were "an identifiable group of employees with a sufficiently separate community of interests to warrant their representation in a separate unit" and that the union's extent of organization was not controlling and therefore the unit finding did not contravene section 9(c)(5) of the Act.

Members Penello and Walther, dissenting, maintained that the majority's decision amounted to "Board sanctioning of piecemeal department-by-department organizing of nonprofessional employees on campus." In their view, and in light of the record, such a result was "consistent with neither Board precedent nor with sound collective-bargaining principles." In this connection, the dissenters maintained that an analysis of the record in light of the seven "traditional factors" applied by the majority, demonstrated that the Medical Area clerical, technical, and service employees did not enjoy a separate community of interest. Thus, they found an "inordinately high degree of centralization" at the college over all aspects of personnel and employment policies and noted that the requested unit constituted a departure from the existing pattern of bargaining at Harvard. Further, the dissenters disagreed with the majority that the record warranted a finding that the petitioned-for employees were geographically separate, that they possessed work skills that differed from those of other employees, or that they were under separate supervision.

In another case which came before the Board during the year, *Peter Kiewit Sons' & South Prairie Construction Co.*,[79] the unit issue was whether employees of one corporation (South Prairie) constituted an appropriate unit separate from employees of a second corporation (Kiewit) when the two corporations had been held to constitute a single employer. In brief, the facts presented to the Board panel indicated that Kiewit had long operated as a heavy construction contractor in the State of Oklahoma and was signatory to a collective-bargaining agreement with the union. In 1972, Kiewit's parent corporation brought South Prairie, another wholly owned subsidiary, into Oklahoma to operate on a nonunion basis. Thereafter, the employer declined to extend to South Prairie employees the terms and con-

[79] 231 NLRB No 13 (Members Jenkins, Penello, and Walther)

ditions of the collective-bargaining agreement covering the Kiewit employees.[80]

In concluding that a separate unit of South Prairie employees was an appropriate unit for bargaining, the Board panel first observed that a single-employer finding "does not necessarily establish that the employerwide unit is the appropriate bargaining unit." As the panel pointed out, the single-employer finding turns on common ownership, structure, and integrated control, while the scope of the unit depends on the community of interests of the employees in question. Applying this principle, the panel reviewed the record in light of such factors as bargaining history; functional integration of operations; types of work and skills of employees; extent of centralization of management and supervision, particularly in regard to labor relations; and the nature and extent of interchange and contact between the two groups of employees. The panel pointed out that the two companies retained separate corporate identities and neither subcontracted work for the other, nor did they work on common projects. South Prairie's labor policies were set by its president, while Kiewit's were set by an official of the parent corporation. Moreover, there existed separate day-to-day supervision and control of employees of each company. Accordingly, the panel concluded that South Prairie's employees in Oklahoma constituted a distinct bargaining unit separate from employees of Kiewit, and thus "it would be improper to impose upon those employees the collective-bargaining agreement executed by Kiewit" and the union.

[80] The failure to do so was alleged to violate sec 8(a)(5) of the Act In its initial Decision and Order in this matter, reported at 206 NLRB 562 (1973), the Board concluded that Kiewit and South Prairie were separate employers and that the employees of each constituted an appropriate unit Thereafter, the Court of Appeals for the District of Columbia reversed and found that the two corporations were a single employer and that the two firms' employees constituted the appropriate unit 518 F 2d 1040 (1975) The Supreme Court granted certiorari, affirmed the single-employer finding, but vacated the judgment as to the appropriate unit, and remanded for further proceedings on the unit determination 425 U S 800 (1976)

# 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 person irrespective of any interest he might have in the matter. They are filed with the regional office of the Board in the area where the alleged unfair labor practice occurred.

This chapter deals with decisions of the Board during this report period 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. Forms of Employee Activities Protected

The forms the protected concerted activity may take are numerous. The following cases decided by the Board during the past year pro-

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

vide a representative sample of the types of activity found by the Board to be protected.

### a. Picket Line Activities

In *Scott Hudgens*,[2] the Board found that the respondent's threats to arrest employee pickets for trespass on his private shopping center property violated section 8(a)(1) of the Act. In that case, on remand from the Supreme Court,[3] the Board had to determine whether employee picketing in the private shopping center was protected under the Act without reference to first amendment considerations. The warehouse employees of an employer had gone on strike and picketed that employer's nine retail stores. One of the picketed stores was located in the private shopping center. The respondent's agent threatened the pickets with arrest for trespassing in the shopping center, if they did not leave the shopping mall.

In remanding the case, the Supreme Court noted that its earlier decisions in *Central Hardware*[4] and *Babcock & Wilcox*[5] were distinguished from the instant case by the following factors:[6] (1) the case herein involved lawful economic strike activity rather than organizational activity; (2) the section 7 activity here was carried on by the employer's employees, not outsiders; and (3) the property interests impinged upon in this case were not those of the picketed employer, but of another, the respondent.

The full Board decided that these three factual distinctions did not preclude the finding that the picketing was protected under section 7 of the Act. Members Jenkins, Penello, Murphy, and Walther found

---

[2] 230 NLRB No 73 (Members Jenkins, Penello, Murphy, and Walther, Chairman Fanning concurring)

[3] *Hudgens* v *N L R B*, 424 U S 507 (1976)

[4] *Central Hardware Co* v *N L R B.*, 407 U.S 539 (1972) The Supreme Court held that the rationale of *Logan Valley, infra,* which rested on constitutional grounds, was inapplicable to a determination of whether an employer violated the Act by enforcing its no-solicitation rule to prohibit nonemployee union organizers from soliciting employees in its parking lot.

[5] *N.L.R B* v. *Babcock & Wilcox Co*, 351 U S 105 (1956). Concluding that the conflicting interests of the parties must be balanced, the Supreme Court held that an employer must allow nonemployee union organizers to approach its employees on its property if circumstances place the employees beyond the reach of reasonable union efforts to communicate with them

[6] The Board originally found (192 NLRB 671 (1971)) that the respondent had violated sec 8(a)(1) of the Act, relying primarily on the Supreme Court's decision in *Amalgamated Food Employees Union Local 590* v *Logan Valley Plaza,* 391 U S 308 (1968) While the case was pending before the United States Court of Appeals for the Fifth Circuit, the Supreme Court issued its decision in *Central Hardware Co, supra,* and *Lloyd Corp, Ltd* v *Tanner,* 407 U S 551 (1972) Accordingly, the Board requested and received a remand so that it might consider the case in the light of these two decisions The Board affirmed (205 NLRB 628 (1973)) the administrative law judge, who, in making his 8(a)(1) finding, relied upon the balancing test enunciated by the Supreme Court in *Babcock & Wilcox, supra* The Fifth Circuit Court of Appeals enforced the Board's order (501 F 2d 161 (1974)) Thereafter the Supreme Court, 424 U S at 523, holding that no first amendment issues were involved, reversed the court of appeals with a remand to the Board for consideration of the issues solely under the statutory criteria of the Act

that economic strike activity is protected by the Act and deserves the same consideration as organizational activity. Further, they held that employee pickets are entitled to at least as much protection as nonemployee organizers inasmuch as section 7 was intended to protect the rights of employees rather than those of nonemployees. In addition, they reasoned that the rights of the employees engaging in economic strike activity to communicate with their intended audience, the public as well as the other employees in the employer's store, require access to the property on which the store fronts because there are few reasonable means of reaching that audience, other than picketing in front of the store. Finally, they held that the respondent's property rights must yield to the employees' section 7 rights even though he was not the employer against whom the picketing was directed. In this connection, they noted that respondent was not a neutral bystander for the reasons, *inter alia*, that he received a percentage of the gross sales of the lessees and therefore had an interest in the success of their businesses.

Chairman Fanning concurring, agreed with his colleagues' conclusions and emphasized the fact that, in his view, the Board's earlier Supplemental Decision and Order,[7] on original remand from the court of appeals, was based solely upon statutory considerations and not first amendment constitutional concerns. He took the position, therefore, that the remand from the Supreme Court only required a clarification of the Board's earlier decision.

In *American Telephone & Telegraph Co.*,[8] a Board panel affirmed without comment the administrative law judge's conclusion that the respondent did not violate section 8(a) (3) and (1) by suspending 31 of its employees for refusing to cross a picket line. The picket line was established by the employees of another employer to protest the failure of their employer and the union to resolve a grievance which had remained at step two for over 6 weeks, but had not been abandoned or withdrawn. The employer and respondent were housed in the same office building. The administrative law judge found that the collective-bargaining agreement between the employer and the union had a no-strike clause which prohibited the picket line, thereby depriving the pickets of protection under the Act. He further found that the rights of the respondent's employees to honor the picket line were derived from the rights of the employees with whom they sympathized. He concluded that the respondent's employees' refusal to cross the picket line was unprotected because the picketing was unprotected. In this regard, the administrative law judge held that

[7] 205 NLRB 628 (1973).
[8] 231 NLRB No 110 (Members Jenkins, Penello, and Walther)

whether the respondent's employees had prior knowledge of the nature of the picket line was not germane to the resolution of the case.

### b. Communications Concerning Working Conditions

In *United Parcel Service*,[9] a Board panel affirmed the administrative law judge's finding that employer violated section 8(a)(1) by promulgating and enforcing a no-solicitation and no-distribution rule that was unlawfully broad. In mid-January 1976, a group of employees began publishing a monthly newspaper entitled "UPSurge," as a means of expressing to other employees of the employer their dissatisfaction with their union's bargaining efforts. On December 3, the employer posted rules prohibiting all solicitations by employees, outsiders, and off-duty employees upon its premises. Finding that the publication and distribution of "UPSurge" was protected concerted activity, limited by the Board's rules of propriety regarding impact on plant discipline, the administrative law judge concluded that the employer had promulgated the rule as a response to, and a deterrent against, employee participation in "UPSurge" activities, in violation of section 8(a)(1). He also found that the rule was unlawfully broad according to the standards established in *St. John's Hospital & School of Nursing*.[10]

Members Jenkins and Murphy, in affirming the administrative law judge's conclusions, agreed that the employer's rule was unlawfully broad, but disavowed his reliance on *St. John's Hospital*, inasmuch as that case established special no-solicitation principles in the health care industry. In addition, Member Murphy stated that, in her view, the employees' right to publish and distribute the newspaper is also protected by the first amendment to the Constitution. Member Walther agreed with the administrative law judge's conclusion that the employer violated section 8(a)(1), but based his agreement solely on the finding that the employer promulgated the rule in response to its employees' protected activities.

In *Automobile Club of Michigan*,[11] a Board panel affirmed the administrative law judge's finding that an employer violated section 8(a)(1) by suspending and discharging certain of its employees for issuing a press release describing in some detail a lawsuit they filed against their employer, which, *inter alia*, alleged that the employer unlawfully converted to its own use commissions earned by salesmen. The employer contended that the press release was not protected con-

[9] 230 NLRB No 177 (Members Jenkins, Murphy, and Walther)

[10] 222 NLRB 1150 (1976).

[11] *Automobile Club of Michigan, Detroit Automobile Inter-Insurance Exchange; Motor Land Insurance Co & Group Insurance Co of Michigan*, 231 NLRB No 99 (Chairman Fanning and Members Penello and Murphy)

certed activity because it was defamatory and an attack upon the employer's "product," evidencing the disloyalty of the employees. Chairman Fanning and Member Penello agreed with the administrative law judge's conclusion that the press release was not an attack upon the quality of the employer's "product," but a description of the grievances which gave rise to the lawsuit, warranting the protection of the Act. Although she believed the press release might have constituted an attack upon the employer's product, Member Murphy found that the employees' rights to issue the press release were protected by the first amendment and that redress for injury by any defamatory statements must be sought in another forum.

In *AMC Air Conditioning Co.*,[12] a Board panel found that an employer violated section 8(a)(1) by attempting to stop, and succeeding in stopping, an employee from giving a speech in the plant cafeteria. The employee stood up during the lunch period, informed the employees in the cafeteria that he was a member of the union organizing committee, and began to read material from a book concerning rights established by the Act. Three supervisors interrupted the speech and then finally forced the employee to stop speaking. The panel held that the union-related speech, made on the employee's own time and in a nonwork area, was a type of concerted activity protected by the Act and that there was no evidence that the employer acted pursuant to a lawful policy of prohibiting or limiting such speech-making activity.

In *E. H., Ltd.*[13] a majority of the Board held that an employer violated section 8(a)(4) by discharging employees for disobeying an order not to attend a Board hearing during working hours. Although the employer's employees had not been subpenaed, they expressed a desire to attend the hearing which was scheduled to begin during their work hours. The employer refused this request and rejected the employees' offer to make up lost time. The employees did attend the hearing and were subsequently discharged for "disobeying orders." The majority stated that the resolution of the dispute required the making of a proper accommodation between an employee's right to attend a Board hearing during working hours and an employer's legitimate interest in operating his business without interruption. They also stated that it was "anomalous to require the possessor of a right to come forward with 'compelling reasons' to justify the exercise of the right." Accordingly, the majority concluded that the employer had failed to establish any business or economic justification for forbidding attendance at the Board hearing and that it therefore violated section 8(a)(4) of the Act by discharging the employees.

[12] 232 NLRB No 24 (Chairman Fanning and Members Penello and Murphy)

[13] *E H, Ltd, d/b/a Earringhouse Imports*, 227 NLRB No 118 (Chairman Murphy and Members Fanning and Jenkins, Members Penello and Walther dissenting)

Members Penello and Walther, dissenting, took the position that, unless employees can demonstrate compelling reasons for attending a Board hearing during working hours, the employer's right to maintain normal business operations takes precedence over the employees' right to attend the hearing. They found that there were no compelling reasons for the employees to attend the hearing inasmuch as they were not subpenaed, did not testify, participated only to the extent of making comments to union counsel, and were represented by the union at the hearing.

## 2. Union Representation at Disciplinary Interviews

Section 9(a) of the Act, which provides for exclusive representation of employees in an appropriate bargaining unit, contains the following proviso: "*Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: *Provided further*, That the bargaining representative has been given opportunity to be present at such adjustment."

In two cases during the 1975 report year—*Weingarten* and *Quality* [14]—the Supreme Court upheld the Board's determination that section 7 of the Act gives an employee the right to insist on the presence of his union representative at an investigatory interview which he reasonably believes will result in disciplinary action. The Court concluded that the Board's holding "is a permissible construction of 'concerted activities . . . for mutual aid or protection' by the agency charged by Congress with enforcement of the Act . . . ." [15]

During the report year, the Board had occasion to apply the principles set forth in *Weingarten* and *Quality* in a number of cases.

In *Coca-Cola Bottling Co. of Los Angeles*, [16] a Board majority held that the right to union representation at an investigatory interview resulting in disciplinary action did not include the right to insist upon

---

[14] *N L R B v J Weingarten*, 420 U S 251, *Intl Ladies' Garment Workers' Union, Upper South Dept, AFL–CIO v Quality Mfg Co*, 420 U S 276

[15] *Weingarten, supra* at 260 In that case, the Supreme Court found that the right to union representation inheres in the section 7 right to act in concert for mutual aid and protection, arises only in situations where the employee requests representation applies only to situations where the employee reasonably believes the investigation will result in disciplinary action, may not be exercised in a manner which interferes with legitimate employer prerogatives and the employer need not justify his refusal, but may present the employee with a choice between having the interview without representation or having no interview, and imposes no duty upon the employer to bargain with any union representative attending the investigatory interview

[16] 227 NLRB No 173 (Chairman Murphy and Members Penello and Walther, Members Fanning and Jenkins dissenting)

a particular union representative who was not available at the time of the interview, where another representative was available. The union representative requested by the employee was on vacation and was not expected to return to work until the next working day after the scheduled day of the interview. The majority noted that the employer's past practice had been to allow union representation at such interviews and that the employee was fully aware of this. They further noted that the employee could have requested alternative representation, but did not do so. Thus, the majority concluded that the employee was, in effect, requesting a delay of the interview and that, in these circumstances, the right to hold a disciplinary interview without delay was a legitimate employer prerogative with which the exercise of the right to representation may not interfere.

Members Fanning and Jenkins, dissenting, took the position that the employee properly invoked the right to union representation when he requested the presence of a particular union steward, and the burden then shifted to the employer either to stop the meeting, or to offer a meeting without the steward or no meeting at all. They asserted that the issue was not whether the employer was forced to delay its interview but, rather, whether the employer was entitled to compel the employee's participation in the interview without the representation requested. In their view, the employer was not so entitled under the principles set forth in *Weingarten, supra.*

In *Climax Molybdenum Co., Div. of Amax*,[17] the Board was presented with the issue of whether the employer violated section 8(a)(1) by refusing to permit a union representative to consult with two employees on company time prior to an investigatory meeting which could have resulted in disciplinary action. An altercation had occurred between the two employees. A supervisor told one of the employees that the matter would be "straightened out" in the morning. The shop steward told the other employee that there would be an investigation of the altercation and that the employees could be fired for their conduct. Before the investigatory meeting started, the union grievance representative asked the employer if he could talk with the two employees. His request was denied. An oral warning was issued to both employees as a result of the meeting.

A majority of the Board concluded that the employer violated section 8(a)(1) by refusing to allow the union representative to consult with the employees before the meeting. Chairman Murphy and Member Jenkins stated that the employees had reason to believe that the meeting would result in disciplinary action and that the only

[17] 227 NLRB No 154 (Chairman Murphy and Member Jenkins, Member Fanning concurring; Members Penello and Walther dissenting)

issue, therefore, was whether an employee's right to representation at an investigatory interview included the right to prior consultation with a union representative. They took the position that such prior consultation would facilitate the investigation because employees would be more likely to discuss the incident fully in privacy with the representative, and the representative could more effectively represent the employee because of greater knowledge of the circumstances. Further, they argued that the greater knowledgeability gained by prior consultation would not "transform the interview into an adversary contest," but would instead advance the factfinding process. Finally, they found that the employees' failure to request prior consultation was immaterial since, if the right to representation at an investigatory interview was to have meaning, it must include the right for the union to meet with the employees before the interview to advise them of their right to representation.

Member Fanning, concurring, pointed out that the majority's holding was not an extension of the right recognized by the Board in *Quality Mfg.*, *supra*, and affirmed by the Supreme Court in *Weingarten*, *supra*. In his view, prior consultation "is not something different than, nor superior to, the act of representation itself; it is simply an aspect of that function which enables the representative to fulfill his role."

Members Penello and Walther, dissenting, took the position that prior consultation is not logically included in the right to representation. In their view, a "knowledgeable" union representative is one who is generally familiar with the grievance procedure, and not necessarily one who is informed of the specific circumstances giving rise to the investigatory interview. They further argued that the majority's position would create an imbalance in favor of the union because a union may view interviews as adversarial and exert pressures on employees to withhold information. Finally, they asserted that the section 7 right to union representation is vested in the employee, not the union, and the employee must therefore request representation before the union can intervene. They concluded that, even assuming *arguendo* that prior consultation was included in the right to representation, there was no violation here because the employees had not requested prior consultation.

In *Southwestern Bell Telephone Co.*,[18] a majority of the Board held that an employer had violated section 8(a)(1) by threatening employees that the exercise of their right to representation at an investigatory interview would lead to more severe discipline. The employer conducted investigatory interviews into the alleged serious

[18] 227 NLRB No 175 (Chairman Murphy and Members Fanning and Jenkins, Members Penello and Walther dissenting)

misconduct of certain employees. When seven employees asked a supervisor about the wisdom of obtaining union representation, they were told that it would result in the involvement of higher management in the investigation and the probability of more severe consequences for the employees. The employees were individually interrogated. Only one requested, and was granted, the presence of another employee, who was also under investigation.

The majority held that, although the employees' requests for union representation were not all forthrightly stated, they were sufficient to put the employer on notice as to the employees' desires. They further found that the employer's threat that the exercise of the right would result in more severe discipline was as great a restraint and interference as a denial of the right. In this connection, they stated that the employees had not waived their right. The right to union representation, the majority argued, is based in part upon the fact that an employee may be too fearful or inarticulate to present adequately the facts with respect to his conduct and, thus, they concluded that to find a waiver in this case would allow the employer to play upon the employees' fears in order to dissuade them from remaining firm in their request for representation.

Members Penello and Walther, dissenting, contended that the employees did not clearly request, and were not refused, union representation. In their view, the employees' failure to make a direct request was not the result of threats by the employer. They also found that the interviews were conducted in a cooperative manner, and that the statements regarding the consequences of involvement of higher management were not threats of more severe discipline, but rather the suggestion that employees might get more sympathetic treatment from their immediate supervisor. Finally, the dissenters asserted that the majority's position would lead to "more formalized. complicated, and time-consuming proceedings."

During the report year, two cases involved questions as to what sort of interview gives rise to the right to union representation. In *Certified Grocers of California, Ltd.*,[19] a Board panel was presented with a situation where an employee had been issued a number of written warning notices due to his low production, and was subsequently told by the night supervisor, who normally had little contact with employees except in disciplinary matters, to report to the plant manager's office. The employee did so, and requested the presence of his shop steward. The manager denied his request, told him that his work was still unsatisfactory, and issued him a warning and disciplinary layoff notice. The employee repeated his request for the pres-

[19] 227 NLRB No 52 (Members Fanning and Penello, Member Walther dissenting).

ence of the union steward and demanded to see his performance records. Both requests were denied.

The panel majority held that the *Weingarten* decision applied and that the employer violated section 8(a)(1) by denying the employee's request for union representation. They found that the section 7 right to representation applies not only to "investigatory interviews" where an employee is asked to give facts, or explain his conduct but also to interviews where an employee's work performance is discussed and the employee is informed of a disciplinary decision. The employer's interview, they held, was of the latter type and the employee therefore had a right to union representation.

Member Walther took the position in his dissenting opinion that an employee has a section 7 right to representation only in an "investigatory interview." In his view, there is no role for a union representative in an interview which only has the purpose of informing an employee of a disciplinary decision already made. He asserted that the employer's interview was for the ministerial purpose of giving the employee notice of disciplinary action. He therefore would find no violation in the denial of the request for union representation.

Similarly, in *Alfred M. Lewis*,[20] the Board panel held that the employer violated section 8(a)(1) by refusing to allow a union representative to be present at counseling sessions carried out under its production quota and disciplinary system. They found that the counseling sessions were not for the purpose of simply giving instructions or training, but were a preliminary step to discipline, inasmuch as the counseling investigated the reasons for an employee's failure to meet production quotas. Thus the panel held that the employees had a right to union representation at the sessions under the principles established by *Weingarten*.

### 3. Other Forms of Interference

In *Grant's Home Furnishings*,[21] the majority of a Board panel found that the employer violated section 8(a)(1) in refusing to allow an election to be held because the Board agent who was to conduct the election arrived late. The election was based upon a stipulation for certification upon consent election, which specified, *inter alia*, that the election was to be held between 4:30 and 5 p.m. The Board agent arrived at 4:35 p.m. The majority held that the Board's role in an election proceeding based upon a stipulation for certification is substantially the same as that based upon a Board direction and thus complaints concerning a stipulated election proceeding must be raised

[20] 229 NLRB No 116 (Chairman Fanning and Members Jenkins and Murphy)
[21] 229 No 181 (Members Jenkins and Murphy, Member Walther dissenting in part)

by properly filed objections after the election has been held. They concluded that the "self-help" measures taken by the employer violated section 8(a)(1) of the Act.

Member Walther, dissenting in relevant part, contended that in a stipulated election proceeding, the stipulation entered into by the parties is a contract and hence the Board's role in the proceeding is limited "to construing the agreement according to contract principles." [22] In his view, the Board agent's late arrival was a material breach of the stipulation agreement because the election was only to be held for a 30-minute period, and the delay in starting the election would have extended beyond 5 minutes. He concluded that, in these circumstances, the employer lawfully refused to proceed with the election. Although he agreed with the majority's position that the standards to be applied to filed objections are the same for stipulated and Board-directed proceedings, he disagreed with their conclusion that all complaints concerning an election must be raised through the objection process.

In *Iowa Beef Processors*,[23] the full Board found that the employer, through its attorney, violated section 8(a)(1) by threatening, restraining, and coercing witnesses for the General Counsel. The case involved, *inter alia*, the allegation that the employer violated section 8(a)(3) by discharging an employee who was a union organizer for allegedly taking cigarettes from a machine without paying. The General Counsel argued that the discharge was discriminatory because the employer did not conduct a full investigation to discover other persons taking cigarettes. At the hearing, the employer's counsel stated, in the presence of all the parties and witnesses, that if any evidence regarding the theft of cigarettes by other employees was elicited at the hearing it would be fully investigated by the company and that none of the witnesses would be immune from criminal prosecution by virtue of their testimony. A number of witnesses subsequently refused to testify as to the involvement of other employees in the alleged theft.

The Board found that the employer's counsel's statement at the hearing was a maneuver to intimidate witnesses when viewed in light of its earlier minimal investigation of the alleged theft. Further, the Board stated that there would have been no cause for concern, had counsel for the employer made his remarks solely to the administrative law judge and the General Counsel; however, his action in open court constituted an interference with the employees' protected right to testify before the Board.

---

[22] *Tidewater Oil Co* v *N.L.R.B.*, 358 F 2d 363, 365 (C A 2, 1966), denying enforcement of 151 NLRB 1288 (1965).

[23] 226 NLRB 1372 (Chairman Murphy and Members Fanning, Jenkins, Penello, and Walther)

*S. E. Nichols Marcy Corp.*[24] involved the threat and institution of a slander suit against an employee. The employee repeated an antiunion remark which she alleged had been made to her by a supervisor. The employer's president told her to "shut her mouth" and that they could sue her for attributing such remarks to the supervisor. Subsequently, a slander action was instituted in the name of the supervisor against the employee.

A Board panel affirmed the administrative law judge's finding that the threat to bring the slander suit was a violation of section 8(a)(1), but disagreed with his conclusion that the institution of the suit was also an unfair labor practice. Citing well-established Board precedent holding that the filing of a civil suit, as opposed to the threat to file, is not unlawful under the Act,[25] the panel reversed the administrative law judge's ruling on this issue and observed that the Board has found civil court action to be a violation of the Act only in 8(b)(1)(A) and (B) areas, where a union has attempted to enforce illegal fines against employees.

In *Westinghouse Electric Corp., Distribution Equipment Div.*,[26] a Board panel was presented with the question of whether an employer's letter to employees regarding the union's holding of a confidence vote constituted an interference in the internal union affairs of employees in violation of section 8(a)(1) of the Act. The employer sent a letter to each union member in its employ, stating that the calling of a confidence vote was premature and that the vote could cause customers to withdraw their business due to fear of a strike. In addition, the letter urged employees to "request the type of ballot that will allow you to express your true feelings." and suggested that employees should be given the opportunity to vote on the employer's proposal when it was presented.

The panel held that the employer's letter did not violate section 8(a)(1) of the Act because it did not address purely internal union matters, but instead was directed to an issue of common concern—the loss of business that could result from the confidence vote. The panel noted that, in contrast to the facts of *Borg-Warner*,[27] the employer did not insist on a contract clause calling for a prestrike secret vote by all employees. Nor did it offer to set up an alternative strike vote procedure to be supervised by nonunion members, as was the case in *General*

[24] 229 NLRB No. 19 (Members Jenkins, Penello, and Walther)

[25] *Clyde Taylor, d/b/a Clyde Taylor Co.*, 127 NLRB 1067 (1960), *United Aircraft Corp. (Pratt & Whitney Div.)*, 192 NLRB 382, 384 (1971), *Frank Visceglia & Vincent Visceglia, t/a Peddie Buildings*, 203 NLRB 265 (1973), were cited as precedent

[26] 232 NLRB No. 10 (Chairman Fanning and Members Penello and Murphy)

[27] *N.L.R.B. v. Wooster Div. of Borg-Warner Corp.*, 356 U.S. 342 (1958)

*Electric.*[28] Instead, the panel reasoned, the employer's letter encouraged union members to take actions with respect to a vote already scheduled by the union, and therefore was not an interference in internal union affairs. Further, they stated that the employer's letter contained no threat of reprisal and no promise of benefit and did not occur in the context of any unlawful conduct; thus it was an exercise of free speech protected by section 8(c) of the Act.

## B. Employer Assistance to Labor Organizations

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

In *Sparks Nugget d/b/a John Ascuaga's Nugget*,[29] a panel majority found that an employees' council, initiated by the employer, was not a labor organization within the meaning of section 2(5) of the Act. The council, formed to hear and resolve employee grievances, was composed of the employer's director of employee relations, an elected employee representative, and a third member who was selected by the other two, but who had to come from management. If a grievance could not be resolved at the first two steps of the grievance procedure, an employee could request that the employees' council be convened. The council would conduct a hearing and render a final and binding decision. The majority distinguished this set of facts from *N.L.R.B.* v. *Cabot Carbon Co.*,[30] wherein the organizations, found to be labor organizations, "dealt with" employers in some sense as the employees' advocates. The council here, however, performed a purely adjudicatory function and did not interact with management other than finally to resolve the grievance in issue. Consequently, since the majority concluded that the council was not "a labor organization" within the meaning of the Act, it reversed the administrative law judge's finding that the employer violated section 8(a)(2) of the Act by assisting and dominating the council.

Chairman Fanning, dissenting in part, found that the majority's interpretation of the statutory definition of labor organization was overly narrow.[31] He contended that, while the majority conceded that "dealing with" employers means more than collective bargaining, it

---

[28] *General Electric Co., Battery Products, Capacitator Dept.*, 163 NLRB 198 (1967), enforcement denied in pertinent part 400 F. 2d 713 (C.A. 5, 1968).

[29] 230 NLRB No. 43 (Members Penello and Murphy, Chairman Fanning dissenting in part).

[30] 360 U.S. 203 (1959).

[31] Sec. 2(5) of the Act defines a labor organization as, *inter alia*, a "committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances."

had overlooked the disjunctive phrasing of the statutory definition. According to the dissent, inasmuch as the council herein dealt with an employer concerning grievances, it performed one of the statutorily enumerated functions and must therefore be considered a labor organization.[32]

In *Mercy-Memorial Hospital Corp.*,[33] the full Board was again confronted with the issue of what constitutes a "labor organization." In facts similar to those in *Sparks Nugget*, *supra*, the majority adopted the administrative law judge's finding that the grievance committee, composed of four employee-members and one management representative, served as an appellate forum in the grievance procedure and did not exist for the purpose of dealing with management concerning grievances.

Chairman Fanning and Members Jenkins, dissenting, found the grievance committee to be a labor organization within the meaning of section 2(5) of the Act. They noted that, unlike the employees' council in *Sparks Nugget*,[34] the function of the grievance committee herein was not limited to the final resolution of grievances, but, as set forth in the employer's policy statements, also encompassed " 'the right and the obligation to recommend . . . any change in the rules, regulations, and standards. These recommendations will then be discussed and acted upon by the administrative head and the committee members and the committee will be informed of that decision.' " In light of this responsibility which, when exercised in one instance, resulted in a change of employer policy, the dissenters found that the committee was a labor organization and that, by assisting and interfering with it, the employer violated section 8(a)(2) of the Act.

## 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.

---

[32] *Thompson Ramo Wooldridge (Dage Television Div.)*, 132 NLRB 993 (1961).

[33] 231 NLRB No. 182 (Members Penello, Murphy, and Walther; Chairman Fanning and Member Jenkins dissenting)

[34] The dissent found no support for the factually distinguishable *Sparks Nugget* in Board precedent, *Cabot Carbon*, *supra*, or the Act

## 1. Failure To Recall Discriminatees

In *Solboro Knitting Mills*,[35] the full Board unanimously found that the employer violated, *inter alia*, section 8(a)(3) of the Act by prematurely laying off and thereafter denying employment to four seasonal employees. However, only a Board majority concluded that the employer also violated section 8(a)(3) by failing to recall these discriminatees when it was hiring for a new season prior to their request for reemployment which, when subsequently made, was also rejected. Accordingly, the majority ordered that the discriminatees be made whole from the date the employer began rehiring rather than when it rejected the request for reemployment. The majority noted that traditional Board policy requires that an unlawfully discharged employee be offered reinstatement [36] and therefore concluded that the burden of seeking reinstatement should not fall on employees by virtue of the fact that they were seasonal workers, particularly since discrimination during one work season may linger to the next and restrain or coerce employees in reapplying for jobs. Thus, as with unlawful discriminatory discharges or terminations, an offer of reinstatement by the employer was necessary to dissipate the deleterious effects of its initial unlawful conduct. The dissent's position, according to the majority, would accord to the discriminatees a status no better than that of economic strikers, who are required to apply to return to work.

In their dissent, Members Penello and Walther found that laid-off employees of the employer enjoyed no right of recall, nor was it the the employer's practice to recall laid-off employees, and therefore it did not discriminate in refusing to hire the discriminatorily laid-off employees until it rejected their applications for employment. In their view, the situation was no different from that in which an employee is discriminatorily discharged from a job of limited duration, but reinstatement is not ordered because the job has ended. The dissenters also found no merit in the argument that the discriminatorily laid-off employees might have been restrained and coerced from applying for employment, as the discriminatees did, in fact, apply for employment and there was no indication that they would have applied earlier but for the employer's conduct.

## 2. Hiring in Anticipation of Referral Change

In *J. S. Alberici Construction Co.*,[37] a panel majority found that Alberici, whose collective-bargaining agreement with the union con-

---

[35] 227 NLRB No 89 (Chairman Murphy and Members Fanning and Jenkins, Members Penello and Walther dissenting in part)

[36] See *Southern Greyhound Lines, Div of Greyhound Lines*, 169 NLRB 627 (1968)

[37] 231 NLRB No 172 (Members Murphy and Walther, Member Jenkins dissenting)

tained an exclusive hiring hall provision which provided that the employer could select, by name, half of its work force, did not violate section 8(a)(3) by laying off 25 employees when the union refused to abide by said hiring hall provision. The union's refusal was premised on its position that the provision was superseded by a Title VII consent court decree recently signed by the union. Alberici sought to transfer 25 employees from a joint venture operation to its own payroll by laying them off one day and rehiring at least 13 out of a possible 25 the following day. Noting that the consent decree required that referrals be made on a first-in/first-out basis only, the union refused to abide by Alberici's request. The employer, in response thereto, hired 22 employees directly and, in so doing, circumvented the hiring hall entirely. The majority rejected the dissent's contention that the employer, by its conduct, i.e., placing the union in the position of refusing to refer its membership to jobs, discouraged union participation by employees by making it appear that the union had little or no interest in the employment status of its members. While they acknowledged that, if alleged discrimination is "inherently destructive" of employee rights, such conduct cannot be legitimized by even substantial business justification, the majority noted that where the discrimination is "comparatively slight" such business justification may be sufficient to rebut the "inference of illegal intent." [38] The majority determined that the employer's conduct did not have "the dire consequences ascribed to it" by the dissent, i.e., inherent discouragement of union membership, and that, in any event, the present facts did not support the finding of an 8(a)(3) violation since, by choosing its course of conduct, the union denied to the employer the contractual method of obtaining its work force. The employer was then left with the choice of accepting employees under the first-in/first-out referral system, to which it had not agreed, or of hiring employees directly, which it did. The majority concluded that "any inherent effect of encouraging or discouraging union membership" arising out of the employer's direct hiring was the result of the union's, not the employer's, conduct.[39]

Member Jenkins, dissenting, found that Alberici had "driven a spike between a union and its members" by conditioning employees' continued employment upon their participation in the repudiation of the hiring hall provision of the decree. Contrary to the majority, he argued that the events leading up to the repudiation were orchestrated by the employer who was initially informed by union officials that the referral system would be exclusively on a first-in/first-out basis. Thus,

[38] *N L R B* v *Great Dane Trailers*, 388 U S 26 (1967)

[39] The Board majority noted that, by dismissing the complaint, they were not in any sense commending the employer for attempting to avoid the effects of the consent decree.

the employer was aware that the employees were faced with the choice of respecting their union's position as required by the decree and being laid off, or of disregarding the union and continuing to work. Viewed in this context and since he also rejected the alleged business justifications relied on by the majority, Member Jenkins found that Alberici's conduct fell within the proscription of section 8(a)(3) of the Act by discouraging union membership.

### 3. Discrimination for Participation in Board Proceedings

In *General Services*,[40] a Board majority held that the employers' refusal to rehire a supervisor because he had previously filed an unfair labor practice charge with the Board violated section 8(a)(4) of the Act.[41] Citing the Supreme Court's holding, the majority noted that "the approach to § 8(a)(4) generally has been a liberal one in order fully to effecuate the section's remedial purpose," [42] and that the Board has included job applicants, employees of other employers, and supervisors within the protection of section 8(a)(4) of the Act. The majority was of the opinion that, in order for the Board to function according to its statutory design, those who believe that their rights have been violated must have free access to the Board's processes and whether their causes have merit is irrelevant. Since the validity of a charging party's claim can only be determined after a charge is filed and Board processes invoked, the majority concluded that were the employer's discrimination here found lawful it would be "tantamount to a conclusion that [an employer], rather than this Board alone, was privileged to decide that [a supervisor's] charge was unmeritorious because he was a statutory supervisor and hence beyond the protections of the Act."

Members Penello and Walther, dissenting, concluded that, in the absence of any evidence to indicate that the alleged misconduct had any effect on employee rights, the employer did not violate section 8(a)(4) of the Act by refusing to reinstate its supervisor in these circumstances. They argued that the rights sought to be protected by the Act belonged to rank-and-file employees and, unless such rights are shown to be affected, the Board should not find a violation. The dissent noted that in the cases cited by the majority, wherein supervisors were the beneficiaries of Board reinstatement orders, those supervisors were engaged in assisting statutory employees in the exercise of their

---

[40] 229 NLRB No 134 (Chairman Fanning and Members Jenkins and Murphy, Members Penello and Walther dissenting)

[41] The supervisor's initial charge, alleging a violation of sec 8(a)(3) of the Act, was dismissed because he was found to be a supervisor and not an employee within the meaning of the Act

[42] *N L R B v Scrivener, d/b/a AA Electric Co*, 405 U S 117, 124 (1972)

section 7 rights,[43] while in the instant case, the supervisor was seeking to vindicate his own discharge stemming from what he believed to be his union activity. Members Penello and Walther pointed out that the Taft-Hartley amendments excluded supervisors from coverage under the Act and that there was nothing to indicate that usage of the term "employee" in section 8(a)(4) was meant to be more inclusive than usage of the term elsewhere in the Act. The dissent thus would have dismissed the complaint.

In *Howard Mfg. Co.*,[44] a Board panel granted the General Counsel's motion for summary judgment, finding that the employer violated section 8(a)(4) of the Act by refusing to pay seven discriminatees, whom the employer had subpenaed to appear and testify at an unfair labor practice hearing, witness fees and mileage allowances for such appearance. The employer argued that it was not obligated to pay these fees since the discriminatee witnesses had a financial stake in the outcome of the case. The Board concluded that, while the discriminatees were, by definition, parties, they were so in a limited sense only. It noted that the General Counsel is in control of the proceeding for he alone can prosecute an unfair labor practice case and can, without the consent of the alleged discriminatees, settle it. The panel pointed out that, in the instant case, the rights of the discriminatees could have been adjudicated without their presence and that, by compelling their appearance, the employer may have caused them financial loss because of their absence from work. Thus, the panel concluded that it would not allow the employer to penalize the discriminatees for appearing in a Board hearing at its own direction, for this would clearly impede Board processes. Accordingly, the payment of the fees and allowances was ordered.

In *General Electric Co.*,[45] the employer subpenaed a bargaining unit employee to testify in its behalf at an unfair labor practice hearing and paid the employee a full day's wages for his participation at the hearing. The charging party, also a bargaining unit employee, was subpenaed by the General Counsel and received payment of the statutory witness fee. The charging party then requested that the employer pay him the difference between the witness fee and a day's wages and the employer refused. The charging party filed the instant charge, and the General Counsel issued a complaint alleging a violation of section 8(a)(4) of the Act. The General Counsel contended that the charging party was discriminated against by not receiving his full wages. The employer acknowledged that it paid employees

[43] *General Nutrition Center*, 221 NLRB 850 (1975), *Modern Linen & Laundry Service*, 116 NLRB 1974 (1956)

[44] 231 NLRB No 87 (Chairman Fanning and Members Jenkins and Penello)

[45] 230 NLRB No 91 (Members Penello and Murphy; Chairman Fanning dissenting)

who testified at its request a full day's wages, but it argued that it should not be compelled to finance its opposition and that, pursuant to a collective-bargaining agreement, it need only compensate employees for attendance at formal court proceedings.

A panel majority dismissed the complaint. They noted that the witness fee is set by statute and not by the employment relationship and that there is nothing in the statute to prohibit a party from paying its witnesses beyond that which the statute requires.[46] In addition, the majority noted that the obligation to compensate a witness runs between the party and its witnesses. Thus, the witness fee paid to one witness by one party is of no concern to a witness called by another party. The majority did note, however, that it would not extend the holding of this case to situations where witnesses would be penalized or rewarded based on the color of their testimony, e.g., an employee witness called by the General Counsel being marked absent for his day spent at a hearing, while an employee witness called by the employer being given credit for his participation, resulting in the former being denied an attendance award and the latter receiving one.[47]

In his dissent, Chairman Fanning concluded that the actual determinative factor as to whether witnesses received their daily wages was the nature of the testimony they offered, i.e., on behalf or against the employer's interest. He reasoned that permitting this type of disparate treatment of witnesses might result at some point in employees' reluctance to testify against their employer or might call into question the credibility of their testimony itself, thus leading to the abuse of the Board's processes. Chairman Fanning also queried as to how the majority could distinguish between the denial of an attendance award which was found to have violated the Act and a denial of wages herein. In either event, he concluded he would find them both inherently discriminatory and accordingly would find that the employer's conduct violated not only section 8(a)(4) of the Act, but section 8(a)(1), as well.

## D. Employer Bargaining Obligation

An employer and the representative of its employees, as designated or selected by a majority of employees in an appropriate unit pursuant to section 9(a), have a mutual obligation to bargain in good faith

[46] Sec 11(4) of the Act See also sec 102 32 of the Board's Rules and Regulations, Series 8, as amended

[47] See *Electronic Research Co*, 187 NLRB 733 (1971)

about wages, hours, and other terms and conditions of employment.[48] An employer or labor organization respectively violates section 8(a)(5) or 8(b)(3) of the Act if it does not fulfill its bargaining obligation.

## 1. Card Majority Bargaining Orders

In *Pinter Bros.*,[49] a panel majority determined that a combination of ballots cast for the union in a Board-conducted election and of authorization cards from those who did not vote or whose ballots were challenged was an appropriate basis upon which to compute the union's majority status. After receiving authorization cards from unit employees, the union filed a petition for an election. Between the time the petition was filed and the time of the election, which the union lost, the employer engaged in numerous unfair labor practices, including the discriminatory discharge or layoff of four employees. The panel majority concluded that the employer's outrageous and pervasive unfair labor practices which interfered with the election warranted a *Gissel* bargaining order,[50] as the union had, at the time of the election, enjoyed a majority showing among the unit employees so as to support the bargaining order. This showing was based upon a combination of 14 ballots and 6 cards. The panel majority disagreed with the dissent's reliance on *Gissel* for the proposition that majority status must be based exclusively on cards or solely on ballots, but not on a combination of both. While conceding that in *Gissel* the Supreme Court acknowledged the superiority of the election process over cards as a means of proving majority status, the panel majority noted that the Court approved the validity of authorization cards as an alternative means of proving majority status when the employer had engaged in conduct disruptive of the election process and that nowhere did the Court state that a combination of cards and ballots should not be used to establish majority status. According to the majority, the Court's statement that cards may be "the most effective—perhaps the only—way of assuring employee choice" should not be read, as the dissent would, as a conclusion that *only* cards may be relied upon to prove majority status, particularly in light of the Court's approval of other means of establishing majority status, such as a "union-called strike, or strike vote, or . . . by possession of cards," and its reference,

[48] The scope of mandatory collective bargaining is set forth generally in sec 8(d) of the Act. It includes the mutual duty of the parties "to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party" However, neither party is compelled to agree to a proposal or to make a concession

[49] 227 NLRB No. 123 (Members Fanning and Penello, Member Walther dissenting in part)

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

under section 9(a) of the Act, to the employees' representative as the one "designated or selected," without specifying exactly how the representative is to be chosen.[51] Accordingly, Members Fanning and Penello were of the opinion that the combination of cards and ballots was a valid alternative means of proving majority status.

Member Walther, in his dissent also relying on *Gissel*, argued that the principle acknowledging the superiority of the election process should not be interwoven with the principle accepting the viability of cards, admittedly inferior, to support the validity of a card-ballot theory, as the Court in *Gissel* clearly indicated its preference for the use of *cards only* where the election has been disrupted. According to Member Walther, the other means for proving majority status are merely alternatives, rather than individual bases upon which to build such a theory. As the union never gained either a card majority or an electoral majority and never had attained any kind of majority, Member Walther disagreed with the combination theory that would allow it to secure a bargaining order.

During the report year, the Board had occasion to apply and refine the principles originally set forth in *Trading Port*,[52] where it was decided that an employer's bargaining obligation should be retroactive, and not prospective from the date of the Board order, to avoid leaving unremedied prior unfair labor practice violations.

In *Beasley Energy*,[53] the Board unanimously agreed that the entry of a bargaining order was warranted, but then was in disagreement as to when the bargaining obligation should attach. The majority held that a bargaining order, which had retroactive application under *Trading Port*, could be issued even in the absence of a bargaining demand, while the dissenters would have issued only a prospective order.

In the instant case, the union obtained authorization cards from a majority of the unit employees, but did not request bargaining. Instead, it filed a representation petition. However, the employer embarked upon a course of unlawful conduct which, the Board found, prevented a fair election. As indicated above, the Board unanimously agreed that the employer had engaged in misconduct which warranted a bargaining order to best protect employees' rights. The majority concluded that the employer should be ordered to bargain as of the date on which it began its unlawful conduct which impeded the holding of a fair election, and that the absence of a demand for recognition or of an 8(a)(5) finding did not preclude the Board from imposing

[51] 395 U S at 597

[52] 219 NLRB 298 (1975). See 41 NLRB Ann Rep 138 (1976)

[53] *Beasley Energy, d/b/a Peaker Run Coal Co , Ohio Div #1,* 228 NLRB No 16 (Chairman Murphy and Members Jenkins and Penello; Member Fanning concurring in part; and Member Walther concurring in part and dissenting in part)

the bargaining obligation retroactively.[54] The majority recognized that while the demand necessary for an 8(a)(5) finding was absent, the remedy it imposed was, except for the absence of any cease-and-desist provisions, the same as if such a finding had been made; the remedy stemmed not from an identity of violation, but because of the need to remedy the unlawful conduct. In these circumstances, the remedy would not constitute an unwarranted extension of *Trading Port* where the bargaining order was predicated on an 8(a)(5) violation. The fact that the employer was not put on notice of the union's majority, because of the absence of a demand, should not be a defense to the order remedying its unlawful conduct. Nor is the remedy imposed punitive in nature, because the decision in *Trading Port* was intended to provide for a collective-bargaining remedy from the first instance of misconduct which disrupted the election process, whether or not there was a demand for recognition.

Member Fanning, concurring in part, would have applied the bargaining order prospectively, as he was of the opinion that requiring the employer to bargain retroactively depended upon a finding of an 8(a)(5) violation. Absent such finding, it was his view that an affirmative bargaining order, prospective in nature, would have been sufficient to remedy the employer's misconduct.

Member Walther, concurring in part and dissenting in part, agreed with Member Fanning that a prospective rather than a retroactive bargaining order was an appropriate remedy in the absence of an 8(a)(5) finding, and noted that the employer's misconduct herein could only constitute a violation of section 8(a)(1) as alleged in the charge and complaint. He disagreed with the majority's determination that the date upon which the employer began its unlawful conduct was the date which most nearly approximated the date upon which the union would have become, in the absence of misconduct, the employees' bargaining representative since, if there had been no misconduct, the bargaining obligation would have arisen at the time of the election, if the union won. Further, he asserted that, as there was no bargaining obligation when the employer embarked on its unlawful conduct, there could be no return to the status quo as of that date. It was his view that the majority had created a nonexistent and legally impossible bargaining obligation, since, in the absence of a demand for recognition, an 8(a)(5) violation, even if alleged, could not have been found. In Member Walther's view, expressed more fully in his separate

[54] The majority noted that the Supreme Court in *Gissel* approved the issuance of retroactive bargaining orders without indicating whether a demand for bargaining was a necessary prerequisite to the issuance of such orders where an employer's misconduct prevents the holding of a fair election

concurrence in *Drug Package*, *infra*, an 8(a) (1) and (3) and an 8(a) (5) bargaining order are not interchangeable.[55]

In *Kroger Co.*,[56] there was a hiatus between the union's demand for recognition and the employer's commencement of its unfair labor practices. While the Board unanimously found an unalleged 8(a) (5) violation because the record established the union's demand for recognition, the employer's refusal, and the employer's commission of various other unfair labor practices, it disagreed as to the date when the retroactive bargaining obligation should be imposed. The majority decided upon the date when, after the demand, the employer embarked on a clear course of unlawful conduct which undermined the union's majority status and made the holding of a fair election improbable. Member Walther concurred in the result reached by Chairman Murphy and Member Penello, but for the reasons stated in his separate opinion in *Drug Package*, *infra*, where he cited *Linden Lumber* [57] to support his opinion that subsequent unfair labor practices cannot convert an initially lawful refusal to bargain into an unlawful one.[58] Members Fanning and Jenkins would have found that the employer had refused to bargain as of the date of the union's demand for recognition made 2 months earlier, consistent with Member Fanning's concurrence in *Trading Port*, *supra*.

In *Drug Package Co.*,[59] which was issued simultaneously with *Beasley* and *Kroger*, the Board unanimously found that the employer had violated section 8(a) (5) of the Act when it refused, upon demand, to recognize and bargain with the majority union as the collective-bargaining representative of the unit employees,[60] and that it engaged in other 8(a) (1) and (3) conduct which caused an unfair labor prac-

[55] In Member Walther's view, an 8(a)(5) order is designed to effectuate ascertainable employee free choice where the employer's misconduct has rendered the election process less reliable than cards An 8(a)(5) order is imposed because of an unlawful refusal to bargain, and, if it is to remedy all of the earlier bargaining violations, it must of necessity be applied retroactively An 8(a)(1) and (3) order, however, is not intended to remedy the breach of a bargaining obligation where no 8(a)(5) violation is found and, accordingly, Member Walther was not willing to apply an 8(a)(1) and (3) bargaining order retroactively The retroactive application of an 8(a)(5) order is in Member Walther's estimation, legally justifiable when at all times it has been supported by a preexisting bargaining obligation which is not true with an 8(a) (1) or (3) bargaining order where the bargaining obligation does not attach until the issuance of the Board's order

[56] 228 NLRB No 19 (Chairman Murphy and Members Fanning, Jenkins, Penello, and Walther)

[57] *Linden Lumber Div , Summer & Co* v *N L R B* , 419 U S 301 (1974)

[58] Member Walther concluded that where an employer's misconduct predates or occurs simultaneously with the demand for recognition and the refusal thereof the 8(a)(5) bargaining obligation should attach as of the date of demand However, where the misconduct commences after the demand has been refused, the bargaining obligation should attach as of the time the employer began its unlawful course of conduct

[59] 228 NLRB No 17 (Chairman Murphy and Member Penello , Member Walther concurring , Members Fanning and Jenkins concurring in part and dissenting in part)

[60] While the complaint did not allege the employer's refusal to bargain as an independent violation of the Act, the necessary elements for establishing an 8(a)(5) violation were alleged and these issues were litigated

tice strike. The Board found that employer's bargaining obligation arose as of the date that the union acquired a majority in the unit in the context of the employer's contemporaneous course of unlawful 8(a) (1) and (3) conduct which impeded a fair election. Under these circumstances, the Board entered a bargaining order retroactive to the date the union attained majority status after its demand had been refused and it was compelled to strike.

## 2. Duration of Bargaining Obligation

Under established law, "a bargaining relationship once rightfully established must be permitted to exist and function for a reasonable period in which it can be given a fair chance to succeed." [61] During the report year, the Board had several occasions to consider the duration of an employer's bargaining obligation.

What is meant by "a reasonable period of time for bargaining" was discussed by the Board in *Brennan's Cadillac*.[62] There, the employer, after executing a recognition agreement voluntarily recognizing the union, negotiated with the union at eight sessions over a period of approximately 4 months. The negotiations produced agreement on a substantial number of noneconomic items, but the parties remained deadlocked on an economic package. However, when informed by a majority of the unit employees that they wished to withdraw from the union, the employer withdrew recognition. In finding that the employer had not violated section 8(a)(5), the Board majority, relying upon the principles established in *Keller Plastics*,[63] found that the period of time during which bargaining was carried on constituted a "reasonable" period of time.

The Board Members unanimously agreed that the basic issue to be decided was whether or not a reasonable period of time for bargaining had elapsed before the employer had the right to dispute the union's majority status and withdrew recognition, but they disagreed as to whether the parties had in fact bargained for a reasonable period of time.[64] The majority answered this question in the affirmative, noting initially that the resolution of the question did not depend upon the amount of time or the number of calendar days during which

[61] *Franks Bros Co* v *N L R B*, 321 U S 702 (1944).

[62] 231 NLRB No 34 (Members Penello, Murphy, and Walther, Chairman Fanning and Member Jenkins dissenting)

[63] *Keller Plastics Eastern*, 157 NLRB 583 (1966), in which it was determined that a union enjoys the irrebuttable presumption of continuing majority status for a reasonable time after voluntary recognition

[64] The full Board agreed that the administrative law judge who had dismissed the unfair labor practice complaint erred in drawing a "sharp distinction" between cases involving voluntary recognition and cases involving Board orders and settlement agreements and that all such cases should be included in the same category

the parties met, but rather turned on what transpired and was accomplished during bargaining meetings. Here, the parties met regularly and arrived at substantial agreement on many items, with both sides making substantial concessions. Another meeting before the strike might have resulted in a complete agreement. However, instead of a meeting, the union chose to test its strength by striking, and it found that a majority of the unit employees had abandoned it. Noting that there had been meaningful good-faith bargaining over a substantial period of time without an impasse and that there were no allegations that the employer had engaged in unfair labor practices, the majority found that the voluntary bargaining obligation had been given a "fair chance to succeed." Accordingly, the actual majority status of the union at the time of withdrawal of recognition became relevant in determining whether the employer was entitled to question that status. The majority found that the employer was entitled to withdraw recognition since the union, after the strike, no longer enjoyed the support of a majority of the unit employees and therefore was no longer entitled to the continuing presumption of majority status.

On the other hand, Chairman Fanning and Member Jenkins, dissenting, disagreed that a reasonable period of time had elapsed in the circumstances herein, and therefore would have found that the presumption of the union's majority status had not been rebutted. While agreeing that there are no hard-and-fast rules as to what constitutes a reasonable period of time, the dissent pointed out that the bargaining took place at eight meetings over 3, rather than 4, months; that the parties met and reached substantial agreement on numerous issues; that, prior to the strike, there was some movement on the employer's part on an unresolved issue; and that, after the strike, the union offered to give up certain of its demands. It was then that the employer announced its intention to withdraw recognition. The dissenters also noted the absence of an impasse, the fact that the parties were bargaining for a first contract, and the relatively brief timespan in which the parties were bargaining. In their opinion, the bargaining relationship was one which might have culminated in an agreement and was the type of incipient relationship which the Board, in the interest of industrial stability, has sought to foster through the concept of a presumption in favor of continuing representative status. Accordingly, they would have found that the employer violated the Act by withdrawing recognition from the union.

In determining that an employer had violated its obligation to bargain following a non-Board settlement agreement, a panel majority, in *Vantran Electric Corp.*,[65] applied the principles of the recently

[65] 231 NLRB No. 169 (Members Jenkins and Murphy, Member Walther dissenting).

decided *Pride Refining*,[66] in which it was held that a non-Board settlement agreement, which resolved the certified union's charges of a refusal to bargain during the certification year, extended the certification year because the employer's concessions therein were the *quid pro quo* for the withdrawal of the charges. In *Vantran Electric*, 1 month after the union was certified and after several negotiating sessions, the union filed charges alleging the employer's refusal to bargain during the certification year. The parties then entered into a non-Board settlement agreement in which the employer agreed to bargain and the union agreed to withdraw its charges. Shortly thereafter, the employer withdrew recognition.

In these circumstances, the panel majority concluded that, as the employer's concessions, i.e., its agreement to bargain with the union, constituted the *quid pro quo* for which the union agreed to withdraw its charges, the union was entitled to the remaining 11 months of its certification year during which the employer was required to bargain. The majority noted that dissenting Member Walther would merely require the employer to bargain for a "reasonable" time following the settlement agreement, but would not apply the rules regarding the extension of the certification year in the circumstances. It claimed that this approach would, in effect, render meaningless the Board's long-standing rule that an employer is required to honor a certification for 1 year,[67] since an employer could easily flout this obligation by refusing to bargain during the certification year and then entering into a settlement agreement, thereby discouraging non-Board settlements as no meaningful remedy could result. The panel majority therefore concluded that the employer should not be allowed to take advantage of its failure to carry out its statutory obligation to bargain during the certification year, by being permitted to bargain for an undefined lesser period of time.

Member Walther relied upon his dissent in *Pride Refining*, *supra*. He argued that the majority had imposed a remedy as if the charge alleging that the employer refused to bargain during the certification year had been litigated and the employer had been found to have violated section 8(a)(5). He further argued that it was improper to treat this allegation as if it had been proven, since it had neither been admitted nor litigated, and the Board had not made a final determination as to it. Member Walther further claimed that the majority's decision would discourage voluntary non-Board settlement agreements while encouraging the filing of refusal-to-bargain charges. In such circumstances, he merely would determine whether the withdrawal of recognition violated the rule requiring an employer to bargain for a

[66] 224 NLRB 1353 (1976)
[67] *Ray Brooks* v. *N L R B*, 348 U S 96 (1954)

reasonable time following the settlement agreement. Finding herein that the employer satisfied this obligation, he would have dismissed the complaint.

The question of majority status in a single-employer unit after withdrawal from a multiemployer unit was considered in *Tahoe Nugget.*[68] There the full Board, with Member Walther dissenting, held that the presumption of majority status arising from an employer's voluntary recognition of a union as the exclusive representative of its employees continued after the employer's withdrawal from a multiemployer unit. In that case, the employer had joined a multiemployer council and became party to its contract with the union. Shortly before the expiration of the contract, the employer timely withdrew from the multiemployer arrangement but then refused to bargain, claiming a reasonable doubt as to the union's majority status. In finding a violation, the majority reasoned that an employer may not lawfully force representation on its employees by joining a multiemployer bargaining unit, unless a majority of the employees desired representation by a union and therefore the union's original majority status must be presumed and any attack thereon would be barred by section 10(b).[69] In these circumstances, the majority status in the single-employer unit existing when recognition was voluntarily extended must be accepted as a fact and the presumption of this majority status continues throughout the life of the collective-bargaining contract and thereafter.[70] To rebut this presumption, the majority stated that an employer must show that the union, in fact, no longer enjoys majority status or that its refusal to bargain was based on a reasonably grounded doubt as to the union's continued majority status. To hold otherwise, as would the dissent, would be to allow every change in the composition of the multiemployer group to constitute objective and substantial reason to doubt the previously existing majority. Accordingly, as the employer had not rebutted this presumption of continued majority status among its employees, the majority found that the employer violated the Act by refusing to bargain with the union after withdrawal from the multiemployer unit.[71]

---

[68] *Tahoe Nugget, d/b/a Jim Kelley's Tahoe Nugget,* 227 NLRB No 72 (Chairman Murphy and Members Fanning, Jenkins, and Penello, Member Walther dissenting)

[69] *Local Lodge 1424, Int. 1 Assn. of Machinists, AFL–CIO* [*Bryan Mfg Co.*] v *N L R B*, 362 U S 411 (1960)

[70] In this regard see *Pioneer Inn Associates, d/b/a Pioneer Inn & Pioneer Inn Casino,* 228 NLRB No 160, where the panel of Chairman Murphy and Members Jenkins and Walther determined that the presumption of a union's majority status during the term of the contract continues irrespective of the degree to which a union may or may not have been deficient in the administration of that agreement and in the absence of any finding that the union was unwilling or unable to represent employees at the time its status is called into question

[71] In *Sahara-Tahoe Corp, d/b/a Sahara-Tahoe Hotel,* 229 NLRB No 151, the Board panel of Chairman Fanning and Members Jenkins and Murphy, in finding an 8(a)(5) violation, cited *Tahoe Nugget* with approval.

Member Walther, dissenting, argued that his colleagues had improperly predicated a violation of the Act not on fact, but upon the interweaving of presumptions which are merely convenient legal fictions. He noted that his colleagues started with a valid presumption of majority status in the multiemployer unit and then interwove a presumption of majority status in the single-employer unit based on a 10(b) prohibition. From this interweaving, they conceived a third presumption of current majority status in a single-employer unit which otherwise had no basis in fact or logic. Such a derived presumption was not a proper basis to establish a violation since an 8(a)(5) finding prevents the single employer's employees from exercising their free choice in the selection of a bargaining representative—a right these employees have never had an opportunity to exercise. Member Walther thus contended that the relevant majority in a multiemployer unit is the majority of employees within the entire multiemployer unit and the presumption of this majority affords no basis in fact or law for the presumption of majority status in the single-employer unit. Accordingly, Member Walther concluded that, as the employer had supported its claim of doubt as to the union's majority status and as the union had not demonstrated its majority, he would not presume the union's continued majority status in the single-employer unit. Instead, he would leave to the Board's representation processes the question, if it existed, concerning representation in the single-employer unit.

The effect of a decertification petition on an employer's obligation to bargain was considered by the full Board in *Lammert Industries, Div. of Componetrol, Subsidiary of I-T-E Imperial Corp.*[72] In that case, on the same date that a petition for decertification, supported almost unanimously by the employees, was filed, the employer, without knowledge of the petition, refused the incumbent union's request to bargain for a new contract. In finding an 8(a)(5) violation on that date, Chairman Fanning and Member Jenkins of the majority specifically disavowed dictum in *Telautograph Corp.*[73] to the effect that the filing of a decertification petition suspends an employer's bargaining obligation. Member Murphy, in a separate concurring opinion, found it unnecessary to pass on *Telautograph*, as she would have found an 8(a)(5) violation under any view of that case. Applying *Telautograph*, she would have found that a decertification petition would have justified an employer's reasonable doubt of the union's majority only if the employer was aware that the petition had been filed and based its refusal to bargain upon the petition. In the present

[72] 229 NLRB No 128 (Chairman Fanning and Member Jenkins, Member Murphy concurring, Members Penello and Walther concurring in part and dissenting in part)

[73] 199 NLRB 892 (1972).

case, the employer refused to bargain before it knew that the petition had been filed and therefore may not be permitted to rely upon the existence of the petition as a defense.

On the other hand, Members Penello and Walther, relying upon *Telautograph*, disagreed and asserted that, even without knowledge of the decertification petition, the employer was legally justified in not bargaining with the union until the question concerning representation raised by the decertification petition was settled by the Board. To decide otherwise, claimed Members Penello and Walther, is to hold implicitly that an employer not only may, but must, continue to bargain and possibly sign a contract in the face of a valid question concerning representation, which, in their opinion, not only negates the concept of employee freedom of choice, but also comes close to directing an employer to commit an unfair labor practice.

In *King Electrical Mfg. Co.*,[74] a Board panel held that the filing of a deauthorization petition did not suspend the employer's obligation to apply the valid union-security clause of the contract, pending the outcome of the deauthorization election. Shortly after the contract had gone into effect, a deauthorization petition seeking rescission of the union shop authorization in the contract was filed. Thereafter, when the union requested that the employer terminate those employees who had not complied with the union-security clause, the employer refused to do so. The panel distinguished *Lyons Apparel*,[75] where the Board held that an affirmative deauthorization vote constituted a *prima facie* withdrawal of the union's right to a union-security clause. The rationale underlying that case was never intended to justify the preelection suspension of union-security requirements merely because a deauthorization petition had been filed within the first 31 days of the institution of those requirements. On the contrary, *Lyons Apparel* implies that the union-security clause remains *prima facie* valid until an affirmative deauthorization vote has actually been cast. Accordingly, the union was legally entitled to expect that the union-security clause in its valid agreement with the employer would be enforced during the pendency of the deauthorization election, and the refusal to honor the union's request violated section 8(a)(5) and 8(d) of the Act.

### 3. Change in Identity of Representative

The obligation of an employer to recognize and bargain with a successor union was considered by a Board panel in *Goodfriend Western Corp., d/b/a Wrangler Wranch*.[76] At the time that Local 1291 of the Retail Clerks International Association made its demand

[74] 229 NLRB No 91 (Members Jenkins, Penello, and Walther)
[75] 218 NLRB 1172 (1975)
[76] 232 NLRB No. 89 (Members Jenkins, Penello, and Murphy)

for recognition, it had obtained a majority of valid authorization cards from 10 to 15 unit employees. The employer refused the demand and subsequently discriminatorily discharged 11 unit employees. Approximately 1 year after the demand for recognition, Local 1291 and three other local unions merged into a single local union, Local 1445. The 10 employees who had signed authorization cards before their discharges and who were not members of Local 1291 did not participate in the merger election.

The panel determined that the employer was obligated to bargain with Local 1291's successor, Local 1445, since Local 1291's apparent loss of identity did not void the authorization cards of the discharged employees so as to undermine the basis for the union's claim of majority status. While all eligible employees should usually be allowed to participate in a merger election,[77] in the instant case, it was the employer's unfair labor practices, rather than the union's internal rules, that prevented the 10 discharged employees from becoming union members and thus having the chance to vote in the election. Local 1291 remained the employees' bargaining representative for over a year until the merger. To disregard the intentions of the employees herein would allow the employer to benefit from its unfair labor practices.[78] Accordingly, the panel held that the employer had violated section 8(a)(5) of the Act and ordered the employer to bargain with Local 1445, the successor to Local 1291.

During the past year, the full Board had occasion to reconsider eligibility requirements for participation in union affiliation elections. In *Jasper Seating Co.*,[79] the certified Jasper union, a small independent local union, sought to affiliate with an international. Only those employees who were members of the Jasper union were allowed to vote in the affiliation election. A majority of the Board determined that the petition to amend the certification, filed to change the name of the certified bargaining representative, should be dismissed, but they were not in agreement as to why.

Members Jenkins and Walther, noting that in the present case employees who were not members were not allowed to vote unless they first became members of the Jasper union, dismissed the petition on

[77] Member Jenkins noted that, if this case had involved the validity of the merger, he would have found it invalid since only union members were allowed to vote on the merger, citing his dissent in *North Electric Co.*, 165 NLRB 942 (1967). However, he agreed that it was the unlawful conduct of the employer which prevented the employees from voting herein

[78] The panel also considered the problem of giving notice to employees of a merger vote in this situation, concluding that it would not be either practical or reasonable to require and allow the discharged employees, whose status was in litigation, to participate in the merger vote

[79] 231 NLRB No 171 (Members Jenkins and Walther, Member Penello concurring. Chairman Fanning and Member Murphy dissenting)

the grounds that not all unit employees were given the chance to vote in the election. In so doing, they relied upon the dissent of Members Jenkins and Zagoria in *North Electric Co., supra.*

Member Penello, separately concurring, agreed that the petition should be dismissed, relying solely on the principles set forth in *American Bridge Div., U.S. Steel Corp.* v. *N.L.R.B.*[80] In his opinion, the possible affiliation of the Jasper union with the international was more than a mere change in name; it involved a substantial change in the actual identity of the bargaining representative, thereby raising a question concerning representation. In such circumstances, Member Penello would require that the question raised by the change in identity be resolved by a Board-conducted election rather than by a petition to amend certification, so that all unit employees would be entitled to vote.

Chairman Fanning and Member Murphy, dissenting, found that Board precedent supported granting an amendment to certification in the instant case.[81] They disagreed with Members Jenkins and Walther that nonmember employees in the unit must be included in an affiliation vote that contemplates continuation of the contract by the newly affiliated bargaining representative. They noted that nonmembers could, if they were interested in the proposed affiliation, join the union and thus participate. They pointed out that an affiliation vote was an internal union matter, not for the purpose of electing a new bargaining representative, but for the purpose of determining whether members of an incumbent union want assistance in conducting their affairs with their employer.[82] With respect to *American Bridge*, the dissenters, noting the court's conclusion that the bargaining unit had changed because of a diminution in the rights of the members by virtue of the affiliation, were of the opinion that these were changes which employees, seeking affiliation with an international union, could have anticipated. Further, the dissent pointed out that in *American Bridge* the employer had refused to bargain with the newly certified union, thus denying to employees a trial period during which the former independent could have operated with the assistance of the international. They noted that, where affiliation is effected during the term of an existing contract and the employer cooperates, the employees would have a trial period to assess the affiliation, at the end of which they could, if dissatisfied, petition for decertification.

Accordingly, Chairman Fanning and Member Murphy would continue to treat affiliation votes as an internal union matter where there

[80] 457 F 2d 660 (C A 3, 1972)

[81] In support of this conclusion, they cited *Amoco Production Co*, 220 NLRB 861 (1975), and *Bear Archery, Div of Victor Comptometer Corp*, 223 NLRB 1169 (1976)

[82] *Hamilton Tool Co*, 190 NLRB 571 (1971).

are procedural safeguards and organizational continuity as in *Hamilton Tool*, and thus, they would have granted the petition to amend herein.

## 4. Successor Employer Issues

During the report year, the Board continued to define the circumstances under which an employer will be found to be a successor employer and in which a successor employer will be required to bargain in light of the Supreme Court's decision in *N.L.R.B.* v. *Burns Intl. Security Services.*[83]

Whether the interim operation of a business by a broker destroyed the chain of successorship was considered by a Board panel in *First Food Ventures.*[84] A broker foreclosed on and purchased the assets of a retail store, ITCO, and, pending its efforts to locate a permanent buyer, undertook temporary operation of the store. Two weeks later, the employer purchased the store and commenced full operation thereof on substantially the same basis as had its predecessor. The union, which had signed a contract with ITCO before its assets were purchased by the broker, presented that contract to the employer, claiming that it was still in effect. The employer replied, *inter alia*, that it doubted whether it was a successor to the union's contract with ITCO.

The panel initially found that the employer was in fact a successor to ITCO, and concluded that the interim operation of the business by the broker did not break the successorship chain, as it was merely a custodian of ITCO's assets pending a permanent transfer thereof to the employer. The broker had created the employer; all legal documents pertaining to the original sale of ITCO contemplated a transfer of assets to the employer; and the employer agreed to undertake all obligations incurred by the broker in its operation of the store, as if the employer had been the original purchaser thereof without a transition period. Accordingly, the panel found that the broker's transitory interim employer status during its temporary operation of the store did not affect the employer's status as a successor employer.

In *MPE, Inc.*,[85] a Board panel was faced with the question of whether a corporation, having undergone a complete change of ownership and management by virtue of a complete stock transfer, but retaining essentially the same employees, production process, and location, was bound to assume a labor contract which was entered into by the corporation before the transfer of stock and of which the new owners were not apprised at the time of the transfer of ownership.

---

[83] 406 U.S. 272 (1972)

[84] 229 NLRB No. 154 (Chairman Fanning and Members Penello and Murphy)

[85] 226 NLRB 519 (Members Jenkins, Penello and Walther)

The General Counsel contended that the corporate respondent continued as the same legal entity and therefore was obligated to sign or asume the agreement. Arguing that it was in the position of a successor employer rather than an "alter ego," the corporation acknowledged a duty to recognize and bargain with the union, but denied any obligation to sign or assume the agreement.

The undisputed facts were that the stock purchaser was informed that the union's prior contract had expired and a new one had not been executed. In fact, the union and the corporation had agreed on a new contract which had been initialed and was awaiting ratification by the union membership and formal execution; in addition, the corporation had implemented retroactively the agreed-upon wage increase. When the new owners took over the operations, the union presented the contract to the new corporation president, who refused to sign it.

The panel acknowledged that in some situations of stock transfer, where the succeeding corporate entity is essentially but a mirror image of the predecessor, the new ownership may be found to have assumed an existing labor contract. It distinguished this case from *Western Boot & Shoe*,[86] in which it was found that the buyer of 100 percent of the stock had knowledge of the labor contract and had explicitly assumed the obligations of that contract. Under the circumstances herein, the panel found that the stock purchasers of the corporate respondent had, in no way, explicitly assumed the obligations of a contract of which it was unaware and it was under no duty to sign the contract. Accordingly, the refusal-to-bargain complaint was dismissed.

In *White-Westinghouse Corp., wholly-owned subsidiary of White Consolidated Industries*,[87] a Board panel held that a successor employer was obligated to bargain with the union on a multiplant unit basis rather than on the basis of single-plant units. For many years, the international union and Westinghouse had been parties to a national agreement which also covered units in which the union or its locals had been certified. Locals which had been separately certified at five facilities, which constituted Westinghouse's appliance division, were immediately included in and covered by the national agreement. In early 1975, representatives of the union and of the parent company, White Consolidated Industries, met to discuss White's prospective purchase of the appliance division, which contained five separate plants. After White had agreed to abide by the national agreement, the appliance division was transferred by Westinghouse to White.

[86] 205 NLRB 999 (1973)
[87] 229 NLRB No. 113 (Chairman Fanning and Members Penello and Walther)

Shortly before the national agreement was to expire, the employer advised the union that it would not bargain for the appliance division on a multiplant basis, but only on the basis of five separate single-plant units. While conceding that it had assumed the national agreement and that, under *Burns*, *supra*, it was a successor employer, the employer raised the issue as to whether, after the expiration of the national agreement, it was obligated to bargain with the union on a multiplant appliance division unit basis rather than on the basis of five separately certified single-plant units.

The panel affirmed the administrative law judge's finding that the employer was obligated to bargain on a multiplant division basis, as the union and Westinghouse had, under the national agreement, merged the individually certified units into a single multiplant unit, which, in effect, destroyed the separate identity of the individual units. It further determined that the successor unit, which had remained intact after the employer's takeover, was the five-plant appliance division, the continuity of which was confirmed by the employer's assumption and application of the national agreement. Finally, the panel decided that the five-plant successor unit was an appropriate unit for bargaining. Accordingly, in the circumstances therein, where there was a successorship and where the purchased unit remained intact, the panel concluded that the successor employer had an obligation to bargain in that appropriate unit.

## 5. Duty To Furnish Information

In several cases decided during this report year, the Board had occasion to consider the nature and scope of information which an employer is obligated to furnish to the union.

In *A. S. Abell Co.*,[88] a panel majority held that an employer violated section 8(a)(5) when it refused to furnish the union (guild) information pertaining to the cross-training of employees who were unit employees covered by the guild's collective-bargaining contract. Such training would have prepared those employees to do work in another unit covered by the Pressmen's contract. Rejecting the administrative law judge's rationale that a labor organization is entitled only to information directly related to unit work, the majority held that a bargaining agent's legitimate interest in information cannot be delimited solely by the work performed by *unit employees*, for, to do so, held the majority, would be to ignore the principles of section 8(d) which require the bargaining agent to represent em-

[88] 230 NLRB No 161 (Chairman Fanning and Member Jenkins, Member Walther dissenting)

ployees with respect to wages, hours, and other terms and conditions of employment. The panel majority found that such terms and conditions of employment cover much more than the particular job tasks performed by individuals in the unit, and that, therefore, the guild's entitlement to information clearly extended to all terms and conditions of employment of unit employees. It reiterated the principle that the presumption of relevancy attaches to requests for wages and related information pertaining to unit employees because, *inter alia*, a union's statutory duty to represent includes both the obligation to formuate proposals for future contract negotiations and the obligation to police the administration of the existing contract. Applying those principles, the panel majority held that the cross-training information requested by the guild was presumptively relevant, as the cross-training might conflict with the existing contract and raise issues which might have to be resolved in future contract negotiations. Accordingly, the employer was obligated to provide the requested information.

Member Walther, while conceding that the information sought was relevant to the guild's statutory duty, nonetheless found no violation in the employer's refusal to furnish it. It was his opinion that it is necessary to consider the purpose underlying the request for information and whether the data is, in fact, needed for a union's proper performance of its duties. It was his view that the guild's purpose in seeking the information was not related to collective bargaining, but rather was an attempt to undermine the employer's training program.

Whether the employer was obligated to furnish specific profit information concerning three individual facilities, where the claim of financial inability was based on its overall corporate financial condition, but where it bargained on a single-facility basis, was considered by a Board panel in *Teleprompter Corp., et al.*[89] The employer had numerous separate facilities located throughout the United States, some of which were represented on an individual basis by various locals of the international union. The employer announced a moratorium on wage increases except for those employees covered by a collective-bargaining contract and thereafter, during contract negotiations with three locals which represented the employees of three facilities, the employer refused to agree to a wage increase because of the wage freeze. The locals then requested information concerning the profitability of the respective individual facilities, but the employer refused to furnish such data. Instead, it provided the locals with information concerning the profitability of the corporation as a whole, which, it claimed, was responsible for the freeze.

[89] 227 NLRB No. 101 (Members Fanning, Penello, and Walther).

The panel noted the well-established collective-bargaining principle that an employer who claims financial inability must provide the union with information which will enable it intelligently and adequately to assess the employer's position. In the panel's opinion, it was essential that the locals had access to the information requested, as they otherwise could not adequately determine why the employer was unable to pay the wage increase. Accordingly, the panel held that an employer such as the one herein must not be allowed to make a nationwide "plea of poverty" without providing data as to the single systems for which it had chosen to bargain.

## 6. Subject Matter for Bargaining

The relationship between mandatory and nonmandatory subjects of bargaining [90] was discussed by a Board panel in *Nordstrom*.[91] In that case, the employer, during bargaining, tied to its wage proposal three additional demands. The union accepted the wage proposal, but did not address itself to the other demands. Thereafter, the union submitted to the employer a contract which included the wage proposal, but did not include the three demands. The employer refused to execute this contract and the union filed unfair labor practice charges. Finding that the additional demands were nonmandatory subjects of bargaining, the administrative law judge found a violation of section 8(a)(5) of the Act in the employer's refusal to sign the contract because of its insistence upon the inclusion of nonmandatory demands and because in the contract the union had accepted all mandatory areas of the employer's offer.

The issue as posed by the panel was whether the union could effectively conclude negotiations by limiting its agreement only to those demands of the employer which constituted *mandatory* subjects of bargaining. The panel disagreed with the administrative law judge's conclusion that the union's acceptance of the mandatory subjects and its silence on the nonmandatory subjects compelled the employer to execute a contract embodying only part of its wage proposal. The panel noted that, while it was clear that a party may not lawfully insist upon the inclusion of nonmandatory proposals, it was equally clear that those nonmandatory subjects can bear upon a party's wage increase proposal. Accordingly, the panel held that since the union had ignored and, basically, removed the nonmandatory subjects from the employer's proposed wage package, the employer was entitled to reconsider and alter its proposals in the mandatory area of bargaining without violating the Act.

---

[90] For additional discussion of subject matters for bargaining, see *infra*, sec G, "Union Bargaining Obligation," subsec 1, "Subjects for Bargaining."

[91] 229 NLRB No 70 (Chairman Fanning and Members Penello and Walther)

In *Natl. Fresh Fruit & Vegetable Co. & Quality Banana Co.*,[92] a Board panel restated the principle that modification of a Board-certified unit is not a mandatory subject of bargaining. During negotiations for a new contract, the employer, over the union's objection, adamantly adhered to its proposal to remove certain classifications of employees from the existing certified bargaining unit. In accord with precedent, the panel found that the employer had violated section 8(a)(5) by insisting to impasse upon a nonmandatory subject of bargaining as a condition to finalizing a contract.[93]

Also in this regard, a panel majority held in *Intl. Harvester Co.*[94] that an employer, which unilaterally decided to remove a certain job classification and related work from the bargaining unit resulting in monetary loss to unit employees, violated section 8(a)(5) because it refused to bargain about this decision. The majority determined that the changes made by the employer's decision were accounting and administrative in nature, and, at most, internal realignments of capital, and were not a fundamental restructuring of basic operations. The panel majority also concluded that, although the decision did not directly involve labor costs, it did have an impact on the earnings of the unit employees, which is clearly the substance of collective bargaining.

Member Walther, dissenting, concluded that the employer was not obligated to bargain with the union over its decision, which constituted a restructuring of its national administrative marketing operations, and which was at the core of entrepreneurial control and thus outside the bargaining relationship. He further noted that the decision did not deal with labor costs, which might have affected the employees' working conditions, but instead dealt with pricing of the employer's product which clearly, in his view, was an issue of managerial responsibility.

A Board panel held, in *Metromedia—KMBC–TV*,[95] that the employer violated section 8(a)(5) of the Act by failing to bargain in good faith with the union (IATSE) over certain work and by unilaterally assigning that work to another union (IBEW) without affording IATSE an opportunity to bargain over the assignment. Shortly after IATSE was certified as representative of the employer's news department motion picture cameramen, the parties met in their first negotiation session, at which the employer proposed (1) that news cameramen could be assigned to operate portable video cameras and associated equipment, and (2) that nothing in the contract should be construed to

[92] 227 NLRB No 293 (Chairman Murphy and Members Fanning and Penello)

[93] The panel relied on *Hess Oil & Chemical Corp v N L R B*, 415 F. 2d 440 (C A 5, 1969) Although the unit involved in *Hess Oil* was a contractual unit rather than one certified by the Board, the court held that this fact did not lead to a different result, as the duty to bargain does not depend upon either a Board election or certification

[94] 227 NLRB No 19 (Members Jenkins and Penello; Member Walther dissenting in part)

[95] 232 NLRB No 76 (Chairman Fanning and Members Penello and Murphy)

prohibit the performance of the work of cameramen by persons who were not cameramen. The parties also discussed IATSE's jurisdiction over the minicam, a new portable video camera. IATSE agreed to the employer's first proposal, which, in its opinion, gave it exclusive jurisdiction over minicams; however, IATSE did not agree to the second proposal. At the second meeting there was no discussion of the minicam issue. After a hiatus of 6 months, the parties met again and the employer informed IATSE that it had negotiated a new contract with IBEW which gave IBEW engineers exclusive jurisdiction over the minicams and created a new category of engineers to implement this agreement, and that, as a result, the issue of the minicams was outside the realm of bargaining with IATSE. IATSE then filed the instant unfair labor practice charge.

The Board panel found that the employer, while presumably bargaining with IATSE about the use of the minicams, unilaterally and without notice to IATSE awarded jurisdiction over that work to employees represented by IBEW, thereby foreclosing any further meaningful negotiations with IATSE on that matter and undermining its representative status. Additionally, the employer created a new and separate category of employees within the IBEW unit and indicated to IATSE cameramen that, if they desired to operate the minicam, they would have to become members of the IBEW unit. In these circumstances, the panel concluded that this action was taken in complete disregard of the status of IATSE as the representative of the unit of news camermen and was thus in violation of section 8(a)(5) of the Act.

The Board's failure to seek review of the Seventh Circuit Court of Appeals' adverse decision in *Ladish Co.*,[96] as well as the refusal of other circuit courts to agree with the Board, should not be construed as a decision by the Board that in-plant food prices are not a mandatory subject of bargaining. So held a Board panel in *Ford Motor Co. (Chicago Stamping Plant)*.[97] There, the employer provided a cafeteria and vending machine for its employees. Prices of the items provided were determined by the food service company with the approval of the employer. Employees were not allowed to leave the premises during their rest periods and it was not feasible for them to leave during lunch. Mobile food vending trucks were not allowed on the premises and generally were not available near the plant gate. While the employees were permitted to bring their own food into the plant, there were no refrigeration facilities for food storage. The employer informed the union that the cafeteria and vending machine prices would be increased by an unspecified amount. It refused the union's request

[96] 219 NLRB 354 (1975), enforcement denied 538 F 2d 1267 (C A 7, 1976)
[97] 230 NLRB No 101 (Chairman Fanning and Members Penello and Murphy)

to discuss the increase, and unilaterally effected the increase. The union reiterated its request to discuss the food prices and services, but the employer refused to do so.

The panel noted that the administrative law judge correctly found, and the employer agreed, that the case fell within the context of the Board's prior decisions,[98] including *Ladish Co.*, and that, on the basis of those decisions, in-plant food prices were a mandatory subject of bargaining. However, because of the adverse court decisions and the failure to seek review in *Ladish*, the administrative law judge concluded that the Board had decided that in-plant food prices were no longer a mandatory subject of bargaining. Accordingly, he dismissed the refusal-to-bargain complaint.

The Board panel, however, determined that, with due respect to the adverse decisions of the First, Fourth, and Seventh Circuit Courts of Appeals, it would continue to adhere to its established position that cafeteria and vending machine prices are a mandatory subject of bargaining.[99] It also pointed out that the failure of the Board to seek review in the courts did not indicate an abandonment of that position and any assumptions to the contrary were both unfounded and unwarranted. The panel accordingly found that the employer had violated the Act by refusing to bargain about the price increases it had placed into effect.

## 7. Other Issues

In *Indiana & Michigan Electric Co.*,[1] the panel majority held that the employer had violated section 8(a)(5) by refusing to grant members of the union's negotiating committee uncompensated leave to permit them to engage in bargaining during working hours, while at the same time refusing the union's request to bargain during nonworking hours. The employees who sought the uncompensated leave were designated "travellers," i.e., employee representatives from one unit who are members of the union bargaining committee for other units represented by the union.

By its decision, the panel majority did not suggest that the employer was compelled to yield to a union's request for negotiations outside normal business hours, as an employer is free to insist on bargaining during the working day. But, once an employer makes the decision

---

[98] *Westinghouse Electric Corp*, 156 NLRB 1080 (1966), enforcement denied 387 F 2d 542 (C A 4, 1967), *McCall Corp*, 172 NLRB 540 (1968), enforcement denied 432 F 2d 187 (C A 4, 1970); *Package Machinery Co*, 191 NLRB 268 (1971), enforcement denied 457 F 2d 936 (C A 1, 1972)

[99] *Ibid* The panel also noted that this case was, in many respects, a stronger case than *Ladish* for adhering to this position, noting that the employer had some input into determining prices, it stood to make a profit on the operations; the parties had in the past bargained over in-plant food services, and, for all practical purposes, it was not feasible for employees to bring their food

[1] 229 NLRB No 95 (Members Jenkins and Murphy, Member Walther dissenting)

to bargain during the working day, it cannot at the same time refuse to allow unpaid time off to union representatives on the bargaining committee because they are employed in another unit. The employer was free to accept the alternative presented by the union here to bargain during nonworking hours and thereby reduce the amount of time off for the "travellers" and minimize the effects of their unavailability. The point stressed by the majority was that the employer cannot have it both ways: it cannot choose to bargain during working hours and then refuse to allow the "travellers" time off; and should the employer refuse to grant time off, it must make itself available for negotiations at a time when the representatives can attend, even if this is outside of working hours. Member Walther, dissenting, pointed out that the requested time off would have entailed extensive traveling which would have interfered with the employer's business operations. He was of the opinion that the employer's refusal to accede to the union's request for time off for the "travellers" was based upon valid business considerations rather than for discriminatory reasons.

In *Airport Limousine Service & Jay McNeill, Esq. as Receiver*,[2] a Board panel determined that the respondent receiver in bankruptcy's attempt to disavow a collective-bargaining contract did not violate the Act. The respondent employer filed for bankruptcy during the term of the union's contract and a receiver was appointed for it. In bankruptcy court, the receiver sought the disavowal of the contract between the employer and the union. The panel, while expressing its reservations concerning the power of the bankruptcy court to permit a receiver lawfully to disavow a contract, found that the receiver's procedurally valid attempt to do so did not violate section 8(a)(5).[3]

## E. Union Interference With Employee Rights

Even as section 8(a) of the Act imposes certain restrictions on employers, section 8(b) limits the activities of labor organizations and their agents. Section 8(b)(1)(A), which is generally analogous to section 8(a)(1), makes it an unfair labor practice for a union or its agents 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.

[2] 231 NLRB No 149 (Members Jenkins, Murphy, and Walther).

[3] The panel reached this conclusion even though it found that the receiver had violated sec 8(a)(5) by refusing to implement certain contract provisions and by refusing to arbitrate under the contract, which actions, the panel found, demonstrated the receiver's desire to repudiate the contract

## 1. Duty of Fair Representation

During the past fiscal year, the Board considered several cases involving the principle that a labor organization has a duty to represent fairly all employees in a bargaining unit for which it is the statutory representative.

In *Michigan Chapter, AGC*,[4] the Board majority held that a union which operated an exclusive hiring hall violated section 8(b)(1)(A) by refusing to supply an employee with information regarding his place on the out-of-work list. There, the charging party, suspecting he was not receiving proper referrals, requested that the union supply him with a list of those individuals ahead of him and behind him on the out-of-work list. Thus, the question arose as to whether the union's refusal was arbitrary and in breach of its duty of fair representation. The majority answered the question in the affirmative. In agreement with the administrative law judge, the majority found that the union's comprehensive and exclusive power and authority over the charging party's employment automatically obligated it to deal fairly with his request for job referral information and its refusal to comply with the member's reasonable and manageable request was arbitrary and therefore breached its duty of fair representation in violation of section 8(b)(1)(A) of the Act.

Member Fanning, dissenting, found that, while the duty of fair representation protects employees from their representative's hostility, it does not extend so far as to protect them from a lack of responsiveness with respect to housekeeping matters. Concluding that the furnishing of the requested list was not within any duty of fair representation because the charging party could have prepared it himself, the dissent concluded that the simple failure to provide the clerical assistance requested was not unfair or invidious and therefore did not restrain or coerce in violation of section 8(b)(1)(A) of the Act.

In *Dearborn Stamping Plant of Ford Motor Co.*,[5] a Board majority held that the union violated section 8(b)(1)(A) by permitting its agent to reject certain grievances in order to benefit his own individual welfare. In this case, the company and the union had contractually provided for a certain number of unit representatives who would perform no production work, but who would be compensated by the company for the performance of representation functions. A dispute arose when the unit chairman, changing past practice, no longer allocated overtime on a regular rotation basis, but instead allocated to himself

[4] *Local 324, Operating Engineers (Michigan Chapter, AGC)*, 226 NLRB 587 (Members Jenkins, Penello, and Walther; Member Fanning dissenting in part)

[5] *Local 600, UAW (Dearborn Stamping Plant of Ford Motor Co.)*, 225 NLRB 1299 (Chairman Murphy and Member Fanning, Member Jenkins concurring in part and dissenting in part; Members Penello and Walther dissenting).

all overtime previously shared by all. While finding no violation of the Act in the unit chairman's allocation of overtime to himself, the Board majority found a violation based on the fact that, when the aggrieved representatives filed grievances under the contractual grievance procedure, it was the unit chairman himself who handled the matter for the union, notwithstanding his own status as an interested party with a conflicting position. Under these circumstances, the Board majority, concluding that the union had not afforded fair and unbiased representation to all unit members, found that the union's action restrained and coerced the aggrieved representatives in their exercise of the protected activity of filing grievances.[6]

Members Penello and Walther, dissenting, found that the union did not violate the Act in any respect. They noted that the representatives in question performed no work directly for the company and that, in effect, their grievance was against the union. Therefore, the dissent concluded that a union had no duty of fair representation requiring it to act fairly in regards to complaints of its agents against itself.

In *P.P.G. Industries*,[7] a Board panel found that the union had violated its duty of fair representation by failing to process grievances in a fair and impartial manner. There, two union members claimed that they were entitled to compensation for riding time and mileage, and their claim arose because of a valid question as to the interpretation of the bargaining agreement. Pursuant to the members' grievances, the union business manager met with a company official, but acknowledged to the official that he did not believe the employees had a legitimate claim to riding time and mileage. The minutes of the union's executive board meeting revealed that the union's position was based in substantial part on the failure of the employees to secure their employment through the union. The Board panel stated that such a consideration was irrelevant in processing the grievances, absent an exclusive hiring hall agreement, and adverse union action against the employees for that reason was impermissible under the Act. The panel further found it irrelevant that the employees were informed, at the time of their hire, that they would not receive payment for riding time and mileage. It stated that a waiver by unit employees of specific benefits to which they were entitled under the collective-bargaining agreement did not form a basis for the union's refusal to process their claim to those benefits. Accordingly, as the union's actions on the employees' behalf did not measure up to a standard requiring fair and

[6] Member Jenkins concurred in the finding of a violation in the union's refusal to process properly the grievances of the representatives, but he dissented from the failure also to find a violation in the unit chairman's denying the other representatives their right to a fair share of the overtime

[7] 229 NLRB No 107 (Members Jenkins, Penello, and Walther)

impartial treatment from the statutory representative, the panel found that the union had violated section 8(b)(1)(A) of the Act.

## 2. Enforcement of Restrictions on Resignation From Membership

### a. Employees

In one case,[8] the Board had occasion to decide whether a union's restrictions on resignation—which served to prevent employees from resigning during a strike—were broader than needed to protect the union's interests.[9] The union's constitution had some eight requirements, all of which had to be met prior to a member's resignation becoming effective.[10] The union had threatened, pursuant to a valid maintenance-of-membership clause, to cause the discharge of employees who had failed to pay because they claimed to have resigned from the union during a strike, although they had not complied with the constitutional requirements. All of the resignations were untimely because they were not sent within the 10-day period prior to the end of the fiscal year. The Board, in deciding whether or not the union's restrictions were so reasonable as to fall within the internal rules proviso to section 8(b)(1)(A), applied the tests of the Supreme Court's decision in *Scofield* v. *N.L.R.B.*[11] which directed an inquiry into "the legitimacy of the union interest vindicated by the rule and the extent to which any policy of the Act may be violated." Noting that the union's restrictions would curtail employees' section 7 rights to refrain from union activity and return to work during a strike called by the union, the Board majority examined the union's interests to see if they justified such a curtailment of the rights. It concluded that the union's restrictions did not afford a reasonable accommodation

[8] *Local 1384, UAW (Ex-Cell-O Corp.)*, 227 NLRB No. 87 (Chairman Murphy and Members Fanning, Penello, and Walther, Member Jenkins dissenting).

[9] The Board majority initially decided that the employees in question had not consented, by applying for membership in the union, to the restrictions on resignation. However, the Board majority reached the question of the propriety of the restrictions by assuming, *arguendo*, that employees had so consented.

[10] Sec. 17 of the constitution read:

"A member may resign or terminate his membership only if he is in good standing, is not in arrears or delinquent in the payment of any dues or other financial obligation to the International Union or to his Local Union and there are no charges filed and pending against him. Such resignation or termination shall be effective only if by written communication, signed by the member, and sent by registered or certified mail, return receipt requested, to the Financial Secretary of the Local Union within the ten (10) day period prior to the end of the fiscal year of the Local Union as fixed by this Constitution, whereupon it shall become effective sixty (60) days after the end of such fiscal year, provided, that if the employer of such member has been authorized either by such member individually or by the Collective Bargaining Agreement between the employer and Union to check off the membership dues of of such member, then such resignation shall become effective upon the effective termination of such authorization, or upon the expiration of such sixty (60) day period, whichever is later."

[11] 394 U.S. 423, 431 (1969).

between the union's and the employees' conflicting interests inasmuch as they compelled continued membership for as long as 2 years, were not narrowly tailored to the union's legitimate needs, and accorded no weight to the competing considerations which may necessitate resignation during a strike. Under the circumstances and on balance, the Board majority found that the union's limitations regarding resignation were not reasonable and were broader than those which were necessary to serve the union interests involved.

Member Jenkins, dissenting, concluded that the rules set forth in the union's constitution relating to resignation were reasonable and within the protection of the proviso to section 8(b)(1)(A) of the Act. He pointed out that the usual membership could be for a minimum of 2 or 3 months and was for a duration of 14 months at most—1 year, plus 60 days after which the resignation took effect. Member Jenkins noted further than the 2-year compulsory membership was effective only where the employee had joined during or just after the resignation period and also signed an independent dues-checkoff authorization just before the next resignation period. He argued that the 10-day resignation period in each year was hardly more unreasonable than the Board's own 30-day limit on filing a representation petition by a competing union—a period which may be available only once in 3 years—or the statutory rule that it cannot run another election within a year after a valid election. Member Jenkins concluded that what was reasonable for the Board ought to be reasonable for a union.

In *Dalmo Victor*,[12] a Board majority, finding the Board's earlier decision in *O.K. Tool*[13] controlling, concluded that a union had unlawfully fined employees for crossing a picket line and returning to work after they had effectively resigned from the union. The union fined the employees pursuant to its constitutional provision which prohibited them from crossing a picket line if their resignations had occurred within 14 days of the establishment of the picket line. The Board majority found that the constitutional provision clearly sought to control the postresignation conduct of employees who were no longer members and was not a restriction on the right to resign. Therefore, according to the Board majority, the union had fined former members for their postresignation protected activities and thereby violated section 8(b)(1)(A) of the Act.

In his dissent, Member Jenkins construed the union's constitutional provision as a reasonable restriction on the right to resign, rather than an attempt to control postresignation conduct. He distinguished

[12] *Machinists Local 1327, IAM (Dalmo Victor)*, 231 NLRB No 115 (Chairman Fanning and Members Penello and Walther; Members Jenkins and Murphy dissenting separately)
[13] *Local Lodge 1994, IAM (O.K Tool Co)*, 215 NLRB 651 (1974).

*O.K. Tool*, reasoning that, unlike that case, the union in *Dalmo Victor* had brought this provision to the attention of the members prior to the strike vote. Accordingly, he concluded that fining persons who had violated this provision the amounts they had previously received in strike benefits was a "lawful means to protect the strike as a legitimate economic weapon."

In her dissent, Member Murphy took the position that members' right to resign from the union may be subject to reasonable restrictions timely brought to their attention. She found that the restrictions herein were reasonable and valid being directed toward protecting a legitimate union interest.[14]

### b. Supervisors

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. In *Tribune Co.*,[15] a Board panel affirmed an administrative law judge's finding that a union did not violate section 8(b)(1)(B) by denying withdrawal benefits from its welfare plan to certain supervisors who resigned from the union. The welfare plan provided, in substance, that only members who resigned in accord with the union's bylaws and constitution[16] would be entitled to a partial refund of their contribution to the welfare fund. In this case, the company had insisted that certain supervisors either resign from the union or give up their supervisory positions, and be demoted to the rank-and-file positions. Thereafter, five supervisors resigned from the union and were denied withdrawal benefits because they continued to work in the industry. The administrative law judge concluded that the union rule as applied did not tend to restrict the company in the selection of its representatives for grievance adjustment or collective bargaining, since the withdrawal benefits were speculative and contingent and therefore the loss of those benefits could not realistically be characterized as a restraint on a supervisor who must decide whether

---

[14] A similar case decided by the Board was *Intl. Assn of Machinists, Merrit Graham Lodge 1871 (General Dynamics Corp., Electric Boat Div.)*, 231 NLRB No 74 (Chairman Fanning and Members Penello and Walther, Members Jenkins and Murphy dissenting separately) A Board majority found that a union's fining of employees for their post-resignation conduct of performing struck work violated sec 8(b)(1)(A) of the Act The Board majority concluded that the natural and probable consequence of fining employees, after they had submitted lawful and effective resignations, was to restrain and coerce them in the exercise of their sec. 7 right to return to work during a strike

Members Jenkins and Murphy reiterated the positions that they took in their respective dissents in *Dalmo Victor, supra*

[15] *Graphics Arts Intl Union (Tribune Co.)*, 226 NLRB 379 (Members Fanning, Penello, and Walther).

[16] Sec. 21.9 of the union's constitution provided that "[a] member may resign from membership only if he is in good standing and *has ceased to be engaged as an employee or in a supervisory capacity in an industry within the jurisdiction of the International,* but continues otherwise to be associated with such industry" (Emphasis supplied)

to retain his position or to remain in the union nor as a limitation on the number of supervisors available to the company. Accordingly, the administrative law judge found, and the panel affirmed, that the union's limitation on receiving withdrawal benefits did not restrain or coerce the company in the selection of its representatives for grievance adjustments and collective-bargaining purposes in violation of section 8(b)(1)(B) of the Act.

## F. 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 their 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 lesser restrictions.

### 1. Priority of Referral for Employment

During the past fiscal year, the Board considered several cases raising the issue of whether section 8(f) permitted priority for referral based on an employee's having previously worked under specific collective-bargaining agreements.

In *Interstate Electric Co.*,[17] the Board considered the validity of a contractual hiring hall provision which gave, with respect to job referrals and layoffs, priority to persons "who have been employed for a period of at least two years of the last four years under a collective bargaining agreement between the parties to this agreement." A Board majority concluded that section 8(f) dictated that the aforementioned provision be found valid because it did not discriminate against applicants for referral on the basis of their membership or nonmembership in the union. The Board majority rested its conclusion on its finding that section 8(f)(4)—in permitting priority based "upon length of service with such employer"—must be interpreted as including any employer who has agreed (whether or not a member of a multiemployer association) to be bound by the pertinent associa-

[17] 227 NLRB No 291 (Chairman Murphy and Members Fanning and Walther; Member Jenkins dissenting)

tion collective-bargaining agreement. To the extent inconsistent, the Board majority overruled *Alcap Electrical Corp.*[18]

Member Jenkins, dissenting, concluded that the majority was reversing longstanding precedent. He found that the hiring hall agreement in question accorded priority to applicants based on their having worked for employers who were signatories to union contracts and that the majority, inconsistent with well-established law, had expanded the term "employer" as used in section 8(f)(4) to include employers signatory to a union contract. Member Jenkins accordingly found that such an agreement infringed on employees' rights to refrain from union activities in violation of section 8(b)(1)(A) and (2) of the Act.[19]

In another case,[20] a Board majority, following the rationale of *Interstate* and *Howard Electric*, *supra*, found lawful a contractual hiring hall provision which granted priorities with respect to job referrals, layoffs, and supervisory positions to persons who had worked designated periods of time for contractors subject to the union's statewide collective-bargaining agreement with an employer association. Member Jenkins dissented, again reaffirming the views he expressed in his dissents in *Interstate* and *Howard Electric.*

## 2. Seniority Preference for Union Representatives

During the past fiscal year, the Board had several occasions to examine and define the permissible limits regarding superseniority clauses as established by the Board in its decision in *Dairylea Cooperative.*[21]

In *McGregor-Werner*,[22] a Board panel considered a provision of a collective-bargaining agreement providing that union stewards were to be given "top seniority for purposes of layoff, recall, and shift preference." The panel majority, finding *Dairylea* inapplicable, noted that the shift preference had never been granted and further found that the contract provision permitted only lateral bumping (not upward bumping) by employees for the purpose of retaining a cur-

[18] *Nassau-Suffolk Chapter of Natl. Electrical Contractors' Assn (Alcap Electrical Corp)*, 215 NLRB 894 (1974)

[19] In *Local Union 68, IBEW (Howard Electric Co)*, 227 NLRB No. 278, a Board majority (Chairman Murphy and Members Fanning and Walther) followed its decision in *Interstate Electric Co*, 227 NLRB No. 291, and found valid a provision granting priority in referrals based upon an applicant's length of service with a signatory employer Member Jenkins reiterated his dissenting opinion as expressed in *Interstate Electric Co* and would have found that the maintenance and enforcement of the provision violated the Act

[20] *Local 469, Plumbers (Plumbing & Air Conditioning Contractors of Arizona)*, 228 NLRB No 36 (Chairman Murphy and Members Fanning, Penello, and Walther, Member Jenkins dissenting)

[21] 219 NLRB 656 (1975).

[22] *Motion Picture Laboratory Technicians, Local 780, IATSE (McGregor-Werner)*, 227 NLRB No. 79 (Chairman Murphy and Member Penello; Member Fanning concurring)

rent classification. The panel majority also noted that, unlike in *Dairylea*, all members of the bargaining unit, whether or not members of the union, participated in the selection of stewards by vote. Stewards were not required to be union members to be elected. Accordingly, it found that the preference granted to stewards was not based on adherence to the union, but derived from being a steward, a position available to all unit members. Finally, the panel majority concluded that the right to bump laterally served a legitimate purpose by encouraging the continued presence of a steward on the job and, as such, was not prohibited by *Dairylea*.

Member Fanning, for the reasons set forth in his dissent in *Dairylea*, concurred in the result. Chairman Murphy was also of the opinion that there would be no violation, even if there were a union-security clause, since employees would have to join the union in any event and then there would be no undue employer encouragement to join or adhere to the union. Accordingly, the 8(b)(1)(A) and (2) complaint was dismissed.[23]

In *Union Carbide Corp. Chemical & Plastics Operations Div.*,[24] a Board panel found valid a contractual provision according union stewards superseniority for the purpose of maintaining their department or shift when they would otherwise be transferred. This case arose in the context of an employer being charged with an 8(a)(5) violation on the basis of its having agreed to the aforementioned contractual provision and thereafter unilaterally refusing to enforce it. The panel noted that the Board in *Dairylea* had stated that superseniority—even that going beyond layoff and recall—was not *per se* unlawful and that the burden of establishing the justification to rebut the presumption of illegality "rests on the party asserting . . . legality." In this case, the panel majority concluded that the General Counsel had established justification for the provision in issue, thereby rebutting the *Dairylea* presumption of illegality. The majority, noting the need for steward continuity on the job was recognized by the Supreme Court,[25] found justification for the provision in that it served the legitimate interest of maintaining the same union steward, thereby providing continuity in office.

In her concurring opinion, Chairman Murphy noted that, in addition to the provisions in issue in *Dairylea*, she would find presumptively lawful job retention superseniority clauses for union stewards

[23] In *Hospital Service Plan of New Jersey*, 227 NLRB No 88 (Chairman Murphy and Member Penello; Member Fanning concurring), the panel majority found lawful a superseniority provision granting stewards a right, should their jobs be deleted, to bump laterally in order to protect their grade level and position as it did contravene *Dairylea*, while Member Fanning concurred on the basis of his dissent in *Dairylea*

[24] 228 NLRB No 141 (Members Fanning and Jenkins, Chairman Murphy concurring)

[25] *Aeronautical Industrial District Lodge* 727 v *Campbell*, 337 U S 521 (1949).

or officers whose functions relate in general to furthering the bargaining relationship.

In *Limpco Mfg.*,[26] the Board had occasion to consider whether the *Dairylea* superseniority, which may validly be extended to union stewards, might also be extended to other union officials who do not have steward-type functions. A Board majority found valid such a provision for superseniority for the purposes of layoff of union officers. In this case, the union's recording secretary. who did not perform steward-type functions, had asserted her right to layoff superseniority, thereby resulting in a more senior employee being laid off. Noting that the administration of a collective-bargaining agreement is not limited to grievance processing or other steward-type duties performed at the workplace, the majority found that the recording secretary's official responsibilities bore "a direct relationship to the effective and efficient representation of unit employees." Therefore, because the union official in question in her official capacity contributed to the ability of the union to represent the unit efficiently and effectively, it concluded that the superseniority provision for union officers was valid.[27]

In their dissenting opinion, Members Jenkins and Penello concluded that the majority was permitting seniority rights to be based on union activities, thereby granting union officers guaranteed job protection as their reward for their union activities. The dissent would find presumptively valid only those superseniority provisions which apply to union officials whose presence on the job was necessary for the on-the-job adjustment or settlement of grievances. Finding that the recording secretary was not engaged in the type of function which *Dairylea* sought to protect, the dissenters concluded that it was a violation of section 8(b)(1)(A) and 8(b)(2) of the Act for the union to invoke the superseniority provision on her behalf.

In *Otis Elevator Co.*,[28] a Board majority, following the rationale in *Limpco*, *supra*, found lawful a contractual provision permitting union officers to exercise superseniority in lateral bumping in order to retain the same (or slightly lower) labor grades in a layoff situation. In this case, in light of massive layoffs, five union officers were permitted to bump laterally to the detriment of senior employees. The Board majority noted that, in *Limpco*, it "rejected the argument that

[26] *United Electrical, Radio & Machine Workers, Local 623 (Limpco Mfg.)*, 230 NLRB No 59 (Chairman Fanning and Members Murphy and Walther, Members Jenkins and Penello dissenting)

[27] While still adhering to his dissent in *Dairylea*, Chairman Fanning agreed "that provisions [for] superseniority for union officers are governed by the same considerations as are provisions [for] such seniority for stewards." Member Murphy agreed with the holding herein, citing her concurring opinion in *Union Carbide, supra*

[28] 231 NLRB No 183 (Chairman Fanning and Members Murphy and Walther, Members Jenkins and Penello dissenting)

the union had the burden of justifying the application of the superseniority provisions to the union officer, and instead held that the burden remains with the General Counsel to prove that such an application is invalid." Finding that the officers had become *de facto* stewards and that their presence was essential for the effective administration of the collective-bargaining agreement, the Board majority concluded that the superseniority provision was presumptively valid and that the General Counsel had not rebutted that presumption.

Members Jenkins and Penello, dissenting, found the provision in question to be presumptively invalid. The dissent expressed the view that the majority would permit a union to accord every member or activist some office crucial to the collective-bargaining process, thereby providing job security based on union adherence. Finding that it had not been shown that the union officials were granted superseniority in order to be involved in the grievance procedure at the plant level, the dissenters concluded that the superseniority provision violated section 8(b)(1)(A) and 8(b)(2) of the Act.

In *Chrysler Corp.*,[29] a Board panel found lawful a clause giving both union stewards and union committee persons preference for overtime work. In regard to the stewards, the Board panel found that according preference for overtime to the steward served the purpose of achieving the continued presence of the steward on the job to perform essential grievance-handling duties. The Board panel also found justification for according a preference to committee persons who handle second-step grievances, as well as performing an active role in handling grievances at the first step.

## G. Union Bargaining Obligation

A labor organization no less than an employer has a duty imposed by the Act to bargain in good faith about wages, hours, and other terms and conditions of employment. A labor organization or an employer respectively violates section 8(b)(3) or 8(a)(5) if it does not fulfill its bargaining obligation.

### 1. Subjects for Bargaining[30]

The Board had occasion during the past fiscal year to examine certain matters to determine whether or not they constituted mandatory subjects of bargaining about which parties are obligated to bargain.

---

[29] *Intl Union, United Automobile, Aerospace & Agricultural Implement Workers, UAW, Local 1331 (Chrysler Corp )* 228 NLRB No 186 (Chariman Murphy and Members Jenkins and Walther)

[30] For additional discussion of subjects for bargaining, see *supra,* sec. D, "Employer Bargaining Obligation," subsec 6, "Subject Matter for Bargaining "

In *Employers Assn. of Roofers*,[31] a Board majority, citing the earlier case of *R. W. Page Corp.*,[32] found that the interest arbitration clause in controversy [33] was a nonmandatory subject of bargaining and that the union's insistence to impasse regarding that clause constituted a violation of section 8(b)(3). In this case, the parties involved had had an interest arbitration clause in their previous agreement. When new negotiations began, the union sought, and the employer association objected to, the retention of such clause. When the parties could not agree on the matter, the union invoked the interest arbitration clause of the existing agreement, thereby sending to arbitration the issue of whether the interest arbitration clause should be retained in a new contract. The Board majority concluded that the union's referral of the matter to the arbitration board created a bargaining impasse. Citing the established principle that a party's previous agreement to a nonmandatory term (i.e., the interest arbitration clause) did not impliedly waive its right to insist later that the term be removed from the bargaining table, the Board majority found that the union's insistence upon retaining the nonmandatory subject (demonstrated by its referring the matter to arbitration) violated its obligation to bargain in good faith.

Chairman Murphy, dissenting, would have found no violation and would have dismissed the complaint in its entirety. She reiterated her position as expressed in her dissent in *R. W. Page Corp.*, *supra*, and concluded that the interest arbitration clause in question was a mandatory subject of bargaining and that the union therefore could lawfully insist to impasse on its inclusion in a new agreement. Chairman Murphy also emphasized that she could think of no matter more related to the terms and conditions of employment of employees than funds directed to the continued existence of their jobs—industry promotion funds. She concluded that interest arbitration is the collective-bargaining tool of the future.

Member Fanning, dissenting, argued that the union's invocation of the interest arbitration clause of its existing agreement could not be found to violate section 8(b)(3) of the Act. Noting that the union's effort was directed to attaining an arbitration decision dealing with a permissive subject of bargaining, he concluded that the union's referral of the matter in dispute to the arbitration board did not create a bargaining impasse or amount to insistence on the continued inclu-

---

[31] *Sheet Metal Workers Intl Assn, Local 59 (Employers Assn of Roofers)*, 227 NLRB No 90 (Members Jenkins, Penello, and Walther, Chairman Murphy and Member Fanning dissenting separately)

[32] *Columbus Printing Pressmen & Assistants' Union 252 (R. W Page Corp.)*, 219 NLRB 268 (1975)

[33] Art X of the Stabilization Agreement for the Sheet Metal Industry (SASMI)

sion of the disputed clauses in future contracts. Member Fanning stated that the employer could refuse to honor any arbitration board award without committing an unfair labor practice and that the union would thereby be relegated to seeking its remedy in court. Accordingly, Member Fanning found no 8(b)(3) violation in the union's invoking an operative provision of an existing contract.[34]

In *Elmsford Sheet Metal Works*,[35] a Board majority, following the rationale in *Employers Assn. of Roofers*, *supra*, found an 8(b)(3) violation in a union's insistence to impasse on the inclusion in a new bargaining agreement of provisions for interest arbitration and industry funds (articles X and VIII of SASMI). The union, pursuant to an interest arbitration clause in a recently expired contract, had obtained an adjustment board decision directing the employer to execute a new contract including the provisions in question. The employer refused to comply with the decision, and the union threatened to strike over the dispute. Noting that the Board had previously held that both industry funds and interest arbitration clauses were nonmandatory subjects of bargaining, the Board majority, concluded that the union's conduct constituted insistence to impasse on a nonmandatory subject of bargaining, thereby violating section 8(b)(3) of the Act.

Chairman Fanning dissented, reaffirming the position he expressed in his dissent in *Employers Assn. of Roofers*.

Member Murphy, dissenting, reemphasized her view, as expressed in her dissent in *R. W. Page Corp.*, that an interest arbitration clause is a mandatory subject of bargaining. Further, she stated that industry funds, like interest arbitration clauses, served to settle an aspect of the relationship between the employer and employees concerning wages, hours, working conditions, and other terms and conditions of employment and therefore constituted a mandatory subject of bargaining. She stressed that the subject matter of collective bargaining must be kept up to date and must reflect the changing condi-

[34] The Board majority further found that the union's insistence that the matter be referred to the arbitration board was an attempt to force the employer to relinquish its right to select its own bargaining representative, thereby constituting an unfair labor practice within the meaning of sec. 8(b)(1)(B) of the Act.

Chairman Murphy dissented on the ground that it must be shown that a labor organization restrained or coerced an employer to establish a violation of sec 8(b)(1)(B), but no such conduct occurred in this case; merely bargaining to impasse on a nonmandatory subject is not restraint or coercion within the meaning of that section

Member Fanning, dissenting, stated that, as he would not find a violation of sec 8(b)(3), it followed that he would not find an 8(b)(1)(B) violation Even assuming, *arguendo*, that the union had bargained to impasse over a nonmandatory subject of bargaining, Member Fanning would not conclude that such conduct constituted the restraint and coercion required to establish a violation of sec 8(b)(1)(B)

[35] *Sheet Metal Workers Intl Assn, Local 38 (Elmsford Sheet Metal Works)*, 231 NLRB No 101 (Members Jenkins, Penello, and Walther; Chairman Fanning and Member Murphy dissenting separately).

tions of industrial society and the changing needs and responsibilities of labor and management. The sole purpose of industry funds, she said, is to promote the industry and thereby improve employment opportunities for unit employees through increased business opportunities for the employer.[36]

In *Lone Star Steel*,[37] a Board majority affirmed an administrative law judge's finding that the union did not engage in conduct violative of section 8(b)(3) by striking to compel the employer's acceptance of the "successorship" clause as contained in a national agreement limiting disposition of the business to successors who agreed to assume the employer's contractual obligation. Further, and contrary to the administrative law judge, the Board majority concluded that the union did not violate section 8(b)(3) by striking to gain the employer's acceptance of the "application of contract clause" which applied the contract to after-acquired operations. The Board majority rested its opinion on its finding that the successorship and contract application clauses were mandatory subjects of bargaining. The majority, citing the Supreme Court decision in *Pittsburgh Plate Glass*,[38] reasoned that the union was entitled to insist to impasse on acceptance of the provisions in question because, though they may touch individuals outside the employment relationship, they vitally affected the terms and conditions of employees in the bargaining unit.

Member Walther, dissenting in part, found that the successorship and application of contract clauses did not constitute mandatory subjects. As to the successorship clause, he concluded that the successorship clause would have a substantial effect on the employer's freedom to conduct its business and dispose of its capital assets and further that it would not vitally affect the terms and conditions of employment of bargaining unit employees. He further found the application of the contract provision to be a nonmandatory subject of bargaining because it contemplated applying the agreement to nonunit employees rather than to employees accreted to the unit.

---

[36] As in *Employers Assn of Roofers*, the Board majority also found a violation of sec 8(b)(1)(B) in the union's insistence to impasse on the inclusion of an interest arbitration clause in a new agreement.

In their respective dissents, Chairman Fanning and Member Murphy stated that they would dismiss the complaint in its entirety In her dissent, Member Murphy concluded that, as to sec 8(b)(1)(B), an interest arbitration provision does not restrain or coerce an employer in the selection of its own bargaining representative She stated that there is nothing inherently unlawful about the voluntary agreement to preclude bargaining of the parties themselves as to the final resolution of disputed matters on which impasse has been reached

[37] *United Mine Workers (Lone Star Steel Co )*, 231 NLRB No 88 (Chairman Fanning and Members Jenkins and Murphy, Member Walther dissenting in part)

[38] *Allied Chemical & Alkali Workers of America, Local 10 v Pittsburgh Plate Glass Co , Chemical Div ,* 404 U S 157, 179 (1971).

## 2. Unilateral Change in Contract Conditions

In *New York Telephone Co.*,[39] a Board panel found that a union violated section 8(d) and section 8(b)(3) of the Act by unilaterally instituting a ban on its members' acceptance of temporary supervisory positions and by implementing that ban by filing intraunion charges against a member who accepted a temporary position. A contract provision between the company and the union gave the company the right to transfer or assign, temporarily or permanently, a bargaining unit employee to a position outside the bargaining unit. Therefore, the Board panel found that the union's attempts to prevent the company's appointment of temporary supervisors constituted an unlawful attempt to alter a provision of an existing collective-bargaining agreement.[40]

In *Morton-Norwich Products*,[41] a Board panel found that a union president was not entitled to insist that grievance meetings, contrary to the past practice of the parties, be recorded on a tape recorder. The Board panel found that the absence of a verbatim transcript in the past had established a practice, regarding the holding of grievance meetings with the parties taking whatever notes they deemed necessary, which became a part of the conditions of employment, not subject to change during the contract term except by mutual agreement. By its insistence on recording grievance sessions and its refusing to participate in grievance processing unless it was permitted to record the discussions, the union attempted to change the implied terms of an existing collective-bargaining agreement and, in effect, terminated the processing of employee grievances provided by the collective-bargaining agreement and thereby violated section 8(d) and 8(b)(3) of the Act.[42]

## 3. Notice Required by Section 8(d)

Section 8(d) of the Act provides that parties to collective-bargaining agreements must observe certain notice requirements prior to engaging in any strike or lockout. Specifically, section 8(d)(4) provides that no party to a contract shall terminate or modify such a

[39] *Communications Workers of America, Local 1122 (New York Telephone Co.)*, 226 NLRB 97 (Members Jenkins, Penello, and Walther)

[40] The Board panel also found that temporary supervisors had the authority to adjust grievances and that therefore the union's conduct in attempting to ban the acceptance of temporary supervisory positions constituted restraint and coercion of the company in its selection of supervisors, thereby violating sec. 8(b)(1)(B) of the Act.

[41] *Local 29, Intl Chemical Workers Union (Morton-Norwich Products)*, 228 NLRB No. 127 (Chairman Murphy and Member Jenkins; Member Fanning concurring).

[42] Member Fanning, in his concurring opinion, agreed that the union's refusal to discuss grievances without a tape recorder violated sec. 8(b)(3) of the Act. He noted that the institution of use of a tape recorder could serve to inhibit the free exchange of ideas and positions which the Act seeks to encourage

contract unless it "continues in full force and effect, without resorting to strike or lockout, all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later."

In *General Marine Transportation Corp.*,[43] the contract between the parties provided that if the employer was 30 days delinquent in making payments to an insurance, pension, and health and welfare fund the union could terminate the contract. When the employer became delinquent, the union informed the employer it was terminating the contract. Although the employer paid the amount due, the union struck in support of negotiations for a new contract without complying with the strike deferral requirements of section 8(d). The Board majority concluded that section 8(d) applied to this situation and that the contractual right exercised by the union to terminate the contract could not permit the union to strike and ignore statutorily required notice requirements. Accordingly, the union was found to have violated section 8(d) of the Act as well as section 8(b)(3).

Member Jenkins found that section 8(d) was not intended to apply where a union refuses to work because of a substantial breach of contract by the employer. He reasoned that it was the employer here who terminated the contract within the meaning of section 8(d) by its delinquency in payments. However, noting that the employer had paid the full amount due 2 days prior to the union's strike date, Member Jenkins concluded that the union's strike was unrelated to the delinquency, but instead was for the purpose of replacing the old contract with a new one. Accordingly, he found that the contract termination and strike therefore fell within the terms of section 8(d) and, therefore, he concurred in the finding of a violation.

## 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 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, where the actions in clause (i) or (ii) are 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 "any primary strike or primary picketing."

[43] *United Marine Div. Local 333 (General Marine Transportation Corp.)*, 228 NLRB No. 128 (Chairman Murphy and Members Fanning, Penello, and Walther; Member Jenkins concurring in part and dissenting in part).

## 1. Ambulatory Picketing

A significant case during the past fiscal year involved the issue of whether a union had violated the secondary boycott provisions of the Act by engaging in ambulatory picketing around a primary employer's trucks located on a construction site where neutral secondary employers were also working. In *Allied Concrete*,[44] when a primary employer, whom the union had struck, twice attempted to make deliveries through a reserved gate to a construction site, union pickets followed the truck onto the construction site and picketed "between the headlights," with signs announcing the unions' strike against the primary employer. In response thereto, employees of the general contractor walked off the job. A Board majority found the picketing presumptively lawful in that it met the *Moore Dry Dock* criteria[45] and did not reveal an intent to appeal to the employees of a neutral employer. Finding that the union at no time picketed at points reserved only for neutral employees, and that the pickets, with signs indicating that their dispute was limited to the primary employer, remained close to the primary employer's trucks and avoided all direct interference with neutral employees, the Board majority concluded that *Schultz Refrigerated Service*[46] was dispositive of the matter and found that the picketing was lawful primary activity. Further, the majority opinion stated that the fact a reserved gate had been established did not preclude primary ambulatory picketing on the construction site. The Board majority stressed that nothing in *Denver Building Trades*[47] suggests that primary picketing becomes less than primary or unlawful because there are alternative locations at which it could be carried on out of sight or hearing of, or having other effects on, neutral employees. If the picketing is found to be primary, according to the majority, the legitimate rights of the neutral employer—which are protected by prohibitions against secondary activity—cannot serve to limit that picketing, and no violation of section 8(b)(4) (i) and (ii)(B) shall be found.

---

[44] *Construction, Bldg. Materials & Miscellaneous Drivers, Local 83, IBT (Allied Concrete)*, 231 NLRB No. 181 (Chairman Fanning and Members Jenkins and Murphy, Members Penello and Walther dissenting).

[45] In *Sailors' Union of the Pacific (Moore Dry Dock Co.)*, 92 NLRB 547 (1950), the Board established four criteria for measuring the presumptive lawfulness of picketing in common situs situations. Those criteria include (a) the picketing is strictly limited to times when the situs of the dispute is located on the secondary employer's premises; (b) at the time of the picketing the primary employer is engaged in its normal business at the situs; (c) the picketing is limited to places reasonably close to the location of the situs; and (d) the picketing discloses clearly that the dispute is with the primary employer.

[46] *Intl. Brotherhood of Teamsters, Truck Drivers & Chauffeurs, Local 807 (Schultz Refrigerated Service)*, 87 NLRB 502 (1949)

[47] *N.L.R.B. v. Denver Building & Construction Trades Council [Gould & Preisner]*, 341 U.S. 675 (1951).

The dissenters argued that the union could not, in the circumstances, legally ignore the reserved gate and proceed onto the actual worksite in order to picket there. They noted that the *Moore Dry Dock* criteria are evidentiary in nature and that compliance with those criteria does not necesarily establish that picketing was lawful where other evidence reveals an unlawful secondary objective. The dissent concluded that the union could have effectively accomplished its legitimate objective by limiting picketing to the site of the reserved gate, while the primary employer's truckdrivers made their deliveries at the jobsite and during the time when the primary employer's trucks made their way from the jobsite to the reserved gate. The dissent found that the union's actions in entering onto the construction site to picket demonstrated its intent to enmesh the neutral employer and its employees in the primary dispute since it could have effectively accomplished its objective without picketing at the jobsite. Because an accommodation of the conflicting rights of the union and the neutral employer would have been served by the union's picketing at the reserved gate, which put the union on notice where it could appropriately appeal to employees of the primary employer, the dissenters concluded that the ambulatory picketing herein violated the secondary boycott provisions of the Act. They also found the *Schultz* precedent to be inapposite, since, unlike the facts herein, there was no reserved gate established in that case.

## 2. Consumer Picketing

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

Cases decided during the report year involved the application of the *Tree Fruits* decision [48] in which the Supreme Court held that the Act does not proscribe all peaceful consumer picketing at secondary sites, but only that picketing used to persuade customers of the secondary employer to cease trading with it in order to force it to cease dealing with, or to put pressure upon, the primary employer. The Supreme Court held that consumer picketing—limited to asking customers not to buy a struck product—is lawful because it is part of, or confined to, the primary dispute. Such picketing becomes unlawful only when it extends beyond the struck product to embrace other products or parts of the business of the secondary employer selling the struck product.

[48] *N.L.R.B. v Fruit & Vegetable Packers & Warehousemen, Local 760* [*Tree Fruits Labor Relations Committee*], 377 U.S. 58 (1964).

Two cases decided by the Board dealt with the issue of whether union pickets at a secondary employer made it evident to the consumers, through their picket signs, that the appeal for a boycott was limited to a specific product of the primary employer with whom the union had a dispute. In *Service Food Stores*,[49] a Board majority found that a union's picket signs, used during the picketing of restaurants and food stores in furtherance of a dispute with meat packing companies, did not adequately identify the struck product or the primary employer. Further, the Board majority concluded that the distribution of leaflets by the union could not serve to cure the ambiguity in the picket signs. Member Jenkins, dissenting in part, found that the picket signs used, with their references to "Scab Meat or Scab Beef," were adequate to identify the primary employer and the struck product. Further, he noted that leaflets passed out by the union served to give the public full details about the strike.

In *Diamond Industries*,[50] a Board majority concluded that a union's picketing a furniture store, in furtherance of its primary dispute with a cabinet manufacturer, was tantamount to an appeal to customers not to patronize the store generally when the signs failed to limit their appeal to the struck product but extended to other products sold by the store. Accordingly, the majority found that picketing violated section 8(b)(4)(ii)(B) of the Act. Chairman Murphy, dissenting, found no violation in the use of the picket signs which lacked specificity in their appeal because such signs were used inadvertently for only 2 days and because the subsequent valid signs were, contrary to the majority, sufficient to eradicate the impact and effect of the first 2 days of picketing.

In another case,[51] a Board majority found unlawful a union's picketing of various land title companies who sold title insurance underwritten by the primary employer. The majority adhered to the Board's decision in *Dow Chemical Co.*,[52] which held that the *Tree Fruits* doctrine is not applicable when picketing is reasonably calculated to induce customers not to patronize a neutral party at all. The Board majority found that the picketing had an unlawful object because a successful boycott of the primary employer's insurance policies, which constituted about 90 percent of the secondary employers' business,

[49] *Local 248, Meat Cutters (Service Food Stores)*, 230 NLRB No 27 (Chairman Fanning and Members Penello, Murphy, and Walther, Member Jenkins dissenting in part)

[50] *Millmen-Cabinet Makers, Local 550, Carpenters (Diamond Industries)*, 227 NLRB No. 36 (Members Fanning, Jenkins, Penello, and Walther, Chairman Murphy dissenting)

[51] *Retail Store Employees Union Local 1001 (Land Title Insurance Co. of Pierce County)*, 226 NLRB 754 (Chairman Murphy and Members Penello and Walther, Members Fanning and Jenkins dissenting)

[52] *Local 14055, Steelworkers (Dow Chemical Co.)*, 221 NLRB 649 (1974), enforcement denied 524 F 2d 853 (C A D C, 1975), cert granted and judgment vacated and remanded 429 U S 807 (1976)

would predictably lead to virtually a complete boycott of the land title companies being picketed. According to the majority, the land title companies, who were powerless to resolve the dispute, would be forced to cease doing business with the primary employer or to go out of business if the consumer appeal were successful.

Members Fanning and Jenkins, dissenting, reiterated the views expressed in their dissent in *Dow Chemical*, noting that nothing in the Supreme Court's *Tree Fruits* decision indicated that consumer picketing, otherwise lawful, became unlawful because it had a significant impact on the secondary employer's business in which he sells the struck product.

In *Oak Construction*,[53] a Board panel found that a union violated section 8(b)(4)(ii)(B) of the Act by picketing a telephone company in furtherance of its primary dispute with an employer who was engaged in constructing manholes and underground telephone conduits. As the primary employer's services had lost their identity and had become an integral part of the telephone company's total system, the picketing was not lawful consumer picketing under the Supreme Court's holding in *Tree Fruits*.[54]

## 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 charge 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.

[53] *Intl. Union of Operating Engineers, Local 139, et al. (Oak Construction)*, 226 NLRB 759 (Members Fanning, Penello, and Walther)

[54] The Board panel found that the union's subsequent handbilling activities, unaccompanied by picketing, advised the public of the true nature of the dispute and therefore were protected by the "publicity" proviso to sec 8(b)(4).

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.

In order to proceed with the determination under section 10(k), the Board must find (1) that there is reasonable cause to believe that the union charged with having violated section 8(b)(4)(D) has induced or encouraged employees to strike or refuse to perform services in order to obtain a work assignment within the meaning of section 8(b)(4)(D); and (2) that a dispute within the meaning of section 10(k) currently exists.

In *Puerto Rico Marine Management*,[55] a Board panel quashed a 10(k) notice of hearing, finding that a reallocation of work had not resulted in any jurisdictional dispute within the meaning of section 8(b)(4)(D). In this case, the employer, a public corporate entity created to provide high quality shipping, contracted with two management companies to manage and operate its vessels. Thereafter, it consolidated its management operations, leaving all management functions with only one of the companies. The other company thus ceased having a business relationship with the overall corporate entity, and its employees—represented by the National Maritime Union (NMU)—picketed the management company which received the consolidated work in order to attempt to preserve work for its personnel. However, since the latter company's employees were represented by the Seafarers International Union (SIU), the company filled all positions with employees represented by the SIU. Accordingly, the NMU began picketing the corporate entity's terminal.

Citing *Saefway Stores*[56] and *Waterway Terminals*,[57] the Board panel stated that the reallocation of work herein did not give rise to competing claims between two rival groups of employees for disputed work in the classic sense. Rather, this case involved picketing by a group of employees who had been supplanted in doing the work and who were seeking to preserve that work for themselves. Accordingly, the Board panel found the dispute was not the type of controversy that Congress intended the Board to resolve pursuant to section

[55] *Natl Maritime Union (Puerto Rico Marine Management)*, 227 NLRB No 155 and 227 NLRB No 160 (Chairman Murphy and Member Jenkins, Member Penello concurring)

[56] *Highway Truckdrivers & Helpers, Local 107, IBT (Safeway Stores)*, 134 NLRB 1320 (1961)

[57] *Intl Longshoremen's & Warehousemen's Union Local 8 (Waterway Terminals Co)*, 185 NLRB 186 (1970)

8(b)(4)(D) and section 10(k) of the Act and therefore it quashed the notice of hearing.[58]

Section 10(k) specifically precludes the Board from determining a dispute which gave rise to 8(b)(4)(D) charges if the parties to the dispute, within 10 days, submit to the Board "satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute."

*Consolidation Coal Co.*[59] involved a situation where a mining company and a trucking company (engaged in trucking activities in and around the coal mines) had collective-bargaining agreements, respectively, with Local 1979 and Local 1600 of the United Mine Workers of America. Local 1979 threatened a shutdown of operations if the mining company continued to have the trucking company do certain hauling work by employees represented by Local 1600. A Board panel found that an agreed-upon method existed for resolving the dispute. The mining company and both union locals were members of a multiemployer-multiunion bargaining group bound by the Coal Wage Agreement of 1974, which provided that jurisdictional disputes be submitted to an arbitration review board for determination. The trucking company was an individual signatory to that agreement and was therefore also bound by its procedures. Concluding that the national agreement provided for four-party arbitration, the panel found an agreed-upon method existed for resolving the dispute and quashed the notice of hearing.[60]

In *Metromedia*,[61] a union, following an adverse Decision and Determination of Dispute by the Board in a 10(k) proceeding[62] sent a letter to the employer indicating its intention to strike if the employer sought to have vacated or stayed a court order compelling an arbitration hearing regarding the disputed work. The union was then charged with violating section 8(b)(4)(ii)(D) of the Act. The same Board panel concluded that the Board's earlier 10(k) award to employees

[58] In his concurrences, Member Penello stated that, for reasons set out in his dissent in *Nalt Maritime Union (Puerto Rico Marine Management)*, 227 NLRB No 6, he would also quash the notice of hearing on the basis that the Board lacks jurisdiction over the employer, Puerto Rico Marine Management

[59] *United Mine Workers, Local 1979 (Consolidation Coal Co)*, 227 NLRB No 125 (Chairman Murphy and Members Fanning and Penello).

[60] For similar findings regarding the same national agreement, see *United Mine Workers, Local 1368, (Bethlehem Mines Corp)*, 227 NLRB No 126 (Chairman Murphy and Members Fanning and Penello), and *United Mine Workers, Local 1600 (Bethlehem Mines Corp)*, 230 NLRB No 111 (Chairman Fanning and members Penello and Murphy), where the notices of hearing were quashed

In the latter case, Member Murphy stated that although she concurred that an agreed-upon method existed for resolving the dispute she might deem it appropriate to reconsider her position in the event that it appears from a series of cases that the existing method for resolving disputes is ineffective or is not being used by the parties.

[61] *Natl Assn of Broadcast Employees & Technicians (Metromedia)*, 230 NLRB No 7 (Members Jenkins, Penello, and Walther).

[62] *Intl. Alliance of Theatrical Stage Employees & Moving Picture Machine Operators (Metromedia)*, 225 NLRB 785 (1976).

represented by another union was binding on the union and that the latter demonstrated its intention not to abide by the award. The panel noted that in the earlier 10(k) case it had rejected the union's contention that the arbitration procedure provided an agreed-upon method for the voluntary settlement of the dispute. Finding that all material issues regarding the merits of the dispute had been previously decided, the panel rejected the union's argument that it was entitled to a new 10(k) hearing based upon its letter and, accordingly, concluded that the union's threat to strike violated section 8(b)(4)(ii)(D) of the Act.

## J. Exactions for Work Not Performed

Section 8(b)(6) of the Act forbids a labor organization or its agents "to cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction for services which are not performed or not to be performed."

In *Graphic Displays, Ltd.*,[63] a Board majority dismissed an 8(b)(6) allegation where members of the union working as employees of a labor contractor, refused to erect an exhibit at a trade show because the exhibit had not previously been "handled" by a shop having a collective-bargaining agreement with the Carpenters. In response to the union's refusal, the company which had designed the exhibit had the erection "handled" by a shop having a contract with the union, thereby incurring an expense of $826.69. The company had no collective-bargaining agreement with the union.

Both the majority and the dissent rejected the administrative law judge's narrow conclusion that section 8(b)(6) is concerned only with payments by employers to employees, i.e., wages, but there was disagreement as to the nature of the payments. In analyzing section 8(b)(6), the Board majority found that the question is not so much to whom the exaction is paid as it is the purpose for which it is paid. Finding that the "handling" service performed for the company had entailed cleaning, inspection, and minor repairs, the Board majority concluded that actual "work" had been performed and therefore the 8(b)(6) sanctions did not apply. It stated that the fact that the services performed were unnecessary or not desired by the company did not prevent those services from being "relevant" under section 8(b)(6). Relying on the Supreme Court decision in *American Newspaper Publishers Assn.* v. *N.L.R.B.*,[64] the Board majority found it sufficient,

[63] *New York District Council of Carpenters (Graphic Displays, Ltd.)*, 226 NLRB 452 (Chairman Murphy and Members Fanning and Jenkins, Members Penello and Walther dissenting)

[64] 345 U.S. 100, 110–111 (1953)

for the purpose of finding relevancy under section 8(b)(6), that the work performed had to do with the product or service offered. Inasmuch as the money was not paid for work not performed or not to be performed, the Board majority dismissed the complaint.

Members Penello and Walther, dissenting, found a clear violation of section 8(b)(6) inasmuch as they viewed the union's action as requiring the payment of something for nothing. Noting that the company that paid the $826.69 had no collective-bargaining relationship with the union, the dissent stated that this case did not involve a union's attempt to compel an employer to honor a negotiated bargaining agreement. The dissenters also contend that section 8(b)(6) was not meant to be read literally and applied mechanically to any "work" performed, as the majority had done, and they cited the Supreme Court's decision in *Gamble Enterprises* [65] for the proposition that section 8(b)(6) does not sanction the payment of money for mere token or nominal services. Accordingly, the dissent found that the union's requiring payment for "handling" did not rise to the level of requiring payment for "work" within the meaning of section 8(b)(6).

## K. Recognitional Picketing

Section 8(b)(7) of the Act makes it an unfair labor practice for a labor organization which is not the certified employee representative to picket or threaten to picket for an object of recognition or organization in the situations delineated in subparagraphs (A), (B), and (C). Such picketing is prohibited: (A) where another union is lawfully recognized by the employer and a question concerning representation may not be appropriately raised under section 9(c); (B) where a valid election has been held within the preceding 12 months; or (C) where no petition for a Board election has been filed "within a reasonable period of time not to exceed thirty days from the commencement of such picketing."

*Jets Services* [66] involved a question of whether a union violated section 8(b)(7)(C) by engaging in picketing which sought the mass reinstatement of employees and which, if successful, would reestablish the majority status of the union. After Jets took over a food concession from ARA Services, it hired only 8 former employees of ARA for its employee complement of 34. The union which had represented ARA's employees, picketed to seek the reinstatement of 26 employees who had lost their jobs. Noting that the object of picketing in an 8(b)(7)(C) situation is primarily a fact determination, a panel majority concluded

[65] *N L R B* v *Gamble Enterprises*, 345 U S 117 (1953).

[66] *Hotel, Motel, Restaurant Employees & Bartenders Union, Local 737 (Jets Services)*, 231 NLRB No 176 (Members Murphy and Walther; Member Jenkins dissenting)

that the picketing therein had a recognitional objective. Inasmuch as the mass reinstatement of former ARA employees would reestablish the union's earlier majority status and would require Jets to recognize and bargain with the union, the panel majority found the picketing had a recognitional object and that the union's failure to file a petition within 30 days established a violation of section 8(b)(7)(C).

Member Jenkins, in dissenting, argued that the stipulated facts did not establish that the union's picketing had a recognitional objective and further that the picketing was within the scope of the proviso to section 8(b)(7)(C) which allows a union to advise consumers that an employer had discharged and refused to reemploy its members. Finding the picketing was directed solely at obtaining reinstatement of former employees, Member Jenkins stated that the fact that reinstatement might have additional consequences and eventually result in recognition of the union did not alter the purpose of the picketing.

## L. Unit Work Preservation Issues

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 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 proviso, however, are agreements between unions and employers in the "construction industry relating to the contracting or subcontracting of work to be done at the site of the construction, alteration, painting, or repair of a building, structure, or other work," and certain agreements in the "apparel and clothing industry."

During the past fiscal year the Board had occasion to determine whether various contract clauses came within the purview of section 8(e). The proper standard for evaluation of such clauses had earlier been set forth by the Supreme Court in *Natl. Woodwork Manufacturers Assn.* v. *N.L.R.B.*,[67] 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." (386 U.S. at 645.)

[67] 386 U S 612 (1967), 32 NLRB Ann Rep 139 (1967)

In *California Dump Truck Owners Assn.*,[68] a Board majority found violative of section 8(e) two contract clauses in a master agreement between a contracting association and a group of union locals. The clauses dealing with offsite subcontracting provided (1) that a subcontractor furnish its employees with health and welfare benefits equal to those received by bargaining unit employees, and (2) that a subcontractor may avoid paying equivalent costs and benefits by executing a separate agreement with another local union in the geographical area where the work is to be performed. The Board majority, distinguishing the earlier *General Teamsters* case [69] concluded that the contract clauses had a secondary object. In regard to the former, they concluded that the clause did not seek to preserve work for unit employees, but rather sought to dictate the type of benefits payable to the subcontractor's employees, in derogation of such employees' section 7 right to negotiate their own type of benefits. In regard to the latter provision, the Board majority held that its clear import, when read in conjunction with the other contract clauses, was to require offsite subcontractors to execute agreements with another local of the union, if they wished to avoid the equivalency requirement.[70]

Members Fanning and Jenkins, dissenting in part, would have dismissed the complaint in its entirety. As to the clause providing that subcontractors provide equal health and welfare benefits, the dissent found that the union was pursuing a legitimate primary job protection purpose in that the clause sought to guarantee that the standards of the bargaining unit would be protected. In regard to the clause permitting subcontractors to sign their own collective-bargaining agreements, the dissenters, finding critical that the employer association rather than the unions had insisted upon the inclusion of this section, reasoned that the sole object of the inclusion of the section was the protection of the association's economic interest rather than the advancement of union objectives elsewhere and therefore section 8(e) of the Act had not been violated.

In *Conduit Fabricators*,[71] a Board panel found that a union had violated section 8(e) by refusing to handle and install "fabricated" pipe because it claimed, under its contract with the employer, the work of cutting and welding the pipe. "Fabricated" pipe was pipe that had already been cut and welded by a subcontractor. The panel noted

---

[68] *Heavy, Highway, Bldg. & Construction Teamsters Committee for Northern California, IBT; et al (California Dump Truck Owners, Assn.)*, 227 NLRB No 27 (Chairman Murphy and Members Penello and Walther; Members Fanning and Jenkins dissenting in part).

[69] *General Teamsters Local 386, IBT (Construction Materials Trucking)*, 198 NLRB 1038 (1972).

[70] The Board majority also concluded that the respondent unions, by threats of picketing and economic action to enforce the unlawful contract clauses, had engaged in unfair labor practice in violation of sec. 8(b)(4)(ii)(A) and (B) of the Act.

[71] *Plumbers & Steamfitters Local 342 (Conduit Fabricators)*, 225 NLRB 1364 (Chairman Murphy and Members Fanning and Jenkins).

that a union does not violate section 8(e) when it seeks to preserve bargaining unit work or to reclaim for the unit previously performed work or work which is otherwise "fairly claimable." However, the Board panel found that the cutting and welding of the pipe had not been traditionally or historically performed by unit employees, but rather such fabricating of pipes was performed by subcontractors prior to the pipe arriving at the site. Accordingly, the panel found that the union's refusal to install the pipe fabricated by a subcontractor must be viewed as either an attempt to acquire work which it had not previously performed or an attempt to force the employer to subcontract the work to a fabricator whose employees were represented by locals affiliated with the union. The Board panel found such objectives to be secondary and that the union's conduct violated section 8(e) of the Act.

In *Associated Transport*,[72] a Board panel majority affirmed an administrative law judge's finding that certain rules for the handling of containerized cargo in contracts between the International Longshoremen's Association (ILA) and various shipping companies in the ports of Baltimore and Hampton Roads had no valid work preservation objective. The rules provided that ILA labor would ship and stuff shippers' loads (i.e., full containers) whenever such work was to be done within a 50-mile radius of the port. Such rules were intended to end "shortstopping," whereby shippers' loads destined for locations more than 50 miles from port were first unloaded by non-ILA labor at trucking stations within 50 miles of port. The panel majority agreed with the administrative law judge that the unloading of shippers' loads had been traditionally (i.e., since containerization) performed by employees of motor carriers and thus the rules on containers would require that ILA labor take over work that had not been traditionally performed by the longshoremen unit. Finding that this case was similar to *Consolidated Express*,[73] and that the distinction between this case and *Consolidated Express*, pointed out by the dissent, was not important, the panel majority found that the container rules violated section 8(e) of the Act.

Chairman Fanning, dissenting, concluded that work preservation was the object of the container rules. He maintained that ILA labor, since 1968, had traditionally unloaded shippers' loads destined for locations within 50 miles of port and that employees of motor carriers had done the work only without the knowledge or consent of the ILA

[72] *Intl Longshoremen's Assn, et al (Associated Transport)*, 231 NLRB No. 64 (Members Penello and Walther, Chairman Fanning dissenting)

[73] *Intl Longshoremen's Assn (Consolidated Express)*, 221 NLRB 956 (1975), enfd 537 F 2d 706 (C A 2, 1976), cert denied 429 U S 1041 (1977)

and the shipping companies. Finding "critical dissimilarities" between this case and *Consolidated Express*, Chairman Fanning stated that the administrative law judge and the panel majority had failed to perceive the distinctions between the work practices and bargaining agreements negotiated by the ILA and shipping companies in New York and those involving the ports of Baltimore and Hampton Roads. He therefore concluded that the container rules in this case were valid provisions reflecting the work practices and agreements which had existed between the ILA and the shippers since the inception of containerization.

## M. Picketing of Health Care Institutions

Included in the 1974 amendments to the Act,[74] which expanded the Board's jurisdiction to cover health care institutions, was one new unfair labor practice section, section 8(g), which provides that before "engaging in any strike, picketing, or other concerted refusal to work at any health care institution," a labor organization must give 10 days' notice in writing of its intention to engage in such action to both the institution and the Federal Mediation and Conciliation Service. A longer notice period, that required by section 8(d)(B) of the Act, applies in the case of bargaining for an initial agreement following certification or recognition. Under an amendment to section 8(d), any employee who engages in a strike within the notice period provided by either that section or section 8(g) loses "his status as an employee of the employer engaged in the particular labor dispute, for the purposes of sections 8, 9, and 10 of this Act . . . ." Several of the important cases decided this past fiscal year were concerned with issues arising under these amendments.

### 1. Notice Requirements

In *Walker Methodist Residence & Health Care Center*,[75] the Board was confronted with the issue of whether section 8(g) of the Act requiring a labor organization to give 10 days' notice before striking or picketing applies to a work stoppage at a health care institution, in this case engaged in by two nurses aides where no labor organization was involved. The Board panel acknowledged that the 1974 health care amendments contemplated the balancing of conflicting equities, i.e., the right of health care workers to enjoy the rights of self-organization and collective bargaining and the necessity for special protection to insure the continuity of patient care. After analyzing the

[74] Public Law 93-360, 93d Cong., 2d Sess. S. 3203

[75] 227 NLRB No. 238 (Members Fanning, Penello, and Walther).

legislative history of the amendments, the panel concluded that Congress was concerned with the effect that a sudden massive strike by a "labor organization" could have on the operation of a health care institution. The panel considered that a brief work stoppage by a few unrepresented employees, as was the case here, simply was not the disruption Congress sought to prevent in enacting section 8(g) but rather that Congress' actual concern was evidenced by continuing references to "labor organizations," throughout the legislative discussions concerning section 8(g). Citing an earlier case[76] which quoted Senator Harrison Williams' comment to the effect that his committee was cognizant of the issues when preparing the legislation and that the Board should not read anything into the Act that was not specifically contained therein, the panel held that section 8(g) should be construed literally according to its clear language. With regard to policy considerations, the panel noted that a sudden strike by a labor organization possessed far greater potential for the disruption of the delivery of health care services than did the concerted activity of a few employees. Accordingly, based on legislative history, policy, and Board precedents, the panel concluded that section 8(g) applies only to strikes and picketing involving a labor organization.

The panel also considered, in *Walker Methodist*, the question of "whether the loss of [employee] status sanction of Section 8(d) applies in the absence of an 8(g) violation." It concluded that it did not. Thus, since the two nurses aides involved maintained their "employee" status, the sole issue left for the Board to decide was whether the work stoppage was concerted protected activity. As noted above, the panel relied on the legislative history of the 1974 amendments and concluded that Congress only meant to outlaw sudden work stoppages by a labor organization and not work stoppages altogether. Consequently, as the two employees were exercising their protected section 7 rights to present a grievance,[77] and as nothing in the health care amendments restricted such concerted activity by unorganized employees, the panel concluded that the employer violated section 8(a)(1) of the Act by discharging these employees.

In another case,[78] a unanimous panel again held that the notice provisions of section 8(g) do not apply in situations where a labor organization was not involved in the work stoppage. The employer, a health care institution, discharged 17 of its employees who had staged a simultaneous work stoppage to protest certain of its working conditions. The union, which was attempting to organize the employees, was

[76] *United Assn of Journeymen & Apprentices of the Plumbing & Pipefitting Industry, Local 630 (Lein-Steenberg)*, 219 NLRB 837 (1975)

[77] *N L R B v Washington Aluminum Co*, 370 U S 9 (1962)

[78] *Long Beach Youth Center, a/k/a Long Beach Youth Home (formerly Trailback)*, 230 NLRB No 90 (Members Jenkins, Murphy, and Walther)

not responsible for the work stoppage—nor did it encourage it. In defense of its action, the employer argued that the work stoppage was not protected since the employees failed to give the 10-day notice required by section 8(g) of the Act. In response to the contention that section 8(g) refers only to "labor organizations," the employer offered alternative theories: that (1) section 8(g) also refers to stoppages which involve only unrepresented employees; and that (2) the 17 employees constituted a labor organization. Citing *Walker Methodist Residence & Health Care Center, supra*, the panel concluded that neither the legislative history nor policy considerations justified the Board's departure from a literal reading of section 8(g), which refers only to "labor organizations" with no reference to groups of unrepresented employees engaged in protected activity. As for the employer's contention that the 17 employees constituted a labor organization, the panel found no indication that these employees took any formal or informal steps to become such an organization within the meaning of section 2(5) of the Act. The fact that they all signed union authorization cards on the first day of the work stoppage indicated to the panel that these employees were only in the process of organizing and had not yet developed into a labor organization. Accordingly, the panel concluded that the notice requirements of section 8(g) did not apply to the group of unrepresented employees falling outside the definition of a labor organization.[79]

In *CHC Corp.*,[80] a Board panel found that the respondent union had not violated section 8(g) of the Act when it failed to give notice prior to a short work stoppage because the health care institution had intentionally and continually frustrated the respondent union's attempt to resolve grievances through the grievance procedure provided in the collective-bargaining agreement. No harm was done to health care services. The panel noted that a health care institution owes some duties to its employees and that section 8(g) was not intended to permit employers to thwart the bargaining process by continually frustrating an attempt to invoke a contractual grievance procedure. Section 8(g) was enacted to ensure the uninterrupted flow of patient health care, but not at the cost of abridging traditional rights of employees

[79] In a similar case, *Kapiolani Hospital*, 231 NLRB No. 10 (Chairman Fanning and Members Penello and Murphy), the Board adopted the administrative law judge's finding that the employer violated sec. 8(a)(1) of the Act by discharging an employee who, while unaffiliated with any labor organization, refused to cross a picket line of a labor organization which had complied with the notice requirements of sec. 8(g). Citing *Walker Methodist, supra*, the administrative law judge found that the employee did not forfeit her status as an employee under sec. 8(d) by failing to give the hospital a 10-day notice of her intention to honor the picket line.

[80] *District 1199 P. Natl. Union of Hospital & Health Care Employees, RWDSU (CHC Corp.)*, 229 NLRB No. 115 (Chairman Fanning and Member Jenkins, Member Murphy concurring)

under the Act. The Board concluded that to find respondent in violation of the 8(g) notice requirements would be contrary to the spirit and letter of the law. Further, the panel also noted that it would not consider the union's conduct a "strike" in this situation, i.e., a 5–15-minute work stoppage, whose purpose was simply to communicate the sense of frustration engendered by the employer's continuing unlawful conduct.[81]

## 2. Informational Picketing

A majority of the Board in *United Hospitals of Newark*[82] determined that the notice rquirement in section 8(g) refers to *any* picketing activities even if it is informational and unrelated to a work stoppage. After obtaining its certification, the respondent union and the employer commenced negotiations. Sensing a potential conflict midway into negotiations, the union notified the Federal Mediation and Conciliation Service that a dispute existed which was subject to mediation. Approximately 4 weeks later, the union, without giving notice to either the employer or FMCS, staged a demonstration with 25 employees carrying various placards in front of the employer's main entrance to demonstrate support for the negotiating committee. Only employees who were off duty participated in the picketing. The union took the position that this type of picketing was informational and akin to handbilling and that the notice requirements of section 8(g) were not intended to encompass this type of activity.

The majority concluded that in view of the overall intent of Congress to treat health care institutions differently from factories or retail establishments, the term "any" in the 8(g) phrase "any strike, picketing, or other concerted refusal to work," modified the words "strike" and "picketing" and that, therefore, the notice requirement of section 8(g) applied to all forms of picketing, not only those related to work stoppages. The majority noted the potential effect of any picketing and the general ability of one to predict how it might affect those who might have to cross the picket line, thereby creating a risk of interrupting the flow of health care services. Viewed in this context, the majority concluded that informational picketing fell within the proscription of section 8(g) of the Act since the union failed to provide the requisite notice.

The majority also noted that its interpretation of section 8(g) was not a prohibition on all picketing *per se*, but a ban on all picketing

---

[81] Member Murphy, in her concurring opinion, noted that she would have dismissed the complaint solely on the ground that she would not consider the respondent union's conduct a strike within the meaning of sec 8(g) of the Act

[82] *District 1199, Natl Union of Hospital & Health Care Employees, RWDSU (United Hospitals of Newark)*, 232 NLRB No 67 (Chairman Fanning and Members Penello and Murphy; Member Jenkins dissenting)

which "unjustifiably occurs without a prior 10-day notice." Contrary to the dissent, the majority did not view this as an inpermissible restriction on the first amendment right of free speech. Rather, the majority noted the first amendment guarantees are not absolute and must often be balanced against other public interests—the public interest in continuous health care balanced against the right to picket as an exercise of free speech. The majority viewed the 10-day notice as reasonable restraint on picketing so as to permit the health care institution to prepare against any possible disruptions of health care.

In his dissent, Member Jenkins stated that he would find that the union's informational picketing was tantamount to handbilling and therefore without the proscription of section 8(g) of the Act. In addition, he noted he would read the 8(g) phrase "any strike, picketing, or other concerted refusal to work," as referring to any picketing that was related to some form of work stoppage. Since the current picketing was solely informational in nature, and there was no work stoppage, he concluded it must therefore fall outside the provisions of section 8(g). Contrary to the majority, Member Jenkins believed that Congress, in enacting section 8(g), was concerned primarily with strikes for recognition and the *impact* of picketing and not picketing *per se*. It did not intend to include peaceful informational picketing within its prohibition. Member Jenkins also noted that the majority's overly broad interpretation of section 8(g) conflicted with the long-established labor policy of narrowly construing limitations on peaceful primary activities such as informational picketing.[83]

## N. Remedial Order Provisions

### 1. Computation of Backpay

In *Florida Steel Corp.*,[84] a Board majority decided to abandon the flat 6-percent interest rate applicable to backpay and other make-whole awards.[85] The Board, citing the current inflationary trend and the present legislative concern in Congress and state legislatures about the growing disparity between statutory interest rates and interest rates in the private money market, decided to adopt the sliding interest scale charged or paid by the Internal Revenue Service in case of underpayment or overpayment of taxes. The majority based its decision on three factors: (1) the IRS rate is directly tied to rates in the private sector; (2) the rate is subject to periodic semiautomatic adjustment;

[83] See *N.L.R.B. v. Fruit & Vegetable Packers & Warehousemen, Local 760* [Tree Fruits Labor Relations Committee], 377 U.S. 58 (1964).

[84] 231 NLRB No. 117 (Members Jenkins, Penello, Murphy, and Walther; Chairman Fanning concurring in part and dissenting in part).

[85] *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

(3) the rate is easy to administer, i.e., the adjustments are announced well before they are implemented and the rates are rounded to the nearest whole decimal. The majority concluded that there was no necessity to include a separate "inflation factor" to the backpay award since the IRS rate has the effect of accounting for periodic inflationary adjustments.

Chairman Fanning would have also included a separate inflation factor in order to make the discriminatees whole, not only for the money itself, but for the purchasing power that money would have represented if they had been paid their wages when due. In support of this position, he cited, as a real example involving this employer, the case of two employees who were unlawfully discharged in 1973 and had to wait until 1976 to obtain reinstatement and backpay and therefore would receive dollars representing only 75 percent of the purchasing value of the wages they had actually lost.[86] In addition he noted that, by delaying compliance with the backpay award, a respondent could benefit by paying in devalued dollars. Thus, Chairman Fanning would have adopted the administrative law judge's recommendation to add an inflation factor to backpay awards.

In *Randolph Paper Co.*,[87] the respondent union, previously found guilty of violating section 8(b)(1)(A) and 8(b)(2) of the Act, contended that it should be able to offset against its backpay liability the amount of dues the discriminatee owed during the period of his discriminatory layoff. A unanimous panel concluded that, except where an employee's discharge is sought on the ground of nonpayment of dues pursuant to a lawful union-security clause, the collection of dues is strictly an internal union matter, involving a private debt which is irrelevant to backpay proceedings. In addition, the panel noted that, by claiming the offset of dues from the date of hire to the date of the discriminatory layoff, the union was attempting to involve a prediscrimination period which bore no relationship to the unfair labor practice which the Board's remedy was designed to remedy. Accordingly, the panel ordered that the union compensate the discriminatee completely without regard to any outstanding union dues.

In *Browning Industries, Venetian Marble of Kentucky*,[88] a unanimous panel concluded that, for the purpose of backpay, when computing a weekly average salary in the base period preceding the period of discrimination, it was appropriate not only to consider the time lost due to the discriminatee's alcoholism, but also the absences resulting from the after-effects of such alcoholism.

---

[86] 215 NLRB 97 (1974), enfd 529 F 2d 1225 (C A. 5, 1976)

[87] *Truck Drivers, Oil Drivers, Filling Station & Platform Workers' Union Local 705, IBT (Randolph Paper Co )*, 227 NLRB No 111 (Chairman Murphy and Members Fanning and Penello)

[88] 226 NLRB 283 (Chairman Murphy and Member Penello, Member Jenkins concurring in part and dissenting in part).

## 2. Obligation of Discharged Strikers To Apply for Reinstatement

In *Michael Muldoon Elder, d/b/a Vorpal Galleries*,[89] a Board majority modified the recommended order of the administrative law judge as it related to the rights of the discharged strikers. The administrative law judge's order provided that the strikers' right to reinstatement was conditioned on their jobs not having been filled by permanent replacements prior to their application for reinstatement. The majority found that, since the discharges of the strikers violated section 8(a)(1) of the Act, their right to reinstatement was unaffected by the presence of permanent replacements hired subsequent to their discharge. Contrary to the dissent, the majority, reiterating Board precedent, noted that it was incumbent upon discharged strikers to evidence a willingness to return to work and an abandonment of the strike in order to establish their right to reinstatement and a resumption of pay, unless the employer had made it futile for the employee to take such action.[90]

Dissenting in part, Members Fanning and Jenkins would have found that an unlawfully discharged striker participating in a lawful strike possesses the same rights as an unlawfully discharged employee and should not be treated as an economic striker. Therefore, the burden was on the employer to make a valid offer of reinstatement in order to toll its backpay liability. The dissent saw no reason to shift the burden to the employees to establish that they were available for employment since the responsibility to rectify the wrong had to rest with the wrongdoer in either case.[91] The dissent also argued that holding to the contrary would permit an employer to subvert the employees' basic statutory right to strike.

## 3. Time for Response to Reinstatement Offers and Applications

In *Murray Products*,[92] a majority of the Board concluded that under the facts of the case the employer's offer of reinstatement to striking employees was not sufficient to toll its backpay liability since it did not provide reasonable time for the employees to respond to the offer. Following 2 weeks of striking, 11 of the strikers approached the employer and asked for their jobs back. They were informed that they

[89] 227 NLRB No 65 (Chairman Murphy and Members Penello and Walther, Members Fanning and Jenkins dissenting in part)

[90] See *Mid-West Paper Products Co*, 223 NLRB 1367 (1976), *Valley Oil Co*, 210 NLRB 370 (1974), *Astro Electronics*, 188 NLRB 572 (1971)

[91] The dissent also noted that, if the victims of unfair labor practices were unavailable for work because of their participation in the strike or for any other reason, this factor would be considered when the proceeding reached compliance

[92] 228 NLRB No 33 (Chairman Murphy and Members Fanning and Jenkins; Members Penello and Walther concurring in part and dissenting in part)

had been permanently replaced when, in fact, 10 of the 11 positions remained vacant. Two days later, the employer approached six of the employees who were then engaged in picketing, and mentioned that there was a position available for which it was seeking an employee. The employer expected an immediate response to its offer.

The majority noted that it was long-established Board law that a discriminatee, having been offered reinstatement, is entitled to a reasonable time to respond thereto.[93] What is a reasonable time is a factual matter. Here, the majority concluded that the fact that the discriminatees were not accorded a reasonable time and were given no opportunity to evaluate their status and the union's status when viewed in the light that they had previously been notified that they had been permanently replaced called into question the good faith and effectiveness of the offer itself.[94] In response to the dissent, the majority reasoned that the protection intended by the Board in requiring employers to make valid offers would be rendered meaningless if it was incumbent on the employees to request additional time to respond to the offer. The majority concluded that, under the circumstances created by the employer's unlawful conduct and misrepresentations concerning the permanent replacements, the employer did not allow the discriminatees sufficient time to respond, thereby rendering the offer insufficient to toll the running of backpay.

Members Penello and Walther noted that in *Fredeman's Calcasieu Locks Shipyard* [95] the Board stated "if there is no valid reason for his not being able to return to work at the fixed date, we will likely view that date as dispositive of the issue." In view of the fact that no striker requested extra time to respond or adjust personal affairs to accommodate the return to work, the dissent concluded that it was a decision of tactical policy to continue picketing and not a matter of limited time that caused the employees to reject the offer of reinstatement. As for the issue of whether the employer's offer was made in good faith, the dissenters pointed out that the one employee who accepted the offer was immediately returned to work. Thus, in view of these facts, the dissent found that the employer's offers were legally sufficient and therefore tolled its backpay liability from the date they were tendered.

A Board majority in *Drug Package Co.*[96] reaffirmed the Board's policy of commencing the backpay period for strikers from 5 days after the unfair labor practice strikers' unconditional offer to return

[93] *See Penco Enterprises, Penco of Ohio & Acoustical Contracting & Supply Corp* 216 NLRB 734 (1975).

[94] The majority also found offers to three other employees to be defective. One other employee accepted the offer and returned to work.

[95] 208 NLRB 839 (1974).

[96] 228 NLRB No. 17 (Chairman Murphy and Member Penello; Member Walther concurring; Members Fanning and Jenkins concurring in part and dissenting in part).

to work. The majority stated that a reasonable accommodation must be reached between the interest of an unfair labor practice striker's desire to return to work and the ability of an employer to effectuate that return in an orderly fashion and to accord some consideration of the terminated strike replacements. While acknowledging the fact that in some instances a 5-day hiatus might be excessive and in others insufficient, the majority concluded that 5 days was a reasonable period for the employer to complete its administrative tasks in the rehiring of personnel and terminating the lawfully hired strike replacements. In the absence of a set standard, the majority foresaw extensive litigation resulting in each case to determine whether the time period allotted for reinstatement was reasonable. Accordingly, the majority voted to continue in effect the 5-day period.

Members Fanning and Jenkins found that the "burden of justifying any delay in returning unfair labor practice strikers to work necessarily should be borne by the respondent whose unfair labor practices caused the strike and not by the employees who have unconditionally offered to return to work." The dissent also took issue with the majority's mention of the "interest" of the strike replacements in the unfair labor practice strikers' reinstatement. Since unfair labor practice strike replacements were subject to replacement the moment they were hired, these replacements, in Members Fanning's and Jenkins' view. have no legal interests, which, in this situation, could concern the Board. In addition, they noted that the 5-day rule penalizes the lawful strikers of 5 days' wages for exercising their right to strike, while the same rule might also penalize an employer who may not then have work available for the returning strikers. Thus, Members Fanning and Jenkins would have commenced the backpay period from the date of the strikers' offer to return or the date on which work was first available for the strikers until the date of the offer of reemployment by the employer.

### 4. Bargaining Orders and Certifications of Unions

In *Great Atlantic & Pacific Tea Co.*,[97] a panel majority, citing a recently issued decision,[98] determined that it was appropriate, under the facts of this case, to issue both a bargaining order and, if the revised tally of ballots revealed a union victory, a certification of representative. Applying the standards set forth in *N.L.R.B.* v. *Gissel Packing Co.*,[99] the majority found that the pervasiveness of the employer's unlawful conduct, involving threats related to the unit

[97] 230 NLRB No 102 (Members Jenkins and Penello; Member Walther dissenting).
[98] *Pope Maintenance Corporation*, 228 NLRB No 20
[99] 395 U S 575 (1969).

employees' employment status, tended to undermine the majority strength and impede the election processes and therefore warranted the issuance of a bargaining order. Finding that the union represented a card majority and relying on the Board's decision in *Trading Port*,[1] the majority dated its bargaining order from January 6, 1976, the date on which the employer "embarked on a clear course of unlawful conduct." Contrary to the dissent, the majority concluded that the issuance of a bargaining order should not preclude the union from being certified if it, in fact, prevailed in the Board election held on January 29, 1976. The majority noted that, if the union lost, the election would be set aside and the bargaining order alone would take effect. If, on the other hand, the union won the election, the effect of the bargaining order would be limited to correcting unilateral changes that the employer instituted from the time its obligation to bargain first arose.

Member Walther, dissenting, would have found that the unfair labor practices were not sufficiently pervasive to warrant the issuance of a bargaining order and that the union had not obtained a card majority. Regarding the possible issuance of a certification of representative, Member Walther concluded that, if the union won the election and was certified, then the basis for the issuance of the bargaining order would have been eliminated. Citing his dissent in *Beasley Energy, d/b/a Peaker Run Coal Co., Ohio Div. #1*,[2] Member Walther concluded that his colleagues were compelled to issue a bargaining order even if the union eventually won the election because, if they did not, it would make it far more attractive for a union, in these circumstances, to lose the election, but gain the benefit of a retroactive bargaining order without waiting for Board certification based on the election.

In *Gary Maughan & Michael Walsh, et al., d/b/a Holding Co.*,[3] a unanimous panel reiterated the Board's holding in *Great Atlantic & Pacific Tea Co., supra*, and found it appropriate to order the employer to bargain retroactively with the union and also to direct the regional director to issue a certification of representative if the revised tally of ballots resulted in a union majority. While the administrative law judge recommended that the Board issue one or the other, the panel concluded that a certification alone would not suffice to correct any unilateral changes the employer might have instituted from the inception of the bargaining obligation to the time the certification of representative issued. Similarly, the panel concluded that the presence

[1] 219 NLRB 298 (1975).

[2] 228 NLRB No 16.

[3] 231 NLRB No 53 (Members Jenkins, Penello, and Walther)

of a bargaining order should not deprive the union of the benefits of certification.[4]

## 5. Remedy for Violation by Causing Arrest of an Employee

As an upshot of enforcing an unlawful no-solicitation rule, an employee in *Baptist Memorial Hospital*,[5] was arrested following a confrontation with security guards concerning a handbilling incident. The employee was subsequent found guilty of disorderly conduct and fined $25. A unanimous panel found that the employee's arrest was a direct result of the enforcement of the employer's unlawful no-solicitation rule and was an attempt by the employer to chill union activity. While adopting the administrative law judge's recommended order required that the employer make the employee whole for loss of wages and reimburse him for the payment of the fine, the Board panel agreed with the General Counsel's contention that the remedy did not go far enough. Citing section 10(c) of the Act, the panel concluded that it was charged with the duty to fashion remedies that will effectuate the policies of the Act and, to that end, had wide discretion to select remedies necessary to rectify the detrimental effects of an unfair labor practice violation so long as the relief bore a rational relationship to the violation found. The General Counsel contended that, in this instance, the employer should be ordered to reimburse the discriminatee for all expenses and fees incurred in defending the criminal action and should file with the court a joint petition to expunge the record of the employee's arrest and conviction. Inasmuch as the discriminatee's legal expenses and fees were the direct result of the employer's attempt to enforce its unlawful policy, the panel concluded that its make-whole remedy must necessarily include total reimbursement for these costs. Noting that a discriminatee is entitled to have any adverse reports or disciplinary warnings connected with the unfair labor practice violation removed from his personnel file, the panel also concluded that it would be reasonable to require the employer to file a joint petition with the employee to expunge the employee's criminal record which was the direct result of the employer's unlawful conduct.

---

[4] While the administrative law judge did not decide whether the unfair labor practices were so pervasive as to require a bargaining order under *Gissel* standards, the Board concluded, on the strength of seven 8(a)(1) violation, including threats of discharge, and four 8(a)(3) discharges, that the unfair labor practices rendered the conduct of a fair election an impossibility requiring the issuance of a bargaining order

[5] 229 NLRB No. 1 (Chairman Fanning and Members Jenkins and Murphy)

# VII

# Supreme Court Litigation

During fiscal year 1977, the Supreme Court decided two cases in which the Board was a party. The Board participated as *amicus curiae* in one other case.

## A. "Right To Control" Test in Secondary Boycott Cases

In *Enterprise*,[1] the union and Hudik, a plumbing subcontractor, were signatories to a collective-bargaining agreement which provided that pipe threading and cutting were to be performed by Hudik's employees on the jobsite. Hudik successfully bid on a job for which the general contractor (Austin) specifically required the use of climate control units (manufactured by Slant/Fin) in which the pipe threading and cutting were completed in the factory. The union subsequently induced its members to refuse to install the prefabricated units. The Board held that, since Hudik did not have the right to control who would do the disputed work, the union's activity was an effort to force Hudik to cease doing business with Austin or to force Austin to cease doing business with the manufacturer of the prefabricated units, in violation of section 8(b)(4)(B) of the Act (the secondary boycott provision).

The Court of Appeals for the District of Columbia Circuit, sitting *en banc* and dividing 5–4, held that the Board's decisive reliance on Hudik's inability to assign the disputed work to its employees was contrary to the principles set out in *Natl. Woodwork Manufacturers Assn.* v. *N.L.R.B.*[2] In *Natl. Woodwork*, the Supreme Court upheld the Board's ruling that a union's refusal, pursuant to a valid work preservation clause, to install prefabricated units which the contractor purchased although he was not required to do so was lawful primary activity. The Court, in so concluding, stated that the legality of such union conduct turned on an "inquiry into whether, under all the surrounding circumstances, the Union's objective was preservation of

[1] *N.L.R.B.* v. *Enterprise Assn. of Steam, Hot Water, Hydraulic Sprinkler, Pneumatic Tube, Ice Machine & General Pipefitters, Local 638 [Austin Co.]*, 429 U.S. 507, reversing 521 F. 2d 885 (C.A.D.C., 1975), remanding 204 NLRB 760 (1973).

[2] 386 U.S. 612 (1967).

work for [the struck employer's] employees, or whether the agreements and boycott were tactically calculated to satisfy union objectives elsewhere. . . . The touchtone is whether the agreement or its maintenance is addressed to the labor relations of the contracting [struck] employer *vis-a-vis* his own employees." [3]

In *Enterprise*, the Supreme Court reversed the court of appeals and sustained the Board.[4] The Court rejected the union's contention that its refusal was necessarily lawful primary activity because it was aimed at enforcing a lawful promise in a collective-bargaining agreement. It found that position inconsistent with the statute as construed in *Sand Door*.[5] "The substantial question before us," the Court stated, "is whether, with or without the collective-bargaining contract, the union's conduct at the time it occurred was proscribed secondary activity within the meaning of [section 8(b)(4)(B)]. If it was, the collective-bargaining provision does not save it." (429 U.S. at 520.)

The Supreme Court further held that "the Board's 'control' test, under which the union commits an unfair labor practice under § 8(b)(4)(B) when it coerces an employer in order to obtain work that the employer has no power to assign," complied with "the *National Woodwork* standard that the union's conduct be judged in light of all the relevant circumstances." (*Id.* at 521.) The Court stated: "Surely the fact that the Board distinguishes between two otherwise identical cases because in the one the employer has control of the work [the situation in *Natl. Woodwork*] and in the other he has no power over it [the situation in *Enterprise*] does not indicate that the Board has ignored any material circumstance. The contrary might more rationally be inferred." (*Id.* at 524.)

Finally, the Supreme Court concluded that there was ample support in the record for the Board's finding that the union had an unlawful secondary objective. "It is uncontrovertible that the work at this site could not be secured by pressure on Hudik alone and that the union's work objectives could not be obtained without exerting pressure on Austin as well. That the union may also have been seeking to enforce its contract and to convince Hudik that it should bid on no more jobs where prepiped units were specified does not alter the fact that the union refused to install the Slant/Fin units and asserted that the piping work on the . . . job belonged to its members. It was not error for the Board to conclude that the union's objectives were not confined to the employment relationship with Hudik but included the object of influencing Austin in a manner prohibited by § 8(b)(4)(B)." (*Id.* at 530–531.)

---

[3] 386 U S at 644–645

[4] Justice White delivered the opinion of the Court Justice Brennan, joined by Justice Marshall, dissented, Justice Stewart also dissented

[5] *Local 1976, Carpenters [Sand Door & Plywood Co.]* v *N L R B*, 357 U S. 93 (1958).

## B. Employee Status of Feed Drivers

In *Bayside* [6] the issue was whether truckdrivers who transported feed milled by their employer (Bayside), the operator of a vertically integrated poultry business, to farmers who were under contract with Bayside to raise its chickens were "agricultural laborers" and therefore exempt from the protection of the National Labor Relations Act.[7] The Supreme Court affirmed the Board's position that the drivers were "employees" under the Act and not agricultural laborers.[8]

The Court noted that the statutory definition of "agriculture" (fn. 7, *supra*) "includes farming in both a primary and secondary sense. The raising of poultry is primary farming, but hauling products to or from a farm is not primary farming. Such hauling may, however, be secondary farming if it is work performed 'by a farmer or on a farm as an incident to or in conjunction with such farming operations . . . .'" The Court added: "Since there is no claim that these drivers work 'on a farm,' the question is whether their activity should be regarded as work performed 'by a farmer.' The answer depends on the character of their employer's activities." (429 U.S. at 300–301.)

The Court accepted the Board's finding that "the owners of the farms are independent contractors rather than employees of Bayside and therefore the farming activity at these locations is attributable to them rather than to Bayside." (*Id.* at 302.) The Court added:

> Even if we should regard a contract farm as a hybrid operation where some of the agricultural activity is performed by Bayside and some by the owner of the farm, we would nevertheless be compelled to sustain the Board's order. For the activity of storing poultry feed and then using it to feed the chicks is work performed by the contract farmer rather than by Bayside. Since the status of the drivers is determined by the character of the work which they perform for their own employer, the work of the contract farmer cannot make the drivers agricultural laborers. And their employer's operation of the feedmill is a nonagricultural activity. Thus, the Board properly concluded that the work of the truck drivers on behalf of their employer is not work performed "by a farmer" whether attention is focused on the origin or the destination of the feed delivery. [*Id.* at 303.]

---

[6] *Bayside Enterprises v. NLRB*, 429 U.S. 298, affg. 527 F. 2d 436 (C.A. 1, 1975), enfg. 216 NLRB 502 (1975).

[7] Sec. 2(3) of the NLRA excludes from the definition of "employee" "any individual employed as an agricultural laborer." Congress has further provided, in riders to annual appropriations acts for the Board (see, e.g., 90 Stat. 23), that the term "agricultural laborer" shall have the meaning specified in § 3(f) of the Fair Labor Standards Act, 29 U.S.C. § 203, which states that "'Agriculture' includes farming in all its branches [including] the raising of poultry, and any practices performed by a farmer or on a farm as an incident to or in conjunction with such farming operations."

[8] Justice Stevens delivered the opinion for a unanimous Court.

## C. Effect of Preemption Doctrine on State Court Suit for Intentional Infliction of Emotional Distress Arising Out of Incidents Covered by the Act

*Farmer*[9] involved the question whether the National Labor Relations Act preempts a state court suit for intentional infliction of emotional distress, where the conduct complained of grows out of alleged discriminatory activities covered by the National Labor Relations Act.

Richard Hill brought a tort action, in a state court, against his union and certain union officials charging, *inter alia*, that they "had intentionally engaged in outrageous conduct, threats, and intimidation, and had thereby caused him to suffer grievous emotional distress resulting in bodily injury." (430 U.S. at 293.) These purported wrongs grew out of the union's alleged discrimination against Hill in assignments from the union's hiring hall for reasons of internal union politics—which discrimination, if proven, would have violated section 8(b)(2) and (1)(A) of the Act. The trial court, while acknowledging that it had no jurisdiction over the alleged hiring hall discrimination, nonetheless permitted Hill to present evidence of such discrimination, and it refused to give the jury an instruction that it could not consider that evidence. The jury returned a verdict of $7,500 actual damages and $175,000 punitive damages against the union and one of its officers.

The California Court of Appeals reversed. Relying on the *Garmon* preemption doctrine,[10] it held that the state court lacked jurisdiction over the complaint since the crux of the action concerned employment relations and involved conduct arguably subject to the jurisdiction of the National Labor Relations Board.

The Supreme Court reversed the California appellate court decision, which the Board, as *amicus curiae*, supported.[11] The Court reaffirmed the vitality of the *Garmon* principle that " '[w]hen it is clear or may fairly be assumed that the activities which a State purports to regulate are protected by § 7 of the National Labor Relations Act, or constitute an unfair labor practice under § 8, due regard for the federal enactment requires that state jurisdiction must yield.' " (*Id.* at 296.) However, the Court added, "the same considerations that underlie the *Garmon* rule have led the Court to recognize exceptions in appropri-

---

[9] *Farmer, Special Administrator* v *United Brotherhood of Carpenters & Joiners of America, Local 25,* 430 U S 290, reversing and remanding 49 Cal App 3d 614, 122 Cal Reptr 722 (1975)

[10] *San Diego Building Trades Council* v *Garmon,* 359 U S 236 (1959) See also *Motor Coach Employees* v *Lockridge,* 403 U S 274 (1971)

[11] Justice Powell delivered the opinion for a unanimous Court

ate classes of cases." (*Id.* at 296).[12] The Court concluded that a similar exception was justified in the class of case presented.

Thus, the Court noted that "[n]o provision of the National Labor Relations Act protects the 'outrageous conduct' complained of by petitioner Hill," while the State "has a substantial interest in protecting its citizens from the kind of abuse of which Hill complained." (*Id.* at 302.) The Court recognized that there was "some risk that the state cause of action for infliction of emotional distress will touch on an area of primary federal concern," but concluded that such "potential for interference is insufficient to counterbalance the legitimate and substantial interest of the State in protecting its citizens." (*Id.* at 303–304.) The Court stated:

> If the charges in Hill's complaint were filed with the Board, the focus of any unfair labor practice proceeding would be on whether the statements or conduct on the part of union officials discriminated or threatened discrimination against him in employment referrals for reasons other than failure to pay union dues. . . . Whether the statements or conduct of the respondents also caused Hill severe emotional distress and physical injury would play no role in the Board's disposition of the case, and the Board could not award Hill damages for pain, suffering, or medical expenses. Conversely, the state court tort action can be adjudicated without resolution of the "merits" of the underlying labor dispute. [*Id.* at 304.]

However, the Court cautioned:

> Union discrimination in employment opportunities cannot itself form the underlying "outrageous" conduct on which the state court tort action is based; to hold otherwise would undermine the pre-emption principle. Nor can threats of such discrimination suffice to sustain state court jurisdiction. . . . Simply stated, it is essential that the state tort be either unrelated to employment discrimination or a function of the particularly abusive manner in which the discrimination is accomplished or threatened rather than a function of the actual or threatened discrimination itself. [*Id.* at 305.]

Noting that Hill's evidence "focuse[d] less on the alleged campaign of harassment, public ridicule, and verbal abuse, than on the discriminatory refusal to dispatch him to any but the briefest and least desirable jobs," and that "no appropriate instruction distinguishing the two categories of evidence was given to the jury," the Court vacated the judgment below and remanded the case for further proceedings consistent with its opinion. [*Id.* at 306.]

---

[12] See, e.g., *Linn* v *United Plant Guard Workers*, 383 U.S. 53 (1966) (malicious libel), *Automobile Workers* v *Russell*, 356 U.S. 634 (1958) (mass picketing and threats of violence), *Intl. Assn of Machinists* v *Gonzales*, 356 U.S. 617 (1958) (wrongful expulsion from union membership), *Vaca* v. *Sipes*, 386 U.S. 171 (1967) (duty of fair representation)

# VIII

# Enforcement Litigation

## A. Board and Court Procedure

The issue of sequestration of witnesses was considered by the Fourth Circuit in a case [1] in which the administrative law judge denied a request to sequester the General Counsel's witnesses. In considering the matter, the court of appeals took the occasion to affirm its long-held rule that sequestration is a matter resting in the sound discretion of the trier of fact.[2] Without passing on whether there had been an abuse of discretion, the court held that even if there had been such an abuse the employer did not suffer such prejudice as to warrant disregarding the evidence supporting the Board's findings of violations of the Act. The court further noted that Rule 615 of the Federal Rules of Evidence makes sequestration a matter of right, rather than discretion. However the unfair labor practice hearing in *Ayres* was conducted prior to July 1, 1975, the effective date of Rule 615, so the court did not decide the extent to which the rule is applicable to Board proceedings under section 10(b) of the Act.[3]

Two circuits refused to enforce bargaining orders on procedural grounds. In *Alaska Roughnecks & Drillers Assn.* v. *N.L.R.B.*,[4] Mobil Oil Corporation had contracted with a drilling corporation to perform drilling operations on an offshore platform. Upon 30 days' notice, either party could terminate the contract. Mobil paid the subcontractor for its wage and fringe benefit outlays and exercised a large degree of control over the subcontractor's employees. After the Board had certified the union involved as the bargaining agent of the subcontractor's employees on the offshore oil drilling platform, the subcontractor notified Mobil that it would request an increase in wage and fringe benefits specified in the contract should wages increase due to the collective bargaining. Mobil then sought new bids for its drilling

[1] *L. S. Ayres & Co.* v. *N.L.R.B.*, 551 F. 2d 586.

[2] Citing *N.L.R.B.* v. *Quality & Service Laundry*, 131 F. 2d 182, 183 (C.A. 4, 1942), cert. denied 318 U.S. 775 (1943).

[3] Sec. 10(b) provides that Board unfair labor practice proceedings shall, "so far as practicable, be conducted in accordance with the rules of evidence applicable in the district courts."

[4] 555 F. 2d 732 (C.A. 9).

operations and gave the subcontractor the 30-day notice of termination. When the union was informed of the contract termination, it asked Mobil to bargain, but Mobil refused. The Board found that Mobil was required to bargain as a joint employer with the subcontractor. The court noted that Mobil had not been afforded an opportunity to participate in the union's certification proceedings and that it had not been requested to bargain with the union until after it terminated its contract with the subcontractor. Accordingly, the court concluded that notice was untimely. In *N.L.R.B.* v. *Globe Security Services*,[5] the court refused to enforce the Board's bargaining order on grounds of mootness. The company, a national guard service, challenged the bargaining order on the ground that the Board's underlying unit determination was inappropriate. The Board had found that the company's guards at 55 state liquor stores in Philadelphia constituted an appropriate unit separate from all the company's guards employed in the Philadelphia area. Prior to the court decision, the company canceled its contract for guard services at the 55 state liquor stores, and the court found that this termination of unit work mooted the case. The court distinguished *Southport Petroleum Co.* v. *N.L.R.B.*[6] and a long line of cases holding that Board orders are not rendered moot by claims that the respondent has gone out of business, on grounds that no issue of fact existed as to the termination of business, no successor or assign could be subject to this order, and no issues of reinstatement or backpay were presented. The court found no merit in both parties' agreement that the case was not moot because a bargaining dispute continued with respect to the company's obligation to bargain concerning the effects of the termination of the state liquor stores' contract. The court found that that issue was not ripe for consideration in this case.

In *N.L.R.B.* v. *Colonial Haven Nursing Home*,[7] the court declined to enforce that part of the Board's order that required the employer to reinstate certain strikers, rejecting the Board's finding that the employees were striking, not for recognition of the choice of bargaining representative, but to protest the company's unfair labor practices. In its petition for rehearing, the Board requested that the court remand the case for a determination of the discharged employees' rights to reinstatement and backpay as economic strikers. The administrative law judge had found that the strikers could not be characterized as either unfair labor practice strikers or economic strikers and hence did not reach the employer's defense that it did not reinstate the strikers because they had been replaced—a defense available only if they

[5] 548 F 2d 1115 (C.A. 3)
[6] 315 U S 100 (1942).
[7] 542 F 2d 691 (C A 7), rehearing denied 542 F 2d 707

were found to have been economic strikers. Accordingly, neither the judge nor the Board had passed on the company's defense. In addition, since the employees had picketed for more than 30 days without filing a new petition for election as required by section 8(b)(7)(C) of the Act, they might have lost their right to reinstatement if the strike were found to be purely for recognitional purposes, a second issue which the Board did not reach. The court denied the Board's request for a remand, noting that the economic striker issue was one that the Board could have decided. After reviewing cases in which other courts had remanded after finding that sufficient alternative grounds existed, even though disagreeing with the grounds upon which the Board had based its order, the court rejected the notion that the waiver principle applicable to ordinary civil litigants necessarily applied to the Board. The court further noted, nevertheless, that there is a public interest in bringing litigation in the field of labor relations to a final disposition. Although the court regarded this to be a "close" case, it concluded that the circumstances here—particularly the likelihood that a further hearing would be necessary to resolve the remaining issues—militated against remand.

## B. Deferral to Other Means of Adjustment

The Ninth Circuit during this period approved the Board's refusal to defer to one arbitration and disapproved the Board's deferral to another. In one case,[8] a divided court approved the Board's refusal to defer to an arbitration award where the arbitrator upheld, without explanation, the discharge of an employee who called the employer's manager a "liar" during a grievance proceeding. The court noted that Board deference to an arbitration award is a discretionary matter and it found no abuse of discretion in the Board's refusal to defer to the arbitrator's award. The court, observing that the Board's refusal to defer to the award was based on its *Spielberg* criterion,[9] under which the Board will refuse to defer to an award that is repugnant to the purposes and policies of the Act, agreed with the Board's conclusion that upholding the award in this instance would have the effect of substantially diluting an employee's right to present his case during arbitration proceedings, inasmuch as grievance sessions are often emotionally charged and accompanied by shouting and profanity. In the other case [10] a divided court rejected the Board's deferral policy as expanded by *Electronic Reproduction*,[11] where a Board majority con-

[8] *Hawaiian Hauling Service Ltd* v *N L R B* , 545 F 2d 674.
[9] *Spielberg Mfg Co* , 112 NLRB 1080 (1955)
[10] *Stephenson* v *N L R B* , 550 F 2d 535
[11] *Electronic Reproduction Service Corp , et al* , 213 NLRB 758 (1974).

cluded that, unless unusual circumstances were present, it would give full effect to arbitration awards dealing with unfair labor practice cases where a party fails to introduce evidence of the unfair labor practices in order to obtain a second hearing before the Board. The court stated that "[u]nder *Electronic Reproduction*, the Board is now willing to defer to an arbitration award even though no indication is given that the arbitrator considered the unfair labor practice issue." (550 F. 2d at 539.) The court held that deferral to arbitration in these circumstances is inappropriate and in contravention of section 10 of the Act where the record fails to indicate that the arbitrator "clearly decided" the unfair labor practice issue. In so holding, the court adopted the *Banyard* decision [12] of the District of Columbia Circuit which extended the *Spielberg* criteria by adding the "clearly decided" requirement.

In two cases, courts considered the question whether, on particular sets of facts, the Board should have extended comity to certifications of bargaining units in nonprofit hospitals issued by state labor relations boards before the effective date of the 1974 health care amendments. In the first case,[13] the Third Circuit, by a divided court, denied enforcement of a Board order requiring the hospital to bargain with the representative of a unit of maintenance employees which had been certified by the Pennsylvania Labor Relations Board (PLRB) in 1973, over the hospital's objections that the unit should also include its service employees. The Board has held that, since "the state agency's election procedures" conformed with due process and effectuated the policies of the Act, it would accord the state certification "the same effect as we would attach to one of our own," and accordingly found that the hospital had violated section 8(a)(5) and (1) of the Act by refusing to bargain with the union as representative of the state-certified unit. The court, however, held that section 9(b) of the Act imposes on the Board a nondelegable duty to exercise its discretion in each case by making its own determination of the appropriate unit and that, in addition, the 1974 health care amendments make the Board responsible for seeing that health care unit determinations reflect the congressional policy against undue proliferation of units; thus, the court concluded, the Board "abdicated its required duty by accepting the PLRB determination without exercising its own mandated discretion." (*Id.* at 360.) The court distinguished precedents relied on by the Board [14] as cases in which the appropriateness of the unit was not at issue so that the extension of comity to state certifications there entailed no such abdication of the duty to exercise discretion.

---

[12] *Banyard* v. *N.L.R.B.*, 505 F. 2d 342 (1974)

[13] *Memorial Hospital of Roxborough* v. *N.L.R.B.*, 545 F. 2d 351

[14] *Bluefield Produce & Provision Company*, 117 NLRB 1660 (1957); *The West Indian Co., Ltd.*, 129 NLRB 1203 (1961), *Screen Print Corporation*, 151 NLRB 1266 (1965).

In the other case,[15] the validity of the state certification was put in issue by the certified union's attempt to enforce a union-security clause against professional employees (hospital dieticians) who had been included against their will in a unit of professional and technical workers. Because the union-security clause had been made applicable to the dieticians by virtue of an amendment of certification issued by the the state board without affording the dieticians a self-determination election like that required by section 9(b)(1) of the Act whenever the inclusion of professional employees in a unit of nonprofessionals is requested, the Second Circuit agreed with the Board that the efforts of the hospital and the union to enforce the clause against the dieticians violated section 8(a)(3) and 8(b)(2) of the Act. In reaching this conclusion, the court balanced the "claims of settled relationships," which were embodied in the unit arrangement and the collective-bargaining agreement concluded before the Board had acquired jurisdiction over nonprofit hospitals, against the important Federal policy of self-determination for professional employees embodied in section 9(b)(1) of the Act. Had the Board, in effect, deferred to the state certification by holding lawful the enforcement of the union-security clause, a "serious sacrifice of national values" would have resulted, the court observed.

In *N.L.R.B.* v. *Heyman, d/b/a Stanwood Thriftmart*,[16] the Ninth Circuit dealt with conflicting interpretations by the Board and a Federal district court. *Heyman* involved a collective-bargaining agreement which in an action under section 301 of the Labor Management Relations Act was rescinded by the district court on the ground that the union did not represent a majority of the employees when the contract was executed. The district court rejected the union's contention that section 10(b) of the Act precluded consideration of majority status at the time of execution—nearly 3 years earlier—and the union did not appeal. In a subsequent unfair labor practice case, the Board found a violation of the Act predicated upon the presumption of majority support flowing from the then rescinded agreement, holding that section 10(b) precluded consideration of the union's majority at the contract's execution. On the Board's application for enforcement, the court characterized the issue, not as one of majority representation, but as to whether the Board, in relying upon the contract for a presumption of majority status, could ignore the district court's prior order of rescission. Noting the Supreme Court's interpretation of section 10(b) in *Bryan Mfg. Co.*,[17] the court concluded that nothing

[15] *See Penco Enterprises, Penco of Ohio & Acoustical Contracting & Supply Corp*, 216
[16] 541 F. 2d 796.
[17] *Local Lodge 1424, I A M [Bryan Mfg Co ] v N L R B*, 362 U S 411 (1960)

therein "intimate[s] that the Board . . . may vitiate the objectives of finality of judgments and of repose by allowing unions to relitigate adverse decisions, rather than perfecting appeals." (541 F. 2d at 801.) Without deciding the merits of the district court's rescission, the court held that the proper vehicle for review was a timely appeal of that decision, not a collateral proceeding before the Board. The court thus concluded that the Board erred in relying for its presumption upon a contract which had been finally adjudicated a nullity.

## C. Representation Case Issues

In reviewing a representation election in which the determinative ballot was found by the Board to have been void, a divided court held that the ballot should have been counted.[18] The Board agent supervising the election had prefolded the ballots and handed one to each employee with only the blank portion visible. One employee had not marked the ballot on the printed side, but had written the word "No" on the blank reverse side. In the court's view, the voided ballot should have been counted, since by writing the word "No" the voter had expressed a clear unequivocal intent to reject union representation. The dissenting judge noted that since 1951 [19] the Board has uniformly refused to count ballots not marked on their face, because markings elsewhere raise doubts as to whether the voter was aware of the choices available, make for difficulties in reaching a determinative tally, and "create the possibility that the voter intended to insure that one of the parties to the election finds out how he voted." [20]

In *J. I. Case Co.* v. *N.L.R.B.*,[21] the Eighth Circuit disagreed with the Board's rejecting the company's challenge to an election alleging that the union, on the day before the election, distributed a letter which materially misrepresented the facts and thereby affected the outcome of the election. The letter's first statement claimed that the yearly wages of the company's skilled workers, who were represented by the union, exceeded $19,000. The court found that the average wage of skilled workers was actually $16,570.12 and that in fact only 8 of the company's 51 skilled workers were earning as much as $19,000 and only 1 was earning in excess of $20,000. Another statement in the letter claimed that the company's production and maintenance employees, who were also represented by the union, received 95 percent of wages, plus paid insurance in the event of layoff. In fact, the employees were entitled only to 95 percent of net wages, rather than gross wages, and

[18] *Roberts Door & Window Co* v *N L R B*, 540 F 2d 350 (C A 8)
[19] *Western Electric Co*, 97 NLRB 933, 934 (1951)
[20] 540 F 2d at 353, quoting from *Columbus Nursing Home*, 188 NLRB 825 (1971)
[21] 555 F 2d 202

the layoff benefit plan was not yet in effect. The court noted that there may be a substantial difference between a percentage of wages based upon gross wages and one based upon net wages. It also observed that the negotiated plan placed a significant limitation on the dollar amount required to be paid for layoff benefits, inasmuch as the plan had a maximum weekly benefit of $100 The court further noted that since the union's letter was circulated the day before the election, and any reply by the company would have required careful preparation, the company did not have a sufficient opportunity to reply meaningfully to the union's claims. Accordingly, the court concluded that the misrepresentations in question must have had a significant impact upon the outcome of the election and warranted setting the election aside.

In *N.L.R.B.* v. *Sumter Plywood Corp.*,[22] the union had concentrated its organizational efforts on black voters—who were in the majority—to the relative exclusion of white employees. The union won the election by a margin of 156 to 77 and was certified. On appeal, the company asserted as an affirmative defense to its refusal to bargain that the Board improperly certified the union because the union was racially discriminatory and further contended that the Board improperly refused the company a postelection evidentiary hearing on this issue. In treating the company's challenge to the certification based on the principles announced by the Board in *Bekins*,[23] the court observed that the denial of certification to a union that won a representation election is a "drastic step" which the Board should take "only in response to a strong demonstration the union has in fact engaged in a pattern of racially discriminatory practices, and is likely to continue such practices," and that the employer is required to make a *prima facie* case of racial discrimination. (535 F. 2d at 931.) In finding that the company's evidence failed to reach that standard, the court noted that, while some of the union's literature was racially oriented, under the neutral principle applied in *Bancroft* [24] "some degree of 'consciousness-raising' will be permitted in union organizing campaigns among ethnic groups which have historically been economically disadvantaged, as long as the ethnic message becomes neither the core of the campaign nor inflammatory." (535 F. 2d at 929.) In this connection, the court noted that, while the electorate here was 85 percent black, rather than 43 percent black as in *Bancroft*, there was no evidence of an effort "to incite blacks against whites" or to promise blacks "benefits unavailable to their fellow workers."

[22] 535 F 2d 917 (C A 5).

[23] *Bekins Moving & Storage Co of Florida*, 211 NLRB 138 (1974)

[24] *N L R B* v *Bancroft Mfg Co*, 516 F 2d 436 (C A 5, 1975), cert denied 424 U S. 914 (1976))

In *Niagara University* v. *N.L.R.B.*[25] and *N.L.R.B.* v. *St. Francis College*[26] the Second and Third Circuits, respectively, held that the Board had unreasonably excluded certain religious faculty from bargaining units of full-time faculty. The Board first excluded religious faculty in *Seton Hill College*[27] finding that they were "part of the employer since their order owns and administers the college" and that their economic interests did not coincide with those of the lay faculty since they "have taken vows of poverty, and by contractual agreement they return to the college a substantial part of their wages." In each of the instant cases, the regional director, relying on *Seton Hill*, excluded priests who were members of the order that founded the school, maintained substantial control—but not ownership—through the school's board of trustees, and supported the school with an annual gift amounting to half the salary paid the excluded priests. In *Niagara*, the Second Circuit found that the order's one-third control of the board of trustees was insufficient to support the conclusion that the individual priests were "part of the employer." The court also rejected the notion that the priests had different economic interests, noting that the Board itself had subsequently disavowed reliance on the vow of poverty[28] and that the priests received the same wages as other faculty and were under no contractual obligation to remit any part of their wage to the university. In *St. Francis*, the Third Circuit held that even majority control of the board of trustees is not, by itself, sufficient to show an identity of interest between the priests and the college. In a concurring opinion, Judge Rosenn stated, however, that the relationship between the priests and the college might have been a valid basis for exclusion had objective evidence been adduced to establish the nature of the relationship. He noted that "[a] future case which presents different bases for the exclusion supported by evidence of record will be decided on its own merits." (562 F. 2d at 257.)

In two consolidated cases[29] involving Catholic high schools in Chicago and in northeastern Indiana, the Seventh Circuit denied enforcement of orders requiring the employers to bargain with certified unions, holding that the Board abused its discretion in finding that the schools were not "completely religious" for the purpose of applying the Board's discretionary jurisdictional standard and that the application of the Act to such schools violates the religion clauses of the first amendment. The Board had found that the schools were

[25] 558 F. 2d 1116
[26] 562 F 2d 246
[27] 201 NLRB 1026 (1973)
[28] *Niagara University*, 227 NLRB No 33 (unit clarification decision)
[29] *Catholic Bishop of Chicago* v *N L R B*, and *Diocese of Ft Wayne-South Bend* v. *N L R.B*, 559 F 2d 1112

merely religiously associated and provided a general secondary education based on religious principles and that, therefore, the policy considerations underlying the Board's discretionary determination to decline to assert jurisdiction over "completely religious" schools did not apply.[30] The court disagreed with this finding, relying on state aid to parochial school cases in which the Supreme Court had labeled similar schools as "religion-pervasive institutions" [31] involving "substantial religious activity and purpose." [32] With respect to the "larger constitutional question," the court held that the act of certifying a union would impinge upon the religious character of the schools by imposing a "chilling aspect . . . on the exercise of the bishops' control of the religious mission of the schools," since future actions taken by the bishop-employers for religious reasons might be alleged to be unfair labor practices and in evaluating such allegations the Board would become involved in determining the validity of church doctrines. Further, the court held that the possibility of such future "entanglement" was enough to strike down the application of the Act in these cases on first amendment grounds, rejecting the Board's argument that the instant cases presented no such conflict and that the constitutional issue should not be decided on the basis of speculation.[33] Finally, the court noted that other substantial constitutional questions would be presented if the Board, in effect, preferred religious over secular employers by attempting to "accommodate" the religious beliefs of the former.

## D. Unfair Labor Practices

### 1. Employer Interference With Employee Rights

Several of significant cases had to do with employer interference with employee rights guaranteed by section 7 of the Act. In *Eastex* v. *N.L.R.B.*[34] the issue was whether the employer could lawfully prohibit the employees' bargaining agent from distributing a flyer in the plant solely because two sections dealt with matters concededly outside the employer's power to change or control. One such section attacked the pending drive to insert a "right to work" guarantee in the Texas constitution and asked the employees to communicate with their state representatives on this matter; the other section criticized President

[30] Compare *Board of Jewish Education of Greater Washington, D.C.*, 210 NLRB 1037 (1974), and *Assn. of Hebrew Teachers of Metropolitan Detroit (United Hebrew Schools)*, 210 NLRB 1053, 1058 (1974), with *Roman Catholic Archdiocese of Baltimore*, 216 NLRB 249, 250 (1975), and *Catholic Bishop of Chicago*, 220 NLRB 359 (1975).

[31] *Meek* v. *Pittenger*, 421 U S 349, 366 (1975).

[32] *Lemon v. Kurtzman*, 403 U.S 602, 616 (1971)

[33] See *Associated Press* v. *N L R.B* , 301 U.S. 103 (1937)

[34] 550 F 2d 198 (C A. 5)

Nixon's veto of a minimum wage bill and urged the employees to register to vote in the upcoming presidential election. The Fifth Circuit agreed with the Board's conclusion that this material was "sufficiently related to employment situations to merit Section 7 protection." The court rejected as "too narrow" the employer's proposed test of statutory coverage: whether the activity pertained to "something over which the employer has it within his power or authority to change or control." (550 F. 2d at 202.) Instead, the court held that the Act's protection extends to any subjects "reasonably related to the employees' *jobs* or to their status or condition as employees in the plant." Applying this standard, it found that both the "right to work" and the "minimum wage" sections addressed the employees' "real interest" in using political pressure to change conditions which bore on their employee status and that both were therefore protected by the Act.

The Board's policy concerning the application of no-solicitation and no-distribution rules to health care institutions was the subject of two decisions in the courts of appeals in the past year. In *St. John's Hospital & School of Nursing* v. *N.L.R.B.*,[35] the Tenth Circuit rejected the policy laid down in the Board's lead decision in this area.[36] Although the court found that the respondent hospital violated section 8(a)(1) by prohibiting solicitation in employee-only working areas, it upheld the hospital's right to bar union solicitation and distribution by employees in all areas to which visitors and patients have access. In the court's view, the record provided no basis for the distinction drawn by the Board between "strictly patient care areas"—such as patient's rooms, operating rooms, and X-ray and therapy facilities—where distribution and solicitation may be banned, and other hospital areas to which patients and visitors have access—such as cafeterias and lounges—where no-solicitation and no-distribution rules are presumptively unlawful. The court construed the Board's decision to concede that solicitation and distribution in strictly patient care areas is disruptive of the tranquil atmosphere essential to the hospital's primary function of providing quality patient care and may be unsettling to patients who are seriously ill and thus in need of quiet and peace of mind. Since the court found no basis in the record for concluding that ambulatory patients are less susceptible to the "unsettling" effects of such activities than bedridden patients or that a tranquil atmosphere is not important to patient care in such areas as halls, stairways, elevators, and waiting rooms accessible to patients, it rejected the Board's position as untenable. Moreover, the court found that the Board's recognition of the unsettling effects of solicitation and distri-

[35] 557 F 2d 1368

[36] *St John's Hospital & School of Nursing*, 222 NLRB 1150 (1976)

bution on hospital patients must be viewed as establishing a "special circumstance" rebutting the presumptive illegality of no-solicitation and no-distribution rules and requiring the Board to consider the availability of other means of employee communication. Noting that the stipulated record established the existence of numerous employee-only nonworking areas, where solicitation and distribution is permitted, the court concluded, in all the circumstances, that the balance struck by the Board between the conflicting rights of employees and employer was unreasonable. Finally, the court held that since the Board permits commercial employers to enforce no-solicitation and no-distribution rules in retail stores and restaurants, it may not prohibit the enforcement of such rules in a public cafeteria and gift shop merely because they are part of a hospital complex rather than a shopping mall or drive-in restaurant.

The First Circuit, on the other hand, upheld the Board's finding that a hospital violated section 8(a)(1) by curtailing employee solicitation and distribution in its cafeteria and coffee shop.[37] The court found that the hospital had not met its burden of rebutting the presumptive illegality of its limitation on employee concerted activities in nonworking areas during nonworking time. It rejected the hospital's argument that solicitation and distribution activities among employees might offend or upset patients and their visitors gathered in the cafeteria and coffee shop, holding that the Board could conclude that such activities in these public areas would not constitute a sufficient threat to the treatment of patients, or their recovery, to justify depriving employees of their organizational rights. Although the court indicated that reasonable minds might differ as to the validity of the distinction that the Board drew between hospital cafeterias and coffee shops, on the one hand, and retail stores and commercial lunchrooms, on the other, it refused to hold that the Board acted irrationally in viewing hospital facilities differently, given the different sorts of institutions, their employees, and their clientele. The court declined to pass on whether union activity may properly be banned in public areas of the hospital other than the cafeteria and coffee shop, as it found that this issue was beyond the scope of the record and the Board's decision and order.

In *J. P. Stevens & Co.* v. *N.L.R.B.*,[38] the Fourth Circuit approved the balance struck by the Board between spontaneous comments of an employee made to the plant manager during his lawful, preelection, captive audience speech and the premeditated, intentionally disruptive, "loaded, loud, and distracting" questions asked by numerous em-

[37] *N L R B* v *Beth Israel Hospital*, 554 F 2d 477
[38] 547 F. 2d 792

ployees at other such meetings. The court, accordingly, enforced the Board's finding that the company's discharge of the single employee was unlawful, and it denied the union's petition for review of the Board's order dismissing the complaint's allegation that the discharge of the other employees was unlawful. The Board had relied, in part, upon its holding in *Prescott Industrial Products Co.*[39] that an employee could not lawfully be discharged for insisting on the right to ask a question at a meeting called by the employer, but the Fourth Circuit, declining either to follow or to reject *Prescott*, distinguished it from *Stevens* on the facts.

In *Mt. Vernon Tanker Co.* v. *N.L.R.B.*,[40] the Ninth Circuit rejected the Board's finding that a seaman's refusal to submit, without union representation, to an interview which he reasonably feared might result in discipline fell within the Supreme Court's decision in *Weingarten.*[41] The seaman, serving on a United States vessel anchored off Chittagong, Bangladesh, was summoned to the captain's office for a "logging"—that is, to hear being read an entry in the ship's log noting that he had been fined for a "willful disobedience" of an order by the chief engineer to leave the engine room. The seaman appeared with his union representative and, when the captain ordered the representative to leave, the seaman started to follow. The captain ordered the seaman to remain while the log was being read, and when the seaman refused to remain without his representative the captain had him placed in irons and put him on bread and water "until his disobedience ceased." After 2 days, the captain agreed to allow the seaman to have a union witness and the logging proceeded. The seaman was also logged and fined for his refusal to attend the first logging without a union representative. The court held first that *Weingarten* was inapplicable because the original punishment was a "foregone conclusion" rather than a product of the interview in the captain's office and hence the rationale of that case did not apply. Second, the court held that, even if the logging would otherwise fall within *Weingarten*, "during the course of a voyage, the *normal* employer-employee relationship is suspended" and the relationship between master and seaman controls.

## 2. Employer Discrimination Against Employees

At the end of a strike, an employer, unless otherwise justified, must reinstate striking employees, lest their discharges penalize the employees for exercising their right to strike under section 7 of the Act. However, serious misconduct during a strike justifies a refusal to

[39] 205 NLRB 51 (1973), enforcement denied in part 500 F 2d 6 (C A 8, 1974)
[40] 549 F. 2d 571
[41] *N L.R B.* v. *J Weingarten,* 420 U S 251 (1975) ; 39 NLRB Ann Rep. 138 (1975).

reinstate after the strike is over. The Board has held that picketline verbal abuses and threats amount to such serious misconduct only when accompanied by physical acts or gestures that would provide added emphasis or meaning to such words.[42] In *N.L.R.B.* v. *W. C. McQuaide*,[43] the Third Circuit disagreed and held that, since threats are not protected conduct under the Act, they do not acquire protected status simply because unaccompanied by physical acts or gestures. Holding that the "question is whether a threat is sufficiently egregious not whether there is added emphasis," the court, rejecting the subjective approach in evaluating threats adopted by at least four other courts of appeals,[44] adopted an objective test—that is, "whether the misconduct is such that, under the circumstances existing, it may reasonably tend to coerce or intimidate employees in the exercise of rights protected under the Act."[45] (552 F. 2d at 528.)

In *N.L.R.B.* v. *Keller-Crescent Co.*,[46] the Seventh Circuit declined to enforce the Board's finding that the company violated section 8(a)(1) and (3) when it disciplined 12 employees because they refused to cross a lawful picket line established by fellow employees who were members of another union. The company had warned the 12 that their conduct was prohibited by a bargaining agreement clause which permitted sympathy strikes only in support of sister locals. The court's decision turned on its interpretation of this provision in conjunction with a no-strike arbitration clause which applied to "all disputes" about "alleged violation[s]" of the agreement. In the court's view, the company, by claiming a violation of the sympathy strike clause, had raised an issue which the employees were obligated to resolve through the arbitration procedure before they were permitted to strike. In this connection, the court distinguished its prior decision in *Gary Hobart*,[47] where it sustained the Board's finding that a typical no-strike clause, without more, did not waive the employees' right to engage in sympathy strikes. In the instant case, the court noted, "there is the important fact that the parties have agreed to resolve *all disputes* regarding the provisions of the contract through an arbitration procedure." The court concluded that the sympathy strike clause, "absent in the aforementioned cases, was clearly a matter which the

[42] See, for example, *Valley Oil Co*, 210 NLRB 370 (1974).

[43] 552 F 2d 519

[44] *N L R B.* v *Efco Mfg. Co*, 227 F 2d 675 (C A 1, 1955), cert. denied 350 U S. 1007 (1956), *N.L R.B* v *Trumbull Asphalt Co*, 327 F. 2d 841 (C.A. 8, 1964); *NL.R B* v. *Pepsi Cola Co of Lumberton*, 496 F. 2d 226 (C A. 4, 1974), *N L R B* v. *Hartmann Luggage Co*, 453 F 2d 178 (CA 6, 1971).

[45] In *Associated Grocers of New England* v. *N L R.B*, 96 LRRM 2630, 2632, the first Circuit agreed that this "objective standard [was] appropriate"

[46] 538 F. 2d 1291.

[47] *Gary Hobart Water Corp.* v *N.L R B*, 511 F. 2d 284 (C.A. 7, 1975), cert denied 423 U S. 925

arbitral panel was authorized to interpret and to apply." (538 F. 2d at 1300). Since the strikers' conduct contravened their contractual obligation to arbitrate before striking, the company's disciplinary action did not interfere with any right guaranteed its employees by the Act.

## 3. The Bargaining Obligation

### a. Obligation To Bargain Upon Request

The Act requires employers and unions to bargain in good faith about "mandatory" subjects of bargaining—wages, hours, and other terms and conditions of employment. They may negotiate and agree upon other matters, but violate section 8(a)(5) and 8(b)(3), respectively, by bargaining to impasse upon such "nonmandatory" subjects. The Board has held in three cases that a union violates section 8(b)(3) of the Act by insisting to impasse upon an "interest arbitration" clause.[48] Unlike a "grievance arbitration" clause, which provides a method to resolve disputes over the interpretation of an *existing* contract, interest arbitration provisions require the parties, when they reach an impasse in negotiations, to submit their disputes over their *new* contract terms to an arbitrator for resolution. Accordingly, if the employer and the union incorporate an interest arbitration into their contract, an arbitrator could determine what the next contract would provide with respect to any items which are at impasse during their next negotiations. Since an interest arbitration provision would therefore have no possible impact on the terms and conditions of employment of unit employees until expiration of the contract which contains it, the Board has found that such clauses do not regulate the employees' employment conditions during the term of that contract, and so should not constitute mandatory subjects of bargaining.[49] During fiscal 1977, the courts of appeals endorsed this reasoning and enforced all three of the Board's decisions on the issue.[50]

In the lead decision, *Columbus Printing Pressmen*, the Fifth Circuit agreed with the Board that interest arbitration clauses are not mandatory bargaining subjects because they "only affect wages and working conditions during the time periods covered by future contracts."

---

[48] *Columbus Printing Pressmen & Assistants' Union 252 (R W Page Corp.)*, 219 NLRB 268 (1975), 41 NLRB Ann Rep 89 (1976), *Greensboro Printing Pressmen & Assistants' Union 319 (Greensboro News Co.)*, 222 NLRB 893 (1976), 41 NLRB Ann Rep 91, fn 31 (1976), *Massachusetts Nurses Assn (Lawrence General Hospital)*, 225 NLRB 678 (1976)

[49] *R W Page*, 219 NLRB at 270, 272, 280 See also *Mechanical Contractors Assn of Newburgh*, 202 NLRB 1, 12–15 (1973)

[50] *N L R B v Columbus Printing Pressmen & Assistant's Union 252 [R W Page Corp.]*, 543 F 2d 1161 (C A 5), *N L R B v Greensboro Printing Pressmen & Assistants' Union 319 [Greensboro News Co.]*, 549 F 2d 308 (C A 4), *N L R B v Massachusetts Nurses Assn [Lawrence General Hospital]*, 557 F. 2d 894 (C A 1).

(543 F. 2d at 1165.) The union argued that the parties would derive "peace of mind" from knowing that their disputes over new contract terms would not be resolved through economic force. However, the court found that such a benefit "is too speculative to be considered a term or condition of employment," in light of the Supreme Court's holding that the retirement benefits of already retired employees are a nonmandatory bargaining subject, since they do not "vitally affect" the terms and conditions of employment of active employees.[51] The court also rejected the union's contention that the Board's decision conflicts with cases holding that interest arbitration clauses are enforceable in actions under section 301,[52] holding that the right to enforce an *existing* interest arbitration clause does not allow a union to use it in an attempt to obtain a *new* interest arbitration clause over the employer's objections. In this connection, the court noted the problems inherent in interest arbitration: the "system could be self-perpetuating"; under it, "the parties delegate to an outsider the final decision on what terms their next contract will contain"; and the scheme eliminates the parties' right to use economic pressure at a critical stage of negotiations, so that the contract written by the arbitrator does not necessarily correspond to the real balance of power between the parties and may not necessarily promote industrial peace.

In *Greensboro Printing Pressmen*, the Fourth Circuit enforced the Board's decision and, in a *per curiam* opinion, simply agreed with the Fifth Circuit's holding in *Columbus Printing Pressmen*, *supra*. The First Circuit, in *Massachusetts Nurses*, likewise adopted the reasoning of *Columbus Printing Pressmen*. The court rejected the union's argument that interest arbitration clauses are analogous to management rights clauses, which are mandatory subjects, pointing out that the parties give up, rather than retain, power in interest arbitration clauses. Nor was the court convinced that an exception to the Board's rule should be carved out for health care institutions, such as the hospital which the union represented. Thus, the court noted that neither the 1974 health care amendments to the Act,[53] nor their legislative history, suggested that the need to maintain uninterrupted health care should be implemented by making interest arbitration a mandatory subject of collective bargaining.

In *N.L.R.B.* v. *Ladish Co.*,[54] the Seventh Circuit rejected the Board's finding that an employer violated section 8(a)(5) and (1) of the Act by refusing to bargain about vending machine food price increases, on

[51] *Ibid*, quoting *Allied Chemical Workers* v *Pittsburgh Plate Glass Co*, 404 U.S 157, 182 (1971); 37 NLRB Ann Rep 144 (1972).

[52] 29 U S C § 185

[53] 88 Stat 395.

[54] 538 F 2d 1267

the ground that such prices are not mandatory subjects of bargaining. Vending machines located in 29 "vendette" areas throughout the plant served as the employees' only in-plant eating facilities. About 70 percent of the employees purchased lunches from vending machines and about 90 percent of the employees bought beverages from them. Employees had a 15-minute lunch period and they were not permitted to leave the plant for lunch. Two independent companies owned and operated the vending machines and set the prices of the items sold in the machines. Pursuant to lease agreements, the employer provided space and maintenance and, in turn, it received a commission from the items sold to cover its costs. When prices were increased on all items except beverages, the employer refused to bargain, upon the union's request, about the increases. Denying enforcement, the Seventh Circuit concluded that "vending machine food prices are not material or significant conditions of employment at Ladish" and that the "impact of these prices is too remote to require bargaining." The court noted that various alternatives were open to employees such as "brown-bagging" lunches from home, employee boycotts to bring about price reductions, and bargaining over such mandatory subjects as the length of lunch periods. The court was also of the view that the employer's lack of control over food prices would preclude meaningful bargaining and that the presence of seven unions representing different groups of employees would in fact be disruptive of stable industrial relations in the plant particularly if they all sought separate bargaining. In rejecting the Board's position, the court specifically followed decisions in the Fourth and First Circuits which have also held that vending machine food prices are not mandatory subjects of bargaining.[55]

In several cases, the courts dealt with the issue of an employer's duty to furnish information to a bargaining representative. In *San Diego Newspaper Guild, Local 95 [Union Tribune Publishing Co.]* v. *N.L.R.B.*,[56] the Ninth Circuit held that an employer need not supply information about employees being trained to replace union members in the event of a strike. Because the employees hired as a strike contingency force were not part of the bargaining unit, the union had to demonstrate why the information concerning them was relevant. The union failed to show that the strike force had any impact upon the unit and hence that the information sought was necessary for the performance of its duties. In *N.L.R.B.* v. *Detroit Edison Co.*,[57] the Sixth

[55] *N L R B* v *Package Machinery Co*, 457 F 2d 936 (C A 1, 1972) denying enforcement of 191 NLRB 268 (1971), *McCall Corp* v *N L R B* 432 F 2d 187 (C A 4, 1970), denying enforcement of 172 NLRB 540 (1968), *Westinghouse Electric Corp* v *N L R B*, 387 F 2d 542 (C A 4, 1967) (Judges Sobeloff and Craven dissenting), reversing 369 F 2d 891 (1966), denying enforcement of 156 NLRB 1080 (1966)

[56] 548 F 2d 863

[57] 560 F 2d 722

Circuit held that an employer, who unilaterally decided to use standardized psychological aptitude tests in determining eligibility for promotion, had to supply its employees' bargaining representative with the tests, together with the answer sheets and scores, upon request. The right of the union to information relevant to its duties overcame employer objections to releasing the confidential information gathered at some effort and expense. And in *N.L.R.B.* v. *Western Electric*,[58] the Eighth Circuit held that an employer may refuse to furnish service record information about nonunit employees who have not been designated for transfer into the unit. The employer had a surplus of unit and nonunit employees and transfers of senior employees into the unit had resulted in the displacement of union members. Further transfers were planned. In these circumstances, the Board had found that the information sought concerning nonunit employees was probably relevant to the union in carrying out its statutory responsibilities.

### b. Successor Bargaining Obligation

In *Pacific Hide & Fur Depot* v. *N.L.R.B.*,[59] the successor employer's duty to bargain turned on when he had "hired his full complement of employees." [60] Following takeover on April 11, the new employer had maintained continuity in the unit for bargaining and, for the first 2 months' operations, hired a majority of his employees from the predecessor's work force. On April 29, when the new employer declined to recognize the union, 7 of his 11 employees were formerly employees of the predecessor who had been represented by the union. While the predecessor's work force had fluctuated between 10 and 18, the stipulated facts showed that the new employer "reached its full employee complement of 19 unit employees on June 6" and that 12 of those 19 were new employees, not previously represented by the union. The court, reversing the Board, held that June 6 was the proper time for defining the new employer's "full complement" and that the absence of a majority at that time, precluded a successorship finding. In the court's view, the June 6 date was more in accord with both the new employer's steady expansion to full capacity and the *Burns* concern for the rights of new unrepresented employees and for "assur[ing] majority rule within the new employer's unit."

In *N.L.R.B.* v. *Security-Columbian Banknote Co.*,[61] the court's disagreement with the Board's successorship finding related to the unit continuity factor. The new employer (Security) purchased the printing plant, equipment, and inventories of the predecessor (Federated)

[58] 559 F. 2d 1131
[59] 553 F 2d 609 (C A 9)
[60] *N L.R B* v. *Burns Intl Security Services*, 406 U S 272, 295 (1972).
[61] 541 F. 2d 135 (C A. 3)

and continued the same type of printing business at the same location. But where Federated's employees had performed both letterpress and offset work in a single department, under the same supervision, with Pressmen as their representative, Security divided the work into two departments, under separate supervision, and recognized Graphic Arts as representative for the offset employees and Pressmen for the letterpress employees. The court, rejecting the Board's finding that the departmental reorganization flowed from a desire unlawfully to recognize Graphic Arts, held that these and other changes were prompted by business considerations and that they sufficed to upset the continued appropriateness of a combined letterpress-offset unit.

## 4. Union Interference With Employee Rights

In *Intl. Longshoremen's & Warehousemen's Union*,[62] the Ninth Circuit affirmed the Board's finding that the union violated section 8(b)(1)(A) and (2) of the Act by requiring that applicants for registration as Class B longshoremen be sponsored by Class A registrants, who were also union members. "Here," as the court stated, "each Union member who qualified as a sponsor was entitled to sponsor one person for Class B membership. That privilege was, in essence, a reward for being a Union member. Moreover, to qualify for Class B registration, thus becoming entitled to a preference over non-registered individuals, workers had to seek out Union members and ask their support. If they refused, the result was to block their Class B registration." (549 F. 2d at 1352.) Thus, the sponsors, by virtue of their membership in the union, were clothed with power over the livelihood of employees seeking registered employment status and the applicants could reasonably conclude that there was a connection between their views towards the union and their chances of obtaining sponsors. Accordingly, the court held that the natural effect of the sponsorship requirement was to encourage membership in the union by creating a discrimination in hiring in favor of Class B registrants.

In the duty of fair representation area, the Ninth Circuit approved the Board's view that an arbitrary and unfair union decision is not excused by the fact that the union had delegated its decision-making responsibility to a vote of its members.[63] Because of an employer decision to shut down a department, the union was faced with a decision as to whether those employees scheduled for layoff had bumping rights under an ambiguous collective-bargaining agreement provision. The union's calling a vote on this issue under those circumstances had the

---

[62] *N L R B v Intl Longshoremen's & Warehousemen's Union, Local 13* [*Pacific Maritime Assn*], 549 F 2d 1346

[63] *N L R B v General Truck Drivers, Warehousemen, Helpers & Automotive Employees, Local 315, IBT* [*Rhodes & Jamieson, Ltd*], 545 F 2d 1173.

effect of pitting those scheduled for layoff against the larger group of members who were not. The court agreed that the lack of fairness in the Union's decision-making process constituted a breach of its duty of fair representation.

## 5. Union Coercion of Employers in Selection of Representatives

Section 8(b)(1)(B) provides that it shall be 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." Two significant Board decisions applying section 8(b)(1)(B) reached the appellate courts during the fiscal year. In *Masters, Mates & Pilots*,[64] the Fifth Circuit held, affirming the Board, that picketing by a union composed primarily of supervisors to secure replacement of supervisors represented by a rival union violated section 8(b)(1)(B). Noting that the picketing constituted direct coercion of an employer in the selection of his supervisors, the Fifth Circuit rejected MM&P's contention that recognitional picketing by rival supervisor unions—as opposed to picketing by rank-and-file unions to obtain management representatives more sympathetic to the rank-and-file union—fell outside the spirit of section 8(b)(1)(B). In *ABC*,[65] the Second Circuit Court held, reversing the Board, that a union did not violate section 8(b)(1)(B) by disciplining supervisor-members who crossed picket lines to perform their supervisory functions during a strike. The court adopted Member Fanning's dissenting opinion which reasoned that the discipline was not likely to affect a supervisor's subsequent performance of his 8(b)(1)(B) functions and that, under the Supreme Court's *Florida Power* decision,[66] union discipline of a supervisor-member can only violate section 8(b)(1)(B) where the discipline "may adversely affect" the supervisor's conduct in performing his 8(b)(1)(B) functions.[67]

## 6. Union Causation of Employer Discrimination

In *Victoria Horvath & Elizabeth Gaudry* v. *N.L.R.B.*,[68] the Seventh Circuit was asked to review the Board's rule that, where there is no time lapse between successive collective-bargaining agreements with similar union-security clauses, the union-security clauses have continuity and the new contract is to be treated as a continuation of

[64] *Intl. Organization of Masters, Mates & Pilots, Marine Div., ILA [Westchester Marine Shipping Co.]* v *N.L.R.B.*, 539 F. 2d 554.

[65] *American Broadcasting Co., CBS & Natl Broadcasting Co.* v. *N.L.R.B.*, 547 F. 2d 159

[66] *Florida Power & Light Co.* v *IBEW, Local 641, et al.*, 417 U.S. 790, 804–805 (1974)

[67] The Board's petition for certiorari in ABC was granted by the Supreme Court on April 25, 1977

[68] 539 F. 2d 1093, cert. denied 430 U.S. 940

the old. In the instant case the union and the company had been parties to an uninterrupted series of collective-bargaining agreements, all of which contained a "maintenance-of-membership" clause requiring each employee who was a union member on the effective date of the contract, or who chose to join thereafter, to remain a member during the life of the contract. The 1970 agreement expired at midnight on January 12, 1973, and a new agreement, effective immediately upon expiration of the 1970 contract, provided that all employees who were members of the union on January 12, 1973, be required to maintain their membership. Petitioners submitted written resignations to the union prior to January 12, 1973, to become effective on or before January 13. The Board, relying on its earlier decisions in *John I. Paulding* and *Enterprise Publishing Co.*,[69] found that the union did not violate section 8(b) (1) (A) and (2) by demanding that the employer discharge employees who were union members under the old contract and failed to continue paying dues under the new agreement. The Seventh Circuit upheld the Board's conclusion, finding it unnecessary, however, to reach "the soundness of the *Paulding* doctrine," since the maintenance-of-membership clause in the new 1973 contract applied to all employees who were union members on January 12 of that year. Petitioners were union members on that date since their resignations became effective at midnight, when the old contract expired. "Accordingly, the provision plainly required that each petitioner maintain his union membership as a condition of continuing in his employment." (539 F. 2d at 1097.)

## 7. Secondary Boycotts and Strikes

### a. The Ally Doctrine

Although section 8(b) (4) prohibits a labor union from engaging in strike activity against a secondary or neutral employer not a party to a primary labor dispute, the "ally doctrine" is a recognized defense where the secondary employer has "entangled" himself in the primary dispute. The ally doctrine permits a union-directed secondary boycott when the secondary employer performs work which "but for" the strike would have been completed by striking employees and the work assists the primary employer in avoiding the economic impact of the strike just as though the primary employer had imported strikebreakers onto his premises.

Four significant cases decided during this fiscal year, all by the Seventh Circuit, involved the ally doctrine. Kable Printing Co., the

[69] *Int Union, United Automobile, Aerospace, Agricultural Implement Workers (John I Paulding)*, 142 NLRB 296, 301 (1963), *Newspaper Guild of Brockton (Enterprise Publishing Co.)*, 201 NLRB 793 (1973)

same primary employer involved in all four cases, was struck by its rotogravure employees represented by a local of Graphic Arts. Kable's other employees remained at work. Faced with the loss of a number of major accounts, Kable undertook to make arrangements whereby its customers contracted for rotogravure work directly with independent front-end shops. The finished rotogravure cylinders were then to be shipped to Kable for use in printing the final product.

When employees in the front-end shops, represented by sister locals of Graphic Arts, refused to do what they characterized as "struck work," the front end shops and Kable filed 8(b)(4)(B) charges with the Board. In *Blackhawk Engraving Co.* v. *N.L.R.B.*,[70] the Seventh Circuit affirmed the Board's dismissal of the complaint, and held that Blackhawk was an ally of Kable. In so holding, the court adopted the Board's finding that Blackhawk's performance of the rotogravure work was the result of an arrangement "orchestrated" by Kable and was not the product of the customer's legitimate right to seek self-help. In *Kable Printing Co.* v. *N.L.R.B.*,[71] two companion cases which issued the same day as *Blackhawk Engraving*, the court similarly affirmed the Board's dismissal of complaints against locals representing employees at two other front-end shops.

After the litigation in the above cases had begun, Kable announced that it had decided to terminate its rotogravure processing operations. Shortly thereafter, Kable entered short-term contracts with two front-end shops to engrave Kable-owned cyclinders which would be shipped back to Kable for use in printing final products for customers. But Kable retained, and planned to retain indefinitely, certain residual unit work required by reason of Kable's ownership of the cylinders. In *Kable Printing Co.* v. *N.L.R.B.*,[72] the Seventh Circuit again affirmed the Board's dismissal of a complaint issued against front-end shop locals which refused to do Kable's farmed-out work. The court, as had the Board, accepted as fact that Kable determined in good faith to discontinue its rotoprocessing operations for economic reasons and not as a bargaining stratagem to force union capitulation. However, the court agreed with the Board that, on the facts presented, Kable had failed to implement its decision to terminate the rotogravure phase of its operation and thus sustained the union's ally defense.

### b. Other Issues

In *N.L.R.B.* v. *Local 3, IBEW* [*Wickham-Perone*],[73] the court enforced the Board's order finding that the union violated section 8(b)

[70] 540 F 2d 1296
[71] 545 F 2d 1079
[72] 540 F 2d 1304
[73] 542 F 2d 860 (C A 2)

(4)(B) of the Act by picketing construction sites of the city of New York school board. The union's object in picketing was to force the school board to cancel contracts for electrical work with employers whose employees were represented by the Teamsters. The court stated that it is "clear that a union's attempts to control the amount of unit work procured by its members' employers, through means of pressuring third parties, falls squarely within the definition" of secondary boycott. No legitimate work preservation objective could be claimed because, as the court stated, "the School Board has *no collective bargaining agreement with Local 3* and is responsible for *no aspect of the union's working conditions or wages.*" (542 F. 2d at 864, 865.)

Another secondary boycott case [74] arose when longshoremen in Puerto Rico sought to enforce the so-called "Rules on Containers" embodied in their union's collective-bargaining agreements with steamship companies. Since 1968 those rules have required all containers arriving in Puerto Rico with "less than container loads" to be unpacked (stripped) and filled (stuffed) on the pier by longshoremen before being released to off-pier freight consolidators. All freight consolidators who were in business in 1968 were expressly exempt from that provision, however, and they hauled their customers' containers from the pier without prior stripping and stuffing by longshoremen. Other freight consolidators, who went into business after 1968 and, hence, were not expressly exempt from the rules, nevertheless historically received their containers without prior rehandling by longshoremen. Charges were filed with the Board by several of the nonexempt consolidators when the union repeatedly prevented a steamship company from releasing containers to them. The Board had found that the work of stripping and stuffing containers consigned to the nonexempt off-pier consolidators traditionally had been performed by the consolidators' own employees, and that an object of the union's conduct was to acquire that work for its own members. The Board concluded that the union's threats, interference, and strike constituted an unlawful secondary boycott designed to force the steamship companies to cease doing business with the nonexempt consolidators.

The court of appeals rejected the union's contention that its conduct merely was designed to enforce a valid work preservation clause embodied in the rules. After reviewing the landmark Supreme Court cases on work preservation [75] and a recent court of appeals decision upholding the Board's determination that the "Rules on Containers"

---

[74] *Intl Longshoremen's Assn, Local 1575 [Puerto Rico Marine Management]* v *N L R B*, 560 F 2d 439 (C A 1)

[75] *Natl Woodwork Manufacturers Assn* v *N L R B*, 386 U S (1967), *N L R B* v *Enterprise Assn of Steam, Hot Water, Hydraulic Sprinkler, Pneumatic Tube, Ice Machine & General Pipefitters [Austin Co.]*, 429 U S 507 (1977)

there violated section 8(e)'s ban on hot cargo agreements,[76] the court enforced the Board's finding that the work in question traditionally had not been performed by longshoremen and, therefore, the union's conduct designed to acquire that work constituted unlawful secondary activity.

The District of Columbia Circuit sustained the Board's rejection of an attack on the established principle that separate contractors on a construction site are not engaged in a joint enterprise in *Bricklayers & Stone Masons Union, Local 2 [AGC of Minnesota]* v. *N.L.R.B.*[77] There, a picket line directed against one construction subcontractor led to a refusal by the employees of the other subcontractors to enter a separate neutral gate established for their use. The unions claimed that their members' refusal to cross an imaginary picket line was a legitimate response to lawful primary activity and was sanctioned by the picket line clauses in their contracts; the arbitrator hearing the dispute adopted the unions' position. The court agreed with the Board that the picket line clauses, as applied by the arbitrator, violated section 8(e) because the arbitrator's decision resulted in neutral employers being used as pawns in a dispute in which they were not involved. The court specifically accepted the Board's refusal to allow the unions to do "by indirection what they can't obtain directly, that is, achieve contractual protection for the employees when refusing to enter the premises of a neutral employer because another employer is involved in labor problems on the same jobsite." (562 F. 2d at 787.) The court also agreed that the unions' approach did violence to the balance of rights and responsibilities of unions and employees on the construction site established by *N.L.R.B.* v. *Denver Building & Construction Trades Council [Gould & Preisner]*,[78] noting further that the labor movement had repeatedly failed in its attempts to obtain the enactment of legislation allowing the picketing of all employers on a construction worksite when there is a dispute with one employer. The court also rejected the argument that the clauses were outside the reach of section 8(e) because they protected only individual refusals, and not union refusals, to cross a picket line on the settled ground that inducement was simply not an element of an 8(e) violation. Finally, the court concluded that the picket line clauses were not saved by the construction industry proviso to section 8(e). The court observed that Congress intended construction site clauses to be enforced by lawsuits, and not by strikes or economic action; by contrast, the instant picket line clauses operated to sanction strike action in the future by conferring advance permission to union members to refuse to work.

---

[76] *Int'l Longshoremen's Assn [Twin Express]* v. *N.L.R.B.*, 537 F. 2d 706 (1976), cert. denied 429 U.S. 1041 (1977) rehearing denied 430 U.S. 911.

[77] 562 F. 2d 775.

[78] 341 U.S. 675 (1951).

In another case,[79] the Second Circuit rejected the Board's view that a union does not violate section 8(b)(4)(ii)(B) and section 8(e) when it invokes a grievance-arbitration mechanism providing for the award of money damages for a breach of a work preservation agreement. The Board's approach was that this procedure was a reasonable noncoercive method for resolving the dispute and that it was therefore unnecessary to determine whether the union's object was primary or secondary. Relying on the administrative law judge's factual findings, the court determined, however, that the union had a work acquisition object and had invoked the grievance mechanism as a device for keeping out of New York City a new product involving work which its members had not traditionally performed. The court also concluded that the union's use of the contract enforcement mechanism amounted to the application of economic pressure violative of section 8(b)(4)(ii)(B). The court did not find it necessary to decide whether resort to bona fide arbitration procedures would constitute unlawful coercion, because, in its view, the joint adjustment board, which lacked a neutral factfinder, was not a bona fide arbitration mechanism.

## 8. Recognitional Picketing

In *Wells Fargo*,[80] the court addressed the application of section 8(b)(7)(C) to picketing for recognition as representative of a unit of armored car guards by a union which was not qualified for certification as a representative of "guards" under section 9(b)(3) of the Act, since the union also admitted nonguards to its membership. The union had filed a petition for a Board election but continued picketing after the regional director had dismissed the petition because the union could not be certified even if it won the election. At the threshold, the court affirmed the Board's position maintained since *Brinks* [81] that, while Congress "may have had plant guards primarily in mind," the limitations of that section are applicable to armored car guards as well. The court then turned to the "more puzzling issue"—namely, the effect of the filing of a representation petition on picketing by a "nonqualifying" union which is barred from certification by section 9(b)(3). At the outset the court found no guidance in the legislative histories of the two provisions adopted separately in 1947 and in 1959. The court then addressed the two views: the Board's conclusion [82] that section 8(b)(7)(C) contemplates the filing of a petition which can result in certification of the union if it is

[79] *Carrier Air Conditioning Co. v. N.L.R.B.*, 547 F. 2d 1178.

[80] *Drivers, Chauffeurs, Warehousemen & Helpers, Local 71, IBT [Wells Fargo Armored Service Corp.] v. N.L.R.B.*, 553 F. 2d 1368 (C.A.D.C.).

[81] 77 NLRB 1182 (1948).

[82] Member Fanning dissenting.

victorious, and the union's position that its petition entitled it to picket and to participate in a Board election even if only the numerical results could be certified. The court concluded that the Board has discretion both to allow electoral participation by an incumbent nonqualifying union, where a qualifying union has petitioned for an election,[83] and to refuse to hold an election where, as here, the petitioning union was nonqualifying.[84] In this connection, the court noted that a Board-conducted election is a "costly occasion" [85] and that the Agency reasonably could conclude that a nonqualifying union should not be allowed to invoke the Board's processes. Since the union picketed after the regional director's proper dismissal of the petition, with no reasonable prospect of a Board-conducted election, the court agreed that this picketing violated section 8(b)(7)(C), which the court found "appears to contemplate picketing by way of prelude to an election." (553 F. 2d at 1377.)

## 9. Hot Cargo Agreement

Section 8(e) makes it an unfair labor practice for any labor organization and any employer to enter into an agreement whereby the latter agrees to cease doing business with any other person. However, the section contains a proviso that specifically excludes from the proscriptions of that subsection agreements relating to the contracting or subcontracting of jobsite construction work. In *Griffith Co.* v. *N.L.R.B.*,[86] the union had collective-bargaining agreements with Griffith and more than 2,500 other Southern California construction industry employers with some 40,000 employees represented by the union. The agreements require the employers—who function both as general contractors and as subcontractors—to make specified contributions to four employee trust funds. Each trust pooled the contributions from all employers into a single account for each particular fringe benefit. An employee's eligibility for benefits was determined by the total hours worked at any job covered by the agreements, whether or not his employer actually had made the required contributions. The level of benefits at any given time, however, depended upon the amount of money actually in the trust fund account at that time, so if any employer failed to make the required contributions, all beneficiary employees would suffer reduced benefits. The agreements provided that if after notice from the trustees that a subcon-

[83] *Wm J Burns Intl Detective Agency*, 138 NLRB 449 (1962)

[84] Cf *Wackenhut Corp*, 223 NLRB 83 (1976) (Board refused to allow a nonincumbent nonqualifying union on the ballot)

[85] Quoting from *Brooks* v *N L R B*, 348 U S 96, 99 (1954)

[86] 545 F 2d 1194 (C A 9), cert denied *sub nom Waggoner* v *Griffith Co*, 98 S Ct 171

tractor was delinquent a general subcontracted to that subcontractor, the general would become liable for all accrued delinquencies of the subcontractor. If the general did not thereafter pay the delinquencies, the general became liable to a strike by the union. The Board had found that the provision furthered the primary object of protecting the fringe benefits of the employees of all employers signatory to the agreements.[87] Accordingly, the Board held, the agreement met the *National Woodwork* "touchstone" test [88] that it be addressed solely to the labor relations of the contracting employers *vis-a-vis* their own employees. The court of appeals reversed and remanded the case for consideration of two questions which the Board did not reach because of its finding the clause to be primary.[89] The court viewed the *Woodwork* test as requiring consideration of two factors: (1) the "tactical object" of the agreement, and (2) the allocation of its benefits. The court found that the Board erred by misapplying the allocation of benefits factor and by failing to consider the question of whether the union's "tactical object" was the delinquent subcontractor's labor relations. As to the benefits test, the court held that the decisive question was not, as the Board found, whether the employees of all contracting employers were benefited, but rather whether the agreement benefited the employees in the prime contractor's work unit as opposed to all union members who might become eligible for benefits.

## 10. Union Compliance With Health Care Amendments

The application of the notice provision of section 8(g) of the Act [90] to picketing on hospital property directed at a contractor engaged in electrical work on a new facility under construction for the hospital was considered for the first time in a decision by the Seventh Circuit.[91]

---

[87] *Intl Union of Operating Engineers Local 12 (Griffith Co, et al)*, 212 NLRB 343 (1974)

[88] *Natl. Woodwork Manufacturers Assn.* v *N L R B*, 386 U S. 612, 644–645 (1967).

[89] The court directed the Board to consider (1) whether the contract provision came within the protection of the construction industry proviso to sec. 8(e), and (2) whether the union was liable for the strike threats made to the employers involved by representatives of the joint trustees of the trust funds and, therefore, violated sec. 8(b)(4)(ii)(B).

[90] Sec. 8(g) of the Act, 29 U.S.C. § 158(g), provides in pertinent part that:

> A labor organization before engaging in any strike, picketing, or other concerted refusal to work at any health care institution shall, not less than ten days prior to such action, notify the institution in writing and the Federal Mediation and Conciliation Service of that intention . . .

[91] *N L R B* v. *Intl. Brotherhood of Electrical Workers, Local 388 [St. Joseph's Hospital]*, 548 F. 2d 704.

The picketing, which protested allegedly substandard benefits paid to the contractor's employees, was carried on without service of the 10-day notice required by section 8(g). In disagreeing with the Board's finding that the union was required to serve such a notice, the court looked first to the language of the section, but found that the references to picketing "at" a health care institution offered little guidance in determining whether to focus on the location where the labor activity takes place or where the persons on whose behalf the activity was undertaken are employed. Accordingly, the court looked outside the quoted language to the legislative history and to the other contemporaneous health care amendments. The court regarded as the "strongest argument" in support of the Board's position the fact that section 8(g) had its origin in an earlier provision which had placed limitations on strikes or picketing by unions representing health care employees—including 10-day notice requirements—and prohibited picketing which was not by a union representing those employees where the picketing was "of" or "at the premises of" a health care institution. Accordingly, the argument runs, the present section 8(g) was a compromise which permits picketing on health care premises by unions which do not represent health care employees, but makes all picketing subject to the 10-day notice requirement. In rejecting that argument, the court relied on the absence in the legislative history of any reference to labor activity involving nonhealth care employees, as well as to the repeated references to health care employees. With respect to other provisions of the amendments, the court noted that the 10-day notice is to be given to the Federal Mediation and Conciliation Service, while section 8(d)(1) limits that agency's powers to situations involving employees of health care institutions. Finally, with respect to the Board's concern to carry out the congressional purpose of insuring "the continuity of health care to the community and the care and well-being of patients" [92] the court observed that the health care amendments were designed to extend the protection of the Act to health care employees while minimizing the consequences of such an extension and that those amendments did not increase the dangers to the delivery of health care attendant on activity by employees of other than health care institutions.[93]

[92] S Rept 93-766 (1974), H Rept 93-1051 (1974)

[93] On October 3, 1977, the Supreme Court denied the Board's petition for certiorari, 98 S. Ct. 127.

## E. Remedial Order Provisions

In *Vernitron*,[94] the First Circuit, having found that the employer had unlawfully assisted the union in organizing the employees, was confronted with objections to the Board's remedy, which required the company, *inter alia*, to reimburse employees for the dues paid pursuant to a collective-bargaining agreement which made joining the assisted union a condition of employment. The court noted that, since the status as majority representative was attributable to the employer's conduct, the Board was not required to determine which employees voluntarily supported the union and to permit the company to abstain from reimbursing them. The court recognized that, if the union were a respondent, equity might require the Board to apportion the burden of dues reimbursement according to the degree of fault. Since the union was not named in the charge, and hence was not a party before the Board, the company was properly required to bear the full cost of remedying the unfair labor practice.

In *Eagle Material*,[95] the Third Circuit granted enforcement of two orders of the Board issued against the employer. The court affirmed the Board's finding that the employer's violations of section 8(a)(1) in *Eagle I*,[96] justified the issuance of a bargaining order retroactive to the date of the first unfair labor practice. The court also affirmed the Board's finding in *Eagle II* [97] that the employer violated section 8(a)(3) by laying off its service and maintenance employees, shortly after the administrative law judge's decison in *Eagle I*, in order to avoid bargaining. While the Board found that because of the outstanding bargaining order, the layoff violated section 8(a)(5), the court rejected this finding and held that an 8(a)(5) violation could not be found in the absence of a demand for recognition. Nevertheless, the court found that the Board's order was sufficiently supported by the 8(a)(3) violations and enforced the order in full.

---

[94] *N L R.B.* v *Vernitron Electrical Components, Beau Products Div*, 548 F 2d 24

[95] *N L.R.B.* v *Eagle Material Handling, Subsidiary of Somerset Tire Service*, 558 F 2d 160

[96] 224 NLRB 1529 (1976).

[97] 227 NLRB No 39 (1976)

# 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 discretion, after issuance of an unfair labor practice complaint against an employer or a labor organization, to petition a U.S. district court for appropriate temporary relief or restraining order in aid of the unfair labor practice proceeding pending before the Board. In the 15-month period from July 1976 through September 1977, the Board filed 55 petitions for temporary relief under the discretionary provisions of section 10(j): 45 against employers and 10 against unions.[1] Injunctions were granted by the courts in 31 cases, and denied in 9. Of the remaining cases, 13 were settled prior to court action, 1 was dismissed, 2 were withdrawn, 1 was in inactive status at the close of the report period, and 5 were pending further processing in court at the close of the period.[2]

Injunctions were obtained against employers in 23 cases and against labor organization in 8 cases. The cases against employers variously involved alleged unlawful assistance to unions, bad-faith bargaining, numerous unfair labor practices in the content of union organizational campaigns, employee discharges, and, in one instance, an employer's resort to violent conduct during a strike. The cases against unions involved alleged strike misconduct, accepting recognition and entering into contracts with employers by minority unions, forcing an employer to hire only union members, and bad-faith bargaining.

One case,[3] decided by the Court of Appeals for the Eighth Circuit, involved review of the district court's denial of an injunction under

[1] In addition, seven petitions filed during fiscal 1976 were pending at the beginning of this report period

[2] See Table 20 at pp 263 and 311, *infra*

[3] *Solien* v *Merchants Home Delivery Service*, 557 F 2d 622

section 10(j) because (1) the matter was one to be determined by the Board, (2) the 4-month delay from the filing of the charge to application for the injunction, and (3) an administrative law judge had already conducted hearings in the matter. Although the court of appeals concluded that denial of the injunction was not an abuse of discretion since the district court judge could have expected that the administrative law judge's recommendations would be rendered promptly and that the Board would expedite its disposition of the case, it emphasized that the district court was clearly in error in not entering findings with respect to a showing of a probable violation of the Act. Also, in addressing the matter of delay relied upon, the court noted that delay in itself was not significant unless it could be found to be "of such a character that a final Board order is likely to be as effective as an interlocutory court order." The court pointed out that some delay in applying for an injunction is necessarily inherent in the Board's heavy workload and the case processing procedures which must precede such an application. It expressed the view that at the time of the instant application "the delay here was not of such a character that injunctive relief should be denied for that reason." Although declining to provide injunctive relief, the court provided for expedited consideration of any petition for enforcement or review of a Board order entered in the underlying unfair labor practice proceeding. Another case where passage of time was evaluated as a basis for denying an injunction was *Kaynard* v. *Independent Assn. of Steel Fabricators*,[4] where, in the context of an allegedly illegal refusal to bargain and assistance to a rival union, injunctive relief was sought to require certain members of a multiemployer association to withdraw recognition from the assisted union and sign the contract ultimately negotiated with the historically recognized union. Although the court found that the Board demonstrated a substantial case providing a basis for believing that the alleged violations had occurred, it concluded that such a showing was inadequate in itself to warrant injunctive relief pending full Board resolution of the issues. In the court's view, such relief would not be just and proper where it was "not based on any extrinsic circumstance, any affectation of interests more extensive than the labor relations interests of the men, the companies and the union locals directly participant in the activities dealt with in the unfair labor practice proceeding before the Board." (95 LRRM at 2019.) The destabilization of the labor relations established prior to the application for relief, which would result if relief were granted, was considered by the court as a further countervailing consideration warranting the conclusion that such interim relief was not appropriate.

[4] 95 LRRM 2015 (D C N Y)

Two other cases in which the courts considered the appropriateness of injunctive relief involved situations in which it was alleged that an employer who took over an existing business was a successor employer obligated to recognize and bargain with the representative of the employees of the predecessor employer. In the *Fabsteel* case,[5] Fabsteel had purchased the assets of a steel company against whom there was a court of appeals judgment enforcing a Board order requiring it to reinstate a number of striking employees who had been fired during the strike. Only a limited number had been returned to work at the time of the sale, all of whom continued to be employed by Fabsteel. Upon charges filed by the employee representative, a complaint issued against Fabsteel as a successor employer for failure to reinstate the employees. The 10(j) injunction sought by the Board was denied as inappropriate by the court. The court pointed out that, although an appropriate objective of an injunction is to restore the *status quo ante*, in this instant the Board sought to require Fabsteel to restore a status quo which had only existed long before under the predecessor employer. In view of the fact that issuance of the injunction would have required Fabsteel to discharge numerous employees in order to reinstate the strikers, and since Fabsteel's ultimate obligation to do so presented difficult and involved questions of labor law which should be resolved initially by the Board, the court denied the injunction as inappropriate. It considered the potential harm from issuance of an unwarranted injunction as being greater than the harm to the strikers which would result from the failure to do so, where the strikers' entitlement to reemployment would still be protected by the pending Board proceeding. The other successorship case [6] involved a situation where an employer purchased a hotel during the term of a collective-bargaining agreement covering the service and maintenance employees, and continued its operations with the same personnel. The employer shortly thereafter withdrew recognition from the incumbent union, and defended against refusal-to-recognize-and-bargain charges by contending that it had a good-faith doubt of the majority status of the union because, *inter alia*, the contract was entered into prior to the hiring of employees, the employees had been required to join the union as a condition of initial employment, the union had never been selected by the employees, and the union had at no time ever represented an uncoerced majority of the employees and did not do so presently. The court at the proceeding on the application for a 10(j) injunction permitted the employer to introduce evidence supporting those defenses and concluded that the evidence successfully rebutted the *prima facie*

[5] *Cram* v *Fabsteel Co of Louisiana*, 427 F Supp 316 (D C La )
[6] *Hirsch* v *Pick-Mt Laurel Corp*, 96 LRRM 2254 (D C N J )

case based upon the presumption of majority status arising from the contract. As no evidence was introduced as to proof of actual majority, the court found no basis for finding reasonable cause to believe that the Act had been violated. Based upon that conclusion, the court also found that injunctive relief to compel recognition would not be just and proper where the employer had done nothing to interfere with the employees' choice of representative, but had immediately filed a petition with the Board to obtain appropriate resolution of the issue, and there was no showing that the purposes of the Act would be frustrated by the denial of injunctive relief.

## B. Injunctive Litigation Under Section 10(l)

Section 10(l) imposes a mandatory duty on the Board to petition for "appropriate injunctive relief" against a labor organization or its agent charged with a violation of section 8(b)(4)(A), (B), and (C),[7] or section 8(b)(7),[8] and against an employer or union charged with a violation of section 8(e),[9] 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 had dominated or interfered with the formation or administration of a labor organization and, after investigation, there is "reasonable cause to believe such charge is true and that a complaint should issue." Section 10(l) also provides that its provision shall be applicable, "where such relief is appropriate," to violations of section 8(b)(4)(D) of the Act, which prohibits strikes and other coercive conduct in support of jurisdictional disputes. In addition, under section 10(l) a temporary restraining order pending the hearing on the petition for an injunction may be obtained, without notice to the respondent, upon a showing that "substantial and irreparable injury to the charging party will be unavoidable" unless immediate injunctive relief is granted. Such *ex parte* relief, however, may not extend beyond 5 days.

---

[7] 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 or work stoppages for these objects but also to proscribe threats, coercion, and restraint addressed to employers for these objects, and to prohibit conduct of this nature where an object was to compel an employer to enter into a hot cargo agreement declared unlawful in another section of the Act, sec 8(e)

[8] Sec 8(b)(7), incorporated in the Act by the 1959 amendments, makes organizational or recognitional picketing under certain circumstances an unfair labor practice

[9] 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

In this report period, the Board filed 237 petitions for injunctions under section 10(l). Of the total caseload, comprised of this number together with the 18 cases pending at the beginning of the period, 97 cases were settled, 4 dismissed, 16 continued in an inactive status, 10 withdrawn, and 10 pending court action at the close of the report year. During this period, 118 petitions went to final order, the courts granting injunctions in 111 cases and denying them in 7 cases. Injunctions were issued in 56 cases involving secondary boycott action proscribed by section 8(b)(4)(B), as well as violations of section 8(b)(4)(A) which proscribes certain conduct to obtain hot cargo agreements barred by section 8(e). Injunctions were granted in 20 cases involving jurisdictional disputes in violation of section 8(b)(4)(D). Injunctions were issued in 29 cases to proscribe alleged recognitional or organizational picketing in violation of section 8(b)(7). The remaining 6 cases in which injunctions were granted arose out of charges involving violations of section 8(e).

Of the seven cases in which injunctions were denied, three involved secondary picketing activity by labor organizations, one involved secondary pressures in furtherance of a jurisdictional dispute, two involved illegal implementation of hot cargo clauses, and one involved recognitional picketing within 12 months of a valid election.

In one 10(l) proceeding,[10] the Board obtained an injunction against recognitional picketing by a union whose petition for a representation election in a unit of the employer's armored car drivers had been dismissed on the ground that the drivers were "guards" within the meaning of section 9(b)(3) of the Act and, therefore, that the union, which admits into membership nonguard employees, was ineligible for certification. In granting the injunction, the district court also dismissed the union's counterclaims alleging that, as applied, section 8(b)(7)(C) violated the employees' constitutional right of free association; that section 9(b)(3) is unconstitutional on its face; and that the Board exceeded its statutory authority in dismissing the union's representation petition. The Seventh Circuit affirmed the issuance of an injunction. The court observed that, since the facts were not in dispute, the only issue before the district court was the substantiality of the regional director's legal theory that a representation petition which does not raise a "legitimate" question concerning representation does not privilege under section 8(b)(7)(C) recognitional picketing for more than 30 days. The court held that this theory, which was the basis for two prior Board orders, one of which was recently enforced by the District of Columbia Circuit Court,[11] was plainly "substantial

[10] *Squillacote v Intl Brotherhood of Teamsters, Local 344 [Purolator Security]*, 561 F 2d 31 (C A 7)

[11] *Drivers, Chauffeurs & Helpers, Local 639, IBT [Dunbar Armored Express]*, 211 NLRB 687 (1974), *Drivers, Chauffeurs, Warehousemen & Helpers, Local 71, IBT [Wells Fargo Armored Service Corp]*, 221 NLRB 1240 (1975), enfd 553 F 2d 1368 (1977)

and not frivolous." With respect to the union's argument that the district court should have considered the union's challenge to the constitutionality of section 8(b)(7)(C), as applied, prior to granting injunctive relief, the court stated that for "the district courts to consider on the merits challenges to the Board's interpretation and application of the Act at a preliminary stage in unfair labor practice proceedings would seem fundamentally inconsistent with the acknowledged purpose of section 10(l)." Finally, observing that Federal district courts generally do not have jurisdiction to determine the merits of the Board's action in unfair labor practice procedures, a function reserved exclusively to the courts of appeals in enforcement or review procedures under section 10 (e) and (f) of the Act, the court held that the union's counterclaims in this case did not allege such plain violations of either statutory or constitutional rights as to confer jurisdiction on the district court under the narrow exception articulated by the Supreme Court in *Leedom* v. *Kyne*, 358 U.S. 184 (1958).

In *Humphrey* v. *Intl. Longshoremen's Assn.* [*United States Lines*],[12] the Court of Appeals for the Fourth Circuit reversed a judgment of the district court denying the Board's petition for preliminary injunctive relief. Contrary to the argument advanced by the regional director, the district court viewed the "rules on containers" incorporated into the collective-bargaining agreement between the Longshoremen's Union and a multiemployer association as lawful primary "work preservation" provisions within the meaning of the Supreme Court's *National Woodwork* decision.[13] In reversing and remanding the case for the issuance of an appropriate temporary injunction, the Fourth Circuit articulated the standard to be applied in its judicial circuit in 10(l) proceedings. Rejecting the "insubstantial and frivolous" test applied by several circuits,[14] the court adopted, instead, the standard applied by the Second Circuit,[15] stating that "a temporary injunction should not issue unless there is some reasonable possibility that the Board will ultimately enter an enforceable order." However, the court emphasized that, in applying this standard, "the General Counsel's resolution of disputed issues of fact and law should be accorded considerable deference," and that in cases presenting "a difficult question as to the proper application of a legal standard to a complex industrial situation, the district court . . . should be

---

[12] 548 F. 2d 494

[13] *Natl Woodwork Manufacturers Assn* v *N L R.B.*, 386 U S 612 (1967)

[14] E g , *Hirsch* v *Bldg & Construction Trades Council of Philadelphia & Vicinity* [*Altemose Construction Co* ], 530 F 2d 298, 302 (C A 3, 1976) , *Boire* v *Intl Brotherhood of Teamsters* [*Pilot Motor Freight Carriers*], 479 F 2d 778, 789–792 (C A. 5, 1973) , *Squillacote* v *Graphic Arts Intl. Union & Local 277* [*Kable Printing Co* ], 540 F 2d 853, 858 (C A. 7, 1976) , *San Francisco-Oakland Newspaper Guild, et al* [*Los Angeles Herald-Examiner*] v *Kennedy*, 412 F 2d 541, 544 (C A 9, 1969)

[15] *Danielson* v *Joint Board of Coat, Suit & Allied Garment Workers Union, ILGWU* [*Hazantown*], 494 F 2d 1230, 1245 (1974)

especially reluctant to conclude that the General Counsel's contentions are without merit." Applying these standards, and in reliance on the Second Circuit's recent affirmation on its merits of the Board's interpretation of the same "rules on containers",[16] the court found that the regional director had established at least reasonable cause to believe that the union's primary object was not the preservation of work being performed or fairly claimable by the unit employees, but to acquire work that "does not fall within the bounds of the longshoremen's traditional role." Consequently, the court found that the disputed provisions constituted a "hot cargo" agreement banned by section 8(e), and that the union's suspension of certain contract provisions violated section 8(b)(4)(ii)(B) since that conduct was calculated to pressure members of the employer association to cease doing business with motor carriers who performed "stripping" work in violation of the rules on containers.

In one unusual 10(l) proceeding, a district court reluctantly granted a temporary injunction against allegedly unlawful recognitional picketing at a construction site. Observing the "substantial conflict in the evidence" and the strong probability that the work at the picketed site would be completed before the Board issued its final order under its normal procedures, the district court feared that "what was intended to be interim relief may actually result in a final adjudication." Accordingly, the court refused to enjoin the picketing during the entire period required for Board action. Instead, the court indicated that it was issuing the injunction only to permit the Board to perfect an appeal to the Eighth Circuit, and limited its duration to the pendency of the circuit court's decision.[17] On appeal, the Eighth Circuit reaffirmed the standard for issuance of 10(l) relief set forth in its *Milk Drivers* decision [18] and concluded that, since the case turned on "factual issues which must be reached by the Board," the regional director had sustained his burden of establishing "reasonable cause to believe" the violation alleged had occurred and that injunctive relief was appropriate.[19] However, sharing the district court's concern that the preliminary injunction should not become dispositive of the issues because of Board delay in deciding the merits of the case, and noting "the concededly simple factual determinations to be made in this case," the circuit court held that in the particular circumstances "the district court may properly consider limiting the duration of the Section 10(l) injunction in an effort to expedite the Board's review." Accordingly,

---

[16] *Intl Longshoremen's Assn.* [*Twin Express*] v *N L R.B*, 537 F. 2d 706 (1976), cert denied 429 U S 1041, enfg 221 NLRB 956 (1975)

[17] *Dawidoff* v *Minneapolis Bldg & Construction Trades Council & Local 34* [*Krasen Plumbing & Heating*], 430 F. Supp 318 (D C Minn )

[18] *Wilson* v. *Milk Drivers & Dairy Employees Union, Local 471, IBT* [*Ronco Delivery*], 491 F 2d 200, 203 (1974)

[19] 550 F. 2d 407.

the case was remanded to the district court for a determination of the "minimum time necessary for Board review if the Board were to accord the case its most expeditious handling." On remand, the Board's executive secretary submitted an affidavit assuring the court that the Board would grant the case extraordinarily expeditious consideration and estimating the minimum time required for final Board action under those special procedures. The court then accepted the parties' stipulation for the automatic expiration of the preliminary injunction on a date mutually agreed upon, or on the date the Board filed its decision, whichever occurred earlier.[20]

[20] 430 F Supp 322 (D C Minn )

# X

# Contempt Litigation

During fiscal 1977, petitions for adjudication in contempt for noncompliance with decrees enforcing Board orders were filed in 34 cases, 33 seeking civil contempt and 1 both civil and criminal contempt. In 11 of these, petitions were granted and civil contempt adjudicated.[1] Three were discontinued upon full compliance;[2] while one was disposed of by an order requiring full compliance.[3] In 10 cases, the courts referred the issues to special masters for trials and recommendations; 3 to U.S. district judges,[4] 4 to U.S. magistrates,[5] and 3 to other experienced

---

[1] *N L R.B.* v. *Otis Hospital,* order of Aug 23, 1977, in civil contempt of 545 F 2d 252 (C A. 1) ; *N.L R.B.* v. *Arkay Packing Corp ,* order of July 22, 1977, in civil contempt of the notice-posting provisions of judgment of Nov. 30, 1976, in No. 76–4150 (C.A. 2) ; *N.L R.B.* v. *Community Disposal Service,* order of Oct. 3, 1977, in civil contempt of the reinstatement provisions of the judgment of July 22, 1976, in No. 76–4160 (C.A. 2) ; *N.L.R B.* v *Empire Corp ,* order of Jan. 27, 1977, in civil contempt of the bargaining and 8(a)(1) provisions of 518 F. 2d 860 (C.A. 6) ; *N.L.R.B* v. *La-Ron Corp.,* order of Sept. 26, 1977, in civil contempt of the discovery provision of the judgment of Nov. 5, 1976, in No. 76–1682 (C.A. 6) ; *N.L.R.B.* v *Valley Mold Co ,* order of May 24, 1977, in civil contempt of 530 F. 2d 693 (C.A. 6) ; *N.L R B* v *Colonial Press,* affirming special master's report by order of Sept. 7, 1977, in civil contempt of 509 F 2d 850 (C A 8) , *N L R.B.* v. *Coliseum Hospital d/b/a University Hospital,* order of Sept. 16, 1977, in civil contempt of the bargaining and backpay provisions of the judgments of Dec. 5, 1975, and Feb. 28, 1975, in Nos. 76–1406 and 74–3468 (C.A. 9) , *N L R B.* v *Alfred & Amelia Gilgen,* order of Sept. 16, 1977, in civil contempt of the bargaining, reinstatement, and posting provisions of the judgment of July 2, 1976, in No 76–1725 (C A. 9) , *N L R B* v *Local 354, IBEW,* order of Oct 2, 1977, in civil contempt of its secondary picketing provisions of the judgment of Nov 13, 1974, in No. 74–1652 (C.A. 10) ; *N L R.B.* v. *Blevins Popcorn Co.,* order of Sept. 16, 1977, in civil contempt of the bargaining provisions of the judgment of May 4, 1977, in No 75–1748 (C.A.D.C.), 96 LRRM 2857.

[2] *N L.R.B* v. *Colonie Hill, Ltd.,* upon the successor's reinstatement of discriminatees, in civil contempt of 519 F. 2d 721 (C.A 2) , *N L R B.* v *Local 798 of Nassau Co of N.Y. Brotherhood of Painters, AFL–CIO,* upon discontinuance of unlawful steward's preference clause in civil contempt of judgment of Sept. 9, 1976, in No. 75–4095 (C.A. 2) ; *N L R B.* v. *Jahnke & Schultz Trucking Services,* upon execution of collective-bargaining agreement and payment of backpay, in civil contempt of judgment of March 16, 1976, in No. 76–1158 (C.A. 7).

[3] *N.L R B* v. *Southland Mfg. Corp ,* upon payment of $100,000 in settlemtnt of backpay, order of Dec 14, 1976, in civil contempt of 475 F. 2d 414 (C.A D C )

[4] *N L R.B.* v. *Newton-New Haven Co ,* in civil contempt of 506 F. 2d 1035 (C A. 2), referred to U.S. District Judge Jon D. Newman (D.C. Conn.) ; *N L R.B.* v *Mountain State Constr Co ,* in civil contempt of 510 F 2d 966 (C.A. 4), referred to U.S District Judge John T CopenHaver, Jr. (D.C. W.Va ) ; *N.L R B.* v. *Gerstenlager Co.,* in civil contempt of 487 F. 2d 1332 (C A. 6), referred to U S District Judge Ben C Green (D C. Ohio).

[5] *N.L.R.B.* v. *Clearview Concrete Pipe Corp ,* in civil contempt of 526 F 2d 585 (C A 2) ; *N L.R.B.* v *Mr. Electric Service Co.* (II), in civil contempt of the reinstatement provision of the judgment of July 20, 1976, in No 74–1961 (C A 2) ; *N.L R B* v *Local 295, Teamsters,* in civil contempt of 521 F. 2d 1166 (C A 2), and to impose the compliance fines of the contempt adjudication of Jan 13, 1976 · *N.L R B* v. *Dust Tex Service,* in civil contempt of the bargaining provisions of the judgment of Oct. 29, 1974, in No. 75–1180 (C A. 8).

triers.[6] Three cases are awaiting referral to a special master.[7] The remaining five cases are before the courts in various stages of litigation; one awaits the issuance of an order to show cause,[8] one is awaiting disposition of the Board's motion for summary adjudication,[9] one is awaiting the court's action on a favorable master's report,[10] another is pending on the Board's motion to withdraw,[11] while, in the last, discovery is in progress to test respondents' continued assertion of financial inability.[12] Finally, in one case the Board's motion was dismissed for failure of proof.[13]

Fourteen cases which were commenced prior to fiscal 1977 were disposed of during the period. In 12 of these, civil contempt was adjudicated [14] while 2 were disposed of by orders granting full compliance.[15]

---

[6] *N.L.R.B* v. *Bancroft Mfg Co*, in civil contempt of 516 F. 2d 436 and 520 F 2d 1406 (C A 5); *N L R B* v *Crockett-Bradley*, in civil contempt of 523 F 2d 449 (C A 5); *N L R B.* v. *Local 85, Teamsters*, in civil contempt of 448 F 2d 789 and 454 F 2d 875 (C A 9)

[7] *N L R B.* v *Local 282, Teamsters*, in civil contempt of 344 F 2d 649 (C A 2), and to impose the compliance fines in the contempt adjudication in 418 F 2d 994 (C A 2), *N L R B* v *James K Sterritt*, in civil contempt of the reinstatement provisions of the judgments of Oct. 17, 1975, and Dec 30, 1976, in Nos 75–4044 and 76–4253 (C A. 2), *N L R B* v *Ship Scalers & Painter's Union, Local 56 ILWU*, in civil contempt of the hiring hall provisions of the judgments of July 25, 1965, and May 26, 1970, in Nos 20259 and 25821 (C A 9).

[8] *N L R B* v *Ariga Textile Corp*, in civil contempt of the reinstatement provisions of the judgment of May 18, 1977, in No 76–4268 (C A 5)

[9] *N.L R B.* v *Timberland Packing Corp*, in civil contempt of 550 F 2d 500 (C.A 9).

[10] *N L R B* v *Local 327, Teamsters*, in civil and criminal contempt of 419 F 2d 1282 (C A 6), and to impose the compliance fines in the contempt adjudication in No 19947, Nov. 18, 1974.

[11] *N L R B* v *Stark*, in civil contempt of 525 F 2d 442 (C A 2)

[12] *N L R B* v *Hickman Garment Co*, in civil contempt of the backpay judgment of April 8, 1976, in No 75–2178 (C A 6)

[13] *N L R B.* v *Centralia Container Corp*, 96 LRRM 2891 (C A 7), order adopting the master's report entered Sept 21, 1977

[14] *N L R B* v *Mr Electric Service Co* (I), in civil contempt of the 8(a)(1) and 8(a)(3) provisions of the judgment of July 20, 1976, in No 74–1961 (C A 2), *N L R B* v *Local 802, American Fed of Musicians*, order of Feb 18, 1977, in civil contempt of the 8(b)(2) and 8(a)(1)(A) provisions of the judgment of Sept 28, 1973, in No 73–2432 (C A 2); *N L R B* v *J P Stevens & Co*, 563 F 2d 8. order at 96 LRRM 2748 (C A 2) *N L R B* v *Berger Electric Co*, order of Sept 7, 1977, in civil contempt of the 8(a)(1) judgment of Dec 15, 1975, in No 75–4193 (C A 5), *N L R B* v *J P Stevens & Co*, 538 F 2d 1152 (C A. 5), *N L R B.* v *Mr. F's Beef & Bourbon*, order of Aug 29, 1977, adopting the recommendation of U S District Judge Thornton finding the company in civil contempt of the bargaining provisions of the judgment of Feb 26, 1975, in No 74–2018 (C A 6); *N L R B* v *Jerome Begin Contracting Co*, order of May 11, 1977, adopting the report of U S Magistrate J Earl Cudd finding the respondents in civil contempt of the reinstatement provisions of the judgments of April 13, 1974, and Dec 15, 1975, in No 74–1551 (C A 8), *N L R B* v *Michigan State Bldg & Constr Trades Council*, order of April 22, 1977, in civil contempt of the unlawful picketing provisions of the judgment of March 9, 1977, in No 73–1453 (C A. 6); *N L R B* v *Doctor's Hospital of Modesto*, order of Sept 16, 1976, in civil contempt of the bargaining provisions of 489 F. 2d 772 (C A. 9), *N L R B* v *Stay Plastics*, order of Sept 16, 1977, in civil contempt of the backpay and notice-mailing provisions of the judgments of April 10, 1975, and April 13, 1976, in Nos 75–1497 and 76–2158 (C A 9), *N L R B* v *John Zink Co*, 551 F 2d 799 (C A 10), *N L.R B* v. *R J Smith Constr Co*, 545 F. 2d 187 (C A D C)

[15] *N L R B* v *Clinch Valley Clinic Hospital*, order of April 1, 1977, providing for the reinstatement and reimbursement of the discriminatees, in civil contempt of 516 F 2d 996 (C A 4), *N L R B.* v. *Covington Furniture Mfg Corp*, order for the reinstatement and reimbursement of discriminatees entered Jan 31, 1977, in civil contempt of the judgment of April 28, 1975, in No 74–2012 (C A 6)

Three cases decided during this period are particularly noteworthy because of the breadth of some of the remedies afforded by the courts. Upon upholding its special master's report in *N.L.R.B.* v. *J. P. Stevens & Co.*,[16] in which the company and a number of supervisors were found in civil contempt of the Second Circuit's decrees for a second time, the court determined to formulate remedies "broad enough" and "potent enough" to put an end to the misconduct that has earned the company a reputation as the "most notorious recidivist" in the field of labor law. Whereas, in the earlier contempt case,[17] a number of the more stringent remedies were limited to the plants where the violations had occurred, this time the court extended all the remedies to all the company's plants in North and South Carolina. Among the remedies which the court awarded were one requiring the company to establish a continuing program of education for all its supervisors and managerial personnel concerning the rights of employees; one directing the company to formulate written nondiscriminatory rules governing union solicitation and distribution; and one ordering the company to permit a reasonable number of union representatives access to all its canteens, rest, and other nonwork areas within each of its plants for the purpose of communicating with employees orally and in writing. In the second case, *N.L.R.B.* v. *Richard T. & N. P. Furtney, d/b/a Mr. F's Beef & Bourbon*,[18] the Sixth Circuit adopted the special master's recommendation that the company, which had been found in civil contempt for disobeying a bargaining judgment, be required to reimburse the union for all costs and expenditures incurred in the bargaining which led to the contempt adjudication. In the third case, *N.L.R.B.* v. *John Zink Co.*,[19] in which the company was found guilty of discontinuing a program of discretionary promotions with respect to striking employees, the Tenth Circuit ordered the company to make whole employees who were excluded from consideration because of their participation in a strike, observing that although "neither the employees injured by discrimination nor the pay to which they are entitled can be ascertained with certainty . . . lack of certainty does not preclude an award where the employer's wrongful acts contribute to the uncertainty."

Of interest also was the Fifth Circuit's decision in *N.L.R.B.* v. *J. P. Stevens & Co., Gulistan Div.*,[20] adopting, in part, the master's recommendation that the company be adjudged in civil contempt for violating two prior decrees directing Stevens to bargain with the Textile Workers Union at its Statesboro, Georgia, plant. The company had

[16] See fn 14, *supra*
[17] See 38 NLRB Ann Rep. 173 (1973).
[18] See fn 14, *supra*
[19] See fn. 14, *supra*
[20] See fn 14, *supra*

argued that granting 18 merit increases to 9 employees was isolated conduct not sufficiently serious to constitute contempt. In rejecting the company's contentions, the court held that even relatively isolated unilateral action may be deemed sufficiently serious so as to constitute contempt when viewed in the context of the company's history of intransigence.

# XI

# Special and Miscellaneous Litigation

## A. Litigation Involving the Board's Jurisdiction

In two cases, Catholic parochial schools sought to enjoin the Board from conducting representation elections among their lay teachers or from taking any other action in relation to their schools, contending that the religion clauses of the first amendment precluded any application of the Act to religious schools. In the first case, *Grutka* v. *Barbour*,[1] the Seventh Circuit vacated the injunction which had been granted by the district court, holding that the district court lacked jurisdiction to enjoin the Board's proceedings. Noting that district courts generally have no jurisdiction to intervene in Board proceedings, the court explained that the narrow exception to this rule enunciated in *Leedom* v. *Kyne*[2] permits intervention only where the Board has patently disregarded the bounds of its jurisdiction as a matter of law. Since the basic issue in this case—whether application of the Act to the schools constitutes an excessive entanglement with religion—was a factual issue, it was necessary for the Board to develop a factual record against which the constitutional issue could be judged. In addition, the court held that the district court lacked jurisdiction, noting that the statutory review procedure contained in section 10 (e) and (f) of the Act would adequately maintain the status quo until after the schools presented the constitutional issue in the court of appeals. Thus, "[t]he constitutional allegations of this complaint do not confer jurisdiction upon the district court because the statutory review procedures are fully adequate to protect the plaintiff's constitutional rights." (549 F. 2d at 9.)

In the second case, *Caulfield* v. *Hirsch*,[3] the district court rejected the Seventh Circuit's reasoning in *Grutka* and concluded that it did

[1] 549 F. 2d 5, cert denied 431 U S 908.

[2] 358 U.S 184 (1958)

[3] 95 LRRM 3164 (D.C Pa.), appeals pending (C A. 3, Dockets 77-1918, 77-1928, 77-1972, 77-2).

have jurisdiction to grant the requested relief because "plaintiffs who seek . . . relief from alleged violations of the religious liberty clauses guaranteed by the first amendment should have direct and immediate access to the federal courts." (*Id.* at 3167.) The court explained that the exclusive review provisions of section 10 (e) and (f) of the Act were intended only to prevent judicial review of Board errors on labor law issues and not to preclude recourse to the courts on constitutional grounds. The court read *Leedom* v. *Kyne* [4] to permit district jurisdiction whenever a "plaintiff is not seeking review of an NLRB representation order in the manner in which it would normally be reviewed by the Court of Appeals in a § 10 case, but rather is seeking relief from NLRB conduct which exceeds its statutory or constitutional power." (*Id.* at 3168.) The court interpreted *McCulloch* v. *Sociedad Nacional de Marineros de Honduras* [*United Fruit Co.*][5] as supporting the assertion of jurisdiction when a case generates public interest and raises new constitutional issues. Having found jurisdiction, the court declared the Act unconstitutional as applied to the parochial schools, based upon an analysis similar to the Seventh Circuit's subsequent decision in *Catholic Bishop of Chicago* v. *N.L.R.B.*,[6] and granted the requested injunctive relief.[7]

In two cases, the courts held that state regulation of labor relations was preempted by the jurisdiction of the Board. Both decisions were the result of litigation initiated by the Board to enjoin state action under the authority of *N.L.R.B.* v. *Nash-Finch Co.*[8] In the first of the cases, *N.L.R.B.* v. *State of New York*,[9] the court held that the state did not have jurisdiction under its police power to prevent employees of a health care institution from striking, Congress having given the Board exclusive jurisdiction over labor relations at health care institutions.[10] In the second of the cases, *N.L.R.B.* v. *Committee of Interns & Residents & N.Y. State Labor Relations Board*,[11] the court agreed with the Board that the state could not find interns, residents, and other housestaff officers to be employees and extend to them collective-bargaining rights when the Board had made a contrary determination as a matter of national policy.[12]

---

[4] Fn 2, *supra*

[5] 372 U S 10 (1963).

[6] 559 F 2d 1112

[7] On May 20, 1977, in granting a partial stay of the district court's earlier preliminary injunction, Justice Brennan permitted the Board to conduct the balloting among the lay teachers and to impound the ballots uncounted pending final resolution of the case

[8] 404 U S 138 (1971)

[9] 436 F. Supp. 335 (D C N Y )

[10] While concluding that the state could not enjoin the strike, the court noted that the state might be empowered to provide for the health and safety of patients during a strike

[11] 96 LRRM 2342 (C A 2)

[12] See *Cedars-Sinai Medical Center*, 223 NLRB 251 (1976), and *Kansas City General Hospital & Medical Center*, 225 NLRB 108 (1976)

The Board also intervened in private litigation to protect a 10(k) determination from collateral attack. In *United Automobile Workers, Local 1519* v. *Rockwell Intl. Corp.*,[13] the Board intervened in a suit brought by the union under section 301 to enforce an arbitration award that was contrary to the Board's work assignment in a 10(k) proceeding. The court held that the Board's 10(k) determination must be treated as final, taking precedence over the arbitrator's award. The court further found that "when an employer has been acting in accord with an ultimate ruling of the NLRB in a section 10(k) proceeding, it is not liable for damages to the union" for breach of a contract as interpreted by an arbitrator.

## B. Litigation Involving the Freedom of Information Act

In several decisions reported last year, the courts of appeals declined to allow the FOIA to be used to discover witness statements in pending enforcement proceedings. Several additional courts of appeals have now reached the same result. In *Roger J. Au & Son* v. *N.L.R.B.*,[14] the Third Circuit held "that statements of charging parties and potential witnesses in pending enforcement proceedings are privileged under FOIA exemption 7(A)." The court rejected the contention that Congress intended all investigative files to be made public unless the agency can establish harm with respect to each particular document sought. The court found that Congress did not intend by the FOIA to alter Board discovery rules and that any disclosure of witness statements inconsistent with Board discovery rules would "interfere with enforcement proceeding."

In *Climax Molybdenum Co.* v. *N.L.R.B.*,[15] the Tenth Circuit held that the amendments to exemption 7 did not alter the FOIA with respect to employee statements in Board proceedings. The court specifically rejected the argument that statements in each case must be considered individually in order to determine if any harm would result from disclosure.[16]

In *N.L.R.B.* v. *Hardeman Garment Corp.*[17] the Sixth Circuit held that, since the Board's discovery rules barred disclosure of employee statements, the statements were exempt from disclosure under the FOIA exemption 7. While noting "an element of unfairness in the

[13] 81 LC ¶ 13,154 (D C Mich )
[14] 538 F 2d 80
[15] 539 F 2d 63
[16] The Tenth Circuit summarily reversed two district courts in later cases on the basis of the *Climax* decision finding no need for inquiry into particular documents to establish harm from disclosure See *Cessna Aircraft Co* v *N L R B* , 542 F. 2d 834 , and *Maremont Corp* v *N L R B* , 93 LRRM 2799 (district court *in camera* inspection is not necessary)
[17] 557 F 2d 559

Board's discovery rules," the court found those rules also "serve a two-fold purpose which is consonant with Congress' intentions in enacting exemption 7: to prevent premature disclosure of the results of the General Counsel's investigation so he could present his strongest case before the Board, and to protect sources of information so that employees and other persons having information would cooperate with Board investigators without fear of reprisal."

In *Harvey's Wagon Wheel* v. *N.L.R.B.*,[18] the Ninth Circuit held that employee statements were protected from pretrial disclosure under exemption 7(A) because disclosure would have a "retarding effect on open and frank Board investigations" and would harm the Board's case in court. Since the record did not specify whether only employee statements were in issue, the court remanded the case "to the district court for it to analyze the statements by those other than employees and decide whether they, too, fit within one of the . . . exemptions." Any factual dispute as to the nature of the statements sought should be resolved by *in camera* inspection, but, "[i]f the only statements in the NLRB case file concededly are those of employees and their union representatives, then *in camera* inspection should not be necessary . . . ."

Finally, in *Abrahamson Chrysler-Plymouth* v. *N.L.R.B.*,[19] the Seventh Circuit held that Board investigatory statements were exempt from disclosure under 7(A) while judicial enforcement proceedings were pending even though the administrative enforcement proceedings had concluded.

In *New England Medical Center Hospital* v. *N.L.R.B.*,[20] the First Circuit, expanding on its decision of last year,[21] concluded that exemption 7(A) protects from disclosure the following records: (1) records other than employee statements, in "open" case files; (2) employee statements in "closed" case files closely related to ongoing proceedings; and (3) other records in "closed" case files that are closely related to current proceedings. The court reasoned that premature disclosure of documents related to a Board enforcement proceeding would interfere with those enforcement proceedings because the information disclosed would allow the respondent to construct defenses to the Board's case. Additionally, the court noted that even discovery requests under the FOIA would infringe upon litigation the Board's ability to conduct hearings. The court also observed, with regard to the relevancy of the records sought to a concrete and prospective enforcement proceeding, "the Board's decision as to relevancy, if reasonable

[18] 550 F 2d 1139
[19] 561 F 2d 63.
[20] 548 F 2d 377.
[21] *Goodfriend Western Corp* v *Fuchs*, 535 F 2d 145, cert denied 429 U S 895

and not arbitrary on its face, and supported by affidavits if necessary, should be final." "[T]he involvement of a court in making pre-trial rulings on relevancy would massively interfere with the Board's enforcement capabilities." [22]

Several cases were litigated in which a demand was made for authorization cards submitted to establish a sufficient employee interest in representation to warrant an election. In the *Committee on Masonic Homes of R. W. Grand Lodge* v. *N.L.R.B.*,[23] the Third Circuit found that authorization cards were exempt from disclosure under exemption 6. The court held that the card signers' privacy interest was "serious" and that no countervailing public interest in disclosure could be asserted. Accordingly, the court concluded that disclosure would constitute a "clearly unwarranted invasion of personal privacy." The court also found exemption 7 to be inapplicable because the showing of interest is not an issue on which the Board permits litigation. In *L'Eggs Products* v. *N.L.R.B.*,[24] and *Howard Johnson Restaurant* v. *N.L.R.B.*,[25] the courts recognized the Board's exemption 7 claim and held that both exemption 6 and its litigation counterpart, exemption 7(C), shielded the cards because of the overriding privacy interest of the signers. One court declined to recognize either exemption 6 or exemption 7. In *Pacific Molasses Co.* v. *N.L.R.B.*,[26] the court found no exemption applicable to authorization cards.

One case was litigated concerning Board files compiled for backpay proceedings. In *Deering Milliken* v. *Irving*,[27] the Fourth Circuit held that most documents in Board backpay files pertaining to computation of backpay are not exempt from disclosure under the FOIA. The court carefully limited its decision to backpay proceedings, noting it would "not depart from the sound precedent, including our own, which exempts from disclosure investigatory records compiled for representation and unfair labor practice proceedings." (*Id.* at 1136.) The court noted that the Board might refuse to disclose certain information of a highly personal nature if the district court agreed that the information withheld was of limited relevance to the computation of backpay. The court also permitted the Board to withhold an expert's report under exemption 5.[28]

---

[22] A petition for rehearing, based upon a settlement in the underlying Board case, was denied The court refused to consider the hospital's assertion that all cases were now "closed," because the issue decided originally was based on the facts in evidence before the district court If the facts changed thereafter, the court found that the appropriate course was to make a new FOIA request 548 F 2d at 387

[23] 556 F 2d 214.

[24] 93 LRRM 2488 (D C Calif ).

[25] 95 LRRM 2471 (D C N.Y.)

[26] 95 LRRM 2638 (D.C. La ).

[27] 548 F 2d 1131

[28] In a clarifying order of March 15, 1977, the court explained that Deering Milliken had acted as a private attorney general and was entitled to recover attorney's fees.

# INDEX OF CASES DISCUSSED


| | Page |
|---|---|
| AMC Air Conditioning Co., 232 NLRB No. 24 | 79 |
| Abell, A. S., Co., 230 NLRB No. 161 | 108 |
| Abrahamson Chrylser-Plymouth v. N.L.R.B., 561 F. 2d 63 (C.A. 7) | 200 |
| Airport Limousine Service & Jay McNeill, Esq. as Receiver, 231 NLRB No. 149 | 114 |
| Aladdin Hotel Corp., 229 NLRB No. 73 | 57 |
| Alaska Roughnecks & Drillers Assn. v. N.L.R.B., 555 F. 2d 732 (C.A. 9) | 157 |
| Alberici, J. S., Construction Co., 231 NLRB No. 172 | 89 |
| American Broadcasting Co., CBS & Natl. Broadcasting Co. v N.L.R.B., 547 F. 2d 159 (C.A. 2) | 175 |
| American Telephone & Telegraph Co., 231 NLRB No. 110 | 77 |
| Au, Roger J., & Son v. N.L.R.B., 538 F. 2d 80 (C.A. 3) | 199 |
| Automobile Club of Michigan, Detroit Automobile Inter-Insurance Exchange; Motor Land Insurance Co. & Group Insurance Co. of Michigan, 231 NLRB No. 99 | 78 |
| Ayres, L. S., & Co. v. N.L.R.B., 551 F. 2d 586 (C.A. 4) | 157 |
| Baptist Memorial Hospital, 229 NLRB No. 1 | 151 |
| Barton, Clara, Terrace Convalescent Center, Div. of Natl. Health Enterprises—Delfern, 225 NLRB No. 1028 | 40 |
| Bayside Enterprises v. N.L.R.B., 429 U.S. 298 | 154 |
| Beasley Energy, d/b/a Peaker Run Coal Co., Ohio Div. #1, 228 NLRB No. 16 | 95 |
| Bell & Howell Co., 230 NLRB No. 57 | 43 |
| Beth Israel Hospital, N.L.R.B. v., 554 F. 2d 477 (C.A. 1) | 167 |
| Blackhawk Engraving Co. v. N.L.R.B., 540 F. 2d 1296 (C.A. 7) | 177 |
| Brennan's Cadillac, 231 NLRB No. 34 | 98 |
| Bricklayers & Stone Masons Union, Local 2 [AGC of Minnesota] v. N.L.R.B., 562 F. 2d 775 (C.A.D.C.) | 179 |
| Browning Industries, Venetian Marble of Kentucky, 226 NLRB No. 283 | 146 |
| Camden Regional Legal Services, 231 NLRB No. 47 | 24, 29 |
| Carrier Air Conditioning Co. v. N.L.R.B., 547 F. 2d 1178 (C.A. 2) | 180 |
| Case, J. I., Co. v. N.L.R.B., 555 F. 2d 202 (C.A. 8) | 162 |
| Catholic Bishop of Chicago v. N.L.R.B., 559 F. 2d 1112 (C.A. 7) | 164 |
| Caulfield v. Hirsch, 95 LRRM 3164 (D.C. Pa.) | 197 |
| Certified Grocers of California, Ltd., 227 NLRB No. 52 | 83 |
| Climax Molybdenum Co., Div. of Amax, 227 NLRB No. 154 | 81 |
| Climax Molybdenum Co. v. N.L.R.B., 539 F. 2d 63 (C.A. 10) | 199 |
| Cobb, R. C., 231 NLRB No. 19 | 44 |
| Coca-Cola Bottling Co. of Los Angeles, 227 NLRB No. 173 | 80 |
| Colonial Haven Nursing Home; N.L.R.B. v., 542 F. 2d 691 (C.A. 7), rehearing denied 542 F. 2d 707 | 158 |
| Columbus Printing Pressmen & Assistants' Union 252 [R. W. Page Corp.]; N.L.R.B. v., 543 F. 2d 1161 (C.A. 5) | 170 |
| Committee of Interns & Residents & N.Y. State Labor Relations Board, N.L.R.B. v., 96 LRRM 2342 (C.A. 2) | 198 |

Page

Committee on Masonic Homes of R. W. Grand Lodge v. N.L.R.B., 556 F. 2d 214 (C.A. 3) ---- 201
Communications Workers of America, Local 1122 (New York Telephone Co.), 226 NLRB 97 ---- 128
Construction, Bldg. Materials & Miscellaneous Drivers, Local 83, IBT (Allied Concrete), 231 NLRB No. 181 ---- 130
Deering Milliken v. Irving, 548 F. 2d 1131 (C.A. 4) ---- 201
Detroit Edison Co., N.L.R.B. v., 560 F. 2d 722 (C.A. 6) ---- 172
Diocese of Ft. Wayne-South Bend v. N.L.R.B., 559 F. 2d 1112 (C.A. 7) ---- 164
District 1199, Natl. Union of Hospital & Health Care Employees, RWDSU (United Hospitals of Newark), 232 NLRB No. 67 ---- 26, 144
District 1199—E, Natl. Union of Hospital & Health Care Employees, RWDSU (CHC Corp.), 229 NLRB No. 115 ---- 143
Drivers, Chauffeurs, Warehousemen & Helpers, Local 71, IBT [Wells Fargo Armored Service Corp.] v. N.L.R.B., 553 F. 2d 1368 (C.A.D.C.) ---- 180
Drug Package Co., 228 NLRB No. 17 ---- 97, 148
Dynalectron Corp., 231 NLRB No. 185 ---- 68
E. H., Ltd., d/b/a Earringhouse Imports, 227 NLRB No. 118 ---- 79
Eagle Material Handling, Subsidiary of Somerset Tire Service, N.L.R.B. v., 558 F. 2d 160 (C.A. 3) ---- 184
Eastex v. N.L.R.B., 550 F. 2d 198 (C.A. 5) ---- 165
Elder, Michael Muldoon, d/b/a Vorpal Galleries, 227 NLRB No. 65 ---- 147
Employer Members of Grower-Shipper Vegetable Assn. of Central California, et al., 230 NLRB No. 150 ---- 60
Enterprise Assn. of Steam, Hot Water, Hydraulic Sprinkler, Pneumatic Tube, Ice Machine & General Pipefitters, Local 638 [Austin Co.]; N.L.R.B. v., 429 U.S. 507 ---- 152
Ernst & Ernst Natl. Warehouse, 228 NLRB No. 68 ---- 29
Fabsteel Co. of Louisiana; Crain v, 427 F. Supp. 316 (D.C. La.) ---- 187
Farmer, Special Administrator v. United Brotherhood of Carpenters & Joiners of America, Local 25, 430 U.S. 290 ---- 155
Fern Laboratories, 232 NLRB No. 84 ---- 53
Filmation Associates, 227 NLRB No. 237 ---- 39
First Food Ventures, 229 NLRB No. 154 ---- 106
Florida Steel Corp., 231 NLRB No. 117 ---- 26, 145
Foley, Hoag & Eliot, 229 NLRB No. 80 ---- 29
Foote, W. A., Memorial Hospital, 230 NLRB No. 88 ---- 50
Ford Motor Co. (Chicago Stamping Plant), 230 NLRB No. 101 ---- 112
Fort Apache Timber Co., 226 NLRB 503 ---- 32
Gates, Thomas E., & Sons, 229 NLRB No. 100 ---- 56
General American Transportation Corp., 228 NLRB No. 102 ---- 24, 36
General Electric Co., 230 NLRB No. 91 ---- 92
General Services, 229 NLRB No. 134 ---- 91
General Truck Drivers, Warehousemen, Helpers & Automotive Employees, Local 315, IBT [Rhodes & Jamieson]; N.L.R.B. v., 545 F. 2d 1173 (C.A. 9) ---- 174
Globe Security Services; N.L.R.B. v., 548 F. 2d 1115 (C.A. 3) ---- 158
Goodfriend Western Corp., d/b/a Wrangler Wranch, 232 NLRB No. 89 ---- 103
Grant's Home Furnishings, 229 NLRB No. 181 ---- 84
Graphic Arts Intl. Union (Tribune Co.), 226 NLRB 379 ---- 119
Great Atlantic & Pacific Tea Co., 230 NLRB No. 102 ---- 149
Greater Bakersfield Memorial Hospital, 226 NLRB 971 ---- 65
Greensboro Printing Pressmen & Assistants' Union 319 [Greensboro News Co.]; N.L.R.B. v., 549 F. 2d 308 (C.A. 4) ---- 170

Page

Griffith Co. v. N.L.R.B., 545 F. 2d 1194 (C.A. 9), cert. denied 98 S. Ct. 171 181
Grutka v. Barbour, 549 F. 2d 5, cert denied 431 U.S. 908 197
Hager, Frank, Inc., 230 NLRB No. 50 49
Handy Andy, 228 NLRB No. 59 25, 41
Hardeman Garment Corp ; N.L.R B. v., 557 F. 2d 559 (C.A. 6) 199
Harvey's Wagon Wheel v. N.L.R.B., 550 F. 2d 1139 (C.A. 9) 200
Hawaiian Hauling Service, Ltd. v. N.L.R.B., 545 F. 2d 674 (C.A. 9) 159
Heavy, Highway, Bldg. & Construction Teamsters Committee for Northern California (California Dump Truck Owners Assn.), 227 NLRB No. 27 139
Heyman, d/b/a Stanwood Thriftmart; N.L.R.B. v., 541 F. 2d 796 (C.A. 9) 161
Horwath, Victoria, & Elizabeth Gaudry v. N.L.R.B, 539 F. 2d 1093 (C.A. 7), cert. denied 430 U.S. 940 175
Hospital Service Plan of New Jersey, 227 NLRB No. 88 122
Hotel, Motel, Restaurant Employees & Bartenders Union, Local 737 (Jets Services), 231 NLRB No. 176 137
Howard Johnson Restaurant v. N.L.R.B., 95 LRRM 2471 (D.C.N.Y.) 201
Howard Mfg. Co., 231 NLRB No. 87 92
Hudgens, Scott, 230 NLRB No. 73 76
Independent Assn. of Steel Fabricators; Kaynard v., 95 LRRM 2015 (D.C.N.Y.) 186
Indiana & Michigan Electric Co., 229 NLRB No. 95 113
Intl. Assn. of Machinists, Merrit Graham Lodge 1871 (General Dynamics Corp.), 231 NLRB No. 74 119
Intl. Brotherhood of Electrical Workers, Local 388 [St. Joseph's Hospital], N.L.R.B. v., 548 F. 2d 704 (C.A. 7), cert. denied 98 S. Ct. 127 182
Intl. Brotherhood of Teamsters, Local 344 [Purolator Security], Squillacote v., 561 F. 2d 31 (C.A. 7) 189
Intl. Harvester Co., 227 NLRB No. 19 111
Intl. Longshoremen's & Warehousemen's Union, Local 13 [Pacific Maritime Assn.]; N.L.R.B. v., 549 F. 2d 1346 (C.A. 9) 174
Intl. Longshoremen's Assn. [United States Lines]; Humphrey v., 548 F. 2d 494 (C.A. 4) 190
Intl. Longshoremen's Assn., et al. (Associated Transport), 231 NLRB No. 64 140
Intl. Longshoremen's Assn., Local 1575 [Puerto Rico Marine Management] v. N.L.R.B., 560 F. 2d 439 (C.A. 1) 178
Intl. Organization of Masters, Mates & Pilots, Marine Div., ILA [Westchester Marine Shipping Co.] v. N.L.R.B., 539 F. 2d 554 (C.A. 5) 175
Intl. Union of Operating Engineers, Local 139, et al. (Oak Construction), 226 NLRB 759 133
Intl. Union, United Automobile, Aerospace & Agricultural Implement Workers, UAW, Local 1331 (Chrysler Corp.), 228 NLRB No. 186 124
Interstate Electric Co., 227 NLRB No. 291 120
Iowa Beef Processors, 226 NLRB 1372 85
Jacobs Transfer. 227 NLRB No. 181 45
Jarp Corp., 230 NLRB No. 97 58
Jasper Seating Co., 231 NLRB No. 171 104
Jet-Pak Corp. 231 NLRB No. 93 49
Joyce Sportswear Co., 226 NLRB 1231 62
Kable Printing Co. v. N.L.R.B., 540 F. 2d 1304 (C.A. 7)) 177
Kable Printing Co. v. N.L.R.B., 545 F. 2d 1079 (C.A. 7) 177

Page

Kapiolani Hospital, 231 NLRB No. 10 ... 143
Keller-Crescent Co., N.L.R.B. v., 538 F. 2d 1291 (C.A. 7) ... 169
Kiewit, Peter, Sons' Co. & South Prairie Construction Co., 231 NLRB No. 13 ... 73
King Electrical Mfg. Co., 229 NLRB No. 91 ... 103
Kroger Co., 228 NLRB No. 19 ... 97
Ladish Co.; N.L.R.B. v., 538 F. 2d 1267 (C.A. 7) ... 171
Lammert Industries, Div. of Componetrol, Subsidiary of I-T-E Imperial Corp., 229 NLRB No. 128 ... 102
Laubenstein & Portz, 226 NLRB 804 ... 52
L'Eggs Products v. N.L.R.B., 93 LRRM 2488 (D.C. Calif.) ... 201
Lewis, Alfred M., 229 NLRB No. 116 ... 84
Local 3, IBEW [Wickham-Perone]; N.L.R.B. v., 542 F.2d 860 (C.A. 2) ... 177
Local 29, Intl. Chemical Workers Union (Morton-Norwich Products), 228 NLRB No. 127 ... 128
Local Union 68, IBEW (Howard Electric Co.), 227 NLRB No. 278 ... 121
Local 248, Meat Cutters (Service Food Stores), 230 NLRB No. 27 ... 132
Local 324, Operating Engineers (Michigan Chapter, AGC), 226 NLRB 587 ... 115
Local 393, Plumbers (Hall-Way Contracting Co.), 232 NLRB No. 83 ... 44
Local 469, Plumbers (Plumbing & Air Conditioning Contractors of Arizona), 228 NLRB No. 36 ... 121
Local 600, UAW (Dearborn Stamping Plant of Ford Motor Co.), 225 NLRB 1299 ... 115
Local 1384. UAW (Ex-Cell-O Corp.), 227 NLRB No. 87 ... 117
Long Beach Youth Center, a/k/a Long Beach Youth Home (formerly Trailback), 230 NLRB 519 ... 142
MPE, Inc., 226 NLRB No. 79 ... 106
Machinists Local 1327, IAM (Dalmo Victor), 231 NLRB No. 115 ... 118
Massachusetts Nurses Assn. [Lawrence General Hospital]; N.L.R.B. v., 557 F. 2d 894 (C.A. 1) ... 170
Maughan, Gary, & Michael Walsh. et al., d/b/a Holding Co., 231 NLRB No. 53 ... 150
McQuaide, W. C.; N.L.R.B. v., 552 F. 2d 519 (C.A. 3) ... 169
Memorial Hospital of Roxborough v. N.L.R.B., 545 F. 2d 351 (C.A. 3) ... 160
Merchants Home Delivery Service; Solien v., 557 F. 2d 622 (C.A. 8) ... 185
Mercy Center for Health Care Services, 227 NLRB No. 265 ... 67
Mercy-Memorial Hospital Corp., 231 NLRB No. 182 ... 88
Metromedia—KMBC-TV, 232 NLRB No. 76 ... 111
Millmen-Cabinet Makers, Local 550, Carpenters (Diamond Industries), 227 NLRB No. 36 ... 132
Minneapolis Bldg. & Construction Trades Council & Local 34 [Krasen Plumbing & Heating]; Dawidoff v., 430 F. Supp. 318 (D.C. Minn.), remanded 550 F. 2d 407 (C.A. 8), affd. 430 F. Supp. 322 ... 191, 192
Motherhouse of the Sisters of Charity of Cincinnati, Ohio, 232 NLRB No 44 ... 32
Motion Picture Laboratory Technicians, Local 780, IATSE (McGregor-Werner), 227 NLRB No. 79 ... 121
Mt. Vernon Tanker Co. v. N.L.R.B., 549 F. 2d 571 (C.A. 9) ... 168
Murcel Mfg. Corp., 231 NLRB No. 80 ... 44
Murray Products, 228 NLRB No. 33 ... 147
Natl. Assn. of Broadcast Employees & Technicians (Metromedia), 230 NLRB No. 7 ... 135

Page

Natl. Fresh Fruit & Vegetable Co. & Quality Banana Co., 227 NLRB No. 293 111
Natl. Maritime Union (Puerto Rico Marine Management), 227 NLRB No. 155 134
Natl. Maritime Union (Puerto Rico Marine Management), 227 NLRB No 160 134
New England Medical Center Hospital v. N.L.R.B., 548 F. 2d 377 (C.A. 1) 200
New York District Council of Carpenters (Graphic Displays, Ltd.), 226 NLRB 452 136
Niagara University v. N.L.R B., 558 F. 2d 1116 (C.A. 2) 164
Nichols, S. E., Marcy Corp., 229 NLRB No. 19 86
Nordstrom, 229 NLRB No. 70 110
Northeastern Hospital, 230 NLRB No. 162 66
Norwestern Products, 226 NLRB 653 51
Ohio Valley Hospital Assn., 230 NLRB No. 84 69
Otis Elevator Co., 231 NLRB No. 183 123
P.P.G. Industries, 229 NLRB No. 107 116
Pacific Hide & Fur Depot v. N.L.R.B., 553 F. 2d 609 (C.A. 9) 173
Pacific Molasses Co. v. N.L.R.B., 95 LRRM 2638 (D.C. La.) 201
Pickle Bill's, 229 NLRB No. 150 33
Pick-Mt. Laurel Corp ; Hirsch v., 96 LRRM 2254 (D.C N.J.) 187
Pinter Bros., 227 NLRB No. 123 94
Pioneer Inn Associates, d/b/a Pioneer Inn & Pioneer Inn Casino, 228 NLRB No. 160 101
Plumbers & Steamfitters Local 342 (Conduit Fabricators), 225 NLRB 1364 140
President & Fellows of Harvard College, 229 NLRB No. 97 72
Retail Store Employees Union Local 1001 (Land Title Insurance Co. of Pierce County), 226 NLRB 754 132
Roberts Door & Window Co. v. N.L.R.B., 540 F. 2d 350 (C.A 8) 162
Robinson, Roy, d/b/a Roy Robinson Chevrolet, 228 NLRB No. 103 36
S K Products Corp , 230 NLRB No 186 31
Sahara-Tahoe Corp., d/b/a Sahara-Tahoe Hotel, 229 NLRB No. 151 101
St. Francis College; N.L.R.B. v., 562 F 2d 246 (C A. 3) 164
St. John's Hospital & School of Nursing v. N L R.B., 557 F. 2d 1368 (C.A 10) 166
St. Luke's Hospital Center; N.L.R.B. v., 551 F. 2d 476 (C.A. 2) 161
San Diego Newspaper Guild, Local 95 [Union Tribune Publishing Co.] v. N.L.R B., 548 F. 2d 863 (C A. 9) 172
San Francisco Art Institute, 226 NLRB 1251 71
Security-Columbian Banknote Co.; N L R.B. v., 541 F. 2d 135 (C A. 3) 173
Sheet Metal Workers Intl. Assn , Local 38 (Elmsford Sheet Metal Works), 231 NLRB No. 101 126
Sheet Metal Workers Intl. Assn , Local 59 (Employers Assn. of Roofers), 227 NLRB No. 90 125
Shopping Kart Food Market, 228 NLRB No. 190 25, 55
Solboro Knitting Mills, 227 NLRB No. 89 89
Southwestern Bell Telephone Co., 227 NLRB No. 175 82
Sparks Nugget d/b/a John Ascuaga's Nugget, 230 NLRB No. 43 87
Standard Oil Co., 230 NLRB No. 137 63
State Bank of India, 229 NLRB No. 137 24, 30
State of New York, N.L.R.B. v., 436 F. Supp. 335 (D.C.N.Y.) 198

Page

Stephenson v. N.L.R B., 550 F. 2d 535 (C.A. 9) 159
Stevens, J. P., & Co. v. N.L.R.B., 547 F. 2d 792 (C.A. 4) 167
Sumter Plywood Corp.; N.L.R.B. v., 535 F. 2d 917 (C.A. 5) 163
Tahoe Nugget, d/b/a Jim Kelley's Tahoe Nugget, 227 NLRB No. 72 101
Teachers College, Columbia University, 226 NLRB 1236 71
Teleprompter Corp., et al., 227 NLRB No. 101 109
Truck Drivers, Oil Drivers, Filling Station & Platform Workers' Union Local 705, IBT (Randolph Paper Co.), 227 NLRB No. 111 146
Union Carbide Corp. Chemical & Plastics Operations Div., 228 NLRB No. 141 122
United Automobile Workers, Local 1519 v. Rockwell Intl. Corp., 81 LC ¶ 13,154 (D.C. Mich.) 199
United Electrical, Radio & Machine Workers, Local 623 (Limpco Mfg.), 230 NLRB No. 59 123
United Marine Div. Local 333 (General Marine Transportation Corp.), 228 NLRB No. 128 129
United Mine Workers (Lone Star Steel Co.), 231 NLRB No. 188 127
United Mine Workers, Local 1368 (Bethlehem Mines Corp.), 227 NLRB No. 126 135
United Mine Workers, Local 1600 (Bethlehem Mines Corp ), 230 NLRB No. 111 135
United Mine Workers, Local 1979 (Consolidation Coal Co.), 227 NLRB No. 125 135
United Parcel Service, 230 NLRB No. 177 78
U.S. Postal Service, 227 NLRB No. 267 38
Vantran Electric Corp., 231 NLRB No. 169 99
Vegas Village Shopping Corp., 229 NLRB No. 40 59
Vermilion Electrical Components, Beau Products Div., N.L.R.B v., 548 F. 2d 24 (C A. 1) 184
Volt Technical Corp., 232 NLRB No. 46 70
Walker Methodist Residence & Health Care Center, 227 NLRB No.238 26, 141
Western Electric, N.L.R B. v., 559 F. 2d 1131 (C.A. 8) 173
Westinghouse Electric Corp., 227 NLRB No. 282 48
Westinghouse Electric Corp., Distribution Equipment Div., 232 NLRB No. 10 86
White-Westinghouse Corp., wholly-owned subsidiary of White Consolidated Industries, 229 NLRB No. 113 107
Yellow Cab Co., 229 NLRB No. 190 64
Young & Rubicam International, 226 NLRB 1271 61

# APPENDIX

## Statistical Tables for Transition Quarter (July–September 1976) and Fiscal Year 1977

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 payment for bonuses, vacations, other fringe benefits, etc , lost because of the discriminatory acts, as well as interest thereon All moneys noted in table 4 have been

reported as paid or owing in cases closed during the fiscal year. (Installment payments may protract some payments beyond this year and some payments may have actually been made at times considerably in advance of the date a case was closed; i.e., in a prior fiscal year.)

## Backpay Hearing

A supplementary hearing to receive evidence and testimony as to the amount of backpay due discriminatees under a prior Board order or court decree.

## Backpay Specification

The formal document, a "pleading," which is served on the parties when the regional director and the respondent are unable to agree as to the amounts of backpay due discriminatees pursuant to a Board order or court decree requiring payment of such backpay It sets forth in detail the amount 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 result 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 nondeterminative challenges or determinative challenges which are resolved by agreement prior to issuance of the first tally of ballots.

## Charge

A document filed by an employee, an employer, a union, or an individual alleging that an unfair labor practice has been committed. See "C Cases" under "Types of Cases."

## Complaint

The document which initiates "formal" proceedings in an unfair labor practice case. It is issued by the regional director when he concludes on the basis of a completed investigation that any of the allegations contained in the charge have merit and 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

253-831 O—78——15

## 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 reimbursement 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 Cases." 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.

## Representation Cases

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 case 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.

## Representation 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 in violation of 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).

CG: A charge that a labor organization has committed unfair labor practices in violation of section 8(g).

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) of 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.

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.

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

## 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


## All Cases

| | Table No. |
|---|---|
| Received-Closed-Pending | 1 |
| Distribution of Intake: | |
| by Industry | 5 |
| Geographic | 6A, B |

## Court Litigation

| | |
|---|---|
| Appellate Decisions | 19A |
| Enforcement and Review | 19 |
| Injunction Litigation | 20 |
| Miscellaneous Litigation | 21 |

## Representation and Union Deauthorization Cases General

| | |
|---|---|
| Received-Closed-Pending | 1, 1B |
| Disposition: | |
| by Method | 10 |
| by Stage | 9 |
| Formal Actions Taken | 3B |

## Elections

| | |
|---|---|
| Final Outcome | 13 |
| Geographic Distribution | 15A, B |
| Industrial Distribution | 16 |
| Objections/Challenges: | |
| Elections Conducted | 11A |
| Disposition | 11D |
| Party Filing | 11C |
| Rerun Results | 11E |
| Ruled on | 11B |
| Size of Units | 17 |
| Types of Elections | 11 |
| Union-Shop Deauthorization Polls—Results of | 12 |
| Valid Votes Cast | 14 |

## Unfair Labor Practice Cases

| | |
|---|---|
| Received-Closed-Pending | 1, 1A |
| Allegations, Types of | 2 |
| Disposition: | |
| by Method | 7 |
| by Stage | 8 |
| Jurisdictional Dispute Cases (Before Complaint) | 7A |
| Formal Actions Taken | 3A |
| Remedial Actions Taken | 4 |
| Size of Establishment (Number of Employees) | 18 |

## Amendment of Certification and Unit Clarification Cases

| | |
|---|---|
| Received-Closed-Pending | 1 |
| Disposition by Method | 10A |
| Formal Actions Taken | 3C |

## Advisory Opinions

| | |
|---|---|
| Received-Closed-Pending | 22 |
| Disposition by Method | 22A |

# Table 1.—Total Cases Received, Closed, and Pending, Transition Quarter (July–September 1976) [1]

| | Total | Identification of filing party | | | | | |
|---|---|---|---|---|---|---|---|
| | | AFL-CIO unions | Teamsters | Other national unions | Other local unions | Individuals | Employers |
| | All cases | | | | | | |
| Pending July 1, 1976 | 17,996 | 7,055 | 2,024 | 618 | 809 | 5,532 | 1,958 |
| Received 19TQ | 13,011 | 4,243 | 1,655 | 314 | 393 | 4,883 | 1,523 |
| On docket 19TQ | 31,007 | 11,298 | 3,679 | 932 | 1,202 | 10,415 | 3,481 |
| Closed 19TQ | 11,834 | 3,879 | 1,514 | 306 | 419 | 4,441 | 1,275 |
| Pending Sept. 30, 1976 | 19,173 | 7,419 | 2,165 | 626 | 783 | 5,974 | 2,206 |
| | Unfair labor practice cases [2] | | | | | | |
| Pending July 1, 1976 | 13,259 | 4,760 | 1,064 | 426 | 391 | 5,026 | 1,592 |
| Received 19TQ | 9,200 | 2,534 | 718 | 168 | 181 | 4,376 | 1,223 |
| On docket 19TQ | 22,459 | 7,294 | 1,782 | 594 | 572 | 9,402 | 2,815 |
| Closed 19TQ | 8,203 | 2,204 | 634 | 167 | 177 | 4,005 | 1,016 |
| Pending Sept. 30, 1976 | 14,256 | 5,090 | 1,148 | 427 | 395 | 5,397 | 1,799 |
| | Representation cases [3] | | | | | | |
| Pending July 1, 1976 | 4,476 | 2,232 | 950 | 185 | 407 | 411 | 291 |
| Received 19TQ | 3,628 | 1,665 | 932 | 144 | 202 | 424 | 261 |
| On docket 19TQ | 8,104 | 3,897 | 1,882 | 329 | 609 | 835 | 552 |
| Closed 19TQ | 3,466 | 1,634 | 874 | 136 | 232 | 371 | 219 |
| Pending Sept. 30, 1976 | 4,638 | 2,263 | 1,008 | 193 | 377 | 464 | 333 |
| | Union-shop deauthorization cases | | | | | | |
| Pending July 1, 1976 | 84 | | | | | 84 | |
| Received 19TQ | 79 | | | | | 79 | |
| On docket 19TQ | 163 | | | | | 163 | |
| Closed 19TQ | 61 | | | | | 61 | |
| Pending Sept. 30, 1976 | 102 | | | | | 102 | |
| | Amendment of certification cases | | | | | | |
| Pending July 1, 1976 | 32 | 19 | 2 | 5 | 3 | 2 | 1 |
| Received 19TQ | 25 | 15 | 1 | 1 | 6 | 0 | 2 |
| On docket 19TQ | 57 | 34 | 3 | 6 | 9 | 2 | 3 |
| Closed 19TQ | 23 | 14 | 1 | 1 | 5 | 1 | 1 |
| Pending Sept. 30, 1976 | 34 | 20 | 2 | 5 | 4 | 1 | 2 |
| | Unit clarification cases | | | | | | |
| Pending July 1, 1976 | 145 | 44 | 8 | 2 | 8 | 9 | 74 |
| Received 19TQ | 79 | 29 | 4 | 1 | 4 | 4 | 37 |
| On docket 19TQ | 224 | 73 | 12 | 3 | 12 | 13 | 111 |
| Closed 19TQ | 81 | 27 | 5 | 2 | 5 | 3 | 39 |
| Pending Sept. 30, 1976 | 143 | 46 | 7 | 1 | 7 | 10 | 72 |

[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, Transition Quarter (July–September 1976) [1]

| | Total | Identification of filing party | | | | | |
|---|---|---|---|---|---|---|---|
| | | AFL–CIO unions | Teamsters | Other national unions | Other local unions | Individuals | Employers |
| | CA cases | | | | | | |
| Pending July 1, 1976 | 9,853 | 4,709 | 1,063 | 409 | 303 | 3,335 | 34 |
| Received 19TQ | 6,223 | 2,512 | 715 | 163 | 159 | 2,661 | 13 |
| On docket 19TQ | 16,0 6 | 7,221 | 1,778 | 572 | 462 | 5,996 | 47 |
| Closed 19TQ | 5,506 | 2,185 | 633 | 159 | 140 | 2,380 | 9 |
| Pending September 30, 1976 | 10,570 | 5,036 | 1,145 | 413 | 322 | 3,615 | 38 |
| | CB cases | | | | | | |
| Pending July 1, 1976 | 2,218 | 43 | 1 | 5 | 16 | 1,628 | 525 |
| Rec ived 19TQ | 2,106 | 17 | 2 | 0 | 9 | 1,679 | 399 |
| On docket 19TQ | 4,324 | 60 | 3 | 5 | 25 | 3,307 | 924 |
| Closed 19TQ | 1,951 | 15 | 0 | 1 | 12 | 1,581 | 342 |
| Pending September 30, 1976 | 2,373 | 45 | 3 | 4 | 13 | 1,726 | 582 |
| | CC cases | | | | | | |
| Pending July 1, 1976 | 678 | 3 | 0 | 8 | 35 | 33 | 599 |
| Received 19TQ | 559 | 2 | 0 | 2 | 7 | 27 | 521 |
| On docket 19TQ | 1,237 | 5 | 0 | 10 | 42 | 60 | 1,120 |
| Closed 19TQ | 464 | 2 | 0 | 6 | 14 | 30 | 412 |
| Pending September, 30 1976 | 773 | 3 | 0 | 4 | 28 | 30 | 708 |
| | CD cases | | | | | | |
| Pending July 1, 1976 | 205 | 2 | 0 | 3 | 2 | 11 | 187 |
| Recieved 19TQ | 128 | 3 | 1 | 2 | 4 | 2 | 116 |
| On docket 19TQ | 333 | 5 | 1 | 5 | 6 | 13 | 303 |
| Closed 19TQ | 117 | 1 | 1 | 1 | 1 | 5 | 108 |
| Pending September 30, 1976 | 216 | 4 | 0 | 4 | 5 | 8 | 195 |
| | CE cases | | | | | | |
| Pending July 1, 1976 | 134 | 1 | 0 | 0 | 28 | 15 | 90 |
| Received 19TQ | 29 | 0 | 0 | 0 | 2 | 1 | 26 |
| On docket 19TQ | 163 | 1 | 0 | 0 | 30 | 16 | 116 |
| Closed 19TQ | 28 | 0 | 0 | 0 | 3 | 3 | 22 |
| Pending September 30, 1976 | 135 | 1 | 0 | 0 | 27 | 13 | 94 |
| | CG cases | | | | | | |
| Pending July 1, 1976 | 57 | 0 | 0 | 0 | 0 | 0 | 57 |
| Received 19TQ | 36 | 0 | 0 | 0 | 0 | 1 | 35 |
| On docket 19TQ | 93 | 0 | 0 | 0 | 0 | 1 | 92 |
| Closed 19TQ | 26 | 0 | 0 | 0 | 0 | 1 | 25 |
| Pending September 30, 1976 | 67 | 0 | 0 | 0 | 0 | 0 | 67 |
| | CP cases | | | | | | |
| Pending July 1, 1976 | 114 | 2 | 0 | 1 | 7 | 4 | 100 |
| Received 197TQ | 119 | 0 | 0 | 1 | 0 | 5 | 113 |
| On docket 19TQ | 233 | 2 | 0 | 2 | 7 | 9 | 213 |
| Closed 19TQ | 111 | 1 | 0 | 0 | 7 | 5 | 98 |
| Pending September 30, 1976 | 122 | 1 | 0 | 2 | 0 | 4 | 115 |

[1] See Glossary for definitions of terms

# Table 1B.—Representation Cases Received, Closed, and Pending, Transition Quarter (July–September 1976) [1]

| | Total | Identification of filing party | | | | | |
|---|---|---|---|---|---|---|---|
| | | AFL–CIO unions | Teamsters | Other national unions | Other local unions | Individuals | Employers |
| | RC cases | | | | | | |
| Pending July 1, 1976 | 3,795 | 2,231 | 948 | 185 | 405 | 26 | ---- |
| Received 19TQ | 2,955 | 1,663 | 930 | 144 | 200 | 18 | ---- |
| On docket 19TQ | 6,750 | 3,894 | 1,878 | 329 | 605 | 44 | ---- |
| Closed 19TQ | 2,886 | 1,632 | 871 | 136 | 232 | 15 | ---- |
| Pending Sept 30, 1976 | 3,864 | 2,262 | 1,007 | 193 | 373 | 29 | ---- |
| | RM cases | | | | | | |
| Pending July 1, 1976 | 291 | ---- | ---- | ---- | ---- | ---- | 291 |
| Received 19TQ | 261 | ---- | ---- | ---- | ---- | ---- | 261 |
| On docket 19TQ | 552 | ---- | ---- | ---- | ---- | ---- | 552 |
| Closed 19TQ | 219 | ---- | ---- | ---- | ---- | ---- | 219 |
| Pending Sept 30, 1976 | 333 | ---- | ---- | ---- | ---- | ---- | 333 |
| | RD cases | | | | | | |
| Pending July 1, 1976 | 390 | 1 | 2 | 0 | 2 | 385 | ---- |
| Received 19TQ | 412 | 2 | 2 | 0 | 2 | 406 | ---- |
| On docket 19TQ | 802 | 3 | 4 | 0 | 4 | 791 | ---- |
| Closed 19TQ | 361 | 2 | 3 | 0 | 0 | 356 | ---- |
| Pending Sept. 30, 1976 | 441 | 1 | 1 | 0 | 4 | 435 | ---- |

[1] See Glossary for definitions of terms

# Table 2.—Types of Unfair Labor Practices Alleged, Transition Quarter (July–September 1976)

| | 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 | 6,223 | 100 0 |
| 8(a)(1) | 882 | 14 2 |
| 8(a)(1)(2) | 96 | 1.5 |
| 8(a)(1)(3) | 3,069 | 49 2 |
| 8(a)(1)(4) | 35 | 0 6 |
| 8(a)(1)(5) | 1,206 | 19.4 |
| 8(a)(1)(2)(3) | 85 | 1 4 |
| 8(a)(1)(2)(5) | 22 | 0 4 |
| 8(a)(1)(3)(4) | 113 | 1.8 |
| 8(a)(1)(3)(5) | 626 | 10 1 |
| 8(a)(1)(2)(3)(4) | 2 | 0 0 |
| 8(a)(1)(2)(3)(5) | 44 | 0.7 |
| 8(a)(1)(3)(4)(5) | 32 | 0.5 |
| 8(a)(1)(2)(3)(4)(5) | 11 | 0 2 |
| Recapitulation [1] | | |
| 8(a)(1) [2] | 6,223 | 100 0 |
| 8(a)(2) | 260 | 4 2 |
| 8(a)(3) | 3,982 | 64 0 |
| 8(a)(4) | 193 | 3 1 |
| 8(a)(5) | 1,941 | 31 2 |
| B. Charges filed against unions under sec 8(b) | | |
| Subsections of sec 8(b); Total cases | 2,912 | 100.0 |
| 8(b)(1) | 1,450 | 49 8 |
| 8(b)(2) | 51 | 1 8 |
| 8(b)(3) | 148 | 5.1 |
| 8(b)(4) | 687 | 23 6 |
| 8(b)(5) | 2 | 0 1 |
| 8(b)(6) | 4 | 0.1 |
| 8(b)(7) | 119 | 4 1 |
| 8(b)(1)(2) | 357 | 12 3 |
| 8(b)(1)(3) | 57 | 2 0 |
| 8(b)(1)(5) | 1 | 0.0 |
| 8(b)(1)(6) | 3 | 0 1 |
| 8(b)(2)(3) | 3 | 0.1 |
| 8(b)(2)(6) | 3 | 0.1 |
| 8(b)(5)(6) | 1 | 0.0 |
| 8(b)(1)(2)(3) | 21 | 0 7 |
| 8(b)(1)(2)(5) | 2 | 0 1 |
| 8(b)(1)(3)(5) | 1 | 0.0 |
| 8(b)(2)(3)(5) | 1 | 0 0 |
| 8(b)(1)(2)(3)(6) | 1 | 0.0 |
| Recapitulation [1] | | |
| (8b)(1) | 1,893 | 65.0 |
| 8(b)(2) | 439 | 15.1 |
| 8(b)(3) | 232 | 8.0 |
| 8(b)(4) | 687 | 23 6 |
| 8(b)(5) | 8 | 0 3 |
| 8(b)(6) | 12 | 0.4 |
| 8(b)(7) | 119 | 4.1 |
| B1 Analysis of 8(b)(4) | | |
| Total cases 8(b)(4) | 687 | 100.0 |
| 8(b)(4)(A) | 22 | 3 2 |
| 8(b)(4)(B) | 524 | 76 4 |
| 8(b)(4)(C) | 3 | 0.4 |
| 8(b)(4)(D) | 128 | 18.6 |
| 8(b)(4)(A)(B) | 7 | 1 0 |
| 8(b)(4)(B)(C) | 3 | 0 4 |
| Recapitulation [1] | | |
| 8(b)(4)(A) | 29 | 4.2 |
| 8(b)(4)(B) | 534 | 77.7 |
| 8(b)(4)(C) | 6 | 0 9 |
| 8(b)(4)(D) | 128 | 18 6 |
| B2 Analysis of 8(b)(7) | | |
| Total cases 8(b)(7) | 119 | 100 0 |
| 8(b)(7)(A) | 13 | 10 9 |
| 8(b)(7)(B) | 9 | 7.6 |
| 8(b)(7)(C) | 91 | 76 5 |
| 8(b)(7)(A)(C) | 6 | 5.0 |
| Recapitulation [1] | | |
| 8(b)(7)(A) | 19 | 16 0 |
| 8(b)(7)(B) | 9 | 7 6 |
| 8(b)(7)(C) | 97 | 81 5 |
| C Charges filed under sec 8(e) | | |
| Total cases 8(e) | 29 | 100 0 |
| Against unions alone | 29 | 100 0 |
| Against employers alone | 0 | 0 0 |
| Against unions and employers | 0 | 0.0 |
| D. Charges filed under sec 8(g) | | |
| Total cases 8(g) | 36 | 100 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, Transition Quarter (July–September 1976) [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 | CG | CP | CA combined with CB | C combined with representation cases | Other C combinations |
| | | | | | | Jurisdictional disputes | Unfair labor practices | | | | | | |
| 10(k) notices of hearings issued | 21 | 20 | | | | 20 | | | | | | | |
| Complaints issued | 1,472 | 1,106 | 869 | 92 | 32 | | 1 | 2 | 4 | 8 | 31 | 55 | 12 |
| Backpay specifications issued | 23 | 14 | 10 | 2 | 0 | | 0 | 0 | 0 | 0 | 2 | 0 | 0 |
| Hearings completed, total | 478 | 340 | 241 | 33 | 10 | 11 | 1 | 0 | 1 | 3 | 15 | 21 | 4 |
| Initial ULP hearings | 438 | 321 | 226 | 30 | 10 | 11 | 1 | 0 | 1 | 3 | 15 | 20 | 4 |
| Backpay hearings | 32 | 14 | 10 | 3 | 0 | | 0 | 0 | 0 | 0 | 0 | 1 | 0 |
| Other hearings | 8 | 5 | 5 | 0 | 0 | | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Decisions by administrative law judges, total | 352 | 246 | 186 | 18 | 4 | | 1 | 0 | 2 | 1 | 14 | 17 | 3 |
| Initial ULP decisions | 336 | 235 | 176 | 17 | 4 | | 1 | 0 | 2 | 1 | 14 | 17 | 3 |
| Backpay decisions | 12 | 7 | 6 | 1 | 0 | | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Supplemental decisions | 4 | 4 | 4 | 0 | 0 | | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Decisions and orders by the Board, total | 345 | 249 | 183 | 28 | 11 | 9 | 0 | 1 | 0 | 1 | 7 | 5 | 4 |
| Upon consent of parties. | | | | | | | | | | | | | |
| Initial decisions | 62 | 36 | 22 | 4 | 7 | | 0 | 0 | 0 | 0 | 2 | 0 | 1 |
| Supplemental decisions | 2 | 2 | 2 | 0 | 0 | | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Adopting administrative law judges decisions (no exceptions filed). | | | | | | | | | | | | | |
| Initial ULP decisions | 121 | 101 | 79 | 13 | 2 | | 0 | 1 | 0 | 1 | 3 | 0 | |
| Backpay decisions | 2 | 2 | 2 | 0 | 0 | | 0 | 0 | 0 | 0 | 0 | 0 | 2 |
| Contested: | | | | | | | | | | | | | 0 |
| Initial ULP decisions | 151 | 103 | 74 | 10 | 2 | 9 | 0 | 0 | 0 | 0 | 2 | 5 | |
| Decisions based on stipulated record | 3 | 2 | 1 | 1 | 0 | | 0 | 0 | 0 | 0 | 0 | 0 | 1 |
| Supplemental ULP decisions | 1 | 1 | 1 | 0 | 0 | | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Backpay decisions | 3 | 2 | 2 | 0 | 0 | | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| | | | | | | | | | | | | | 0 |

[1] See Glossary for definitions of terms.

# Table 3B.—Formal Actions Taken in Representation and Union Deauthorization Cases, Transition Quarter (July–September 1976) [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 | 288 | 276 | 246 | 10 | 20 | 2 |
| Initial hearings | 202 | 194 | 169 | 8 | 17 | 2 |
| Hearings on objections and/or challenges | 86 | 82 | 77 | 2 | 3 | 0 |
| Decisions issued, total | 607 | 570 | 501 | 21 | 48 | 4 |
| By regional directors | 576 | 543 | 477 | 20 | 46 | 4 |
| Elections directed | 514 | 487 | 428 | 17 | 42 | 3 |
| Dismissals on record | 62 | 56 | 49 | 3 | 4 | 1 |
| By Board | 31 | 27 | 24 | 1 | 2 | 0 |
| Transferred by regional directors for initial decision | 16 | 13 | 12 | 1 | 0 | 0 |
| Elections directed | 13 | 10 | 9 | 1 | 0 | 0 |
| Dismissals on record | 3 | 3 | 3 | 0 | 0 | 0 |
| Review of regional directors' decisions | | | | | | |
| Requests for review received | 167 | 152 | 144 | 2 | 6 | 1 |
| Withdrawn before request ruled upon | 3 | 1 | 1 | 0 | 0 | 0 |
| Board action on request ruled upon, total | 151 | 142 | 134 | 2 | 6 | 1 |
| Granted | 18 | 18 | 17 | 1 | 0 | 0 |
| Denied | 131 | 122 | 116 | 1 | 5 | 1 |
| Remanded | 2 | 2 | 1 | 0 | 1 | 0 |
| Withdrawn after request granted, before Board review | 0 | 0 | 0 | 0 | 0 | 0 |
| Board decison after review, total | 15 | 14 | 12 | 0 | 2 | 0 |
| Regional directors' decision | | | | | | |
| Affirmed | 7 | 6 | 6 | 0 | 0 | 0 |
| Modified | 2 | 2 | 2 | 0 | 0 | 0 |
| Reversed | 6 | 6 | 4 | 0 | 2 | 0 |
| Outcome | | | | | | |
| Election directed | 12 | 11 | 11 | 0 | 0 | 0 |
| Dismissals on record | 3 | 3 | 1 | 0 | 2 | 0 |

[1] See Glossary for definitions of terms

## Table 3B.—Formal Actions Taken in Representation and Union Deauthorization Cases, Transition Quarter (July–September 1976) [1]—Contd.

| 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 |
| Decisions on objections and/or challenges, total | 300 | 289 | 268 | 6 | 15 | 9 |
| By regional directors | 96 | 88 | 84 | 2 | 2 | 7 |
| By Board | 204 | 201 | 184 | 4 | 13 | 2 |
| In stipulated elections | 198 | 195 | 178 | 4 | 13 | 2 |
| No exceptions to regional directors' reports | 181 | 179 | 162 | 4 | 13 | 2 |
| Exceptions to regional directors' reports | 17 | 16 | 16 | 0 | 0 | 0 |
| In directed elections (after transfer by regional director) | 5 | 5 | 5 | 0 | 0 | 0 |
| Review of Regional directors' supplemental decisions | | | | | | |
| Request for review received | 24 | 21 | 21 | 0 | 0 | 0 |
| Withdrawn before request ruled upon | 0 | 0 | 0 | 0 | 0 | 0 |
| Board action on request ruled upon, total | 19 | 17 | 16 | 0 | 1 | 0 |
| Granted | 3 | 3 | 3 | 0 | 0 | 0 |
| Denied | 16 | 14 | 13 | 0 | 1 | 0 |
| Remanded | 0 | 0 | 0 | 0 | 0 | 0 |
| Withdrawn after request granted, before Board review | 0 | 0 | 0 | 0 | 0 | 0 |
| Board decision after review, total | 1 | 1 | 1 | 0 | 0 | 0 |
| Regional directors' decisions | | | | | | |
| Affirmed | 0 | 0 | 0 | 0 | 0 | 0 |
| Modified | 0 | 0 | 0 | 0 | 0 | 0 |
| Reversed | 1 | 1 | 1 | 0 | 0 | 0 |

[1] See Glossary for definitions of terms

# Table 3C.—Formal Actions Taken in Amendment of Certification and Unit Clarification Cases, Transition Quarter (July–September 1976) [1]

| Types of formal actions taken | Cases in which formal actions taken | Formal actions taken by type of case | |
|---|---|---|---|
| | | AC | UC |
| Hearings completed | 46 | 5 | 34 |
| Decision issued after hearing | 45 | 5 | 33 |
| By regional directors | 44 | 5 | 32 |
| By Board | 1 | 0 | 1 |
| Transferred by regional directors for initial decision | 1 | 0 | 1 |
| Review of regional directors' decisions | | | |
| Requests for review received | 1 | 0 | 1 |
| Withdrawn before request ruled upon | 0 | 0 | 0 |
| Board action on requests ruled upon, total | 1 | 0 | 1 |
| Granted | 1 | 0 | 1 |
| Denied | 0 | 0 | 0 |
| Remanded | 0 | 0 | 0 |
| Withdrawn after request granted, before Board review | 0 | 0 | 0 |
| Board decision after review, total | 0 | 0 | 0 |
| Regional directors' decisions | | | |
| Affirmed | 0 | 0 | 0 |
| Modified | 0 | 0 | 0 |
| Reversed | 0 | 0 | 0 |

[1] See Glossary for definitions of terms

# Table 4.—Remedial Actions Taken in Unfair Labor Practice Cases Closed, Transition Quarter (July-September 1976) [1]

| Action taken | Total all | Remedial action taken by— | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Employer | | | | | | Union | | | | | |
| | | Total | Pursuant to— | | | | | Total | Pursuant to— | | | | |
| | | | Agreement of parties | | Recommendation of administrative law judge | Order of— | | | 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] 2,255 | | | | | | | | | | | | |
| Notice posted | 1,024 | 792 | 587 | 17 | 7 | 123 | 58 | 232 | 172 | 17 | 0 | 28 | 15 |
| Recognition or other assistance withdrawn | 16 | 16 | 12 | 1 | 0 | 1 | 2 | | | | | | |
| Employer-dominated union disestablished | 7 | 7 | 5 | 0 | 0 | 2 | 0 | | | | | | |
| Employees offered reinstatement | 391 | 391 | 288 | 10 | 5 | 54 | 34 | | | | | | |
| Employees placed on preferential hiring list | 23 | 23 | 19 | 0 | 1 | 1 | 2 | | | | | | |
| Hiring hall rights restored | 4 | | | | | | | 4 | 4 | 0 | 0 | 0 | 0 |
| Objections to employment withdrawn | 16 | | | | | | | 16 | 12 | 0 | 0 | 2 | 2 |
| Picketing ended | 153 | | | | | | | 153 | 146 | 3 | 0 | 1 | 3 |
| Work stoppage ended | 44 | | | | | | | 44 | 40 | 1 | 0 | 0 | 3 |
| Collective bargaining begun | 482 | 434 | 365 | 6 | 1 | 37 | 25 | 48 | 47 | 0 | 0 | 1 | 0 |
| Backpay distributed | 566 | 529 | 425 | 10 | 5 | 59 | 30 | 37 | 22 | 0 | 0 | 8 | 7 |
| Reimbursement of fees, dues, and fines | 26 | 16 | 14 | 0 | 0 | 1 | 1 | 10 | 8 | 0 | 0 | 1 | 1 |
| Other conditions of employment improved | 631 | 388 | 383 | 1 | 0 | 4 | 0 | 243 | 240 | 1 | 0 | 1 | 1 |
| Other remedies | 1 | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

| | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| B By number of employees affected | | | | | | | | | | | | | |
| Employees offered reinstatement, total | 1,057 | 1,057 | 704 | 12 | 8 | 72 | 261 | | | | | | |
| Accepted | 744 | 744 | 527 | 7 | 3 | 36 | 171 | | | | | | |
| Declined | 313 | 313 | 177 | 5 | 5 | 36 | 90 | | | | | | |
| Employees placed on preferential hiring list | 173 | 173 | 145 | 0 | 2 | 10 | 16 | | | | | | |
| Hiring hall rights restored | 6 | | | | | | | 6 | 6 | 0 | 0 | 0 | 0 |
| Objections to employment withdrawn | 24 | | | | | | | 24 | 19 | 0 | 0 | 2 | 3 |
| Employees receiving backpay | | | | | | | | | | | | | |
| From either employer or union | 1,788 | 1,582 | 1,159 | 53 | 14 | 154 | 202 | 206 | 30 | 0 | 0 | 37 | 139 |
| From both employer and union | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Employees reimbursed for fees, dues, and fines[1] | | | | | | | | | | | | | |
| From either employer or union | 1,012 | 904 | 794 | 0 | 0 | 100 | 10 | 108 | 106 | 0 | 0 | 1 | 1 |
| From both employer and union | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| C By amounts of monetary recovery, total | $3,163,020 | $2,478,360 | $1,389,640 | $104,280 | $7,370 | $358,240 | $618,830 | $684,660 | $67,040 | 0 | 0 | $263,150 | $354,470 |
| Backpay (includes all monetary payments except fees, dues, and fines) | 3,072,500 | 2,406,620 | 1,321,300 | 104,280 | 7,370 | 356,030 | 617,040 | 665,880 | 48,380 | 0 | 0 | 263,070 | 354,430 |
| Reimbursement of fees, and fines | 90,520 | 71,740 | 68,340 | 0 | 0 | 2,210 | 1,190 | 18,780 | 18,660 | 0 | 0 | 80 | 40 |

[1] See Glossary for definitions of terms Data in this table are based on unfair labor practice cases that were closed during transition quarter 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, Transition Quarter (July–September 1976) [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 | CG | CP | All R cases | RC | RM | RD | UD | AC | UC |
| Food and kindred products | 689 | 461 | 343 | 104 | 12 | 0 | 0 | 0 | 2 | 220 | 183 | 9 | 28 | 3 | 2 | 3 |
| Tobacco manufacturers | 8 | 7 | 4 | 3 | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 0 | 0 | 0 | 0 | 0 |
| Textile mill products | 177 | 135 | 107 | 25 | 2 | 1 | 0 | 0 | 0 | 39 | 30 | 1 | 8 | 0 | 2 | 1 |
| Apparel and other finished products made from fabric and similar materials | 213 | 155 | 115 | 37 | 1 | 0 | 0 | 0 | 2 | 56 | 42 | 8 | 6 | 0 | 0 | 2 |
| Lumber and wood products (except furniture) | 205 | 120 | 107 | 10 | 3 | 0 | 0 | 0 | 0 | 84 | 69 | 4 | 11 | 0 | 0 | 1 |
| Furniture and fixtures | 153 | 111 | 91 | 19 | 0 | 0 | 0 | 0 | 1 | 41 | 30 | 5 | 6 | 1 | 0 | 0 |
| Paper and allied products | 184 | 139 | 91 | 36 | 10 | 2 | 0 | 0 | 0 | 43 | 40 | 0 | 3 | 1 | 1 | 0 |
| Printing, publishing, and allied products | 396 | 285 | 195 | 83 | 4 | 2 | 0 | 0 | 1 | 107 | 82 | 8 | 17 | 1 | 1 | 2 |
| Chemicals and allied products | 237 | 167 | 124 | 34 | 8 | 1 | 0 | 0 | 0 | 66 | 58 | 3 | 5 | 4 | 0 | 0 |
| Petroleum refining and related industries | 68 | 48 | 29 | 12 | 7 | 0 | 0 | 0 | 0 | 18 | 13 | 1 | 4 | 0 | 1 | 1 |
| Rubber and miscellaneous plastic products | 200 | 131 | 95 | 35 | 1 | 0 | 0 | 0 | 0 | 67 | 56 | 2 | 9 | 1 | 0 | 1 |
| Leather and leather products | 39 | 25 | 22 | 3 | 0 | 0 | 0 | 0 | 0 | 14 | 11 | 0 | 3 | 0 | 0 | 0 |
| Stone, clay, glass, and concrete products | 240 | 186 | 119 | 38 | 23 | 3 | 0 | 0 | 3 | 51 | 40 | 4 | 7 | 1 | 0 | 2 |
| Primary metal industries | 359 | 276 | 162 | 106 | 7 | 1 | 0 | 0 | 0 | 80 | 71 | 3 | 6 | 1 | 1 | 1 |
| Fabricated metal products (except machinery and transportation equipment) | 462 | 304 | 217 | 70 | 10 | 2 | 0 | 0 | 5 | 152 | 129 | 6 | 17 | 3 | 1 | 2 |
| Machinery (except electrical) | 511 | 354 | 278 | 73 | 2 | 1 | 0 | 0 | 0 | 147 | 128 | 9 | 10 | 5 | 2 | 3 |
| Electrical and electronic machinery, equipment, and supplies | 397 | 293 | 206 | 76 | 8 | 2 | 0 | 0 | 1 | 99 | 83 | 2 | 14 | 4 | 0 | 1 |
| Aircraft and parts | 76 | 63 | 39 | 24 | 0 | 0 | 0 | 0 | 0 | 13 | 9 | 1 | 3 | 0 | 0 | 0 |
| Ship and boat building and repairing | 55 | 46 | 22 | 21 | 2 | 1 | 0 | 0 | 0 | 6 | 6 | 0 | 0 | 0 | 1 | 2 |
| Automotive and other transportation equipment | 380 | 281 | 188 | 89 | 4 | 0 | 0 | 0 | 0 | 90 | 74 | 5 | 11 | 6 | 2 | 1 |
| Measuring, analyzing, and controlling instruments, photographic, medical, and optical goods, watches and clocks | 68 | 44 | 37 | 5 | 1 | 1 | 0 | 0 | 0 | 23 | 21 | 1 | 1 | 0 | 0 | 1 |
| Miscellaneous manufacturing industries | 411 | 286 | 181 | 95 | 7 | 1 | 0 | 0 | 2 | 123 | 108 | 3 | 12 | 1 | 0 | 1 |
| Manufacturing | 5,528 | 3,917 | 2,772 | 998 | 112 | 18 | 0 | 0 | 17 | 1,540 | 1,284 | 75 | 181 | 32 | 14 | 25 |

| | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Metal mining | 17 | 14 | 10 | 2 | 2 | 0 | 0 | 0 | 0 | 3 | 3 | 0 | 0 | 0 | 0 | 0 |
| Coal mining | 132 | 113 | 50 | 20 | 38 | 1 | 4 | 0 | 0 | 18 | 18 | 0 | 0 | 0 | 0 | 1 |
| Oil and gas extraction | 10 | 5 | 3 | 2 | 0 | 0 | 0 | 0 | 0 | 5 | 5 | 0 | 0 | 0 | 0 | 0 |
| Mining and quarrying of nonmetallic minerals (except fuels) | 42 | 27 | 20 | 5 | 1 | 0 | 0 | 0 | 1 | 14 | 8 | 4 | 2 | 0 | 0 | 1 |
| Mining | 201 | 159 | 83 | 29 | 41 | 1 | 4 | 0 | 1 | 40 | 34 | 4 | 2 | 0 | 0 | 2 |
| Construction | 1,381 | 1,267 | 571 | 301 | 248 | 81 | 11 | 0 | 55 | 111 | 80 | 25 | 6 | 2 | 0 | 1 |
| Wholesale trade | 601 | 299 | 223 | 50 | 16 | 2 | 1 | 0 | 7 | 289 | 217 | 31 | 41 | 7 | 1 | 5 |
| Retail trade | 1,405 | 860 | 663 | 138 | 27 | 5 | 5 | 0 | 22 | 521 | 390 | 58 | 73 | 15 | 2 | 7 |
| Finance, insurance, and real estate | 140 | 73 | 55 | 17 | 0 | 1 | 0 | 0 | 0 | 64 | 54 | 4 | 6 | 3 | 0 | 0 |
| U.S. Postal Service | 243 | 242 | 177 | 65 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 1 | 0 | 0 | 0 |
| Local and suburban transit and interurban highway passenger transportation | 152 | 103 | 80 | 23 | 0 | 0 | 0 | 0 | 0 | 47 | 39 | 1 | 7 | 1 | 0 | 1 |
| Motor freight transportation and warehousing | 865 | 647 | 436 | 157 | 43 | 4 | 0 | 0 | 7 | 208 | 158 | 19 | 31 | 4 | 1 | 5 |
| Water transportation | 80 | 68 | 29 | 33 | 4 | 2 | 0 | 0 | 0 | 11 | 10 | 0 | 1 | 1 | 0 | 0 |
| Other transportation | 43 | 22 | 16 | 5 | 1 | 0 | 0 | 0 | 0 | 19 | 15 | 2 | 2 | 2 | 0 | 0 |
| Communication | 283 | 196 | 133 | 54 | 2 | 6 | 1 | 0 | 0 | 82 | 71 | 2 | 9 | 0 | 1 | 4 |
| Electric, gas, and sanitary services | 202 | 143 | 93 | 28 | 19 | 3 | 0 | 0 | 0 | 50 | 49 | 1 | 0 | 0 | 3 | 6 |
| Transportation, communication, and other utilities | 1,625 | 1,179 | 787 | 300 | 69 | 15 | 1 | 0 | 7 | 417 | 342 | 25 | 50 | 8 | 5 | 16 |
| Hotels, rooming houses, camps, and other lodging places | 162 | 115 | 93 | 17 | 4 | 0 | 0 | 0 | 1 | 42 | 39 | 3 | 0 | 3 | 0 | 2 |
| Personal services | 76 | 50 | 40 | 9 | 1 | 0 | 0 | 0 | 0 | 24 | 20 | 1 | 3 | 1 | 0 | 1 |
| Automotive repair, services, and garages | 113 | 53 | 42 | 8 | 3 | 0 | 0 | 0 | 0 | 60 | 51 | 2 | 7 | 0 | 0 | 0 |
| Motion pictures | 55 | 49 | 28 | 17 | 2 | 1 | 0 | 0 | 1 | 6 | 6 | 0 | 0 | 0 | 0 | 0 |
| Amusement and recreation services (except motion pictures) | 68 | 42 | 35 | 3 | 1 | 0 | 2 | 0 | 1 | 26 | 12 | 8 | 6 | 0 | 0 | 0 |
| Health services | 762 | 457 | 342 | 62 | 13 | 2 | 0 | 36 | 2 | 283 | 248 | 16 | 19 | 3 | 1 | 18 |
| Educational services | 96 | 74 | 56 | 13 | 4 | 1 | 0 | 0 | 0 | 20 | 15 | 2 | 3 | 0 | 1 | 1 |
| Membership organizations | 90 | 79 | 52 | 18 | 5 | 0 | 4 | 0 | 0 | 11 | 10 | 0 | 1 | 0 | 0 | 0 |
| Business services | 390 | 244 | 170 | 58 | 10 | 0 | 1 | 0 | 5 | 139 | 125 | 5 | 9 | 5 | 1 | 1 |
| Miscellaneous repair services | 29 | 14 | 13 | 1 | 0 | 0 | 0 | 0 | 0 | 15 | 11 | 1 | 3 | 0 | 0 | 0 |
| Miscellaneous services | 32 | 19 | 15 | 1 | 2 | 1 | 0 | 0 | 0 | 13 | 12 | 1 | 0 | 0 | 0 | 0 |
| Services | 1,873 | 1,196 | 886 | 207 | 45 | 5 | 7 | 36 | 10 | 639 | 549 | 39 | 51 | 12 | 3 | 23 |
| Public administration | 14 | 8 | 6 | 1 | 1 | 0 | 0 | 0 | 0 | 6 | 5 | 0 | 1 | 0 | 0 | 0 |
| Total, all industrial groups | 13,011 | 9,200 | 6,223 | 2,106 | 559 | 128 | 29 | 36 | 119 | 3,628 | 2,955 | 261 | 412 | 79 | 25 | 79 |

[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, Transition Quarter (July–September 1976) [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 | CG | CP | All R cases | RC | RM | RD | UD | AC | UC |
| Maine | 48 | 27 | 21 | 6 | 0 | 0 | 0 | 0 | 0 | 20 | 20 | 0 | 0 | 0 | 1 | 0 |
| New Hampshire | 32 | 19 | 15 | 3 | 1 | 0 | 0 | 0 | 0 | 13 | 12 | 0 | 1 | 0 | 0 | 0 |
| Vermont | 12 | 6 | 6 | 0 | 0 | 0 | 0 | 0 | 0 | 6 | 6 | 0 | 0 | 0 | 0 | 0 |
| Massachusetts | 392 | 288 | 200 | 67 | 8 | 7 | 0 | 1 | 5 | 97 | 86 | 5 | 6 | 2 | 1 | 4 |
| Rhode Island | 69 | 58 | 37 | 13 | 5 | 0 | 0 | 1 | 2 | 11 | 9 | 2 | 0 | 0 | 0 | 0 |
| Connecticut | 125 | 88 | 57 | 24 | 6 | 0 | 0 | 0 | 1 | 37 | 36 | 0 | 1 | 0 | 0 | 0 |
| New England | 678 | 486 | 336 | 113 | 20 | 7 | 0 | 2 | 8 | 184 | 169 | 7 | 8 | 2 | 2 | 4 |
| New York | 1,149 | 811 | 466 | 272 | 38 | 17 | 5 | 2 | 11 | 323 | 294 | 13 | 16 | 5 | 2 | 8 |
| New Jersey | 484 | 318 | 198 | 91 | 14 | 5 | 3 | 1 | 6 | 154 | 127 | 10 | 17 | 12 | 0 | 0 |
| Pennsylvania | 838 | 606 | 375 | 166 | 36 | 14 | 4 | 1 | 10 | 222 | 185 | 10 | 27 | 5 | 0 | 5 |
| Middle Atlantic | 2,471 | 1,735 | 1,039 | 529 | 88 | 36 | 12 | 4 | 27 | 699 | 606 | 33 | 60 | 22 | 2 | 13 |
| Ohio | 799 | 565 | 381 | 135 | 36 | 8 | 0 | 1 | 4 | 222 | 193 | 5 | 24 | 6 | 1 | 5 |
| Indiana | 669 | 547 | 392 | 111 | 41 | 1 | 0 | 0 | 2 | 114 | 99 | 5 | 10 | 4 | 2 | 2 |
| Illinois | 867 | 670 | 410 | 194 | 44 | 10 | 0 | 1 | 11 | 189 | 160 | 15 | 14 | 4 | 1 | 3 |
| Michigan | 561 | 361 | 261 | 67 | 22 | 2 | 0 | 3 | 6 | 193 | 163 | 12 | 18 | 3 | 1 | 3 |
| Wisconsin | 289 | 205 | 147 | 48 | 3 | 3 | 1 | 1 | 2 | 79 | 59 | 5 | 15 | 2 | 1 | 2 |
| East North Central | 3,185 | 2,348 | 1,591 | 555 | 146 | 24 | 1 | 6 | 25 | 797 | 674 | 42 | 81 | 19 | 6 | 15 |
| Iowa | 115 | 57 | 47 | 7 | 3 | 0 | 0 | 0 | 0 | 54 | 41 | 5 | 8 | 0 | 2 | 2 |
| Minnesota | 158 | 92 | 54 | 17 | 12 | 5 | 0 | 0 | 4 | 63 | 53 | 3 | 7 | 1 | 0 | 2 |
| Missouri | 442 | 342 | 248 | 64 | 19 | 8 | 0 | 0 | 3 | 96 | 77 | 5 | 14 | 2 | 0 | 2 |
| North Dakota | 20 | 6 | 4 | 2 | 0 | 0 | 0 | 0 | 0 | 14 | 10 | 0 | 4 | 0 | 0 | 0 |
| South Dakota | 14 | 6 | 5 | 1 | 0 | 0 | 0 | 0 | 0 | 8 | 7 | 0 | 1 | 0 | 0 | 0 |
| Nebraska | 42 | 28 | 21 | 5 | 2 | 0 | 0 | 0 | 0 | 13 | 11 | 1 | 1 | 0 | 0 | 1 |
| Kansas | 71 | 46 | 37 | 5 | 2 | 0 | 0 | 2 | 0 | 25 | 16 | 5 | 4 | 0 | 0 | 0 |
| West North Central | 862 | 577 | 416 | 101 | 38 | 13 | 0 | 2 | 7 | 273 | 215 | 19 | 39 | 3 | 2 | 7 |
| Delaware | 24 | 17 | 9 | 8 | 0 | 0 | 0 | 0 | 0 | 6 | 5 | 1 | 0 | 1 | 0 | 0 |
| Maryland | 199 | 137 | 84 | 44 | 5 | 2 | 0 | 1 | 1 | 58 | 47 | 4 | 7 | 3 | 1 | 0 |
| District of Columbia | 86 | 65 | 31 | 33 | 0 | 1 | 0 | 0 | 0 | 18 | 14 | 1 | 3 | 2 | 0 | 1 |
| Virginia | 106 | 75 | 60 | 15 | 0 | 0 | 0 | 0 | 0 | 26 | 26 | 0 | 0 | 0 | 4 | 1 |

| | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| West Virginia | 110 | 79 | 47 | 15 | 11 | 1 | 2 | 2 | 1 | 31 | 28 | 0 | 3 | 0 | 0 | 0 |
| North Carolina | 115 | 84 | 78 | 6 | 0 | 0 | 0 | 0 | 0 | 30 | 27 | 0 | 3 | 0 | 0 | 1 |
| South Carolina | 63 | 49 | 43 | 6 | 0 | 0 | 0 | 0 | 0 | 14 | 13 | 0 | 1 | 0 | 0 | 0 |
| Georgia | 212 | 145 | 120 | 25 | 0 | 0 | 0 | 0 | 0 | 63 | 61 | 0 | 2 | 0 | 2 | 2 |
| Florida | 322 | 256 | 187 | 41 | 26 | 1 | 0 | 1 | 0 | 66 | 60 | 1 | 5 | 0 | 0 | 0 |
| South Atlantic | 1,237 | 907 | 659 | 193 | 42 | 5 | 2 | 4 | 2 | 312 | 281 | 7 | 24 | 6 | 7 | 5 |
| Kentucky | 222 | 148 | 102 | 28 | 10 | 2 | 2 | 0 | 4 | 70 | 67 | 0 | 3 | 2 | 1 | 1 |
| Tennessee | 235 | 176 | 143 | 23 | 7 | 1 | 0 | 0 | 2 | 56 | 47 | 4 | 5 | 0 | 1 | 2 |
| Alabama | 153 | 104 | 80 | 10 | 9 | 4 | 0 | 0 | 1 | 46 | 43 | 0 | 3 | 0 | 0 | 3 |
| Mississippi | 63 | 38 | 30 | 4 | 3 | 1 | 0 | 0 | 0 | 24 | 22 | 1 | 1 | 0 | 0 | 1 |
| East South Central | 673 | 466 | 355 | 65 | 29 | 8 | 2 | 0 | 7 | 196 | 179 | 5 | 12 | 2 | 2 | 7 |
| Arkansas | 85 | 53 | 46 | 4 | 3 | 0 | 0 | 0 | 0 | 32 | 25 | 1 | 6 | 0 | 0 | |
| Louisiana | 103 | 76 | 45 | 25 | 1 | 1 | 0 | 1 | 3 | 25 | 21 | 1 | 3 | 0 | 0 | 2 |
| Oklahoma | 85 | 55 | 44 | 6 | 4 | 1 | 0 | 0 | 0 | 30 | 17 | 6 | 7 | 0 | 0 | 0 |
| Texas | 453 | 326 | 241 | 69 | 9 | 4 | 0 | 1 | 2 | 118 | 96 | 9 | 13 | 0 | 1 | 8 |
| West South Central | 726 | 510 | 376 | 104 | 17 | 6 | 0 | 2 | 5 | 205 | 159 | 17 | 29 | 0 | 1 | 10 |
| Montana | 63 | 49 | 28 | 15 | 5 | 1 | 0 | 0 | 0 | 14 | 8 | 5 | 1 | 0 | 0 | 0 |
| Idaho | 43 | 31 | 25 | 4 | 2 | 0 | 0 | 0 | 0 | 12 | 8 | 1 | 3 | 0 | 0 | 0 |
| Wyoming | 20 | 13 | 9 | 1 | 1 | 0 | 0 | 0 | 2 | 6 | 4 | 1 | 1 | 0 | 0 | 1 |
| Colorado | 173 | 124 | 91 | 19 | 8 | 2 | 2 | 2 | 0 | 45 | 37 | 2 | 6 | 2 | 0 | 2 |
| New Mexico | 63 | 47 | 31 | 10 | 3 | 0 | 0 | 0 | 3 | 16 | 12 | 3 | 1 | 0 | 0 | 0 |
| Arizona | 179 | 138 | 91 | 30 | 15 | 1 | 0 | 0 | 1 | 41 | 27 | 8 | 6 | 0 | 0 | 0 |
| Utah | 28 | 12 | 7 | 2 | 2 | 0 | 0 | 0 | 1 | 16 | 14 | 2 | 0 | 0 | 0 | 0 |
| Nevada | 77 | 60 | 46 | 12 | 1 | 0 | 0 | 0 | 1 | 17 | 8 | 5 | 4 | 0 | 0 | 0 |
| Mountain | 646 | 474 | 328 | 93 | 37 | 4 | 2 | 2 | 8 | 167 | 118 | 27 | 22 | 2 | 0 | 3 |
| Washington | 347 | 225 | 157 | 41 | 18 | 6 | 1 | 1 | 1 | 107 | 69 | 15 | 23 | 6 | 0 | 9 |
| Oregon | 164 | 86 | 44 | 13 | 18 | 3 | 0 | 8 | 0 | 77 | 54 | 6 | 17 | 1 | 0 | 0 |
| California | 1,759 | 1,248 | 817 | 278 | 97 | 15 | 9 | 5 | 27 | 491 | 328 | 81 | 82 | 15 | 2 | 3 |
| Alaska | 75 | 53 | 34 | 12 | 5 | 1 | 0 | 0 | 1 | 22 | 18 | 1 | 3 | 0 | 0 | 0 |
| Hawaii | 74 | 39 | 33 | 2 | 3 | 0 | 0 | 0 | 1 | 35 | 33 | 0 | 2 | 0 | 0 | 0 |
| Guam | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Pacific | 2,419 | 1,651 | 1,085 | 346 | 141 | 25 | 10 | 14 | 30 | 732 | 502 | 103 | 127 | 22 | 2 | 12 |
| Puerto Rico | 106 | 46 | 38 | 7 | 1 | 0 | 0 | 0 | 0 | 55 | 45 | 1 | 9 | 1 | 1 | 3 |
| Virgin Islands | 8 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 8 | 7 | 0 | 1 | 0 | 0 | 0 |
| Outlying Areas | 114 | 46 | 38 | 7 | 1 | 0 | 0 | 0 | 0 | 63 | 52 | 1 | 10 | 1 | 1 | 3 |
| Total, all States and areas | 13,011 | 9,200 | 6,223 | 2,106 | 559 | 128 | 29 | 36 | 119 | 3,628 | 2,955 | 261 | 412 | 79 | 25 | 79 |

[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, Transition Quarter (July–September 1976) [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 | CG | CP | All R cases | RC | RM | RD | UD | AC | UC |
| Connecticut | 125 | 88 | 57 | 24 | 6 | 0 | 0 | 0 | 1 | 37 | 36 | 0 | 1 | 0 | 0 | 0 |
| Maine | 48 | 27 | 21 | 6 | 0 | 0 | 0 | 0 | 0 | 20 | 20 | 0 | 0 | 0 | 1 | 0 |
| Massachusetts | 392 | 288 | 200 | 67 | 8 | 7 | 0 | 1 | 5 | 97 | 86 | 5 | 6 | 2 | 1 | 4 |
| New Hampshire | 32 | 19 | 15 | 3 | 1 | 0 | 0 | 0 | 0 | 13 | 12 | 0 | 1 | 0 | 0 | 0 |
| Rhode Island | 69 | 58 | 37 | 13 | 5 | 0 | 0 | 1 | 2 | 11 | 9 | 2 | 0 | 0 | 0 | 0 |
| Vermont | 12 | 6 | 6 | 0 | 0 | 0 | 0 | 0 | 0 | 6 | 6 | 0 | 0 | 0 | 0 | 0 |
| Region I | 678 | 486 | 336 | 113 | 20 | 7 | 0 | 2 | 8 | 184 | 169 | 7 | 8 | 2 | 2 | 4 |
| Delaware | 24 | 17 | 9 | 8 | 0 | 0 | 0 | 0 | 0 | 6 | 5 | 1 | 0 | 1 | 0 | 0 |
| New Jersey | 484 | 318 | 198 | 91 | 14 | 5 | 3 | 1 | 6 | 154 | 127 | 10 | 17 | 12 | 0 | 0 |
| New York | 1,149 | 811 | 466 | 272 | 38 | 17 | 5 | 2 | 11 | 323 | 294 | 13 | 16 | 5 | 2 | 8 |
| Puerto Rico | 106 | 46 | 38 | 7 | 1 | 0 | 0 | 0 | 0 | 55 | 45 | 1 | 9 | 1 | 1 | 3 |
| Virgin Islands | 8 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 8 | 7 | 0 | 1 | 0 | 0 | 0 |
| Region II | 1,771 | 1,192 | 711 | 378 | 53 | 22 | 8 | 3 | 17 | 546 | 478 | 25 | 43 | 19 | 3 | 11 |
| District of Columbia | 86 | 65 | 31 | 33 | 0 | 1 | 0 | 0 | 0 | 18 | 14 | 1 | 3 | 2 | 0 | 1 |
| Maryland | 199 | 137 | 84 | 44 | 5 | 2 | 0 | 1 | 1 | 58 | 47 | 4 | 7 | 3 | 1 | 0 |
| Pennsylvania | 838 | 606 | 375 | 166 | 36 | 14 | 4 | 1 | 10 | 222 | 185 | 10 | 27 | 5 | 0 | 5 |
| Virginia | 106 | 75 | 60 | 15 | 0 | 0 | 0 | 0 | 0 | 26 | 26 | 0 | 0 | 0 | 4 | 1 |
| West Virginia | 110 | 79 | 47 | 15 | 11 | 1 | 2 | 2 | 1 | 31 | 28 | 0 | 3 | 0 | 0 | 0 |
| Region III | 1,339 | 962 | 597 | 273 | 52 | 18 | 6 | 4 | 12 | 355 | 300 | 15 | 40 | 10 | 5 | 7 |
| Alabama | 153 | 104 | 80 | 10 | 9 | 4 | 0 | 0 | 1 | 46 | 43 | 0 | 3 | 0 | 0 | 3 |
| Florida | 322 | 256 | 187 | 41 | 26 | 1 | 0 | 1 | 0 | 66 | 60 | 1 | 5 | 0 | 0 | 0 |
| Georgia | 212 | 145 | 120 | 25 | 0 | 0 | 0 | 0 | 0 | 63 | 61 | 0 | 2 | 0 | 2 | 2 |
| Kentucky | 222 | 148 | 102 | 28 | 10 | 2 | 2 | 0 | 4 | 70 | 67 | 0 | 3 | 2 | 1 | 1 |
| Mississippi | 63 | 38 | 30 | 4 | 3 | 1 | 0 | 0 | 0 | 24 | 22 | 1 | 1 | 0 | 0 | 1 |
| North Carolina | 115 | 84 | 78 | 6 | 0 | 0 | 0 | 0 | 0 | 30 | 27 | 0 | 3 | 0 | 0 | 1 |
| South Carolina | 63 | 49 | 43 | 6 | 0 | 0 | 0 | 0 | 0 | 14 | 13 | 0 | 1 | 0 | 0 | 0 |
| Tennessee | 235 | 176 | 143 | 23 | 7 | 1 | 0 | 0 | 2 | 56 | 47 | 4 | 5 | 0 | 1 | 2 |
| Region IV | 1,385 | 1,000 | 783 | 143 | 55 | 9 | 2 | 1 | 7 | 369 | 340 | 6 | 23 | 2 | 4 | 10 |

| | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Illinois | 867 | 670 | 410 | 194 | 44 | 10 | 0 | 1 | 11 | 189 | 160 | 15 | 14 | 4 | 1 | 3 |
| Indiana | 669 | 547 | 392 | 111 | 41 | 1 | 0 | 0 | 2 | 114 | 99 | 5 | 10 | 4 | 2 | 2 |
| Michigan | 561 | 361 | 261 | 67 | 22 | 2 | 0 | 3 | 6 | 193 | 163 | 12 | 18 | 3 | 1 | 3 |
| Minnesota | 158 | 92 | 54 | 17 | 12 | 5 | 0 | 0 | 4 | 63 | 53 | 3 | 7 | 1 | 0 | 2 |
| Ohio | 799 | 565 | 381 | 135 | 36 | 8 | 0 | 1 | 4 | 222 | 193 | 5 | 24 | 6 | 1 | 5 |
| Wisconsin | 289 | 205 | 147 | 48 | 3 | 3 | 1 | 1 | 2 | 79 | 59 | 5 | 15 | 2 | 1 | 2 |
| Region V | 3,343 | 2,440 | 1,645 | 572 | 158 | 29 | 1 | 6 | 29 | 860 | 727 | 45 | 88 | 20 | 6 | 17 |
| Arkansas | 85 | 53 | 46 | 4 | 3 | 0 | 0 | 0 | 0 | 32 | 25 | 1 | 6 | 0 | 0 | 0 |
| Louisiana | 103 | 76 | 45 | 25 | 1 | 1 | 0 | 1 | 3 | 25 | 21 | 1 | 3 | 0 | 0 | 2 |
| New Mexico | 63 | 47 | 31 | 10 | 3 | 0 | 0 | 0 | 3 | 16 | 12 | 3 | 1 | 0 | 0 | 0 |
| Oklahoma | 85 | 55 | 44 | 6 | 4 | 1 | 0 | 0 | 0 | 30 | 17 | 6 | 7 | 0 | 0 | 0 |
| Texas | 453 | 326 | 241 | 69 | 9 | 4 | 0 | 1 | 2 | 118 | 96 | 9 | 13 | 0 | 1 | 8 |
| Region VI | 789 | 557 | 407 | 114 | 20 | 6 | 0 | 2 | 8 | 221 | 171 | 20 | 30 | 0 | 1 | 10 |
| Iowa | 115 | 57 | 47 | 7 | 3 | 0 | 0 | 0 | 0 | 54 | 41 | 5 | 8 | 0 | 2 | 2 |
| Kansas | 71 | 46 | 37 | 5 | 2 | 0 | 0 | 2 | 0 | 25 | 16 | 5 | 4 | 0 | 0 | 0 |
| Missouri | 442 | 342 | 248 | 64 | 19 | 8 | 0 | 0 | 3 | 96 | 77 | 5 | 14 | 2 | 0 | 2 |
| Nebraska | 42 | 28 | 21 | 5 | 2 | 0 | 0 | 0 | 0 | 13 | 11 | 1 | 1 | 0 | 0 | 1 |
| Region VII | 670 | 473 | 353 | 81 | 26 | 8 | 0 | 2 | 3 | 188 | 145 | 16 | 27 | 2 | 2 | 5 |
| Colorado | 173 | 124 | 91 | 19 | 8 | 2 | 2 | 2 | 0 | 45 | 37 | 2 | 6 | 2 | 0 | 2 |
| Montana | 63 | 49 | 28 | 15 | 5 | 1 | 0 | 0 | 0 | 14 | 8 | 5 | 1 | 0 | 0 | 0 |
| North Dakota | 20 | 6 | 4 | 2 | 0 | 0 | 0 | 0 | 0 | 14 | 10 | 0 | 4 | 0 | 0 | 0 |
| South Dakota | 14 | 6 | 5 | 1 | 0 | 0 | 0 | 0 | 0 | 8 | 7 | 0 | 1 | 0 | 0 | 0 |
| Utah | 28 | 12 | 7 | 2 | 2 | 0 | 0 | 0 | 1 | 16 | 14 | 2 | 0 | 0 | 0 | 0 |
| Wyoming | 20 | 13 | 9 | 1 | 1 | 0 | 0 | 0 | 2 | 6 | 4 | 1 | 1 | 0 | 0 | 1 |
| Region VIII | 318 | 210 | 144 | 40 | 16 | 3 | 2 | 2 | 3 | 103 | 80 | 10 | 13 | 2 | 0 | 3 |
| Arizona | 179 | 138 | 91 | 30 | 15 | 1 | 0 | 0 | 1 | 41 | 27 | 8 | 6 | 0 | 0 | 0 |
| California | 1,759 | 1,248 | 817 | 278 | 97 | 15 | 9 | 5 | 27 | 491 | 328 | 81 | 82 | 15 | 2 | 3 |
| Hawaii | 74 | 39 | 33 | 2 | 3 | 0 | 0 | 0 | 1 | 35 | 33 | 0 | 2 | 0 | 0 | 0 |
| Guam | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Nevada | 77 | 60 | 46 | 12 | 1 | 0 | 0 | 0 | 1 | 17 | 8 | 5 | 4 | 0 | 0 | 0 |
| Region IX | 2,089 | 1,485 | 987 | 322 | 116 | 16 | 9 | 5 | 30 | 584 | 396 | 94 | 94 | 15 | 2 | 3 |
| Alaska | 75 | 53 | 34 | 12 | 5 | 1 | 0 | 0 | 1 | 22 | 18 | 1 | 3 | 0 | 0 | 0 |
| Idaho | 43 | 31 | 25 | 4 | 2 | 0 | 0 | 0 | 0 | 12 | 8 | 1 | 3 | 0 | 0 | 0 |
| Oregon | 164 | 86 | 44 | 13 | 18 | 3 | 0 | 8 | 0 | 77 | 54 | 6 | 17 | 1 | 0 | 0 |
| Washington | 347 | 225 | 157 | 41 | 18 | 6 | 1 | 1 | 1 | 107 | 69 | 15 | 23 | 6 | 0 | 9 |
| Region X | 629 | 395 | 260 | 70 | 43 | 10 | 1 | 9 | 2 | 218 | 149 | 23 | 46 | 7 | 0 | 9 |
| Total, all Federal regions | 13,011 | 9,200 | 6,223 | 2,106 | 559 | 128 | 29 | 36 | 119 | 3,628 | 2,955 | 261 | 412 | 79 | 25 | 79 |

[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, Transition Quarter (July–September 1976) [1]

| Method and stage of disposition | All C cases | | | CA cases | | CB cases | | CC cases | | CD cases | | CE cases | | CG 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 | Number | Percent of total closed |
| Total number of cases closed | 8,203 | 100 0 | ..... | 5,506 | 100 0 | 1,951 | 100 0 | 464 | 100 0 | 117 | 100 0 | 28 | 100 0 | 26 | 100 0 | 111 | 100.0 |
| Agreement of the parties | 1,945 | 23 8 | 100 0 | 1,379 | 25 0 | 340 | 17 5 | 181 | 39 0 | 1 | 0 9 | 8 | 28 6 | 7 | 26 9 | 29 | 26 1 |
| Informal settlement | 1,908 | 23 3 | 98 1 | 1,360 | 24 8 | 331 | 17 0 | 173 | 37.4 | 0 | ..... | 8 | 28 6 | 7 | 26 9 | 29 | 26 1 |
| Before issuance of complaint | 1,388 | 17.0 | 71.3 | 914 | 16 7 | 277 | 14 2 | 158 | 34.2 | (2) | ..... | 5 | 17 9 | 7 | 26 9 | 27 | 24.3 |
| After issuance of complaint, before opening of hearing | 503 | 6 1 | 25.9 | 433 | 7 9 | 51 | 2 6 | 14 | 3 0 | 0 | ..... | 3 | 10 7 | 0 | ..... | 2 | 1 8 |
| After hearing opened, before issuance of administrative law judge's decision | 17 | 0.2 | 0 9 | 13 | 0 2 | 3 | 0 2 | 1 | 0 2 | 0 | ..... | 0 | ..... | 0 | ..... | 0 | ..... |
| Formal settlement | 37 | 0 5 | 1 9 | 19 | 0 2 | 9 | 0 5 | 8 | 1.6 | 1 | 0 9 | 0 | ..... | 0 | ..... | 0 | ..... |
| After issuance of complaint, before opening of hearing | 23 | 0 3 | 1 2 | 10 | 0 1 | 5 | 0.3 | 7 | 1.4 | 1 | 0 9 | 0 | ..... | 0 | ..... | 0 | ..... |
| Stipulated decision | 6 | 0 1 | 0 3 | 2 | 0 0 | 0 | ..... | 4 | 0 8 | 0 | ..... | 0 | ..... | 0 | ..... | 0 | ..... |
| Consent decree | 17 | 0.2 | 0 9 | 8 | 0 1 | 5 | 0 3 | 3 | 0 6 | 1 | 0 9 | 0 | ..... | 0 | ..... | 0 | ..... |
| After hearing opened | 14 | 0 2 | 0.7 | 9 | 0 1 | 4 | 0 2 | 1 | 0.2 | 0 | ..... | 0 | ..... | 0 | ..... | 0 | ..... |
| Stipulated decision | 2 | 0 0 | 0 1 | 2 | 0 0 | 0 | ..... | 0 | ..... | 0 | ..... | 0 | ..... | 0 | ..... | 0 | ..... |
| Consent decree | 12 | 0 2 | 0 6 | 7 | 0 1 | 4 | 0.2 | 1 | 0.2 | 0 | ..... | 0 | ..... | 0 | ..... | 0 | ..... |
| Compliance with | 249 | 3 0 | 100 0 | 207 | 3 8 | 26 | 1 3 | 7 | 1 4 | 1 | 0 9 | 3 | 10 7 | 0 | ..... | 5 | 4 5 |
| Administrative law judge's decision | 7 | 0 1 | 2.8 | 7 | 0 1 | 0 | ..... | 0 | ..... | 0 | ..... | 0 | ..... | 0 | ..... | 0 | ..... |
| Board decision | 169 | 2 0 | 67 9 | 139 | 2 6 | 18 | 0 9 | 5 | 1 0 | 0 | ..... | 3 | 10.7 | 0 | ..... | 4 | 3 6 |

| | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Adopting administrative law judge's decision (no exceptions filed) | 42 | 0.5 | 16.9 | 34 | 0.4 | 2 | 0.1 | 3 | 0.6 | 0 | ------- | 3 | 10 7 | 0 | ------- | 0 | ------- |
| Contested | 127 | 1.5 | 51 0 | 105 | 2.2 | 16 | 0 8 | 2 | 0.4 | 0 | ------- | 0 | ------- | 0 | ------- | 4 | 3.6 |
| Circuit court of appeals decree | 72 | 0 9 | 28.9 | 61 | 1.1 | 7 | 0.4 | 2 | 0.4 | 1 | 0.9 | 0 | ------- | 0 | ------- | 1 | 0.9 |
| Supreme Court action | 1 | 0.0 | 0.4 | 0 | ------- | 1 | 0.0 | 0 | ------- | 0 | ------- | 0 | ------- | 0 | ------- | 0 | ------- |
| Withdrawal | 2,988 | 36 4 | 100.0 | 1,963 | 35.7 | 773 | 39.6 | 188 | 40.5 | 0 | ------- | 11 | 39.3 | 19 | 73.1 | 34 | 30.6 |
| Before issuance of complaint | 2,900 | 35.4 | 97 1 | 1,889 | 34 4 | 764 | 39.1 | 187 | 40.3 | (2) | ------- | 7 | 25.0 | 19 | 73 1 | 34 | 30.6 |
| After issuance of complaint, before opening of hearing | 86 | 1.0 | 2 9 | 72 | 1 3 | 9 | 0.5 | 1 | 0.2 | 0 | ------- | 4 | 14.3 | 0 | ------- | 0 | ------- |
| After hearing opened, before administrative law judge's decision | 1 | 0.0 | 0 0 | 1 | 0 0 | 0 | ------- | 0 | ------- | 0 | ------- | 0 | ------- | 0 | ------- | 0 | ------- |
| After administrative law judge's decision, before Board decision | 1 | 0.0 | 0 0 | 1 | 0 0 | 0 | ------- | 0 | ------- | 0 | ------- | 0 | ------- | 0 | ------- | 0 | ------- |
| After Board or court decision | 0 | ------- | ------- | 0 | ------- | 0 | ------- | 0 | ------- | 0 | ------- | 0 | ------- | 0 | ------- | 0 | ------- |
| Dismissal | 2,902 | 35.4 | 100.0 | 1,953 | 35 5 | 812 | 41.6 | 88 | 19.0 | 0 | ------- | 6 | 21.4 | 0 | ------- | 43 | 38.8 |
| Before issuance of complaint | 2,848 | 34.8 | 98 1 | 1,912 | 35 1 | 801 | 41.0 | 86 | 18 6 | (2) | ------- | 6 | 21 4 | 0 | ------- | 43 | 38 8 |
| After issuance of complaint, before opening of hearing | 7 | 0.1 | 0.2 | 4 | 0.0 | 2 | 0.1 | 1 | 0.2 | 0 | ------- | 0 | ------- | 0 | ------- | 0 | ------- |
| After hearing opened, before administrative law judge's decision | 0 | ------- | ------- | 0 | ------- | 0 | ------- | 0 | ------- | 0 | ------- | 0 | ------- | 0 | ------- | 0 | ------- |
| By administrative law judge's decision | 0 | ------- | ------- | 0 | ------- | 0 | ------- | 0 | ------- | 0 | ------- | 0 | ------- | 0 | ------- | 0 | ------- |
| By Board decision | 44 | 0.5 | 1 6 | 34 | 0.4 | 9 | 0 5 | 1 | 0.2 | 0 | ------- | 0 | ------- | 0 | ------- | 0 | ------- |
| Adopting administrative law judges' decision (no exceptions filed) | 25 | 0.3 | 0.9 | 19 | 0.2 | 5 | 0.3 | 1 | 0.2 | 0 | ------- | 0 | ------- | 0 | ------- | 0 | ------- |
| Contested | 19 | 0 2 | 0.7 | 15 | 0 2 | 4 | 0.2 | 0 | ------- | 0 | ------- | 0 | ------- | 0 | ------- | 0 | ------- |
| By circuit court of appeals decree | 3 | 0.0 | 0 1 | 3 | 0.0 | 0 | ------- | 0 | ------- | 0 | ------- | 0 | ------- | 0 | ------- | 0 | ------- |
| By Supreme Court action | 0 | ------- | ------- | 0 | ------- | 0 | ------- | 0 | ------- | 0 | ------- | 0 | ------- | 0 | ------- | 0 | ------- |
| 10(k) actions (see table 7A for details of dispositions) | 115 | 1.4 | ------- | ------- | ------- | ------- | ------- | ------- | ------- | 115 | 98.2 | ------- | ------- | ------- | ------- | ------- | ------- |
| Otherwise (compliance with order of administrative law judge or Board not achieved—firm went out of business) | 4 | 0.0 | ------- | 4 | 0.0 | 0 | ------- | 0 | ------- | 0 | ------- | 0 | ------- | 0 | ------- | 0 | ------- |

[1] See table 8 for summary of disposition by stage See Glossary for definitions of terms.
[2] CD cases closed in this stage are processed as jurisdictional disputes under sec. 10(k) of the Act. See table 7A.

# Table 7A.—Analysis of Methods of Disposition of Jurisdictional Dispute Cases Closed Prior to Unfair Labor Practice Proceedings, Transition Quarter (July–September 1976) [1]

| Method and stage of disposition | Number of cases | Percent of total closed |
|---|---|---|
| Total number of cases closed before issuance of complaint | 115 | 100.0 |
| Agreement of the parties—informal settlement | 57 | 49.6 |
| Before 10(k) notice | 53 | 46 1 |
| After 10(k) notice, before opening of 10(k) hearing | 4 | 3 5 |
| After opening of 10(k) hearing, before issuance of Board decision and determination of dispute | 0 | |
| Compliance with Board decision and determination of dispute | 4 | 3 5 |
| Withdrawal | 41 | 35 6 |
| Before 10(k) notice | 39 | 33.9 |
| After 10(k) notice, before opening of 10(k) hearing | 2 | 1.7 |
| After opening of 10(k) hearing, before issuance of Board decision and determination of dispute | 0 | |
| After Board decision and determination of dispute | 0 | |
| Dismissal | 13 | 11.3 |
| Before 10(k) notice | 13 | 11 3 |
| 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 | 0 | |

[1] See Glossary for definitions of terms.

# Table 8.—Disposition by Stage of Unfair Labor Practice Cases Closed, Transition Quarter (July–September 1976) [1]

| Stage of disposition | All cases | | CA cases | | CB cases | | CC cases | | CD cases | | CE cases | | CG cases | | CP cases | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Number of cases | Percent of cases | Number of cases | Percent of cases | Number of cases | Percent of cases | Number of cases | Percent of cases | Number of cases | Percent of cases | Number of cases | Percent of cases | Number of cases | Percent of cases | Number of cases | Percent of cases |
| Total number of cases closed | 8,203 | 100 0 | 5,506 | 100 0 | 1,951 | 100.0 | 464 | 100 0 | 117 | 100.0 | 28 | 100.0 | 26 | 100 0 | 111 | 100 0 |
| Before issuance of complaint | 7,251 | 88.4 | 4,715 | °85 7 | 1,842 | 94 4 | 431 | 93 0 | 115 | 98.2 | 18 | 64 3 | 26 | 100.0 | 104 | 93.7 |
| After issuance of complaint, before opening of hearing | 619 | 7.5 | 519 | 9.4 | 67 | 3 4 | 23 | 5.0 | 1 | 0 9 | 7 | 25 0 | 0 | ..... | 2 | 1.8 |
| After hearing opened, before issuance of administrative law judge's decision | 32 | 0 4 | 23 | 0 4 | 7 | 0 4 | 2 | 0.4 | 0 | ..... | 0 | ..... | 0 | ..... | 0 | ..... |
| After administrative law judge's decision, before issuance of Board decision | 8 | 0.1 | 8 | 0.1 | 0 | ..... | 0 | ..... | 0 | ..... | 0 | ..... | 0 | ..... | 0 | ..... |
| After Board order adopting administrative law judge's decision in absence of exceptions | 67 | 0 8 | 53 | 1 0 | 7 | 0 4 | 4 | 0 8 | 0 | ..... | 3 | 10.7 | 0 | ..... | 0 | ..... |
| After Board decision, before circuit court decree | 147 | 1.8 | 121 | 2 2 | 20 | 1.0 | 2 | 0.4 | 0 | ..... | 0 | ..... | 0 | ..... | 4 | 3 6 |
| After circuit court decree, before Supreme Court action | 78 | 1 0 | 67 | 1 2 | 7 | 0 4 | 2 | 0 4 | 1 | 0 9 | 0 | ..... | 0 | ..... | 1 | 0.9 |
| After Supreme Court action | 1 | 0 0 | 0 | ..... | 1 | 0 0 | 0 | ..... | 0 | ..... | 0 | ..... | 0 | ..... | 0 | ..... |

[1] See Glossary for definitions of terms.

## Table 9.—Disposition by Stage of Representation and Union Deauthorization Cases Closed, Transition Quarter (July–September 1976) [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 | 3,466 | 100.0 | 2,886 | 100.0 | 219 | 100 0 | 361 | 100.0 | 61 | 100 0 |
| Before issuance of notice of hearing | 1,250 | 36 1 | 921 | 31 9 | 133 | 60 7 | 196 | 54 2 | 36 | 59 0 |
| After issuance of notice before close of hearing | 1,622 | 46 8 | 1,436 | 49.7 | 63 | 28 8 | 123 | 34.1 | 7 | 11 5 |
| After hearing closed before issuance of decision | 26 | 0 8 | 23 | 0 8 | 1 | 0 5 | 2 | 0 6 | 0 | ---------- |
| After issuance of regional director's decision | 549 | 15.8 | 487 | 16 9 | 22 | 10 0 | 40 | 11.1 | 18 | 29 5 |
| After issuance of Board decision | 19 | 0 5 | 19 | 0.7 | 0 | ---------- | 0 | ---------- | 0 | ---------- |

[1] See Glossary for definitions of terms

# Table 10.—Analysis of Methods of Disposition of Representation and Union Deauthorization Cases Closed, Transition Quarter (July–September 1976) [1]

| Method and stage of disposition | All R cases | | RC cases | | RM cases | | RD cases | | UD cases | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Number | Percent | Number | Percent | Number | Percent | Number | Percent | Number | Percent |
| Total, all | 3,466 | 100.0 | 2,886 | 100 0 | 219 | 100.0 | 361 | 100.0 | 61 | 100.0 |
| Certification issued, total | 2,312 | 66.7 | 2,033 | 70.4 | 103 | 47 0 | 176 | 48.8 | 34 | 55 8 |
| After: | | | | | | | | | | |
| Consent election | 240 | 6 9 | 206 | 7.1 | 10 | 4.6 | 24 | 6.6 | 4 | 6 6 |
| Before notice of hearing | 126 | 3 6 | 105 | 3 6 | 5 | 2.3 | 16 | 4 4 | 2 | 3.3 |
| After notice of hearing, before hearing closed | 112 | 3.2 | 99 | 3.4 | 5 | 2 3 | 8 | 2 2 | 2 | 3.3 |
| After hearing closed, before decision | 2 | 0 1 | 2 | 0 1 | 0 | ---------- | 0 | ---------- | 0 | ---------- |
| Stipulated election | 1,599 | 46.2 | 1,412 | 48.9 | 66 | 30.1 | 121 | 33.5 | 7 | 11.5 |
| Before notice of hearing | 558 | 16.1 | 472 | 16 4 | 35 | 16 0 | 51 | 14.1 | 4 | 6.6 |
| After notice of hearing, before hearing closed | 1,032 | 29.8 | 931 | 32 2 | 31 | 14 1 | 70 | 19.4 | 3 | 4.9 |
| After hearing closed, before decision | 9 | 0.3 | 9 | 0.3 | 0 | ---------- | 0 | ---------- | 0 | ---------- |
| Expedited election | 12 | 0 3 | 1 | 0.0 | 11 | 5 0 | 0 | ---------- | 5 | 8 2 |
| Regional director directed election | 447 | 12.9 | 400 | 13.9 | 16 | 7.3 | 31 | 8.7 | 18 | 29 5 |
| Board directed election | 14 | 0 4 | 14 | 0 5 | 0 | ---------- | 0 | ---------- | 0 | ---------- |
| By withdrawal, total | 917 | 26.5 | 712 | 24 7 | 81 | 37 0 | 124 | 34.3 | 21 | 34.4 |
| Before notice of hearing | 423 | 12 2 | 283 | 9.8 | 57 | 26.0 | 83 | 22 9 | 20 | 32.8 |
| After notice of hearing, before hearings closed | 441 | 12.7 | 383 | 13 3 | 22 | 10.0 | 36 | 10 0 | 1 | 1.6 |
| After hearing closed, before decision | 11 | 0.3 | 8 | 0 3 | 1 | 0.5 | 2 | 0 6 | 0 | ---------- |
| After regional director's decision and direction of election | 40 | 1.2 | 36 | 1.2 | 1 | 0 5 | 3 | 0.8 | 0 | ---------- |
| After Board decision and direction of election | 2 | 0 1 | 2 | 0.1 | 0 | ---------- | 0 | ---------- | 0 | ---------- |
| By dismissal, total | 237 | 6 8 | 141 | 4.9 | 35 | 16.0 | 61 | 16.9 | 6 | 9.8 |
| Before notice of hearing | 131 | 3.7 | 60 | 2.1 | 25 | 11 4 | 46 | 12.7 | 5 | 8 2 |
| After notice of hearing, before hearing closed | 37 | 1.1 | 23 | 0 8 | 5 | 2.3 | 9 | 2.5 | 1 | 1 6 |
| After hearing closed, before decision | 4 | 0.1 | 4 | 0 1 | 0 | ---------- | 0 | ---------- | 0 | ---------- |
| By regional director's decision | 62 | 1.8 | 51 | 1 8 | 5 | 2.3 | 6 | 1 7 | 0 | ---------- |
| By Board decision | 3 | 0.1 | 3 | 0.1 | 0 | ---------- | 0 | ---------- | 0 | ---------- |

[1] See Glossary for definitions of terms

## Table 10A.—Analysis of Methods of Disposition of Amendment of Certification and Unit Clarification Cases Closed, Transition Quarter (July–September 1976)

| | AC | UC |
|---|---|---|
| Total, all | 18 | 68 |
| Certification amended or unit clarified | 8 | 34 |
| Before hearing | 0 | 0 |
| By regional director's decision | 0 | 0 |
| By Board decision | 0 | 0 |
| After hearing | 8 | 34 |
| By regional director's decision | 8 | 33 |
| By Board decision | 0 | 1 |
| Dismissed | 1 | 7 |
| Before hearing | 1 | 6 |
| By regional director's decision | 1 | 6 |
| By Board decision | 0 | 0 |
| After hearing | 0 | 1 |
| By regional director's decision | 0 | 1 |
| By Board decision | 0 | 0 |
| Withdrawn | 9 | 27 |
| Before hearing | 9 | 27 |
| After hearing | 0 | 0 |

## Table 11.—Types of Elections Resulting in Certification in Cases Closed, Transition Quarter (July–September 1976) [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 | 2,307 | 241 | 1,593 | 18 | 446 | 9 |
| Eligible voters | 145,556 | 5,979 | 101,369 | 1,247 | 36,866 | 95 |
| Valid votes | 127,364 | 4,990 | 90,146 | 1,104 | 31,057 | 67 |
| RC cases | | | | | | |
| Elections | 2,013 | 203 | 1,411 | 17 | 381 | 1 |
| Eligible voters | 132,363 | 5,175 | 93,640 | 1,220 | 32,326 | 2 |
| Valid votes | 116,343 | 4,400 | 83,410 | 1,079 | 27,452 | 2 |
| RM cases. | | | | | | |
| Elections | 90 | 7 | 60 | 0 | 15 | 8 |
| Eligible voters | 2,358 | 88 | 1,622 | 0 | 555 | 93 |
| Valid votes | 1,918 | 63 | 1,418 | 0 | 372 | 65 |
| RD cases | | | | | | |
| Elections | 174 | 24 | 117 | 0 | 33 | 0 |
| Eligible voters | 9,321 | 579 | 5,987 | 0 | 2,755 | 0 |
| Valid votes | 7,901 | 401 | 5,230 | 0 | 2,270 | 0 |
| UD cases | | | | | | |
| Elections | 30 | 7 | 5 | 1 | 17 | ---- |
| Eligible voters | 1,514 | 137 | 120 | 27 | 1,230 | ---- |
| Valid votes | 1,202 | 126 | 88 | 25 | 963 | ---- |

[1] See Glossary for definitions of terms

# Table 11A.—Analysis of Elections Conducted in Representation Cases Closed, Transition Quarter (July–September 1976)

| 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 runlff | Resulting in certification |
| All types | 2,309 | 2 | 30 | 2,277 | 2,045 | 2 | 30 | 2,013 | 90 | 0 | 0 | 90 | 174 | 0 | 0 | 174 |
| Rerun required | | | 30 | | | | 30 | | | | 0 | | | | 0 | |
| Runoff required | | | 0 | | | | 0 | | | | 0 | | | | 0 | |
| Consent elections | 234 | 0 | 0 | 234 | 203 | 0 | 0 | 203 | 7 | 0 | 0 | 7 | 24 | 0 | 0 | 24 |
| Rerun required | | | 0 | | | | 0 | | | | 0 | | | | 0 | |
| Runoff required | | | 0 | | | | 0 | | | | 0 | | | | 0 | |
| Stipulated elections | 1,611 | 1 | 22 | 1,588 | 1,434 | 1 | 22 | 1,411 | 60 | 0 | 0 | 60 | 117 | 0 | | 117 |
| Rerun required | | | 22 | | | | 22 | | | | 0 | | | | 0 | |
| Runoff required | | | 0 | | | | 0 | | | | 0 | | | | 0 | |
| Regional director-directed | 438 | 1 | 8 | 429 | 390 | 1 | 8 | 381 | 15 | 0 | 0 | 15 | 35 | 0 | 0 | 33 |
| Rerun required | | | 8 | | | | 8 | | | | 0 | | | | 0 | |
| Runoff required | | | 0 | | | | 0 | | | | 0 | | | | 0 | |
| Board-directed | 17 | 0 | 0 | 17 | 17 | 0 | 0 | 17 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Rerun required | | | 0 | | | | 0 | | | | 0 | | | | 0 | |
| Runoff required | | | 0 | | | | 0 | | | | 0 | | | | 0 | |
| Expedited—sec 8(b)(7)(C) | 9 | 0 | 0 | 9 | 1 | 0 | 0 | 1 | 8 | 0 | 0 | 8 | 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, Transition Quarter (July–September 1976)

| | 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 | 2,343 | 201 | 8 6 | 69 | 2 9 | 26 | 1.1 | 227 | 9 7 | 95 | 4 0 |
| By type of case, | | | | | | | | | | | |
| In RC cases | 2,076 | 190 | 9 2 | 64 | 3 1 | 23 | 1 1 | 213 | 10.3 | 87 | 4 2 |
| In RM cases | 90 | 4 | 4.4 | 2 | 2 2 | 2 | 2 2 | 6 | 6 6 | 4 | 4 4 |
| In RD cases | 177 | 7 | 4 0 | 3 | 1 7 | 1 | 0 6 | 8 | 4 6 | 4 | 2 3 |
| By type of election, | | | | | | | | | | | |
| Consent elections | 234 | 9 | 3 8 | 5 | 2.1 | 0 | | 9 | 3 8 | 5 | 2 1 |
| Stipulated elections | 1,633 | 132 | 8 1 | 40 | 2 4 | 14 | 0 9 | 146 | 9 0 | 54 | 3 3 |
| Expedited elections | 11 | 0 | | 0 | | 0 | | 0 | | 0 | |
| Regional director-directed elections | 446 | 60 | 13 5 | 17 | 3.8 | 12 | 2 7 | 72 | 16 2 | 29 | 6 5 |
| Board-directed elections | 19 | 0 | | 7 | 36 8 | 0 | | 0 | | 7 | 36 8 |

[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 individual ballots challenged in each election

## Table 11C.—Objections Filed in Representation Cases Closed, by Party Filing, Transition Quarter (July–September 1976) [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 | 280 | 100 0 | 124 | 44 3 | 149 | 53 2 | 7 | 2 5 |
| By type of case | | | | | | | | |
| RC cases | 263 | 100 0 | 123 | 46 8 | 135 | 51 3 | 5 | 1 9 |
| RM cases | 7 | 100 0 | 1 | 14 3 | 5 | 71 4 | 1 | 14 3 |
| RD cases | 10 | 100 0 | 0 | ------- | 9 | 90 0 | 1 | 10 0 |
| By type of election | | | | | | | | |
| Consent elections | 12 | 100 0 | 8 | 66 7 | 4 | 33 0 | 0 | ------- |
| Stipulated elections | 180 | 100 0 | 72 | 40 0 | 104 | 57 8 | 4 | 2 2 |
| Expedited elections | 1 | 100 0 | 1 | 100 0 | 0 | ------- | 0 | ------- |
| Regional director-directed elections | 87 | 100 0 | 43 | 49 5 | 41 | 47 1 | 3 | 3 4 |
| Board-directed elections | 0 | ------- | 0 | ------- | 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, Transition Quarter (July–September 1976) [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 | 277 | 50 | 227 | 194 | 85 5 | 33 | 14. 5 |
| By type of case | | | | | | | |
| RC cases | 260 | 47 | 213 | 180 | 84. 5 | 33 | 15 5 |
| RM cases | 7 | 1 | 6 | 6 | 100 0 | 0 | ---------- |
| RD cases | 10 | 2 | 8 | 8 | 100. 0 | 0 | ---------- |
| By type of election | | | | | | | |
| Consent elections | 12 | 3 | 9 | 9 | 100 0 | 0 | ---------- |
| Stipulated elections | 178 | 31 | 147 | 121 | 82. 3 | 26 | 17. 7 |
| Expedited elections | 1 | 1 | 0 | 0 | ---------- | 0 | ---------- |
| Regional director-directed elections | 86 | 15 | 71 | 64 | 90 1 | 7 | 9. 9 |
| Board-directed elections | 0 | 0 | 0 | 0 | ---------- | 0 | ---------- |

[1] See Glossary for definitions of terms
[2] See table 11E for rerun elections held after objections were sustained In 3 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, Transition Quarter (July–September 1976) [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 | 28 | 100 0 | 10 | 35 7 | 18 | 64 3 | 5 | 17 9 |
| By type of case. | | | | | | | | |
| RC cases | 28 | 100 0 | 10 | 35 7 | 18 | 64 3 | 5 | 17 9 |
| RM cases | 0 | | 0 | | 0 | | 0 | |
| RD | 0 | | 0 | | 0 | | 0 | |
| By type of election | | | | | | | | |
| Consent elections | 0 | | 0 | | 0 | | 0 | |
| Stipulated elections | 21 | 100 0 | 7 | 33 3 | 14 | 66 7 | 3 | 14 3 |
| Expedited elections | 0 | | 0 | | 0 | | 0 | |
| Regional director-directed elections | 7 | 100 0 | 3 | 42 9 | 4 | 57 1 | 2 | 28 6 |
| Board-directed elections | 0 | | 0 | | 0 | | 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 2 rerun elections which were conducted and subsequently set aside pursuant to sustained objections The 2 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, Transition Quarter (July–September 1976)

| 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 | 30 | 23 | 76 7 | 7 | 23 3 | 1,514 | 973 | 64 3 | 541 | 35 7 | 1,202 | 79 4 | 783 | 51 7 |
| AFL–CIO unions | 22 | 16 | 72 7 | 6 | 27 3 | 985 | 529 | 53 7 | 456 | 46 3 | 811 | 82 3 | 435 | 44 2 |
| Teamsters | 8 | 7 | 87 5 | 1 | 12 5 | 529 | 444 | 83 9 | 85 | 16 1 | 391 | 73 9 | 348 | 65 8 |

[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, Transition Quarter (July–September 1976) [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 | | | | Other local unions | |
| | | | | | | | | | | | AFL–CIO unions | Teamsters | Other national unions | | | |
| | A All representation elections | | | | | | | | | | | | | | | |
| AFL–CIO | 1,213 | 44.4 | 538 | 538 | | | | 675 | 79,259 | 25,213 | 25,213 | | | | | 54,046 |
| Teamsters | 703 | 39 0 | 274 | | 274 | | | 429 | 23,431 | 7,113 | | 7,113 | | | | 16,318 |
| Other national unions | 103 | 36 9 | 38 | | | 38 | | 65 | 12,222 | 2,905 | | | 2,905 | | | 9,317 |
| Other local unions | 108 | 63.0 | 68 | | | | 68 | 40 | 6,982 | 4,784 | | | | 4,784 | | 2,198 |
| 1-union elections | 2,127 | 43 2 | 918 | 538 | 274 | 38 | 68 | 1,209 | 121,894 | 40,015 | 25,213 | 7,113 | 2,905 | 4,784 | | 81,879 |
| AFL–CIO v AFL–CIO | 43 | 72 1 | 31 | 31 | | | | 12 | 3,217 | 1,620 | 1,620 | | | | | 1,597 |
| AFL–CIO v Teamsters | 35 | 71 4 | 25 | 12 | 13 | | | 10 | 3,248 | 1,959 | 1,072 | 887 | | | | 1,289 |
| AFL–CIO v national | 6 | 66 7 | 4 | 0 | | 4 | | 2 | 635 | 333 | | | 333 | | | 302 |
| AFL–CIO v local | 33 | 100 0 | 33 | 19 | | | 14 | 0 | 11,881 | 11,881 | 8,726 | | | 3,155 | | 0 |
| Teamsters v national | 1 | 0 0 | 0 | | 0 | 0 | | 1 | 155 | 0 | | 0 | 0 | | | 155 |
| Teamsters v local | 12 | 83.3 | 10 | | 6 | | 4 | 2 | 802 | 504 | | 161 | | 343 | | 298 |
| Teamsters v Teamsters | 1 | 0.0 | 0 | | 0 | | | 1 | 139 | 0 | | 0 | | | | 139 |
| National v local | 5 | 100 0 | 5 | | | 5 | 0 | 0 | 319 | 319 | | | 319 | 0 | | 0 |
| National v national | 2 | 50 0 | 1 | | | 1 | | 1 | 305 | 11 | | | 11 | | | 294 |
| Local v local | 4 | 100 0 | 4 | | | | 4 | 0 | 168 | 168 | | | | 168 | | 0 |
| 2-union elections | 142 | 79.6 | 113 | 62 | 19 | 10 | 22 | 29 | 20,869 | 16,795 | 11,418 | 1,048 | 663 | 3,666 | | 4,074 |
| AFL–CIO v AFL–CIO v AFL–CIO | 1 | 100 0 | 1 | 1 | | | | 0 | 67 | 67 | 67 | | | | | 0 |
| AFL–CIO v AFL–CIO v Teamsters | 3 | 66 7 | 2 | 2 | 0 | | | 1 | 674 | 132 | 132 | 0 | | | | 542 |
| AFL–CIO v Teamsters v national | 1 | 0 0 | 0 | 0 | 0 | 0 | | 1 | 202 | 0 | 0 | 0 | 0 | | | 202 |
| AFL–CIO v local v local | 2 | 100 0 | 2 | 1 | | | 1 | 0 | 254 | 254 | 243 | | | | 11 | 0 |
| Local v local v local | 1 | 100 0 | 1 | | | | 1 | 0 | 82 | 82 | | | | | 82 | 0 |
| 3 (or more)-union elections | 8 | 75 0 | 6 | 4 | 0 | 0 | 2 | 2 | 1,279 | 535 | 442 | 0 | 0 | 93 | | 744 |
| Total representation elections | 2,277 | 45 5 | 1,037 | 604 | 293 | 48 | 92 | 1,240 | 144,042 | 57,345 | 37,073 | 8,161 | 3,568 | 8,543 | | 86,697 |

B Elections in RC cases

| | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| AFL–CIO | 1,089 | 47 3 | 515 | 515 | | | | 574 | 72,714 | 23,197 | 23,197 | | | | 49,517 |
| Teamsters | 589 | 44 0 | 259 | | 259 | | | 330 | 21,637 | 6,616 | | 6,616 | | | 15,021 |
| Other national unions | 94 | 40 4 | 38 | | | 38 | | 56 | 11,193 | 2,905 | | | 2,905 | | 8,288 |
| Other local unions | 102 | 63 7 | 65 | | | | 65 | 37 | 6,656 | 4,706 | | | | 4,706 | 1,950 |
| 1-union elections | 1,874 | 46 8 | 877 | 515 | 259 | 38 | 65 | 997 | 112,200 | 37,424 | 23,197 | 6,616 | 2,905 | 4,706 | 74,776 |
| AFL–CIO v AFL–CIO | 42 | 71 4 | 30 | 30 | | | | 12 | 3,214 | 1,617 | 1,617 | | | | 1,597 |
| AFL–CIO v Teamsters | 32 | 68 8 | 22 | 10 | 12 | | | 10 | 2,648 | 1,359 | 680 | 679 | | | 1,289 |
| AFL–CIO v national | 5 | 60 0 | 3 | 0 | | 3 | | 2 | 604 | 302 | 0 | | 302 | | 302 |
| AFL–CIO v local | 27 | 100 0 | 27 | 15 | | | 12 | 0 | 10,530 | 10,530 | 7,507 | | | 3,023 | 0 |
| Teamsters v national | 1 | 0 0 | 0 | | 0 | 0 | | 1 | 155 | 0 | | 0 | 0 | | 155 |
| Teamsters v local | 12 | 83 3 | 10 | | 6 | | 4 | 2 | 802 | 504 | | 161 | | 343 | 298 |
| Teamsters v Teamsters | 1 | 0 0 | 0 | | 0 | | | 1 | 139 | 0 | | 0 | | | 139 |
| National v local | 5 | 100 0 | 5 | | | 5 | 0 | 0 | 319 | 319 | | | 319 | 0 | 0 |
| National v national | 2 | 50 0 | 1 | | | 1 | | 1 | 305 | 11 | | | 11 | | 294 |
| Local v local | 4 | 100 0 | 4 | | | | 4 | 0 | 168 | 168 | | | | 168 | 0 |
| 2-union elections | 131 | 77 9 | 102 | 55 | 18 | 9 | 20 | 29 | 18,884 | 14,810 | 9,804 | 840 | 632 | 3,534 | 4,074 |
| AFL–CIO v AFL–CIO v AFL–CIO | 1 | 100 0 | 1 | 1 | | | | 0 | 67 | 67 | 67 | | | | 0 |
| AFL–CIO v AFL–CIO v Teamsters | 3 | 66 7 | 2 | 2 | 0 | | | 1 | 674 | 132 | 132 | 0 | | | 542 |
| AFL–CIO v Teamsters v national | 1 | 0 0 | 0 | 0 | 0 | 0 | | 1 | 202 | 0 | 0 | 0 | 0 | | 202 |
| AFL–CIO v local v local | 2 | 100 0 | 2 | 1 | | | 1 | 0 | 254 | 254 | 243 | | | 11 | 0 |
| Local v local v local | 1 | 100 0 | 1 | | | | 1 | 0 | 82 | 82 | | | | 82 | 0 |
| 3 (or more)-union elections | 8 | 75 0 | 6 | 4 | 0 | 0 | 2 | 2 | 1,279 | 535 | 442 | 0 | 0 | 93 | 744 |
| Total RC elections | 2,013 | 48 9 | 985 | 574 | 277 | 47 | 87 | 1,028 | 132,363 | 52,769 | 33,443 | 7,456 | 3,537 | 8,333 | 79,594 |

# Table 13.—Final Outcome of Representation Elections in Cases Closed, Transition Quarter (July–September 1976) [1]—Contd.

| 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 | | | Other local unions | | |
| | | | | | | | | | | | AFL–CIO unions | Teamsters | Other national unions | | | |
| | C Elections in RM cases | | | | | | | | | | | | | | | |
| AFL-CIO | 35 | 28 6 | 10 | 10 | | | | 25 | 1,672 | 480 | 480 | | | | | 1,192 |
| Teamsters | 46 | 13 0 | 6 | | 6 | | | 40 | 478 | 71 | | 71 | | | | 407 |
| Other national unions | 2 | 0 0 | 0 | | | 0 | | 2 | 15 | 0 | | | 0 | | | 15 |
| Other local unions | 3 | 100 0 | 3 | | | | 3 | 0 | 78 | 78 | | | | 78 | | 0 |
| 1-union elections | 86 | 22 1 | 19 | 10 | 6 | 0 | 3 | 67 | 2,243 | 629 | 480 | 71 | 0 | 78 | | 1,614 |
| AFL-CIO v. AFL-CIO | 1 | 100 0 | 1 | 1 | | | | 0 | 3 | 3 | 3 | | | | | 0 |
| AFL-CIO v local | 3 | 100 0 | 3 | 2 | | | 1 | 0 | 112 | 112 | 110 | | | 2 | | 0 |
| 2-union elections | 4 | 100.0 | 4 | 3 | 0 | 0 | 1 | 0 | 115 | 115 | 113 | 0 | 0 | 2 | | 0 |
| Total RM elections | 90 | 25 6 | 23 | 13 | 6 | 0 | 4 | 67 | 2,358 | 744 | 593 | 71 | 0 | 80 | | 1,614 |
| | D Elections in RD cases | | | | | | | | | | | | | | | |
| AFL-CIO | 89 | 14 6 | 13 | 13 | | | | 76 | 4,873 | 1,536 | 1,536 | | | | | 3,337 |
| Teamsters | 68 | 13 2 | 9 | | 9 | | | 59 | 1,316 | 426 | | 426 | | | | 890 |
| Other national unions | 7 | 0 0 | 0 | | | 0 | | 7 | 1,014 | 0 | | | 0 | | | 1,014 |
| Other local unions | 3 | 0 0 | 0 | | | | 0 | 3 | 248 | 0 | | | | 0 | | 248 |
| 1-union elections | 167 | 13 2 | 22 | 13 | 9 | 0 | 0 | 145 | 7,451 | 1,962 | 1,536 | 426 | 0 | 0 | | 5,489 |
| AFL-CIO v Teamsters | 3 | 100 0 | 3 | 2 | 1 | | | 0 | 600 | 600 | 392 | 208 | | | | 0 |
| AFL-CIO v national | 1 | 100 0 | 1 | 0 | | 1 | | 0 | 31 | 31 | 0 | | 31 | | | 0 |
| AFL-CIO v local | 3 | 100 0 | 3 | 2 | | | 1 | 0 | 1,239 | 1,239 | 1,109 | | | 130 | | 0 |
| 2-union elections | 7 | 100 0 | 7 | 4 | 1 | 1 | 1 | 0 | 1,870 | 1,870 | 1,501 | 208 | 31 | 130 | | 0 |
| Total RD elections | 174 | 16 7 | 29 | 17 | 10 | 1 | 1 | 145 | 9,321 | 3,832 | 3 037 | 634 | 31 | 130 | | 5,489 |

[1] See Glossary for definitions of terms

[2] Includes each unit in which a choice as to collective-bargaining agent was made, for example, there may have been more than one election in a single case, or several cases may have been involved in one election unit

# Table 14.—Valid Votes Cast in Representation Elections, by Final Results of Election, in Cases Closed' Transition Quarter (July–September 1976) [1]

| Participating unions | Total valid votes cast | Valid votes cast in elections won | | | | | | Valid votes cast in elections lost | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Votes for unions | | | | | Total votes for no union | Votes for unions | | | | | Total votes for no union |
| | | Total | AFL–CIO unions | Teamsters | Other national unions | Other local unions | | Total | AFL–CIO unions | Teamsters | Other national unions | Other local unions | |
| | A All representation elections | | | | | | | | | | | | |
| AFL–CIO | 69,436 | 14,655 | 14,655 | | | | 7,237 | 16,125 | 16,125 | | | | 31,419 |
| Teamsters | 20,964 | 4,104 | | 4,104 | | | 2,151 | 4,765 | | 4,765 | | | 9,944 |
| Other national unions | 10,866 | 1,515 | | | 1,515 | | 722 | 3,003 | | | 3,003 | | 5,626 |
| Other local unions | 5,708 | 2,698 | | | | 2,698 | 1,230 | 516 | | | | 516 | 1,264 |
| 1-union elections | 106,974 | 22,972 | 14,655 | 4,104 | 1,515 | 2,698 | 11,340 | 24,409 | 16,125 | 4,765 | 3,003 | 516 | 48,253 |
| AFL–CIO v AFL–CIO | 2,768 | 1,222 | 1,222 | | | | 133 | 519 | 519 | | | | 894 |
| AFL–CIO v Teamsters | 2,863 | 1,574 | 828 | 746 | | | 96 | 479 | 91 | 388 | | | 714 |
| AFL–CIO v. national | 559 | 283 | 112 | | 171 | | 9 | 56 | 6 | | 50 | | 211 |
| AFL–CIO v local | 10,201 | 9,969 | 5,116 | | | 4,853 | 232 | 0 | 0 | | | 0 | 0 |
| Teamsters v national | 127 | 0 | | 0 | 0 | | 0 | 50 | | 1 | 49 | | 77 |
| Teamsters v local | 700 | 419 | | 205 | | 214 | 20 | 85 | | 53 | | 32 | 176 |
| Teamsters v Teamsters | 113 | 0 | | 0 | | | 0 | 32 | | 32 | | | 81 |
| National v. local | 285 | 272 | | | 201 | 71 | 13 | 0 | | | 0 | 0 | 0 |
| National v. national | 285 | 10 | | | 10 | | 1 | 125 | | | 125 | | 149 |
| Local v local | 129 | 124 | | | | 124 | 5 | 0 | | | | 0 | 0 |
| 2-union elections | 18,030 | 13,873 | 7,278 | 951 | 382 | 5,262 | 509 | 1,346 | 616 | 474 | 224 | 32 | 2,302 |
| AFL–CIO v AFL–CIO v. AFL–CIO | 65 | 65 | 65 | | | | 0 | 0 | 0 | | | | 0 |
| AFL–CIO v. AFL–CIO v Teamsters | 624 | 80 | 76 | 4 | | | 43 | 193 | 41 | 152 | | | 308 |
| AFL–CIO v. Teamsters v National | 198 | 0 | 0 | 0 | 0 | | 0 | 79 | 0 | 13 | 66 | | 119 |
| AFL–CIO v. Local v Local | 202 | 194 | 102 | | | 92 | 8 | 0 | 0 | | | 0 | 0 |
| Local v Local. v Local | 69 | 66 | | | | 66 | 3 | 0 | | | | 0 | 0 |
| 3 (or more)-union elections | 1,158 | 405 | 243 | 4 | 0 | 158 | 54 | 272 | 41 | 165 | 66 | 0 | 427 |
| Total representation elections | 126,162 | 37,250 | 22,176 | 5,059 | 1,897 | 8,118 | 11,903 | 26,027 | 16,782 | 5,404 | 3,293 | 548 | 50,982 |

See footnote at end of table

# Table 14.—Valid Votes Cast in Representation Elections, by Final Results of Election, in Cases Closed, Transition Quarter (July–September 1976)[1]—Contd.

| 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 | |
| | B. Elections in RC cases | | | | | | | | | | | | |
| AFL–CIO | 64,024 | 13,420 | 13,420 | | | | 6,802 | 14,947 | 14,947 | | | | 28,855 |
| Teamsters | 19,339 | 3,809 | | 3,809 | | | 1,997 | 4,476 | | 4,476 | | | 9,057 |
| Other national unions | 9,938 | 1,515 | | | 1,515 | | 722 | 2,622 | | | 2,622 | | 5,079 |
| Other local unions | 5,415 | 2,647 | | | | 2,647 | 1,208 | 459 | | | | 459 | 1,101 |
| 1-union elections | 98,716 | 21,391 | 13,420 | 3,809 | 1,515 | 2,647 | 10,729 | 22,504 | 14,947 | 4,476 | 2,622 | 459 | 44,092 |
| AFL–CIO v AFL–CIO | 2,765 | 1,219 | 1,219 | | | | 133 | 519 | 519 | | | | 894 |
| AFL–CIO v. Teamsters | 2,393 | 1,108 | 577 | 531 | | | 92 | 479 | 91 | 388 | | | 714 |
| AFL–CIO v. National | 530 | 254 | 98 | | 156 | | 9 | 56 | 6 | | 50 | | 211 |
| AFL–CIO v. Local | 9,142 | 8,938 | 4,482 | | | 4,456 | 204 | 0 | 0 | | | 0 | 0 |
| Teamsters v. National | 127 | 0 | | 0 | 0 | | 0 | 50 | | 1 | 49 | | 77 |
| Teamsters v Local | 700 | 419 | | 205 | | 214 | 20 | 85 | | 53 | | 32 | 176 |
| Teamsters v. Teamsters | 113 | 0 | | 0 | | | 0 | 32 | | 32 | | | 81 |
| National v. Local | 285 | 272 | | | 201 | 71 | 13 | 0 | | | 0 | 0 | 0 |
| National v. National | 285 | 10 | | | 10 | | 1 | 125 | | | 125 | | 149 |
| Local v. Local | 129 | 124 | | | | 124 | 5 | 0 | | | | 0 | 0 |
| 2-union elections | 16,469 | 12,344 | 6,376 | 736 | 367 | 4,865 | 477 | 1,346 | 616 | 474 | 224 | 32 | 2,302 |
| AFL–CIO v. AFL–CIO v. AFL–CIO | 65 | 65 | 65 | | | | 0 | 0 | 0 | | | | 0 |
| AFL–CIO v. AFL–CIO v. Teamsters | 624 | 80 | 76 | 4 | | | 43 | 193 | 41 | 152 | | | 308 |
| AFL–CIO v. Teamsters v. national | 198 | 0 | 0 | 0 | 0 | | 0 | 79 | 0 | 13 | 66 | | 119 |
| AFL–CIO v. Local v. Local | 202 | 194 | 102 | | | 92 | 8 | 0 | 0 | | | 0 | 0 |
| Local v. Local v. Local | 69 | 66 | | | | 66 | 3 | 0 | | | | 0 | 0 |
| 3 (or more)-union elections | 1,158 | 405 | 243 | 4 | 0 | 158 | 54 | 272 | 41 | 165 | 66 | 0 | 427 |
| Total RC elections | 116,343 | 34,140 | 20,039 | 4,549 | 1,882 | 7,670 | 11,260 | 24,122 | 15,604 | 5,115 | 2,912 | 491 | 46,821 |

| | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | C. Elections in RM cases | | | | | | | | | | | | |
| AFL-CIO | 1,325 | 291 | 291 | | | | 111 | 295 | 295 | | | | 628 |
| Teamsters | 418 | 37 | | 37 | | | 14 | 74 | | 74 | | | 293 |
| Other national unions | 11 | 0 | | | 0 | | 0 | 3 | | | 3 | | 8 |
| Other local unions | 73 | 51 | | | | 51 | 22 | 0 | | | | 0 | 0 |
| 1-union elections | 1,827 | 379 | 291 | 37 | 0 | 51 | 147 | 372 | 295 | 74 | 3 | 0 | 929 |
| AFL-CIO v AFL-CIO | 3 | 3 | 3 | | | | 0 | 0 | 0 | | | | 0 |
| AFL-CIO v Local | 88 | 83 | 54 | | | 29 | 5 | 0 | 0 | | | 0 | 0 |
| 2-union elections | 91 | 86 | 57 | 0 | 0 | 29 | 5 | 0 | 0 | 0 | 0 | 0 | 0 |
| Total RM elections | 1,918 | 465 | 348 | 37 | 0 | 80 | 152 | 372 | 295 | 74 | 3 | 0 | 929 |
| | D Elections in RD cases | | | | | | | | | | | | |
| AFL-CIO | 4,087 | 944 | 944 | | | | 324 | 883 | 883 | | | | 1,936 |
| Teamsters | 1,207 | 258 | | 258 | | | 140 | 215 | | 215 | | | 594 |
| Other national unions | 917 | 0 | | | 0 | | 0 | 378 | | | 378 | | 539 |
| Other local unions | 220 | 0 | | | | 0 | 0 | 57 | | | | 57 | 163 |
| 1-union elections | 6,431 | 1,202 | 944 | 258 | 0 | 0 | 464 | 1,533 | 883 | 215 | 378 | 57 | 3,232 |
| AFL-CIO v. Teamsters | 470 | 466 | 251 | 215 | | | 4 | 0 | 0 | 0 | | | 0 |
| AFL-CIO v. National | 29 | 29 | 14 | | 15 | | 0 | 0 | 0 | | 0 | | 0 |
| AFL-CIO v Local | 971 | 948 | 580 | | | 368 | 23 | 0 | 0 | | | 0 | 0 |
| 2-union elections | 1,470 | 1,443 | 845 | 215 | 15 | 368 | 27 | 0 | 0 | 0 | 0 | 0 | 0 |
| Total RD elections | 7,901 | 2,645 | 1,789 | 473 | 15 | 368 | 491 | 1,533 | 883 | 215 | 378 | 57 | 3,232 |

[1] See Glossary for definitions of terms.

# Table 15A.—Geographic Distribution of Representation Elections Held in Cases Closed, Transition Quarter (July–September 1976)

| Division and State [1] | Total elections | Number of elections in which representation rights were won by unions | | | | | Number of elections in which no representative was chosen | Number of employees eligible to vote | Total valid votes cast | Valid votes cast for unions | | | | | Total votes for no union | Eligible employees in units choosing representation |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Total | AFL–CIO unions | Teamsters | Other national unions | Other local unions | | | | Total | AFL–CIO unions | Teamsters | Other national unions | Other local unions | | |
| Maine | 27 | 23 | 20 | 3 | 0 | 0 | 4 | 1,565 | 1,392 | 730 | 674 | 56 | 0 | 0 | 662 | 670 |
| New Hampshire | 4 | 1 | 0 | 1 | 0 | 0 | 3 | 167 | 160 | 48 | 19 | 29 | 0 | 0 | 112 | 6 |
| Vermont | 2 | 1 | 1 | 0 | 0 | 0 | 1 | 105 | 103 | 23 | 23 | 0 | 0 | 0 | 80 | 9 |
| Massachusetts | 69 | 32 | 19 | 9 | 0 | 4 | 37 | 4,841 | 4,197 | 2,120 | 1,439 | 480 | 0 | 201 | 2,077 | 2,214 |
| Rhode Island | 14 | 5 | 3 | 0 | 0 | 2 | 9 | 1,173 | 1,031 | 454 | 368 | 18 | 0 | 68 | 577 | 301 |
| Connecticut | 18 | 9 | 4 | 4 | 1 | 0 | 9 | 1,445 | 1,312 | 466 | 169 | 221 | 67 | 9 | 846 | 229 |
| New England | 134 | 71 | 47 | 17 | 1 | 6 | 63 | 9,296 | 8,195 | 3,841 | 2,692 | 804 | 67 | 278 | 4,354 | 3,429 |
| New York | 160 | 73 | 35 | 15 | 3 | 20 | 87 | 7,616 | 6,535 | 3,515 | 1,958 | 388 | 82 | 1,087 | 3,020 | 4,060 |
| New Jersey | 86 | 47 | 28 | 10 | 2 | 7 | 39 | 5,498 | 4,798 | 2,306 | 947 | 855 | 121 | 383 | 2,492 | 1,877 |
| Pennsylvania | 155 | 62 | 31 | 22 | 4 | 5 | 93 | 15,804 | 14,172 | 8,524 | 4,434 | 641 | 1,262 | 2,187 | 5,648 | 7,119 |
| Middle Atlantic | 401 | 182 | 94 | 47 | 9 | 32 | 219 | 28,918 | 25,505 | 14,345 | 7,339 | 1,884 | 1,465 | 3,657 | 11,160 | 13,056 |
| Ohio | 130 | 63 | 38 | 17 | 4 | 4 | 67 | 5,249 | 4,747 | 2,270 | 1,391 | 376 | 206 | 297 | 2,477 | 2,310 |
| Indiana | 69 | 35 | 25 | 8 | 1 | 1 | 34 | 5,057 | 4,500 | 1,885 | 1,443 | 197 | 241 | 4 | 2,615 | 1,095 |
| Illinois | 117 | 48 | 28 | 9 | 4 | 7 | 69 | 6,254 | 5,316 | 2,692 | 1,817 | 299 | 157 | 419 | 2,624 | 2,495 |
| Michigan | 119 | 57 | 22 | 17 | 11 | 7 | 62 | 6,106 | 4,866 | 2,277 | 967 | 281 | 697 | 332 | 2,589 | 2,144 |
| Wisconsin | 56 | 22 | 11 | 9 | 1 | 1 | 34 | 3,194 | 2,835 | 1,165 | 776 | 146 | 40 | 203 | 1,670 | 927 |
| East North Central | 491 | 225 | 124 | 60 | 21 | 20 | 266 | 25,860 | 22,264 | 10,289 | 6,394 | 1,299 | 1,341 | 1,255 | 11,975 | 8,971 |
| Iowa | 30 | 13 | 6 | 2 | 4 | 1 | 17 | 2,282 | 2,009 | 1,223 | 640 | 147 | 389 | 47 | 786 | 1,269 |
| Minnesota | 45 | 21 | 9 | 7 | 1 | 4 | 24 | 1,492 | 1,337 | 632 | 389 | 142 | 10 | 91 | 705 | 499 |
| Missouri | 64 | 30 | 15 | 11 | 1 | 3 | 34 | 5,130 | 4,658 | 3,330 | 1,334 | 185 | 185 | 1,626 | 1,328 | 3,390 |
| North Dakota | 13 | 2 | 1 | 1 | 0 | 0 | 11 | 473 | 421 | 158 | 123 | 35 | 0 | 0 | 263 | 69 |
| South Dakota | 2 | 1 | 0 | 1 | 0 | 0 | 1 | 43 | 36 | 23 | 0 | 23 | 0 | 0 | 13 | 40 |
| Nebraska | 15 | 7 | 4 | 2 | 0 | 1 | 8 | 1,341 | 1,129 | 837 | 746 | 19 | 0 | 72 | 292 | 1,195 |
| Kansas | 22 | 13 | 9 | 4 | 0 | 0 | 9 | 1,527 | 1,378 | 513 | 457 | 56 | 0 | 0 | 865 | 182 |
| West North Central | 191 | 87 | 44 | 28 | 6 | 9 | 104 | 12,288 | 10,968 | 6,716 | 3,689 | 607 | 584 | 1,836 | 4,252 | 6,644 |
| Delaware | 3 | 3 | 1 | 1 | 0 | 1 | 0 | 162 | 139 | 130 | 36 | 52 | 0 | 42 | 9 | 162 |
| Maryland | 38 | 14 | 10 | 4 | 0 | 0 | 24 | 3,089 | 2,597 | 913 | 666 | 244 | 0 | 3 | 1,684 | 457 |
| District of Columbia | 14 | 12 | 8 | 0 | 0 | 4 | 2 | 1,681 | 1,315 | 1,112 | 716 | 0 | 0 | 396 | 203 | 1,635 |

| | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Virginia | 19 | 12 | 9 | 2 | 0 | 1 | 7 | 1,885 | 1,635 | 751 | 703 | 26 | 0 | 22 | 884 | 826 |
| West Virginia | 25 | 13 | 7 | 5 | 1 | 0 | 12 | 886 | 772 | 427 | 240 | 156 | 31 | 0 | 345 | 475 |
| North Carolina | 23 | 10 | 8 | 1 | 0 | 1 | 13 | 2,984 | 2,706 | 1,038 | 464 | 556 | 0 | 18 | 1,668 | 636 |
| South Carolina | 11 | 3 | 1 | 2 | 0 | 0 | 8 | 1,090 | 886 | 306 | 263 | 43 | 0 | 0 | 580 | 167 |
| Georgia | 31 | 12 | 10 | 2 | 0 | 0 | 19 | 3,084 | 2,871 | 1,085 | 832 | 182 | 71 | 0 | 1,786 | 596 |
| Florida | 40 | 6 | 5 | 1 | 0 | 0 | 34 | 2,439 | 2,143 | 832 | 552 | 211 | 0 | 69 | 1,311 | 386 |
| South Atlantic | 204 | 85 | 59 | 18 | 1 | 7 | 119 | 17,300 | 15,064 | 6,594 | 4,472 | 1,470 | 102 | 550 | 8,470 | 5,340 |
| Kentucky | 42 | 23 | 12 | 8 | 2 | 1 | 19 | 4,589 | 4,348 | 2,131 | 1,603 | 156 | 293 | 79 | 2,217 | 1,785 |
| Tennessee | 40 | 20 | 14 | 5 | 1 | 0 | 20 | 3,500 | 3,147 | 1,496 | 923 | 457 | 114 | 2 | 1,651 | 946 |
| Alabama | 34 | 17 | 11 | 5 | 1 | 0 | 17 | 3,737 | 3,354 | 1,505 | 1,021 | 238 | 246 | 0 | 1,849 | 1,157 |
| Mississippi | 7 | 2 | 2 | 0 | 0 | 0 | 5 | 658 | 594 | 285 | 283 | 2 | 0 | 0 | 309 | 195 |
| East South Central | 123 | 62 | 39 | 18 | 4 | 1 | 61 | 12,484 | 11,443 | 5,417 | 3,830 | 853 | 653 | 81 | 6,026 | 4,083 |
| Arkansas | 11 | 6 | 5 | 1 | 0 | 0 | 5 | 1,961 | 1,775 | 734 | 697 | 22 | 15 | 0 | 1,041 | 580 |
| Louisiana | 23 | 8 | 4 | 4 | 0 | 0 | 15 | 1,318 | 1,133 | 477 | 257 | 189 | 31 | 0 | 656 | 471 |
| Oklahoma | 22 | 8 | 6 | 2 | 0 | 0 | 14 | 533 | 490 | 195 | 125 | 70 | 0 | 0 | 295 | 199 |
| Texas | 64 | 39 | 27 | 11 | 1 | 0 | 25 | 5,119 | 4,630 | 2,876 | 2,015 | 639 | 50 | 172 | 1,754 | 3,590 |
| West South Central | 120 | 61 | 42 | 18 | 1 | 0 | 59 | 8,931 | 8,028 | 4,282 | 3,094 | 920 | 96 | 172 | 3,746 | 4,840 |
| Montana | 8 | 4 | 0 | 4 | 0 | 0 | 4 | 112 | 100 | 53 | 13 | 40 | 0 | 0 | 47 | 40 |
| Idaho | 17 | 8 | 4 | 4 | 0 | 0 | 9 | 1,354 | 1,194 | 538 | 280 | 258 | 0 | 0 | 656 | 729 |
| Wyoming | 2 | 0 | 0 | 0 | 0 | 0 | 2 | 51 | 30 | 7 | 4 | 3 | 0 | 0 | 23 | 0 |
| Colorado | 29 | 15 | 11 | 3 | 1 | 0 | 14 | 2,892 | 2,500 | 841 | 777 | 45 | 19 | 0 | 1,659 | 550 |
| New Mexico | 10 | 3 | 2 | 1 | 0 | 0 | 7 | 511 | 458 | 167 | 164 | 3 | 0 | 0 | 291 | 84 |
| Arizona | 21 | 12 | 6 | 5 | 1 | 0 | 9 | 1,077 | 964 | 388 | 279 | 71 | 38 | 0 | 576 | 359 |
| Utah | 7 | 3 | 0 | 2 | 0 | 1 | 4 | 234 | 205 | 95 | 33 | 25 | 14 | 23 | 110 | 58 |
| Nevada | 8 | 4 | 3 | 1 | 0 | 0 | 4 | 289 | 223 | 127 | 121 | 3 | 0 | 3 | 96 | 221 |
| Mountain | 102 | 49 | 26 | 20 | 2 | 1 | 53 | 6,520 | 5,674 | 2,216 | 1,671 | 448 | 71 | 26 | 3,458 | 2,041 |
| Washington | 57 | 26 | 19 | 7 | 0 | 0 | 31 | 1,351 | 1,135 | 545 | 435 | 109 | 1 | 0 | 590 | 534 |
| Oregon | 43 | 16 | 10 | 6 | 0 | 0 | 27 | 2,426 | 2,169 | 850 | 332 | 501 | 0 | 17 | 1,319 | 311 |
| California | 328 | 129 | 76 | 43 | 3 | 7 | 199 | 16,179 | 13,446 | 6,883 | 4,452 | 1,356 | 790 | 285 | 6,563 | 6,869 |
| Alaska | 27 | 15 | 11 | 4 | 0 | 0 | 12 | 571 | 496 | 227 | 148 | 79 | 0 | 0 | 269 | 256 |
| Hawaii | 23 | 12 | 8 | 4 | 0 | 0 | 11 | 443 | 418 | 192 | 142 | 30 | 20 | 0 | 226 | 127 |
| Pacific | 478 | 198 | 124 | 64 | 3 | 7 | 280 | 20,970 | 17,664 | 8,697 | 5,509 | 2,075 | 811 | 302 | 8,967 | 8,097 |
| Puerto Rico | 30 | 16 | 4 | 3 | 0 | 9 | 14 | 1,410 | 1,305 | 835 | 223 | 103 | 0 | 509 | 470 | 793 |
| Virgin Islands | 3 | 1 | 1 | 0 | 0 | 0 | 2 | 65 | 52 | 45 | 45 | 0 | 0 | 0 | 7 | 51 |
| Outlying areas | 33 | 17 | 5 | 3 | 0 | 9 | 16 | 1,475 | 1,357 | 880 | 268 | 103 | 0 | 509 | 477 | 844 |
| Total, all States and areas | 2,277 | 1,037 | 604 | 293 | 48 | 92 | 1,240 | 144,042 | 126,162 | 63,277 | 38,958 | 10,463 | 5,190 | 8,666 | 62,885 | 57,345 |

[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, Transition Quarter (July–September 1976)

| 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 | 18 | 9 | 4 | 4 | 1 | 0 | 9 | 1,445 | 1,312 | 466 | 169 | 221 | 67 | 9 | 846 | 229 |
| Maine | 27 | 23 | 20 | 3 | 0 | 0 | 4 | 1,565 | 1,392 | 730 | 674 | 56 | 0 | 0 | 662 | 670 |
| Massachusetts | 69 | 32 | 19 | 9 | 0 | 4 | 37 | 4,841 | 4,197 | 2,120 | 1,439 | 480 | 0 | 201 | 2,077 | 2,214 |
| New Hampshire | 4 | 1 | 0 | 1 | 0 | 0 | 3 | 167 | 160 | 48 | 19 | 29 | 0 | 0 | 112 | 6 |
| Rhode Island | 14 | 5 | 3 | 0 | 0 | 2 | 9 | 1,173 | 1,031 | 454 | 368 | 18 | 0 | 68 | 577 | 301 |
| Vermont | 2 | 1 | 1 | 0 | 0 | 0 | 1 | 105 | 103 | 23 | 23 | 0 | 0 | 0 | 80 | 9 |
| Region I | 134 | 71 | 47 | 17 | 1 | 6 | 63 | 9,296 | 8,195 | 3,841 | 2,692 | 804 | 67 | 278 | 4,354 | 3,429 |
| Delaware | 3 | 3 | 1 | 1 | 0 | 1 | 0 | 162 | 139 | 130 | 36 | 52 | 0 | 42 | 9 | 162 |
| New Jersey | 86 | 47 | 28 | 10 | 2 | 7 | 39 | 5,498 | 4,798 | 2,306 | 947 | 855 | 121 | 383 | 2,492 | 1,877 |
| New York | 160 | 73 | 35 | 15 | 3 | 20 | 87 | 7,616 | 6,535 | 3,515 | 1,958 | 388 | 82 | 1,087 | 3,020 | 4,060 |
| Puerto Rico | 30 | 16 | 4 | 3 | 0 | 9 | 14 | 1,410 | 1,305 | 835 | 223 | 103 | 0 | 509 | 470 | 793 |
| Virgin Islands | 3 | 1 | 1 | 0 | 0 | 0 | 2 | 65 | 52 | 45 | 45 | 0 | 0 | 0 | 7 | 51 |
| Region II | 282 | 140 | 69 | 29 | 5 | 37 | 142 | 14,751 | 12,829 | 6,831 | 3,209 | 1,398 | 203 | 2,021 | 5,998 | 6,943 |
| District of Columbia | 14 | 12 | 8 | 0 | 0 | 4 | 2 | 1,681 | 1,315 | 1,112 | 716 | 0 | 0 | 396 | 203 | 1,635 |
| Maryland | 38 | 14 | 10 | 4 | 0 | 0 | 24 | 3,089 | 2,597 | 913 | 666 | 244 | 0 | 3 | 1,684 | 457 |
| Pennsylvania | 155 | 62 | 31 | 22 | 4 | 5 | 93 | 15,804 | 14,172 | 8,524 | 4,434 | 641 | 1,262 | 2,187 | 5,648 | 7,119 |
| Virginia | 19 | 12 | 9 | 2 | 0 | 1 | 7 | 1,885 | 1,635 | 751 | 703 | 26 | 0 | 22 | 884 | 826 |
| West Virginia | 25 | 13 | 7 | 5 | 1 | 0 | 12 | 886 | 772 | 427 | 240 | 156 | 31 | 0 | 345 | 475 |
| Region III | 251 | 113 | 65 | 33 | 5 | 10 | 138 | 23,345 | 20,491 | 11,727 | 6,759 | 1,067 | 1,293 | 2,608 | 8,764 | 10,512 |
| Alabama | 34 | 17 | 11 | 5 | 1 | 0 | 17 | 3,737 | 3,354 | 1,505 | 1,021 | 238 | 246 | 0 | 1,849 | 1,157 |
| Florida | 40 | 6 | 5 | 1 | 0 | 0 | 34 | 2,439 | 2,143 | 832 | 552 | 211 | 0 | 69 | 1,311 | 386 |
| Georgia | 31 | 12 | 10 | 2 | 0 | 0 | 19 | 3,084 | 2,871 | 1,085 | 832 | 182 | 71 | 0 | 1,786 | 596 |
| Kentucky | 42 | 23 | 12 | 8 | 2 | 1 | 19 | 4,589 | 4,348 | 2,131 | 1,603 | 156 | 293 | 79 | 2,217 | 1,785 |
| Mississippi | 7 | 2 | 2 | 0 | 0 | 0 | 5 | 658 | 594 | 285 | 283 | 2 | 0 | 0 | 309 | 195 |
| North Carolina | 23 | 10 | 8 | 1 | 0 | 1 | 13 | 2,984 | 2,706 | 1,038 | 464 | 556 | 0 | 18 | 1,668 | 636 |
| South Carolina | 11 | 3 | 1 | 2 | 0 | 0 | 8 | 1,090 | 886 | 306 | 263 | 43 | 0 | 0 | 580 | 167 |
| Tennessee | 40 | 20 | 14 | 5 | 1 | 0 | 20 | 3,500 | 3,147 | 1,496 | 923 | 457 | 114 | 2 | 1,651 | 946 |
| Region IV | 228 | 93 | 63 | 24 | 4 | 2 | 135 | 22,081 | 20,049 | 8,678 | 5,941 | 1,845 | 724 | 168 | 11,371 | 5,868 |

| | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Illinois | 117 | 48 | 28 | 9 | 4 | 7 | 69 | 6,254 | 5,316 | 2,692 | 1,817 | 299 | 157 | 419 | 2,624 | 2,495 |
| Indiana | 69 | 35 | 25 | 8 | 1 | 1 | 34 | 5,057 | 4,500 | 1,885 | 1,443 | 197 | 241 | 4 | 2,615 | 1,095 |
| Michigan | 119 | 57 | 22 | 17 | 11 | 7 | 62 | 6,106 | 4,866 | 2,277 | 967 | 281 | 697 | 332 | 2,589 | 2,144 |
| Minnesota | 45 | 21 | 9 | 7 | 1 | 4 | 24 | 1,492 | 1,327 | 632 | 389 | 142 | 10 | 91 | 705 | 499 |
| Ohio | 130 | 63 | 38 | 17 | 4 | 4 | 67 | 5,249 | 4,747 | 2,270 | 1,391 | 376 | 206 | 297 | 2,477 | 2,310 |
| Wisconsin | 56 | 22 | 11 | 9 | 1 | 1 | 34 | 3,194 | 2,835 | 1,165 | 776 | 146 | 40 | 203 | 1,670 | 927 |
| Region V | 536 | 246 | 133 | 67 | 22 | 24 | 290 | 27,352 | 23,601 | 10,921 | 6,783 | 1,441 | 1,351 | 1,346 | 12,680 | 9,470 |
| Arkansas | 11 | 6 | 5 | 1 | 0 | 0 | 5 | 1,961 | 1,775 | 734 | 697 | 22 | 15 | 0 | 1,041 | 580 |
| Louisiana | 23 | 8 | 4 | 4 | 0 | 0 | 15 | 1,318 | 1,133 | 477 | 257 | 189 | 31 | 0 | 656 | 471 |
| New Mexico | 10 | 3 | 2 | 1 | 0 | 0 | 7 | 511 | 458 | 167 | 164 | 3 | 0 | 0 | 291 | 84 |
| Oklahoma | 22 | 8 | 6 | 2 | 0 | 0 | 14 | 533 | 490 | 195 | 125 | 70 | 0 | 0 | 295 | 199 |
| Texas | 64 | 39 | 27 | 11 | 1 | 0 | 25 | 5,119 | 4,630 | 2,876 | 2,015 | 639 | 50 | 172 | 1,754 | 3,590 |
| Region VI | 130 | 64 | 44 | 19 | 1 | 0 | 66 | 9,442 | 8,486 | 4,449 | 3,258 | 923 | 96 | 172 | 4,037 | 4,924 |
| Iowa | 30 | 13 | 6 | 2 | 4 | 1 | 17 | 2,282 | 2,009 | 1,223 | 640 | 147 | 389 | 47 | 786 | 1,269 |
| Kansas | 22 | 13 | 9 | 4 | 0 | 0 | 9 | 1,527 | 1,378 | 513 | 457 | 56 | 0 | 0 | 865 | 182 |
| Missouri | 64 | 30 | 15 | 11 | 1 | 3 | 34 | 5,130 | 4,658 | 3,330 | 1,334 | 185 | 185 | 1,626 | 1,328 | 3,390 |
| Nebraska | 15 | 7 | 4 | 2 | 0 | 1 | 8 | 1,341 | 1,129 | 837 | 746 | 19 | 0 | 72 | 292 | 1,195 |
| Region VII | 131 | 63 | 34 | 19 | 5 | 5 | 68 | 10,280 | 9,174 | 5,903 | 3,117 | 407 | 574 | 1,745 | 3,271 | 6,036 |
| Colorado | 29 | 15 | 11 | 3 | 1 | 0 | 14 | 2,892 | 2,500 | 841 | 777 | 45 | 19 | 0 | 1,659 | 550 |
| Montana | 8 | 4 | 0 | 4 | 0 | 0 | 4 | 112 | 100 | 53 | 13 | 40 | 0 | 0 | 47 | 40 |
| North Dakota | 13 | 2 | 1 | 1 | 0 | 0 | 11 | 473 | 421 | 158 | 123 | 35 | 0 | 0 | 263 | 69 |
| South Dakota | 2 | 1 | 0 | 1 | 0 | 0 | 1 | 43 | 36 | 23 | 0 | 23 | 0 | 0 | 13 | 40 |
| Utah | 7 | 3 | 0 | 2 | 0 | 1 | 4 | 234 | 205 | 95 | 33 | 25 | 14 | 23 | 110 | 58 |
| Wyoming | 2 | 0 | 0 | 0 | 0 | 0 | 2 | 51 | 30 | 7 | 4 | 3 | 0 | 0 | 23 | 0 |
| Region VIII | 61 | 25 | 12 | 11 | 1 | 1 | 36 | 3,805 | 3,292 | 1,177 | 950 | 171 | 33 | 23 | 2,115 | 757 |
| Arizona | 21 | 12 | 6 | 5 | 1 | 0 | 9 | 1,077 | 964 | 388 | 279 | 71 | 38 | 0 | 576 | 359 |
| California | 328 | 129 | 76 | 43 | 3 | 7 | 199 | 16,179 | 13,446 | 6,883 | 4,452 | 1,356 | 790 | 285 | 6,563 | 6,869 |
| Hawaii | 23 | 12 | 8 | 4 | 0 | 0 | 11 | 443 | 418 | 192 | 142 | 30 | 20 | 0 | 226 | 127 |
| Nevada | 8 | 4 | 3 | 1 | 0 | 0 | 4 | 289 | 223 | 127 | 121 | 3 | 0 | 3 | 96 | 221 |
| Region IX | 280 | 157 | 93 | 53 | 4 | 7 | 223 | 17,988 | 15,051 | 7,590 | 4,994 | 1,460 | 848 | 288 | 7,461 | 7,576 |
| Alaska | 27 | 15 | 11 | 4 | 0 | 0 | 12 | 571 | 496 | 227 | 148 | 79 | 0 | 0 | 269 | 256 |
| Idaho | 17 | 8 | 4 | 4 | 0 | 0 | 9 | 1,354 | 1,194 | 538 | 280 | 258 | 0 | 0 | 656 | 729 |
| Oregon | 43 | 16 | 10 | 6 | 0 | 0 | 27 | 2,426 | 2,169 | 850 | 332 | 501 | 0 | 17 | 1,319 | 311 |
| Washington | 57 | 26 | 19 | 7 | 0 | 0 | 31 | 1,361 | 1,135 | 545 | 435 | 109 | 1 | 0 | 590 | 534 |
| Region X | 144 | 65 | 44 | 21 | 0 | 0 | 79 | 5,702 | 4,994 | 2,160 | 1,195 | 947 | 1 | 17 | 2,834 | 1,830 |
| Total, all Federal regions | 2,277 | 1,037 | 604 | 293 | 48 | 92 | 1,240 | 144,042 | 126,162 | 63,277 | 38,957 | 10,463 | 5,190 | 8,666 | 62,885 | 57,345 |

[1] The States are grouped according to the 10 standard Federal administrative regions.

# Table 16.—Industrial Distribution of Representation Elections Held in Cases Closed, Transition Quarter (July–September 1976)

| Industrial group [1] | Total elections | Number of elections in which representation rights were won by unions | | | | | Number of elections in which no representative was chosen | Number of employees eligible to vote | Total valid votes cast | Valid votes cast for unions | | | | | Total votes for no union | Eligible employees in units choosing representation |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Total | AFL–CIO unions | Teamsters | Other national unions | Other local unions | | | | Total | AFL–CIO unions | Teamsters | Other national unions | Other local unions | | |
| Food and kindred products | 117 | 57 | 29 | 24 | 1 | 3 | 60 | 5,590 | 4,923 | 2,741 | 1,627 | 689 | 107 | 318 | 2,182 | 2,926 |
| Tobacco manufactures | 2 | 2 | 1 | 1 | 0 | 0 | 0 | 190 | 168 | 95 | 79 | 16 | 0 | 0 | 73 | 190 |
| Textile mill products | 17 | 8 | 7 | 1 | 0 | 0 | 9 | 3,105 | 2,815 | 1,423 | 1,249 | 174 | 0 | 0 | 1,392 | 1,096 |
| Apparel and other finished products made from fabrics and similar materials | 27 | 12 | 11 | 1 | 0 | 0 | 15 | 3,480 | 3,209 | 1,795 | 1,668 | 121 | 0 | 6 | 1,414 | 2,072 |
| Lumber and wood products (except furniture) | 60 | 35 | 32 | 3 | 0 | 0 | 25 | 2,482 | 2,198 | 1,161 | 1,071 | 88 | 0 | 2 | 1,037 | 1,384 |
| Furniture and fixtures | 25 | 10 | 4 | 5 | 1 | 0 | 15 | 1,769 | 1,575 | 607 | 499 | 83 | 25 | 0 | 968 | 311 |
| Paper and allied products | 32 | 16 | 10 | 5 | 0 | 1 | 16 | 2,411 | 2,212 | 1,135 | 794 | 156 | 37 | 148 | 1,077 | 684 |
| Printing, publishing, and allied industries | 72 | 30 | 25 | 2 | 0 | 3 | 42 | 3,300 | 2,775 | 1,641 | 1,133 | 125 | 44 | 339 | 1,134 | 1,570 |
| Chemicals and allied products | 42 | 18 | 11 | 4 | 2 | 1 | 24 | 2,212 | 2,054 | 971 | 640 | 169 | 132 | 30 | 1,083 | 670 |
| Petroleum refining and related industries | 12 | 9 | 4 | 4 | 0 | 1 | 3 | 325 | 295 | 204 | 107 | 79 | 0 | 18 | 91 | 251 |
| Rubber and miscellaneous plastics products | 62 | 27 | 12 | 10 | 3 | 2 | 35 | 6,301 | 5,296 | 2,600 | 1,739 | 465 | 321 | 75 | 2,696 | 2,796 |
| Leather and leather products | 9 | 2 | 1 | 1 | 0 | 0 | 7 | 2,089 | 1,837 | 679 | 504 | 175 | 0 | 0 | 1,158 | 119 |
| Stone, clay, glass, and concrete products | 49 | 21 | 12 | 5 | 2 | 2 | 28 | 2,648 | 2,389 | 1,052 | 618 | 167 | 251 | 16 | 1,337 | 912 |
| Primary metal industries | 66 | 32 | 18 | 9 | 1 | 4 | 34 | 5,258 | 4,741 | 2,292 | 1,422 | 436 | 166 | 268 | 2,449 | 1,689 |
| Fabricated metal products (except machinery and transportation equipment) | 100 | 42 | 21 | 14 | 5 | 2 | 58 | 8,073 | 7,007 | 3,291 | 2,310 | 460 | 352 | 169 | 3,716 | 3,305 |
| Machinery (except electrical) | 112 | 43 | 29 | 8 | 4 | 2 | 69 | 12,920 | 11,879 | 4,882 | 2,162 | 1,166 | 1,414 | 140 | 6,997 | 2,823 |
| Electrical and electronic machinery, equipment, and supplies | 65 | 27 | 15 | 8 | 2 | 2 | 38 | 10,770 | 9,929 | 5,247 | 2,128 | 586 | 921 | 1,612 | 4,682 | 4,074 |
| Aircraft and parts | 53 | 24 | 5 | 10 | 8 | 1 | 29 | 3,169 | 2,811 | 1,322 | 434 | 221 | 657 | 10 | 1,489 | 864 |
| Ship and boat building and repairing | 4 | 0 | 0 | 0 | 0 | 0 | 4 | 886 | 677 | 154 | 154 | 0 | 0 | 0 | 523 | 0 |
| Automotive and other transportation equipment | 7 | 3 | 3 | 0 | 0 | 0 | 4 | 1,200 | 996 | 712 | 693 | 19 | 0 | 0 | 284 | 917 |
| Measuring, analyzing, and controlling instruments, photographic, medical, and optical goods, watches and clocks | 15 | 2 | 2 | 0 | 0 | 0 | 13 | 2,410 | 2,154 | 934 | 652 | 282 | 0 | 0 | 1,220 | 207 |
| Miscellaneous manufacturing industries | 60 | 27 | 18 | 5 | 1 | 3 | 33 | 4,430 | 3,796 | 1,766 | 1,177 | 371 | 6 | 212 | 2,030 | 1,548 |
| Manufacturing | 1,008 | 447 | 270 | 120 | 30 | 27 | 561 | 85,018 | 75,736 | 36,704 | 22,860 | 6,048 | 4,433 | 3,363 | 39,032 | 30,408 |

| | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Metal mining | 3 | 1 | 1 | 0 | 0 | 0 | 2 | 472 | 445 | 166 | 162 | 4 | 0 | 0 | 279 | 110 |
| Coal mining | 9 | 4 | 1 | 0 | 3 | 0 | 5 | 520 | 487 | 305 | 8 | 0 | 234 | 63 | 182 | 250 |
| Crude petroleum and natural gas production | 2 | 1 | 1 | 0 | 0 | 0 | 1 | 12 | 12 | 5 | 5 | 0 | 0 | 0 | 7 | 4 |
| Mining and quarrying of nonmetallic minerals (except fuels) | 4 | 3 | 1 | 2 | 0 | 0 | 1 | 80 | 71 | 42 | 13 | 29 | 0 | 0 | 29 | 72 |
| Mining | 18 | 9 | 4 | 2 | 3 | 0 | 9 | 1,084 | 1,015 | 518 | 188 | 33 | 234 | 63 | 497 | 436 |
| Construction | 53 | 17 | 9 | 5 | 2 | 1 | 36 | 909 | 774 | 403 | 260 | 43 | 11 | 89 | 371 | 333 |
| Wholesale trade | 168 | 62 | 15 | 44 | 2 | 1 | 106 | 4,096 | 3,686 | 1,509 | 446 | 882 | 157 | 24 | 2,177 | 842 |
| Retail trade | 281 | 123 | 82 | 33 | 4 | 4 | 158 | 8,863 | 7,820 | 3,650 | 2,568 | 906 | 109 | 67 | 4,170 | 3,705 |
| Finance, insurance, and real estate | 45 | 23 | 18 | 1 | 1 | 3 | 22 | 2,078 | 1,796 | 840 | 378 | 98 | 15 | 349 | 956 | 1,003 |
| U.S Postal Service | 2 | 2 | 1 | 1 | 0 | 0 | 0 | 85 | 74 | 48 | 30 | 18 | 0 | 0 | 26 | 85 |
| Local and suburban transit and interurban highway passenger transportation | 20 | 11 | 9 | 2 | 0 | 0 | 9 | 908 | 676 | 332 | 296 | 36 | 0 | 0 | 344 | 287 |
| Transportation services | 160 | 61 | 15 | 44 | 1 | 1 | 99 | 3,530 | 3,095 | 1,387 | 344 | 982 | 12 | 49 | 1,708 | 1,575 |
| Water transportation | 9 | 3 | 3 | 0 | 0 | 0 | 6 | 1,202 | 1,127 | 424 | 121 | 284 | 19 | 0 | 703 | 144 |
| Pipe lines (except natural gas) | 8 | 6 | 3 | 3 | 0 | 0 | 2 | 317 | 285 | 253 | 149 | 39 | 0 | 65 | 32 | 256 |
| Communication | 56 | 28 | 27 | 1 | 0 | 0 | 28 | 1,822 | 1,639 | 850 | 732 | 104 | 0 | 14 | 789 | 734 |
| Electric, gas, and sanitary services | 41 | 26 | 19 | 7 | 0 | 0 | 15 | 6,126 | 5,610 | 4,824 | 2,767 | 167 | 0 | 1,890 | 786 | 5,141 |
| Transportation, communication, and other utilities | 294 | 135 | 76 | 57 | 1 | 1 | 159 | 13,905 | 12,432 | 8,070 | 4,409 | 1,612 | 31 | 2,018 | 4,362 | 8,137 |
| Hotels, rooming houses, camps, and other lodging places | 28 | 9 | 7 | 1 | 0 | 1 | 19 | 2,157 | 1,639 | 617 | 506 | 64 | 20 | 27 | 1,022 | 531 |
| Personal services | 13 | 7 | 2 | 4 | 0 | 1 | 6 | 295 | 263 | 152 | 81 | 24 | 0 | 47 | 111 | 113 |
| Automotive repair, services, and garages | 51 | 21 | 8 | 12 | 1 | 0 | 30 | 958 | 836 | 377 | 151 | 206 | 10 | 10 | 459 | 256 |
| Motion pictures | 4 | 3 | 2 | 0 | 0 | 1 | 1 | 24 | 20 | 17 | 6 | 0 | 0 | 11 | 3 | 20 |
| Amusement and recreation services (except motion pictures) | 12 | 3 | 2 | 0 | 0 | 1 | 9 | 1,411 | 857 | 413 | 377 | 3 | 0 | 33 | 444 | 1,072 |
| Health services | 186 | 107 | 70 | 5 | 1 | 31 | 79 | 17,201 | 14,254 | 7,151 | 4,973 | 258 | 21 | 1,899 | 7,103 | 7,402 |
| Educational services | 18 | 14 | 4 | 0 | 0 | 10 | 4 | 1,524 | 1,332 | 791 | 460 | 17 | 0 | 314 | 541 | 816 |
| Membership organizations | 6 | 5 | 1 | 0 | 0 | 4 | 1 | 189 | 155 | 106 | 34 | 0 | 0 | 72 | 49 | 109 |
| Business services | 74 | 42 | 28 | 6 | 2 | 6 | 32 | 3,693 | 2,990 | 1,697 | 1,085 | 220 | 112 | 280 | 1,293 | 1,892 |
| Miscellaneous repair services | 6 | 3 | 1 | 1 | 1 | 0 | 3 | 111 | 98 | 69 | 14 | 18 | 37 | 0 | 29 | 61 |
| Social services | 4 | 4 | 3 | 1 | 0 | 0 | 0 | 117 | 98 | 63 | 50 | 13 | 0 | 0 | 35 | 117 |
| Services | 402 | 218 | 128 | 30 | 5 | 55 | 184 | 27,680 | 22,542 | 11,453 | 7,737 | 823 | 200 | 2,693 | 11,089 | 12,389 |
| Public administration | 6 | 1 | 1 | 0 | 0 | 0 | 5 | 324 | 287 | 82 | 82 | 0 | 0 | 0 | 205 | 7 |
| Total, all industrial groups | 2,277 | 1,037 | 604 | 293 | 48 | 92 | 1,240 | 144,042 | 126,162 | 63,277 | 38,958 | 10,463 | 5,190 | 8,666 | 62,885 | 57,345 |

[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, Transition Quarter (July–September 1976) [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 | 134,721 | 2,103 | 100 0 | | 587 | 100 0 | 283 | 100.0 | 47 | 100.0 | 91 | 100.0 | 1,095 | 100.0 |
| Under 10 | 3,024 | 532 | 25.5 | 25.5 | 148 | 25 1 | 117 | 41.0 | 10 | 21.4 | 16 | 17.5 | 241 | 22 2 |
| 10 to 19 | 6,530 | 460 | 21.9 | 47 4 | 133 | 22 7 | 81 | 28.6 | 8 | 17.0 | 10 | 11.0 | 228 | 20.8 |
| 20 to 29 | 5,553 | 234 | 11.1 | 58 5 | 70 | 11 9 | 22 | 7.8 | 3 | 6.4 | 21 | 23.1 | 118 | 10 8 |
| 30 to 39 | 5,639 | 165 | 7 8 | 66 3 | 46 | 7 8 | 16 | 5 7 | 6 | 12.8 | 6 | 6 6 | 91 | 8 3 |
| 40 to 49 | 5,151 | 116 | 5 5 | 71.8 | 34 | 5 8 | 11 | 3 9 | 5 | 10 6 | 7 | 7 7 | 59 | 5.4 |
| 50 to 59 | 4,733 | 88 | 4 2 | 76 0 | 35 | 6.0 | 4 | 1.4 | 3 | 6 4 | 1 | 1.1 | 45 | 4.1 |
| 60 to 69 | 4,342 | 68 | 3.2 | 79 2 | 19 | 3 2 | 4 | 1.4 | 0 | | 7 | 7.7 | 38 | 3.5 |
| 70 to 79 | 3,515 | 47 | 2 2 | 81.4 | 13 | 2.2 | 2 | 0.7 | 3 | 6 4 | 3 | 3.3 | 26 | 2 4 |
| 80 to 89 | 4,822 | 57 | 2.7 | 84.1 | 17 | 2 9 | 6 | 2 1 | 1 | 2 1 | 2 | 2.2 | 31 | 2 8 |
| 90 to 99 | 3,018 | 32 | 1 5 | 85 6 | 4 | 0.7 | 4 | 1 4 | 0 | | 3 | 3.3 | 21 | 1 9 |
| 100 to 109 | 3,158 | 30 | 1.4 | 87.0 | 7 | 1.2 | 2 | 0.7 | 0 | | 3 | 3.3 | 18 | 1 6 |
| 110 to 119 | 2,614 | 23 | 1.1 | 88 1 | 5 | 0 9 | 1 | 0.4 | 0 | | 0 | | 17 | 1.6 |
| 120 to 129 | 2,225 | 18 | 0 9 | 89 0 | 6 | 1 0 | 2 | 0.7 | 0 | | 0 | | 10 | 0.9 |
| 130 to 139 | 2,672 | 20 | 1 0 | 90 0 | 4 | 0 7 | 4 | 1.4 | 1 | 2.1 | 0 | | 11 | 1.0 |
| 140 to 149 | 1,720 | 12 | 0.6 | 90 6 | 2 | 0.3 | 1 | 0 4 | 0 | | 2 | 2.2 | 7 | 0.6 |
| 150 to 159 | 2,312 | 15 | 0.7 | 91 3 | 7 | 1.2 | 1 | 0.4 | 0 | | 1 | 1 1 | 6 | 0 5 |
| 160 to 169 | 2,451 | 15 | 0 7 | 92.0 | 5 | 0 9 | 1 | 0 4 | 0 | | 0 | | 9 | 0.8 |
| 170 to 179 | 2,973 | 17 | 0 8 | 92 8 | 6 | 1 0 | 1 | 0.4 | 1 | 2.1 | 0 | | 9 | 0.8 |
| 180 to 189 | 1,295 | 7 | 0 3 | 93 1 | 1 | 0.2 | 0 | | 2 | 4 3 | 0 | | 4 | 0 4 |
| 190 to 199 | 1,562 | 8 | 0 4 | 93 5 | 0 | | 1 | 0 4 | 0 | | 0 | | 7 | 0 6 |
| 200 to 299 | 14,930 | 62 | 2.9 | 96 4 | 13 | 2 2 | 1 | 0 4 | 1 | 2.1 | 4 | 4.4 | 43 | 3 9 |
| 300 to 399 | 9,504 | 28 | 1.3 | 97 7 | 4 | 0 7 | 0 | | 1 | 2.1 | 2 | 2 2 | 21 | 1 9 |
| 400 to 499 | 7,143 | 16 | 0.8 | 98.5 | 2 | 0 3 | 1 | 0 4 | 1 | 2.1 | 0 | | 12 | 1 1 |
| 500 to 599 | 3,220 | 6 | 0.3 | 98 8 | 0 | | 0 | | 0 | | 0 | | 6 | 0.5 |
| 600 to 799 | 8,153 | 12 | 0 6 | 99 4 | 1 | 0 2 | 0 | | 1 | 2 1 | 2 | 2.2 | 8 | 0.7 |
| 800 to 999 | 4,432 | 5 | 0.2 | 99.6 | 1 | 0 2 | 0 | | 0 | | 0 | | 4 | 0 4 |
| 1,000 to 1,999 | 8,890 | 7 | 0 3 | 99 9 | 3 | 0 5 | 0 | | 0 | | 0 | | 4 | 0 4 |
| 2,000 to 2,999 | 4,640 | 2 | 0.1 | 100 0 | 0 | | 0 | | 0 | | 1 | 1.1 | 1 | 0.1 |
| 3,000 to 9,999 | 4,500 | 1 | 0 0 | 100 0 | 1 | 0.2 | 0 | | 0 | | 0 | | 0 | |

| | B Decertification elections (RD) | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Total RD elections | 9,321 | 174 | 100.0 | | 17 | 100 0 | 10 | 100 0 | 1 | 100 0 | 1 | 100.0 | 145 | 100 0 |
| Under 10 | 292 | 60 | 34 7 | 34 7 | 1 | 5 9 | 2 | 20 0 | 0 | | 0 | | 57 | 39 2 |
| 10 to 19 | 432 | 33 | 19.0 | 53 7 | 5 | 29 4 | 1 | 10 0 | 0 | | 0 | | 27 | 18 6 |
| 20 to 29 | 634 | 27 | 15 5 | 69 2 | 1 | 5 9 | 3 | 30 0 | 0 | | 0 | | 23 | 15 9 |
| 30 to 39 | 356 | 11 | 6 3 | 75 5 | 3 | 17 6 | 1 | 10 0 | 1 | 100 0 | 0 | | 6 | 4.1 |
| 40 to 49 | 346 | 8 | 4.6 | 80 1 | 0 | | 0 | | 0 | | 0 | | 8 | 5 5 |
| 50 to 59 | 391 | 7 | 4 0 | 84 1 | 1 | 5.9 | 1 | 10 0 | 0 | | 0 | | 5 | 3 4 |
| 60 to 69 | 263 | 4 | 2 3 | 86 4 | 1 | 5 9 | 0 | | 0 | | 0 | | 3 | 2 1 |
| 70 to 79 | 140 | 2 | 1 1 | 87.5 | 0 | | 0 | | 0 | | 0 | | 2 | 1 4 |
| 80 to 89 | 82 | 1 | 0 6 | 88 1 | 0 | | 0 | | 0 | | 0 | | 1 | 0 7 |
| 90 to 99 | 0 | 0 | | 88 1 | 0 | | 0 | | 0 | | 0 | | 0 | |
| 100 to 109 | 104 | 1 | 0 6 | 88 7 | 0 | | 0 | | 0 | | 0 | | 1 | 0 7 |
| 110 to 119 | 0 | 0 | | 88 7 | 0 | | 0 | | 0 | | 0 | | 0 | |
| 120 to 129 | 122 | 1 | 0.6 | 89 3 | 0 | | 0 | | 0 | | 0 | | 1 | 0 7 |
| 130 to 139 | 391 | 3 | 1.7 | 91 0 | 0 | | 0 | | 0 | | 1 | 100 0 | 2 | 1 4 |
| 140 to 149 | 294 | 2 | 1.1 | 92 1 | 0 | | 0 | | 0 | | 0 | | 2 | 1 4 |
| 150 to 159 | 150 | 1 | 0 6 | 92 7 | 0 | | 0 | | 0 | | 0 | | 1 | 0 7 |
| 160 to 169 | 0 | 0 | | 92 7 | 0 | | 0 | | 0 | | 0 | | 0 | |
| 170 to 199 | 357 | 2 | 1 1 | 93 8 | 0 | | 0 | | 0 | | 0 | | 2 | 1.4 |
| 200 to 299 | 457 | 2 | 1 1 | 94 9 | 0 | | 2 | 20 0 | 0 | | 0 | | 0 | |
| 300 to 399 | 2,275 | 6 | 3.4 | 98 3 | 3 | 17.6 | 0 | | 0 | | 0 | | 3 | 2 1 |
| 500 to 799 | 1,371 | 2 | 1.1 | 99 4 | 1 | 5 9 | 0 | | 0 | | 0 | | 1 | 0 7 |
| 800 and over | 864 | 1 | 0.6 | 100 0 | 1 | 5 9 | 0 | | 0 | | 0 | | 0 | |

[1] See Glossary for definitions of terms



253-831 O - 78 - 18

# Table 18.—Distribution of Unfair Labor Practice Situations Received, by Number of Employees in Establishments, Transition Quarter (July–September 1976) [1]

| Size of establishment (number of employees) | Total number of situations | Total | | Type of situations | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Percent of all situations | Cumulative percent of all situations | CA | | CB | | CC | | CD | | CE | | CG | | CP | | CA–CB combinations | | Other C combinations | |
| | | | | 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 | Number of situations | Percent by size class |
| Total | [2] 8,081 | 100.0 | ------- | 5,363 | 100.0 | 1,575 | 100.0 | 434 | 100.0 | 107 | 100.0 | 21 | 100 0 | 33 | 100.0 | 96 | 100.0 | 366 | 100 0 | 86 | 100 0 |
| Under 10 | 2,288 | 27.8 | 27 8 | 1,450 | 27.0 | 462 | 29 6 | 162 | 37.4 | 39 | 36.7 | 7 | 33.3 | 0 | ------- | 42 | 44.0 | 88 | 24 3 | 38 | 44 2 |
| 10 to 19 | 692 | 8.6 | 36 4 | 508 | 9.5 | 82 | 5.2 | 39 | 9.0 | 14 | 13 1 | 4 | 19.0 | 1 | 0 3 | 17 | 17.7 | 17 | 4.6 | 10 | 11.5 |
| 20 to 29 | 572 | 7.1 | 43 5 | 430 | 8 0 | 77 | 4 9 | 28 | 6.5 | 5 | 4 7 | 0 | ------- | 1 | 0.3 | 10 | 10 4 | 16 | 4.4 | 5 | 5.8 |
| 30 to 39 | 417 | 5.2 | 48.7 | 297 | 5.5 | 57 | 3.6 | 27 | 6.2 | 5 | 4.7 | 2 | 9.5 | 1 | 0.3 | 5 | 5.2 | 18 | 4.9 | 5 | 5 8 |
| 40 to 49 | 239 | 3 0 | 51.7 | 180 | 3.4 | 29 | 1.8 | 10 | 2.3 | 3 | 2.8 | 0 | ------- | 0 | ------- | 2 | 2.1 | 14 | 3 8 | 1 | 1.2 |
| 50 to 59 | 319 | 3 9 | 55.6 | 221 | 4.1 | 55 | 3.5 | 25 | 5.8 | 2 | 1.9 | 0 | ------- | 1 | 0.3 | 3 | 3 1 | 10 | 2 7 | 2 | 2 3 |
| 60 to 69 | 220 | 2 7 | 58.3 | 161 | 3.0 | 42 | 2.7 | 9 | 2 1 | 1 | 0.9 | 0 | ------- | 1 | 0 3 | 1 | 1.0 | 5 | 1.4 | 0 | ------- |
| 70 to 79 | 209 | 2.6 | 60.9 | 141 | 2.6 | 40 | 2 5 | 11 | 2 5 | 4 | 3.7 | 0 | ------- | 2 | 0 6 | 2 | 2.1 | 7 | 1.9 | 2 | 2 3 |
| 80 to 89 | 146 | 1.8 | 62 7 | 96 | 1.8 | 28 | 1 8 | 8 | 1.8 | 0 | ------- | 1 | 4 8 | 0 | ------- | 7 | 7.3 | 4 | 1.1 | 2 | 2.3 |
| 90 to 99 | 85 | 1.1 | 63 8 | 58 | 1.1 | 13 | 0 8 | 6 | 1.4 | 1 | 0.9 | 0 | ------- | 0 | ------- | 1 | 1 0 | 5 | 1.4 | 1 | 1 2 |
| 100 to 109 | 289 | 3.6 | 67 4 | 180 | 3 4 | 70 | 4 4 | 12 | 2 8 | 4 | 3.7 | 0 | ------- | 1 | 0 3 | 1 | 1.0 | 20 | 5.5 | 1 | 1.2 |
| 110 to 119 | 50 | 0 6 | 68.0 | 34 | 0.6 | 11 | 0 7 | 3 | 0.7 | 0 | ------- | 0 | ------- | 0 | ------- | 0 | ------- | 2 | 0.5 | 0 | ------- |
| 120 to 129 | 91 | 1 1 | 69 1 | 75 | 1.4 | 7 | 0 4 | 2 | 0 5 | 1 | 0.9 | 1 | 4 8 | 1 | 0.3 | 0 | ------- | 4 | 1.1 | 0 | ------- |
| 130 to 139 | 47 | 0.6 | 69 7 | 32 | 0 6 | 11 | 0.7 | 3 | 0 7 | 0 | ------- | 0 | ------- | 0 | ------- | 0 | ------- | 0 | ------- | 1 | 1 2 |
| 140 to 149 | 46 | 0.6 | 70.3 | 35 | 0 7 | 7 | 0 4 | 1 | 0 2 | 1 | 0 9 | 1 | 4.8 | 0 | ------- | 0 | ------- | 1 | 0.3 | 0 | ------- |
| 150 to 159 | 158 | 2.0 | 72.3 | 97 | 1 8 | 35 | 2.2 | 8 | 1 8 | 3 | 2 8 | 4 | 19.0 | 0 | ------- | 0 | ------- | 10 | 2.7 | 1 | 1.2 |
| 160 to 169 | 55 | 0 7 | 73.0 | 43 | 0.8 | 8 | 0.5 | 2 | 0.5 | 1 | 0.9 | 0 | ------- | 0 | ------- | 0 | ------- | 1 | 0 3 | 0 | ------- |
| 170 to 179 | 54 | 0 7 | 73.7 | 31 | 0 6 | 7 | 0.4 | 11 | 2.5 | 0 | ------- | 0 | ------- | 1 | 0.3 | 0 | ------- | 2 | 0.5 | 2 | 2.3 |
| 180 to 189 | 30 | 0.4 | 74.1 | 22 | 0 4 | 6 | 0.4 | 1 | 0 2 | 0 | ------- | 0 | ------- | 0 | ------- | 0 | ------- | 0 | ------- | 1 | 1.2 |
| 190 to 199 | 15 | 0.2 | 73.3 | 10 | 0 2 | 4 | 0 3 | 0 | ------- | 0 | ------- | 0 | ------- | 0 | ------- | 0 | ------- | 1 | 0 3 | 0 | ------- |
| 200 to 299 | 441 | 5.5 | 79.8 | 296 | 5.5 | 98 | 6.2 | 12 | 2.8 | 7 | 6.5 | 0 | ------- | 2 | 0.6 | 2 | 2 1 | 21 | 5 7 | 3 | 3.5 |
| 300 to 399 | 259 | 3.2 | 83.0 | 163 | 3.0 | 62 | 3 9 | 12 | 2.8 | 3 | 2.8 | 0 | ------- | 1 | 0.3 | 0 | ------- | 16 | 4.4 | 2 | 2.3 |
| 400 to 499 | 169 | 2.1 | 85.1 | 106 | 2 0 | 38 | 2.4 | 9 | 2.1 | 0 | ------- | 0 | ------- | 3 | 0 9 | 1 | 1.0 | 10 | 2.7 | 2 | 2.3 |
| 500 to 599 | 130 | 1.6 | 86.7 | 78 | 1 5 | 35 | 2.2 | 4 | 0.9 | 0 | ------- | 0 | ------- | 1 | 0 3 | 0 | ------- | 12 | 3.3 | 0 | ------- |
| 600 to 699 | 87 | 1.1 | 87.8 | 50 | 0.9 | 25 | 1.6 | 1 | 0 2 | 0 | ------- | 0 | ------- | 1 | 0.3 | 0 | ------- | 10 | 2 7 | 0 | ------- |
| 700 to 799 | 42 | 0.5 | 88.3 | 28 | 0.5 | 10 | 0.6 | 1 | 0 2 | 0 | ------- | 0 | ------- | 0 | ------- | 0 | ------- | 3 | 0.8 | 0 | ------- |
| 800 to 899 | 55 | 0.7 | 89.0 | 31 | 0.6 | 11 | 0 7 | 3 | 0 7 | 1 | 0.9 | 0 | ------- | 2 | 0.6 | 1 | 1 0 | 6 | 1 6 | 0 | ------- |
| 900 to 999 | 31 | 0 4 | 89.4 | 20 | 0.4 | 8 | 0 5 | 1 | 0 2 | 1 | 0 9 | 0 | ------- | 0 | ------- | 0 | ------- | 0 | ------- | 1 | 1 2 |
| 1,000 to 1,999 | 310 | 3.8 | 93.2 | 176 | 3.3 | 78 | 5.0 | 11 | 2 5 | 5 | 4.7 | 0 | ------- | 9 | 2 8 | 0 | ------- | 30 | 8.2 | 1 | 1.2 |
| 2,000 to 2,999 | 150 | 1.9 | 95.1 | 80 | 1.5 | 47 | 3.0 | 7 | 1.6 | 2 | 1.9 | 0 | ------- | 0 | ------- | 1 | 1.0 | 11 | 3.0 | 2 | 2.3 |
| 3,000 to 3,999 | 70 | 0.9 | 96.0 | 39 | 0.7 | 22 | 1.4 | 1 | 0.2 | 1 | 0.9 | 0 | ------- | 0 | ------- | 0 | ------- | 6 | 1.6 | 1 | 1.2 |
| 4,000 to 4,999 | 39 | 0.5 | 96.5 | 26 | 0.5 | 11 | 0.7 | 0 | ------- | 0 | ------- | 0 | ------- | 0 | ------- | 0 | ------- | 2 | 0 5 | 0 | ------- |
| 5,000 to 9,999 | 102 | 1.3 | 97.8 | 60 | 1.1 | 36 | 2.3 | 1 | 0.2 | 1 | 0.9 | 0 | ------- | 0 | ------- | 0 | ------- | 4 | 1.1 | 0 | ------- |
| Above 9,999 | 74 | 2.2 | 100.0 | 109 | 2.0 | 43 | 2.7 | 3 | 0.7 | 2 | 1.9 | 1 | 4.8 | 4 | 1.2 | 0 | ------- | 10 | 2.7 | 2 | 2.3 |

[1] See Glossary for definitions of terms.

[2] Based on revised situation count which absorbs companion cases, cross-filing, and multiple filings as compared to situations shown in Charts 1 and 2 of Chapter I, which are based on single and multiple filings of same type of case.

# Table 19.—Litigation for Enforcement and/or Review of Board Orders, Transition Qtr (July–September 1976); and Cumulative Totals, Fiscal Years 1936 Through Transition Qtr (July–September 1976)

| | Transition Qtr (July–September 1976) | | | | | | | | | July 5, 1935–Sept 30, 1976 | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | 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 | 55 | 45 | 9 | 0 | 1 | | | | | | |
| On petitions for review and/or enforcement | 55 | 45 | 9 | 0 | 1 | 100.0 | 100 0 | 100 0 | 100 0 | 6, 263 | 100.0 |
| Board orders affirmed in full | 33 | 24 | 9 | 0 | 0 | 53.3 | 100 0 | | | 3, 951 | 63 1 |
| Board orders affirmed with modification | 7 | 7 | 0 | 0 | 0 | 15 6 | | | | 1, 028 | 16 4 |
| Remanded to Board | 5 | 4 | 0 | 0 | 1 | 8 9 | | | 100 0 | 278 | 4 4 |
| Board orders partially affirmed and partially remanded | 0 | 0 | 0 | 0 | 0 | | | | | 97 | 1.6 |
| Board orders set aside | 10 | 10 | 0 | 0 | 0 | 22 2 | | | | 909 | 14.5 |
| On petitions for contempt | 0 | 0 | 0 | 0 | 0 | | | | | | |
| Compliance after filing of petition, before court order | 0 | 0 | 0 | 0 | 0 | | | | | | |
| Court orders holding respondent in contempt | 0 | 0 | 0 | 0 | 0 | | | | | | |
| Court orders denying petition | 0 | 0 | 0 | 0 | 0 | | | | | | |
| Proceedings decided by U S Supreme Court | 0 | 0 | 0 | 0 | 0 | | | | | 215 | 100 0 |
| Board orders affirmed in full | 0 | 0 | 0 | 0 | 0 | | | | | 128 | 59.5 |
| Board orders affirmed with modification | 0 | 0 | 0 | 0 | 0 | | | | | 16 | 7.4 |
| Board orders set aside | 0 | 0 | 0 | 0 | 0 | | | | | 34 | 15 8 |
| Remanded to Board | 0 | 0 | 0 | 0 | 0 | | | | | 18 | 8 4 |
| Remanded to court of appeals | 0 | 0 | 0 | 0 | 0 | | | | | 16 | 7 4 |
| Board's request for remand or modification of enforcement order denied | 0 | 0 | 0 | 0 | 0 | | | | | 1 | 0.5 |
| Contempt cases remanded to courts of appeals | 0 | 0 | 0 | 0 | 0 | | | | | 1 | 0.5 |
| Contempt cases enforced | 0 | 0 | 0 | 0 | 0 | | | | | 1 | 0 5 |

[1] "Proceedings" are comparable to "cases" reported in annual reports prior to fiscal year 1964 This term more accurately describes the data inasmuch as a single "proceeding" often includes more than one "case " See Glossary for definitions of terms

[2] A proceeding in which the Board had entered an order dismissing the complaint and the charging party appealed such dismissal in the courts of appeals

# Table 19A.—Proceedings Decided by Circuit Courts of Appeals on Petitions for Enforcement and/or Review of Board Orders, Transition Quarter 1976, Compared With 5-Year Cumulative Totals, Fiscal Years 1972 Through 1976[1]

| Circuit courts of appeals (headquarters) | Total Transition Qtr July–Sept 1976 | Total years 1972–76 | Affirmed in full | | | | Modified | | | | Remanded in full | | | | Affirmed in part and remanded in part | | | | Set aside | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | TQ July–Sept 76 | | Cumulative fiscal years 1972–76 | | TQ July–Sept 76 | | Cumulative fiscal years 1972–76 | | TQ July–Sept. 76 | | Cumulative fiscal years 1972–76 | | TQ July–Sept 76 | | Cumulative fiscal years 1972–76 | | TQ July–Sept 76 | | Cumulative fiscal years 1972–76 | |
| | | | Number | Percent | Number | Percent | Number | Percent | Number | Percent | Number | Percent | Number | Percent | Number | Percent | Number | Percent | Number | Percent | Number | Percent |
| Total all circuits | 55 | 1,500 | 33 | 60 0 | 1,095 | 73.0 | 7 | 12.7 | 140 | 9 3 | 5 | 9.1 | 73 | 4 9 | 0 | ------ | 27 | 1.8 | 10 | 18 2 | 165 | 11 0 |
| 1. Boston, Mass | 0 | 53 | 0 | ------ | 41 | 77.4 | 0 | ------ | 4 | 7 6 | 0 | ------ | 2 | 3 8 | 0 | ------ | 0 | ------ | 0 | ------ | 6 | 11.3 |
| 2. New York, N Y | 4 | 121 | 3 | 75.0 | 95 | 78.5 | 0 | ------ | 10 | 8 3 | 1 | 25.0 | 3 | 2.5 | 0 | ------ | 2 | 1 7 | 0 | ------ | 11 | 9.1 |
| 3 Philadelphia, Pa | 3 | 92 | 1 | 33 3 | 69 | 75.0 | 1 | 33 3 | 4 | 4.4 | 0 | ------ | 7 | 7.6 | 0 | ------ | 1 | 1.0 | 1 | 33.3 | 11 | 12 0 |
| 4. Richmond, Va | 12 | 85 | 7 | 58 3 | 61 | 71.7 | 1 | 8 3 | 10 | 11.8 | 2 | 16 7 | 4 | 4 7 | 0 | ------ | 0 | ------ | 2 | 16 7 | 10 | 11 8 |
| 5 New Orleans, La | 10 | 237 | 9 | 90.0 | 190 | 80.2 | 0 | ------ | 15 | 6 3 | 1 | 10 0 | 8 | 3.4 | 0 | ------ | 3 | 1.3 | 0 | ------ | 21 | 8.9 |
| 6 Cincinnati, Ohio | 3 | 219 | 0 | ------ | 154 | 70.3 | 2 | 66.7 | 22 | 10 1 | 1 | 33.3 | 8 | 3 7 | 0 | ------ | 3 | 1 3 | 0 | ------ | 32 | 14.6 |
| 7. Chicago, Ill | 13 | 155 | 6 | 46 2 | 119 | 76.8 | 3 | 23 1 | 15 | 9.7 | 0 | ------ | 6 | 3.9 | 0 | ------ | 0 | ------ | 4 | 30 7 | 15 | 9 7 |
| 8. St Louis, Mo | 2 | 127 | 1 | 50 0 | 75 | 59.1 | 0 | ------ | 29 | 22 8 | 0 | ------ | 5 | 3 9 | 0 | ------ | 2 | 1 6 | 1 | 50 0 | 16 | 12 6 |
| 9. San Francisco, Calif. | 5 | 233 | 3 | 60.0 | 165 | 70.8 | 0 | ------ | 22 | 9 4 | 0 | ------ | 14 | 6.0 | 0 | ------ | 5 | 2.2 | 2 | 40.0 | 27 | 11.6 |
| 10. Denver, Colo | 0 | 62 | 0 | ------ | 49 | 79.0 | 0 | ------ | 2 | 3 2 | 0 | ------ | 0 | ------ | 0 | ------ | 1 | 1 6 | 0 | ------ | 10 | 16.1 |
| Washington, D C | 4 | 116 | 4 | 100 0 | 77 | 66.4 | 0 | ------ | 7 | 6.0 | 0 | ------ | 16 | 13.8 | 0 | ------ | 10 | 8.6 | 0 | ------ | 6 | 5 3 |

[1] Percentages are computed horizontally by current fiscal year and total fiscal years

# Table 20.—Injunction Litigation Under Section 10(e), 10(j), and 10(l), Transition Quarter (July–September 1976)

| | Total proceedings | Injunction proceedings | | Total dispositions | Disposition of injunctions | | | | | | Pending in district court September 30, 1976 |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Pending in district court July 1, 1976 | Filed in district court Transition Quarter (July–September) | | Granted | Denied | Settled | Withdrawn | Dismissed | Inactive | |
| Under sec. 10(e), total | 0[1] | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Under sec 10(j), total | 17 | 7 | 10 | 12 | 6 | 1 | 5 | 0 | 0 | 0 | 5 |
| 8(a)(1)(2)(3), 8(b)(1)(2) | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 |
| 8(a)(1)(5) | 3 | 0 | 3 | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 2 |
| 8(a)(1)(3)(5) | 3 | 0 | 3 | 2 | 2 | 0 | 0 | 0 | 0 | 0 | 1 |
| 8(a)(1)(2)(3)(5) | 5 | 4 | 1 | 4 | 1 | 0 | 3 | 0 | 0 | 0 | 1 |
| 8(b)(1) | 4 | 2 | 2 | 4 | 2 | 0 | 2 | 0 | 0 | 0 | 0 |
| 8(b)(6) | 1 | 0 | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 |
| Under sec 10(l), total | 71 | 18 | 53 | 59 | 16 | 0 | 32 | 3 | 1 | 7 | 12 |
| 8(b)(4)(A) | 6 | 2 | 4 | 6 | 1 | 0 | 3 | 0 | 0 | 2 | 0 |
| 8(b)(4)(B) | 43 | 8 | 35 | 35 | 12 | 0 | 16 | 1 | 1 | 5 | 8 |
| 8(b)(3)(B), 7(A) | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 |
| 8(b)(4)(B), 8(e) | 2 | 2 | 0 | 2 | 0 | 0 | 2 | 0 | 0 | 0 | 0 |
| 8(b)(4)(A)(B), 8(e) | 1 | 1 | 0 | 1 | 0 | 0 | 1 | 0 | 0 | 0 | 0 |
| 8(b)(4)(D) | 8 | 1 | 7 | 7 | 1 | 0 | 5 | 1 | 0 | 0 | 1 |
| 8(b)(7)(A) | 5 | 3 | 2 | 5 | 0 | 0 | 4 | 1 | 0 | 0 | 0 |
| 8(b)(7)(B) | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 |
| 8(b)(7)(C) | 4 | 1 | 3 | 3 | 2 | 0 | 1 | 0 | 0 | 0 | 1 |

[1] In Courts of Appeals

# Table 21.—Miscellaneous Litigation Involving NLRB; Outcome of Proceedings in Which Court Decision Issued in Transition Quarter (July–September 1976)

| Type of litigation | Number of proceedings | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | Total—all courts | | | In courts of appeals | | | In district courts | | |
| | Number decided | Court determination | | Number decided | Court determination | | Number decided | Court determination | |
| | | Upholding Board position | Contrary to Board position | | Upholding Board position | Contrary to Board position | | Upholding Board position | Contrary to Board position |
| Totals—all types | 10 | 9 | 1 | 2 | 2 | 0 | 8 | 7 | 1 |
| NLRB-initiated actions or interventions | 2 | 2 | 0 | 0 | 0 | 0 | 2 | 2 | 0 |
| To enforce subpena | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| To prevent discovery against Board | 1 | 1 | 0 | 0 | 0 | 0 | 2 | 1 | 0 |
| To defend Board's jurisdiction | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| To lift bankruptcy stay | 1 | 1 | 0 | 0 | 0 | 0 | 1 | 1 | 0 |
| Action by other parties | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| To review R case determination | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| To review 10(k) determination | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| To restrain NLRB from | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Proceeding in R case | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Proceeding in unfair labor practice case | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Proceeding in 10(k) case | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| To compel NLRB to | 8 | 7 | 1 | 2 | 2 | 0 | 6 | 5 | 1 |
| To take action in backpay case | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Issue complaint | 1 | 1 | 0 | 0 | 0 | 0 | 1 | 1 | 0 |
| Take action in R case | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Comply with Freedom of Information Act [1] | 7 | 6 | 1 | 2 | 2 | 0 | 5 | 4 | 1 |

[1] FOIA cases are categorized as to court determination depending on whether NLRB substantially prevailed.
*One opinion in this category found the issue to be moot

## Table 22.—Advisory Opinion Cases Received, Closed, and Pending, Transition Quarter (July–September 1976) [1]

| | Total | Number of cases | | | |
|---|---|---|---|---|---|
| | | Identification of petitioner | | | |
| | | Employer | Union | Courts | State boards |
| Pending July 1, 1976 | 1 | 1 | 0 | 0 | 0 |
| Received 19TQ | 3 | 3 | 0 | 0 | 0 |
| On docket 19TQ | 4 | 4 | 0 | 0 | 0 |
| Closed 19TQ | 0 | 0 | 0 | 0 | 0 |
| Pending Sept. 30, 1976 | 4 | 4 | 0 | 0 | 0 |

[1] See Glossary for definitions of terms.

## Table 22A.—Disposition of Advisory Opinion Cases, Transition Quarter (July–September 1976) [1]

| Action taken | Total cases closed |
|---|---|
| Total | 0 |
| Board would assert jurisdiction | 0 |
| Board would not assert jurisdiction | 0 |
| Unresolved because of insufficient evidence submitted | 0 |
| Dismissed | 0 |
| Withdrawn | 0 |

[1] See Glossary for definitions of terms.

# Table 1.—Total Cases Received, Closed, and Pending, Fiscal Year 1977 [1]

| | Total | Identification of filing party | | | | | |
|---|---|---|---|---|---|---|---|
| | | AFL-CIO unions | Teamsters | Other national unions | Other local unions | Individuals | Employers |
| **All cases** | | | | | | | |
| Pending October 1, 1976 | 19,173 | 7,419 | 2,165 | 626 | 783 | 5,974 | 2,206 |
| Received fiscal 1977 | 52,943 | 17,009 | 6,758 | 1,355 | 1,651 | 21,043 | 5,127 |
| On docket fiscal 1977 | 72,116 | 24,428 | 8,923 | 1,981 | 2,434 | 27,017 | 7,333 |
| Closed fiscal 1977 | 53,908 | 17,315 | 6,760 | 1,210 | 1,932 | 20,938 | 5,753 |
| Pending September 30, 1977 | 18,208 | 7,113 | 2,163 | 771 | 502 | 6,079 | 1,580 |
| **Unfair labor practice cases [2]** | | | | | | | |
| Pending October 1, 1976 | 14,256 | 5,090 | 1,148 | 427 | 395 | 5,397 | 1,799 |
| Received fiscal 1977 | 37,828 | 10,299 | 3,114 | 710 | 865 | 18,899 | 3,941 |
| On docket fiscal 1977 | 52,084 | 15,389 | 4,262 | 1,137 | 1,260 | 24,296 | 5,740 |
| Closed fiscal 1977 | 37,602 | 10,085 | 2,909 | 602 | 916 | 18,670 | 4,420 |
| Pending September 30, 1977 | 14,482 | 5,304 | 1,353 | 535 | 344 | 5,626 | 1,320 |
| **Representation cases [3]** | | | | | | | |
| Pending October 1, 1976 | 4,638 | 2,263 | 1,008 | 193 | 377 | 464 | 333 |
| Received fiscal 1977 | 14,358 | 6,548 | 3,622 | 630 | 751 | 1,820 | 987 |
| On docket fiscal 1977 | 18,996 | 8,811 | 4,630 | 823 | 1,128 | 2,284 | 1,320 |
| Closed fiscal 1977 | 15,436 | 7,035 | 3,825 | 589 | 979 | 1,910 | 1,098 |
| Pending September 30, 1977 | 3,560 | 1,776 | 805 | 234 | 149 | 374 | 222 |
| **Union-shop deauthorization cases** | | | | | | | |
| Pending October 1, 1976 | 102 | | | | | 102 | |
| Received fiscal 1977 | 305 | | | | | 305 | |
| On docket fiscal 1977 | 407 | | | | | 407 | |
| Closed fiscal 1977 | 332 | | | | | 332 | |
| Pending September 30, 1977 | 75 | | | | | 75 | |
| **Amendment of certification cases** | | | | | | | |
| Pending October 1, 1976 | 34 | 20 | 2 | 5 | 4 | 1 | 2 |
| Received fiscal 1977 | 65 | 33 | 2 | 3 | 7 | 1 | 19 |
| On docket fiscal 1977 | 99 | 53 | 4 | 8 | 11 | 2 | 21 |
| Closed fiscal 1977 | 90 | 49 | 2 | 7 | 9 | 2 | 21 |
| Pending September 30, 1977 | 9 | 4 | 2 | 1 | 2 | 0 | 0 |
| **Unit clarification cases** | | | | | | | |
| Pending October 1, 1976 | 143 | 46 | 7 | 1 | 7 | 10 | 72 |
| Received fiscal 1977 | 387 | 129 | 20 | 12 | 28 | 18 | 180 |
| On docket fiscal 1977 | 530 | 175 | 27 | 13 | 35 | 28 | 252 |
| Closed fiscal 1977 | 448 | 146 | 24 | 12 | 28 | 24 | 214 |
| Pending September 30, 1977 | 82 | 29 | 3 | 1 | 7 | 4 | 38 |

[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 1977 [1]

| | Total | Identification of filing party | | | | | |
|---|---|---|---|---|---|---|---|
| | | AFL-CIO unions | Teamsters | Other national unions | Other local unions | Individuals | Employers |
| **CA cases** | | | | | | | |
| Pending October 1, 1976 | 10,570 | 5,036 | 1,145 | 413 | 322 | 3,616 | 38 |
| Received fiscal 1977 | 26,105 | 10,220 | 3,099 | 656 | 718 | 11,374 | 38 |
| On docket fiscal 1977 | 36,675 | 15,256 | 4,244 | 1,069 | 1,040 | 14,990 | 76 |
| Colosed fiscal 1977 | 25,448 | 9,996 | 2,898 | 547 | 768 | 11,197 | 42 |
| Pending September 30, 1977 | 11,227 | 5,260 | 1,346 | 522 | 272 | 3,793 | 34 |
| **CB cases** | | | | | | | |
| Pending October 1, 1976 | 2,373 | 45 | 3 | 4 | 13 | 1,726 | 582 |
| Received fiscal 1977 | 8,956 | 56 | 14 | 7 | 64 | 7,409 | 1,406 |
| On docket fiscal 1977 | 11,329 | 101 | 17 | 11 | 77 | 9,135 | 1,988 |
| Closed fiscal 1977 | 9,021 | 66 | 10 | 6 | 59 | 7,345 | 1,535 |
| Pending September 30, 1977 | 2,308 | 35 | 7 | 5 | 18 | 1,790 | 453 |
| **CC cases** | | | | | | | |
| Pending October 1, 1976 | 773 | 3 | 0 | 4 | 28 | 30 | 708 |
| Received fiscal 1977 | 1,737 | 10 | 0 | 29 | 46 | 77 | 1,575 |
| On docket fiscal 1977 | 2,510 | 13 | 0 | 33 | 74 | 107 | 2,283 |
| Closed fiscal 1977 | 1,942 | 10 | 0 | 31 | 47 | 80 | 1,774 |
| Pending September 30, 1977 | 568 | 3 | 0 | 2 | 27 | 27 | 509 |
| **CD cases** | | | | | | | |
| Pending October 1, 1976 | 216 | 4 | 0 | 4 | 5 | 8 | 195 |
| Received fiscal 1977 | 391 | 10 | 0 | 4 | 5 | 7 | 365 |
| On docket fiscal 1977 | 607 | 14 | 0 | 8 | 10 | 15 | 560 |
| Closed fiscal 1977 | 475 | 10 | 0 | 6 | 8 | 10 | 441 |
| Pending September 30, 1077 | 132 | 4 | 0 | 2 | 2 | 5 | 119 |
| **CE cases** | | | | | | | |
| Pending October 1, 1976 | 135 | 1 | 0 | 0 | 27 | 13 | 94 |
| Received fiscal 1977 | 122 | 2 | 1 | 0 | 10 | 7 | 102 |
| On docket fiscal 1977 | 257 | 3 | 1 | 0 | 37 | 20 | 196 |
| Closed fiscal 1977 | 138 | 2 | 1 | 0 | 13 | 15 | 107 |
| Pending September 30, 1977 | 119 | 1 | 0 | 0 | 24 | 5 | 89 |
| **CG cases** | | | | | | | |
| Pending October 1, 1976 | 67 | 0 | 0 | 0 | 0 | 0 | 67 |
| Received fiscal 1977 | 68 | 0 | 0 | 0 | 0 | 5 | 63 |
| On docket fiscal 1977 | 135 | 0 | 0 | 0 | 0 | 5 | 130 |
| Closed fiscal 1977 | 110 | 0 | 0 | 0 | 0 | 4 | 106 |
| Pending September 30, 1977 | 25 | 0 | 0 | 0 | 0 | 1 | 24 |
| **CP cases** | | | | | | | |
| Pending October 1, 1976 | 122 | 1 | 0 | 2 | 0 | 4 | 115 |
| Recived fiscal 1977 | 449 | 1 | 0 | 14 | 22 | 20 | 392 |
| On docket fiscal 1977 | 571 | 2 | 0 | 16 | 22 | 24 | 507 |
| Closed fiscal 1977 | 468 | 1 | 0 | 12 | 21 | 19 | 415 |
| Pending September 30, 1977 | 103 | 1 | 0 | 4 | 1 | 5 | 92 |

[1] See Glossary for definitions of terms

# Table 1B.—Representation Cases Received, Closed, and Pending, Fiscal Year 1977 [1]

| | Total | Identification of filing party | | | | | |
|---|---|---|---|---|---|---|---|
| | | AFL-CIO unions | Teamsters | Other national unions | Other local unions | Individuals | Employers |
| | RC cases | | | | | | |
| Pending October 1, 1976 | 3,864 | 2,262 | 1,007 | 193 | 373 | 29 | |
| Received fiscal 1977 | 11,578 | 6,537 | 3,618 | 629 | 744 | 50 | |
| On docket fiscal 1977 | 15,442 | 8,799 | 4,625 | 822 | 1,117 | 79 | |
| Closed fiscal 1977 | 12,471 | 7,025 | 3,821 | 588 | 969 | 68 | |
| Pending September 30, 1977 | 2,971 | 1,774 | 804 | 234 | 148 | 11 | |
| | RM cases | | | | | | |
| Pending October 1, 1976 | 333 | | | | | | 333 |
| Received fiscal 1977 | 987 | | | | | | 987 |
| On docket fiscal 1977 | 1,320 | | | | | | 1,320 |
| Closed fiscal 1977 | 1,098 | | | | | | 1,098 |
| Pending September 30, 1977 | 222 | | | | | | 222 |
| | RD cases | | | | | | |
| Pending October 1, 1976 | 441 | 1 | 1 | 0 | 4 | 435 | |
| Received fiscal 1977 | 1,793 | 11 | 4 | 1 | 7 | 1,770 | |
| On docket fiscal 1977 | 2,234 | 12 | 5 | 1 | 11 | 2,205 | |
| Closed fiscal 1977 | 1,867 | 10 | 4 | 1 | 10 | 1,842 | |
| Pending September 30, 1977 | 367 | 2 | 1 | 0 | 1 | 363 | |

[1] See Glossary for definitions of terms

# Table 2.—Types of Unfair Labor Practices Alleged, Fiscal Year 1977

| | 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 | 26,105 | 100.0 |
| 8(a)(1) | 3,616 | 13.9 |
| 8(a)(1)(2) | 313 | 1.2 |
| 8(a)(1)(3) | 13,238 | 50.6 |
| 8(a)(1)(4) | 186 | 0.7 |
| 8(a)(1)(5) | 5,140 | 19.7 |
| 8(a)(1)(2)(3) | 275 | 1.1 |
| 8(a)(1)(2)(4) | 8 | 0.0 |
| 8(a)(1)(2)(5) | 126 | 0.5 |
| 8(a)(1)(3)(4) | 604 | 2.3 |
| 8(a)(1)(3)(5) | 2,276 | 8.7 |
| 8(a)(1)(4)(5) | 19 | 0.1 |
| 8(a)(1)(2)(3)(4) | 17 | 0.1 |
| 8(a)(1)(2)(3)(5) | 190 | 0.7 |
| 8(a)(1)(3)(4)(5) | 72 | 0.3 |
| 8(a)(1)(2)(3)(4)(5) | 25 | 0.1 |
| Recapitulation [1] | | |
| 8(a)(1) [2] | 26,105 | 100.0 |
| 8(a)(2) | 954 | 3.7 |
| 8(a)(3) | 16,697 | 64.0 |
| 8(a)(4) | 931 | 3.6 |
| 8(a)(5) | 7,848 | 30.1 |
| B. Charges filed against unions under sec. 8(b) | | |
| Subsections of sec 8(b). Total cases | 11,533 | 100.0 |
| 8(b)(1) | 6,329 | 55.0 |
| 8(b)(2) | 208 | 1.8 |
| 8(b)(3) | 581 | 5.0 |
| 8(b)(4) | 2,128 | 18.5 |
| 8(b)(5) | 12 | 0.1 |
| 8(b)(6) | 20 | 0.2 |
| 8(b)(7) | 449 | 3.9 |
| 8(b)(1)(2) | 1,455 | 12.6 |
| 8(b)(1)(3) | 237 | 2.1 |
| 8(b)(1)(5) | 11 | 0.1 |
| 8(b)(1)(6) | 10 | 0.1 |
| 8(b)(2)(3) | 21 | 0.2 |
| 8(b)(2)(5) | 3 | 0.0 |
| 8(b)(3)(5) | 1 | 0.0 |
| 8(b)(3)(6) | 1 | 0.0 |
| 8(b)(1)(2)(3) | 50 | 0.4 |
| 8(b)(1)(2)(5) | 5 | 0.0 |
| 8(b)(1)(2)(6) | 3 | 0.0 |
| 8(b)(1)(3)(5) | 3 | 0.0 |
| 8(b)(1)(3)(6) | 2 | 0.0 |
| 8(b)(1)(2)(3)(5) | 3 | 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) | 8,109 | 70.3 |
| 8(b)(2) | 1,749 | 15.2 |
| 8(b)(3) | 900 | 7.8 |
| 8(b)(4) | 2,128 | 18.5 |
| 8(b)(5) | 38 | 0.3 |
| 8(b)(6) | 37 | 0.3 |
| 8(b)(7) | 449 | 3.9 |
| B1 Analysis of 8(b)(4) | | |
| Total cases 8(b)(4) | 2,128 | 100.0 |
| 8(b)(4)(A) | 82 | 3.9 |
| 8(b)(4)(B) | 1,598 | 75.1 |
| 8(b)(4)(C) | 7 | 0.3 |
| 8(b)(4)(D) | 391 | 18.4 |
| 8(b)(4)(A)(B) | 26 | 1.2 |
| 8(b)(4)(A)(C) | 2 | 0.1 |
| 8(b)(4)(B)(C) | 1 | 0.0 |
| 8(b)(4)(A)(B)(C) | 21 | 1.0 |
| Recapitulation [1] | | |
| 8(b)(4)(A) | 131 | 6.2 |
| 8(b)(4)(B) | 1,646 | 77.3 |
| 8(b)(4)(C) | 31 | 1.5 |
| 8(b)(4)(D) | 391 | 18.4 |
| B2 Analysis of 8(b)(7) | | |
| Total cases 8(b)(7) | 449 | 100.0 |
| 8(b)(7)(A) | 81 | 18.0 |
| 8(b)(7)(B) | 23 | 5.1 |
| 8(b)(7)(C) | 344 | 76.7 |
| 8(b)(7)(A)(C) | 1 | 0.2 |
| Recapitulation [1] | | |
| 8(b)(7)(A) | 82 | 18.3 |
| 8(b)(7)(B) | 23 | 5.1 |
| 8(b)(7)(C) | 345 | 76.8 |
| C Charges filed under sec 8(e) | | |
| Total cases 8(e) | 122 | 100.0 |
| Against unions alone | 118 | 96.8 |
| Against employers alone | 2 | 1.6 |
| Against unions and employers | 2 | 1.6 |
| D Charges filed under sec 8(g) | | |
| Total cases 8(g) | 68 | 100.0 |

[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 1977 [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 | CG | CP | CA combined with CB | C combined with representation cases | Other C combinations |
| | | | | | | Jurisdictional disputes | Unfair labor practices | | | | | | |
| 10(k) notices of hearings issued | 85 | 70 | | | | 70 | | | | | | | |
| Complaints issued | 6,247 | 4,834 | 3,904 | 417 | 139 | | 10 | 18 | 7 | 32 | 133 | 130 | 44 |
| Backpay specifications issued | 145 | 87 | 75 | 7 | 0 | | 0 | 0 | 0 | 0 | 4 | 1 | 0 |
| Hearings completed, total | 2,086 | 1,439 | 1,076 | 132 | 25 | 45 | 1 | 5 | 2 | 13 | 48 | 85 | 7 |
| Initial ULP hearings | 2,000 | 1,381 | 1,028 | 128 | 24 | 45 | 1 | 5 | 2 | 13 | 44 | 84 | 7 |
| Backpay hearings | 56 | 36 | 28 | 4 | 0 | | 0 | 0 | 0 | 0 | 3 | 1 | 0 |
| Other hearings | 30 | 22 | 20 | 0 | 1 | | 0 | 0 | 0 | 0 | 1 | 0 | 0 |
| Decisions by administrative law judges, total | 1,795 | 1,245 | 941 | 126 | 25 | | 1 | 2 | 2 | 13 | 46 | 83 | 6 |
| Initial ULP decisions | 1,698 | 1,183 | 893 | 118 | 24 | | 1 | 2 | 2 | 13 | 43 | 81 | 6 |
| Backpay decisions | 73 | 47 | 37 | 5 | 1 | | 0 | 0 | 0 | 0 | 2 | 2 | 0 |
| Supplemental decisions | 24 | 15 | 11 | 3 | 0 | | 0 | 0 | 0 | 0 | 1 | 0 | 0 |
| Decisions and orders by the Board, total | 2,187 | 1,596 | 1,200 | 139 | 36 | 45 | 4 | 1 | 5 | 12 | 55 | 82 | 17 |
| Upon consent of parties | | | | | | | | | | | | | |
| Initial decisions | 180 | 114 | 70 | 19 | 8 | | 1 | 1 | 0 | 3 | 8 | 3 | 1 |
| Supplemental decisions | 10 | 7 | 6 | 0 | 0 | | 0 | 0 | 0 | 0 | 0 | 1 | 0 |
| Adopting administrative law judges' decisions (no exceptions filed) | | | | | | | | | | | | | |
| Initial ULP decisions | 413 | 335 | 283 | 26 | 9 | | 0 | 0 | 2 | 3 | 4 | 7 | 1 |
| Backpay decisions | 15 | 13 | 10 | 2 | 0 | | 0 | 0 | 0 | 0 | 1 | 0 | 0 |
| Contested | | | | | | | | | | | | | |
| Initial ULP decisions | 1,427 | 1,018 | 741 | 83 | 17 | 45 | 2 | 0 | 3 | 6 | 39 | 70 | 12 |
| Decisions based on stipulated record | 52 | 47 | 40 | 4 | 1 | | 1 | 0 | 0 | 0 | 1 | 0 | 0 |
| Supplemental ULP decisions | 19 | 16 | 12 | 0 | 1 | | 0 | 0 | 0 | 0 | 0 | 0 | 3 |
| Backpay decisions | 71 | 46 | 38 | 5 | 0 | | 0 | 0 | 0 | 0 | 2 | 1 | 0 |

[1] See Glossary for definitions of terms

# Table 3B.—Formal Actions Taken in Representation and Union Deauthorization Cases, Fiscal Year 1977 [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 | 2,878 | 2,699 | 2,402 | 90 | 207 | 10 |
| Initial hearings | 2,505 | 2,344 | 2,067 | 83 | 194 | 6 |
| Hearings on objections and/or challenges | 373 | 355 | 335 | 7 | 13 | 4 |
| Decisions issued, total | 2,545 | 2,409 | 2,135 | 79 | 195 | 10 |
| By regional directors | 2,342 | 2,222 | 1,961 | 75 | 186 | 9 |
| Elections directed | 2,020 | 1,922 | 1,700 | 58 | 164 | 6 |
| Dismissals on record | 322 | 300 | 261 | 17 | 22 | 3 |
| By Board | 203 | 187 | 174 | 4 | 9 | 1 |
| Transferred by regional directors for initial decision | 90 | 79 | 72 | 4 | 3 | 1 |
| Elections directed | 61 | 54 | 51 | 2 | 1 | 1 |
| Dismissals on record | 29 | 25 | 21 | 2 | 2 | 0 |
| Review of regional directors' decisions | | | | | | |
| Requests for review received | 721 | 676 | 625 | 9 | 42 | 2 |
| Withdrawn before request ruled upon | 5 | 5 | 3 | 0 | 2 | 0 |
| Board action on requests ruled upon, total | 651 | 609 | 565 | 29 | 15 | 2 |
| Granted | 84 | 77 | 71 | 0 | 6 | 0 |
| Denied | 562 | 528 | 491 | 29 | 8 | 2 |
| Remanded | 5 | 4 | 3 | 0 | 1 | 0 |
| Withdrawn after request granted, before Board review | 0 | 0 | 0 | 0 | 0 | 0 |
| Board decision after review, total | 113 | 108 | 102 | 0 | 6 | 0 |
| Regional directors' decision | | | | | | |
| Affirmed | 41 | 41 | 39 | 0 | 2 | 0 |
| Modified | 30 | 28 | 27 | 0 | 1 | 0 |
| Reversed | 42 | 39 | 36 | 0 | 3 | 0 |
| Outcome: | | | | | | |
| Election directed | 95 | 92 | 88 | 0 | 4 | 0 |
| Dismissals on record | 18 | 16 | 14 | 0 | 2 | 0 |

[1] See Glossary for definitions of terms.

# Table 3B.—Formal Actions Taken in Representation and Union Deauthorization Cases, Fiscal Year 1977—Contd.

| 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 |
| Decisions on objections and/or challenges, total | 1,507 | 1,460 | 1,320 | 47 | 93 | 19 |
| By regional directors | 412 | 393 | 356 | 18 | 19 | 10 |
| By Board | 1,095 | 1,076 | 973 | 29 | 74 | 9 |
| In stipulated elections | 1,051 | 1,024 | 922 | 29 | 73 | 7 |
| No exceptions to regional directors' reports | 587 | 563 | 475 | 27 | 61 | 7 |
| Exceptions to regional directors' reports | 464 | 461 | 447 | 2 | 12 | 0 |
| In directed elections (after transfer by regional director) | 46 | 45 | 44 | 0 | 1 | 2 |
| Review of Regional directors' supplemental decisions | | | | | | |
| Request for review received | 58 | 54 | 50 | 2 | 2 | 3 |
| Withdrawn before request ruled upon | 0 | 0 | 0 | 0 | 0 | 0 |
| Board action on request ruled upon, total | 45 | 44 | 41 | 2 | 1 | 1 |
| Granted | 8 | 8 | 8 | 0 | 0 | 0 |
| Denied | 35 | 34 | 32 | 1 | 1 | 1 |
| Remanded | 2 | 2 | 1 | 1 | 0 | 0 |
| Withdrawn after request granted, before Board review | 0 | 0 | 0 | 0 | 0 | 0 |
| Board decision after review, total | 7 | 7 | 7 | 0 | 0 | 0 |
| Regional directors' decisions | | | | | | |
| Affirmed | 2 | 2 | 2 | 0 | 0 | 0 |
| Modified | 0 | 0 | 0 | 0 | 0 | 0 |
| Reversed | 5 | 5 | 5 | 0 | 0 | 0 |

# Table 3C.—Formal Actions Taken in Amendment of Certification and Unit Clarification Cases, Fiscal Year 1977—Contd.

| Types of formal actions taken | Cases in which formal actions taken | Formal actions taken by type of case | |
|---|---|---|---|
| | | AC | UC |
| Hearings completed | 162 | 14 | 121 |
| Decision issued after hearing | 169 | 16 | 126 |
| By regional directors | 152 | 14 | 112 |
| By Board | 17 | 2 | 14 |
| Transferred by regional directors for initial decision | 10 | 0 | 9 |
| Review of regional directors' decisions | 30 | 4 | 24 |
| Requests for review received | 30 | 4 | 24 |
| Withdrawn before request ruled upon | 0 | 0 | 0 |
| Board action on requests ruled upon, total | 22 | 4 | 18 |
| Granted | 8 | 2 | 6 |
| Denied | 14 | 2 | 12 |
| Remanded | 0 | 0 | 0 |
| Withdrawn after request granted, before Board review | 0 | 0 | 0 |
| Board decision after review, total | 7 | 2 | 5 |
| Regional directors' decisions. | | | |
| Affirmed | 5 | 2 | 3 |
| Modified | 1 | 0 | 1 |
| Reversed | 1 | 0 | 1 |

# Table 4.—Remedial Actions Taken in Unfair Labor Practice Cases Closed, Fiscal Year 1977 [1]

| Action taken | Total all | Remedial action taken by— | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Employer | | | | | | Union | | | | | |
| | | Total | Pursuant to— | | | | | Total | Pursuant to— | | | | |
| | | | Agreement of parties | | Recommendation of administrative law judge | Order of— | | | 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] 10,607 | | | | | | | | | | | | |
| Notice posted | 4,352 | 3,532 | 2,677 | 26 | 5 | 494 | 230 | 820 | 614 | 32 | 0 | 103 | 71 |
| Recognition or other assistance withdrawn | 64 | 64 | 45 | 8 | 0 | 5 | 6 | | | | | | |
| Employer-dominated union disestablished | 25 | 25 | 14 | 2 | 0 | 8 | 1 | | | | | | |
| Employees offered reinstatement | 1,485 | 1,485 | 1,113 | 53 | 2 | 210 | 107 | | | | | | |
| Employees placed on preferential hiring list | 96 | 96 | 81 | 3 | 0 | 6 | 6 | | | | | | |
| Hiring hall rights restored | 22 | | | | | | | 22 | 20 | 0 | 0 | 2 | 0 |
| Objections to employment withdrawn | 18 | | | | | | | 18 | 14 | 0 | 0 | 3 | 1 |
| Picketing ended | 293 | | | | | | | 293 | 267 | 4 | 0 | 18 | 4 |
| Work stoppage ended | 111 | | | | | | | 111 | 94 | 4 | 0 | 9 | 4 |
| Collective bargaining begun | 1,487 | 1,352 | 1,205 | 20 | 0 | 56 | 71 | 135 | 109 | 0 | 0 | 6 | 20 |
| Backpay distributed | 2,136 | 2,055 | 1,672 | 60 | 3 | 226 | 94 | 81 | 53 | 0 | 0 | 8 | 20 |
| Reimbursement of fees, dues, and fines | 107 | 62 | 45 | 5 | 0 | 9 | 3 | 45 | 30 | 2 | 0 | 12 | 1 |
| Other conditions of employment improved | 1,953 | 1,433 | 1,416 | 0 | 3 | 12 | 2 | 520 | 507 | 4 | 2 | 7 | 0 |
| Other remedies | 1 | 1 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

| | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| B By number of employees affected: | | | | | | | | | | | | | |
| Employees offered reinstatement, total | 4,458 | 4,458 | 3,261 | 126 | 2 | 423 | 646 | | | | | | |
| Accepted | 2,983 | 2,983 | 2,377 | 88 | 2 | 182 | 334 | | | | | | |
| Declined | 1,475 | 1,475 | 884 | 38 | 0 | 241 | 312 | | | | | | |
| Employees placed on preferential hiring list | 582 | 582 | 461 | 15 | 0 | 78 | 28 | | | | | | |
| Hiring hall rights restored | 36 | | | | | | | 36 | 32 | 0 | 0 | 4 | 0 |
| Objections to employment withdrawn | 28 | | | | | | | 28 | 23 | 0 | 0 | 4 | 1 |
| Employees receiving backpay. | | | | | | | | | | | | | |
| From either employer or union | 7,552 | 7,220 | 5,648 | 197 | 27 | 702 | 646 | 332 | 228 | 0 | 0 | 9 | 95 |
| From both employer and union | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Employees reimbursed for fees, dues, and fines: | | | | | | | | | | | | | |
| From either employer or union | 2,744 | 1,664 | 918 | 404 | 0 | 169 | 173 | 1,080 | 435 | 2 | 0 | 555 | 88 |
| From both employer and union | 14 | 14 | 13 | 0 | 0 | 1 | 0 | 14 | 13 | 0 | 0 | 1 | 0 |
| C. By amounts of monetary recovery, total | $17,576,320 | $15,879,860 | $8,670,190 | $1,059,470 | $53,470 | $3,043,820 | $3,052,910 | $1,696,460 | $152,230 | $410 | 0 | $92,210 | $1,451,610 |
| Backpay (includes all monetary payments except fees, dues, and fines) | 17,372,680 | 15,757,350 | 8,623,550 | 1,030,240 | 53,470 | 3,020,220 | 3,029,870 | 1,615,330 | 118,430 | 0 | 0 | 45,790 | 1,451,110 |
| Reimbursement of fees and fines | 203,640 | 122,510 | 46,640 | 29,230 | 0 | 23,600 | 23,040 | 81,130 | 33,800 | 410 | 0 | 46,420 | 500 |

[1] See Glossary for definitions of terms Data in this table are based on unfair labor practice cases that were closed during fiscal year 1977 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 1977 [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 | CG | CP | All R cases | RC | RM | RD | UD | AC | UC |
| Food and kindred products | 2,776 | 1,973 | 1,365 | 533 | 57 | 9 | 1 | 0 | 8 | 767 | 635 | 37 | 95 | 12 | 8 | 16 |
| Tobacco manufacturers | 21 | 15 | 9 | 6 | 0 | 0 | 0 | 0 | 0 | 6 | 5 | 0 | 1 | 0 | 0 | 0 |
| Textile mill products | 519 | 376 | 291 | 78 | 1 | 1 | 0 | 0 | 5 | 133 | 110 | 11 | 12 | 5 | 2 | 3 |
| Apparel and other finished products made from fabric and similar materials | 731 | 552 | 402 | 129 | 11 | 1 | 0 | 0 | 9 | 174 | 138 | 19 | 17 | 4 | 0 | 1 |
| Lumber and wood products (except furniture) | 766 | 468 | 354 | 93 | 17 | 2 | 0 | 0 | 2 | 283 | 239 | 18 | 26 | 6 | 1 | 8 |
| Furniture and fixtures | 715 | 508 | 404 | 96 | 4 | 1 | 1 | 0 | 2 | 200 | 170 | 12 | 18 | 6 | 0 | 1 |
| Paper and allied products | 745 | 539 | 373 | 148 | 17 | 1 | 0 | 0 | 0 | 199 | 168 | 3 | 28 | 4 | 1 | 2 |
| Printing, publishing, and allied products | 1,4.1 | 1,003 | 760 | 199 | 30 | 11 | 0 | 0 | 3 | 416 | 310 | 27 | 79 | 7 | 8 | 27 |
| Chemicals and allied products | 1,025 | 711 | 533 | 145 | 23 | 4 | 0 | 0 | 6 | 294 | 255 | 8 | 31 | 4 | 3 | 13 |
| Petroleum refining and related industries | 366 | 247 | 184 | 55 | 7 | 1 | 0 | 0 | 0 | 112 | 84 | 6 | 22 | 1 | 2 | 4 |
| Rubber and miscellaneous plastic products | 960 | 651 | 511 | 130 | 6 | 1 | 1 | 0 | 2 | 295 | 259 | 7 | 29 | 9 | 0 | 5 |
| Leather and leather products | 187 | 135 | 105 | 25 | 1 | 0 | 0 | 0 | 4 | 52 | 50 | 0 | 2 | 0 | 0 | 0 |
| Stone, clay, glass, and concrete products | 993 | 731 | 497 | 167 | 35 | 13 | 4 | 0 | 15 | 248 | 189 | 23 | 36 | 7 | 1 | 6 |
| Primary metal industries | 1,66o | 1,306 | 854 | 422 | 20 | 1 | 1 | 0 | 8 | 348 | 297 | 17 | 34 | 3 | 0 | 8 |
| Fabricated metal products (except machinery and transportation equipment) | 1,967 | 1,400 | 1,014 | 353 | 18 | 11 | 1 | 0 | 3 | 546 | 449 | 26 | 71 | 13 | 0 | 8 |
| Machinery (except electrical) | 2,273 | 1,652 | 1,187 | 413 | 38 | 11 | 1 | 0 | 2 | 593 | 493 | 22 | 78 | 14 | 2 | 12 |
| Electrical and electronic machinery, equipment, and supplies | 1,513 | 1,111 | 812 | 280 | 16 | 1 | 0 | 0 | 2 | 385 | 333 | 14 | 38 | 6 | 1 | 10 |
| Aircraft and parts | 252 | 193 | 127 | 65 | 1 | 0 | 0 | 0 | 0 | 59 | 51 | 2 | 6 | 0 | 0 | 0 |
| Ship and boat building and repairing | 273 | 223 | 133 | 85 | 5 | 0 | 0 | 0 | 0 | 47 | 40 | 3 | 4 | 2 | 0 | 1 |
| Automotive and other transportation equipment | 1,793 | 1,440 | 917 | 504 | 11 | 4 | 0 | 0 | 4 | 334 | 287 | 11 | 36 | 13 | 1 | 5 |
| Measuring, analyzing, and controlling instruments; photographic, medical, and optical goods, watches and clocks | 317 | 209 | 173 | 33 | 3 | 0 | 0 | 0 | 0 | 103 | 85 | 7 | 11 | 2 | 0 | 3 |
| Miscellaneous manufacturing industries | 1,523 | 1,124 | 663 | 428 | 23 | 5 | 2 | 0 | 3 | 383 | 329 | 14 | 40 | 12 | 1 | 3 |
| Manufacturing | 22,841 | 16,567 | 11,668 | 4,387 | 344 | 78 | 12 | 0 | 78 | 5,977 | 4,976 | 287 | 714 | 130 | 31 | 136 |

| | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Metal mining | 121 | 96 | 69 | 26 | 1 | 0 | 0 | 0 | 0 | 24 | 20 | 0 | 4 | 0 | 1 | 0 |
| Coal mining | 347 | 282 | 214 | 45 | 19 | 3 | 1 | 0 | 0 | 63 | 52 | 4 | 7 | 0 | 0 | 2 |
| Oil and gas extraction | 33 | 21 | 15 | 5 | 0 | 0 | 0 | 0 | 1 | 12 | 11 | 0 | 1 | 0 | 0 | 0 |
| Mining and quarrying of nonmetallic minerals (except fuels) | 164 | 103 | 71 | 20 | 7 | 2 | 0 | 0 | 3 | 57 | 46 | 3 | 8 | 1 | 1 | 2 |
| Mining | 665 | 502 | 369 | 96 | 27 | 5 | 1 | 0 | 4 | 156 | 129 | 7 | 20 | 1 | 2 | 4 |
| Construction | 4,367 | 3,943 | 1,587 | 1,045 | 851 | 204 | 60 | 0 | 196 | 417 | 299 | 80 | 38 | 3 | 0 | 4 |
| Wholesale trade | 2,635 | 1,558 | 1,182 | 289 | 63 | 6 | 3 | 0 | 15 | 1,037 | 800 | 86 | 151 | 24 | 2 | 14 |
| Retail trade | 6,056 | 3,828 | 2,965 | 660 | 92 | 16 | 6 | 0 | 88 | 2,103 | 1,483 | 252 | 368 | 70 | 1 | 54 |
| Finance, insurance, and real estate | 687 | 418 | 324 | 66 | 21 | 2 | 2 | 0 | 3 | 261 | 225 | 12 | 24 | 0 | 1 | 7 |
| U.S. Postal Service | 1,133 | 1,122 | 882 | 239 | 0 | 0 | 0 | 0 | 1 | 11 | 11 | 0 | 0 | 0 | 0 | 0 |
| Local and suburban transit and interurban highway passenger transportation | 569 | 442 | 334 | 99 | 6 | 0 | 0 | 0 | 3 | 122 | 104 | 7 | 11 | 2 | 0 | 3 |
| Motor freight transportation and warehousing | 3,560 | 2,629 | 1,790 | 665 | 114 | 32 | 13 | 0 | 15 | 900 | 730 | 73 | 97 | 15 | 2 | 14 |
| Water transportation | 259 | 211 | 94 | 97 | 13 | 4 | 1 | 0 | 2 | 42 | 30 | 3 | 9 | 1 | 2 | 3 |
| Other transportation | 259 | 181 | 124 | 36 | 16 | 2 | 0 | 0 | 3 | 78 | 71 | 4 | 3 | 0 | 0 | 0 |
| Communication | 1,058 | 717 | 512 | 181 | 17 | 2 | 3 | 0 | 2 | 319 | 252 | 14 | 53 | 2 | 2 | 18 |
| Electric, gas and sanitary services | 772 | 518 | 363 | 122 | 26 | 6 | 0 | 0 | 1 | 231 | 193 | 10 | 28 | 4 | 3 | 16 |
| Transportation, communication, and other utilities | 6,477 | 4,698 | 3,217 | 1,200 | 192 | 46 | 17 | 0 | 26 | 1,692 | 1,380 | 111 | 201 | 24 | 9 | 54 |
| Hotels, rooming houses, camps, and other lodging places | 788 | 581 | 461 | 102 | 7 | 3 | 5 | 0 | 3 | 200 | 156 | 13 | 31 | 4 | 1 | 2 |
| Personal services | 234 | 152 | 123 | 27 | 1 | 0 | 0 | 0 | 1 | 78 | 54 | 12 | 12 | 0 | 0 | 4 |
| Automotive repair, services, and garages | 464 | 232 | 170 | 43 | 13 | 0 | 0 | 0 | 6 | 225 | 178 | 16 | 31 | 6 | 0 | 1 |
| Motion pictures | 253 | 223 | 136 | 72 | 4 | 3 | 1 | 0 | 7 | 28 | 27 | 1 | 0 | 0 | 0 | 2 |
| Amusement and recreation services (except motion pictures) | 332 | 240 | 130 | 62 | 28 | 6 | 11 | 0 | 3 | 84 | 63 | 9 | 12 | 3 | 0 | 5 |
| Health services | 2,960 | 1,750 | 1,411 | 238 | 24 | 4 | 0 | 68 | 5 | 1,110 | 945 | 51 | 114 | 23 | 14 | 63 |
| Educational services | 380 | 244 | 195 | 35 | 11 | 3 | 0 | 0 | 0 | 125 | 115 | 3 | 7 | 2 | 3 | 6 |
| Membership organizations | 354 | 295 | 211 | 74 | 4 | 3 | 1 | 0 | 2 | 49 | 43 | 0 | 6 | 1 | 0 | 9 |
| Business services | 1,931 | 1,256 | 908 | 280 | 43 | 12 | 3 | 0 | 10 | 654 | 562 | 41 | 51 | 11 | 0 | 10 |
| Miscellaneous repair services | 140 | 75 | 58 | 15 | 2 | 0 | 0 | 0 | 0 | 59 | 48 | 3 | 8 | 3 | 0 | 3 |
| Legal services | 22 | 9 | 9 | 0 | 0 | 0 | 0 | 0 | 0 | 11 | 10 | 1 | 0 | 0 | 1 | 1 |
| Museums, art galleries, botanical and zoological gardens | 4 | 2 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | 2 | 0 | 0 | 0 | 0 | 0 |
| Social services | 134 | 74 | 63 | 9 | 2 | 0 | 0 | 0 | 0 | 53 | 50 | 1 | 2 | 0 | 0 | 7 |
| Miscellaneouls services | 34 | 22 | 17 | 4 | 1 | 0 | 0 | 0 | 0 | 12 | 12 | 0 | 0 | 0 | 0 | 0 |
| Services | 8,030 | 5,155 | 3,894 | 961 | 140 | 34 | 21 | 68 | 37 | 2,690 | 2,265 | 151 | 274 | 53 | 19 | 113 |
| Public administration | 52 | 37 | 17 | 13 | 6 | 0 | 0 | 0 | 1 | 14 | 10 | 1 | 3 | 0 | 0 | 1 |
| Total, all industrial groups | 52,943 | 37,828 | 26,105 | 8,956 | 1,737 | 391 | 122 | 68 | 449 | 14,358 | 11,578 | 987 | 1,793 | 305 | 65 | 387 |

[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 1977 [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 | CG | CP | All R cases | RC | RM | RD | UD | AC | UC |
| Maine | 201 | 132 | 103 | 20 | 8 | 0 | 0 | 0 | 1 | 65 | 57 | 2 | 6 | 3 | 0 | 1 |
| New Hampshire | 112 | 75 | 58 | 14 | 1 | 0 | 2 | 0 | 0 | 35 | 28 | 1 | 6 | 1 | 0 | 1 |
| Vermont | 72 | 41 | 34 | 7 | 0 | 0 | 0 | 0 | 0 | 31 | 30 | 0 | 1 | 0 | 0 | 0 |
| Massachusetts | 1,684 | 1,236 | 876 | 269 | 52 | 28 | 2 | 4 | 5 | 417 | 350 | 26 | 41 | 7 | 0 | 24 |
| Rhode Island | 210 | 155 | 111 | 29 | 13 | 1 | 0 | 0 | 1 | 52 | 39 | 6 | 7 | 1 | 0 | 2 |
| Connecticut | 656 | 436 | 307 | 107 | 12 | 5 | 0 | 1 | 4 | 193 | 169 | 4 | 20 | 10 | 11 | 6 |
| New England | 2,935 | 2,075 | 1,489 | 446 | 86 | 34 | 4 | 5 | 11 | 793 | 673 | 39 | 81 | 22 | 11 | 34 |
| New York | 4,587 | 3,323 | 1,895 | 1,154 | 141 | 33 | 18 | 9 | 73 | 1,190 | 1,005 | 92 | 93 | 26 | 2 | 46 |
| New Jersey | 1,941 | 1,339 | 875 | 391 | 32 | 15 | 3 | 3 | 20 | 566 | 487 | 34 | 45 | 22 | 5 | 9 |
| Pennsylvania | 3,160 | 2,285 | 1,484 | 587 | 130 | 47 | 2 | 8 | 27 | 831 | 731 | 33 | 67 | 21 | 1 | 22 |
| Middle Atlantic | 9,688 | 6,947 | 4,254 | 2,132 | 303 | 95 | 23 | 20 | 120 | 2,587 | 2,223 | 159 | 205 | 69 | 8 | 77 |
| Ohio | 3,325 | 2,407 | 1,706 | 578 | 93 | 16 | 1 | 0 | 13 | 880 | 774 | 33 | 73 | 18 | 0 | 20 |
| Indiana | 2,292 | 1,878 | 1,281 | 529 | 43 | 11 | 4 | 0 | 10 | 387 | 320 | 9 | 58 | 15 | 2 | 10 |
| Illinois | 3,469 | 2,669 | 1,859 | 803 | 144 | 14 | 4 | 0 | 45 | 757 | 615 | 37 | 105 | 15 | 6 | 22 |
| Michigan | 2,460 | 1,606 | 1,184 | 336 | 49 | 21 | 0 | 4 | 12 | 814 | 675 | 41 | 98 | 19 | 2 | 19 |
| Wisconsin | 1,214 | 852 | 638 | 193 | 12 | 6 | 2 | 1 | 0 | 347 | 271 | 18 | 58 | 6 | 2 | 7 |
| East North Central | 12,760 | 9,412 | 6,468 | 2,439 | 341 | 68 | 11 | 5 | 80 | 3,185 | 2,655 | 138 | 392 | 73 | 12 | 78 |
| Iowa | 482 | 266 | 208 | 44 | 11 | 1 | 0 | 0 | 2 | 213 | 190 | 6 | 17 | 0 | 0 | 3 |
| Minnesota | 653 | 345 | 234 | 54 | 37 | 10 | 2 | 1 | 7 | 295 | 241 | 19 | 35 | 5 | 0 | 8 |
| Missouri | 2,169 | 1,743 | 1,219 | 420 | 65 | 18 | 2 | 1 | 18 | 414 | 337 | 25 | 52 | 5 | 1 | 6 |
| North Dakota | 69 | 33 | 28 | 2 | 2 | 0 | 0 | 0 | 1 | 35 | 28 | 4 | 3 | 0 | 0 | 1 |
| South Dakota | 59 | 31 | 23 | 1 | 2 | 2 | 0 | 0 | 3 | 27 | 21 | 5 | 1 | 0 | 0 | 1 |
| Nebraska | 216 | 144 | 96 | 34 | 9 | 1 | 0 | 0 | 4 | 70 | 61 | 2 | 7 | 1 | 0 | 1 |
| Kansas | 372 | 279 | 200 | 66 | 5 | 6 | 1 | 0 | 1 | 87 | 70 | 5 | 12 | 4 | 1 | 1 |
| West North Central | 4,020 | 2,841 | 2,008 | 621 | 131 | 38 | 5 | 2 | 36 | 1,141 | 948 | 66 | 127 | 15 | 2 | 21 |
| Delaware | 128 | 67 | 36 | 18 | 7 | 2 | 0 | 1 | 3 | 57 | 50 | 2 | 5 | 3 | 0 | 1 |
| Maryland | 754 | 543 | 324 | 186 | 14 | 7 | 5 | 2 | 5 | 205 | 176 | 8 | 21 | 5 | 0 | 1 |
| District of Columbia | 345 | 228 | 158 | 60 | 4 | 1 | 1 | 2 | 2 | 110 | 92 | 3 | 15 | 0 | 2 | 5 |
| Virginia | 524 | 389 | 283 | 97 | 8 | 1 | 0 | 0 | 0 | 132 | 111 | 8 | 13 | 0 | 1 | 2 |
| West Virginia | 484 | 379 | 271 | 80 | 16 | 7 | 0 | 1 | 4 | 101 | 89 | 3 | 9 | 1 | 0 | 3 |

| | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| North Carolina | 557 | 438 | 362 | 71 | 3 | 2 | 0 | 0 | 0 | 118 | 109 | 3 | 6 | 0 | 0 | 1 |
| South Carolina | 237 | 174 | 152 | 22 | 0 | 0 | 0 | 0 | 0 | 62 | 55 | 2 | 5 | 0 | 0 | 1 |
| Georgia | 800 | 596 | 486 | 101 | 3 | 3 | 0 | 1 | 2 | 203 | 183 | 6 | 14 | 0 | 0 | 1 |
| Florida | 959 | 733 | 579 | 120 | 28 | 4 | 0 | 1 | 1 | 224 | 195 | 7 | 22 | 0 | 2 | 0 |
| South Atlantic | 4,788 | 3,547 | 2,651 | 755 | 83 | 27 | 6 | 8 | 17 | 1,212 | 1,060 | 42 | 110 | 9 | 5 | 15 |
| Kentucky | 835 | 625 | 502 | 70 | 40 | 5 | 1 | 2 | 5 | 203 | 180 | 5 | 18 | 3 | 0 | 4 |
| Tennessee | 982 | 726 | 567 | 123 | 23 | 2 | 2 | 7 | 2 | 242 | 211 | 5 | 26 | 0 | 1 | 13 |
| Alabama | 612 | 404 | 319 | 66 | 12 | 3 | 0 | 2 | 2 | 203 | 180 | 7 | 16 | 0 | 2 | 3 |
| Mississippi | 260 | 180 | 155 | 21 | 4 | 0 | 0 | 0 | 0 | 78 | 70 | 3 | 5 | 0 | 0 | 2 |
| East South Central | 2,689 | 1,935 | 1,543 | 280 | 79 | 10 | 3 | 11 | 9 | 726 | 641 | 20 | 65 | 3 | 3 | 22 |
| Arkansas | 293 | 181 | 152 | 27 | 2 | 0 | 0 | 0 | 0 | 106 | 84 | 3 | 19 | 0 | 0 | 6 |
| Louisiana | 511 | 389 | 264 | 98 | 15 | 7 | 3 | 1 | 1 | 119 | 100 | 5 | 14 | 0 | 1 | 2 |
| Oklahoma | 428 | 282 | 238 | 25 | 14 | 0 | 1 | 2 | 2 | 143 | 110 | 12 | 21 | 2 | 0 | 1 |
| Texas | 1,868 | 1,448 | 1,092 | 278 | 47 | 19 | 0 | 0 | 12 | 411 | 328 | 21 | 62 | 1 | 1 | 7 |
| West South Central | 3,100 | 2,300 | 1,746 | 428 | 78 | 26 | 4 | 3 | 15 | 779 | 622 | 41 | 116 | 3 | 2 | 16 |
| Montana | 230 | 137 | 87 | 27 | 16 | 3 | 1 | 0 | 3 | 82 | 55 | 16 | 11 | 7 | 0 | 4 |
| Idaho | 173 | 132 | 118 | 11 | 3 | 0 | 0 | 0 | 0 | 36 | 26 | 5 | 5 | 3 | 0 | 2 |
| Wyoming | 92 | 58 | 41 | 13 | 2 | 0 | 0 | 1 | 1 | 33 | 22 | 3 | 8 | 0 | 0 | 1 |
| Colorado | 767 | 566 | 463 | 74 | 19 | 8 | 1 | 0 | 1 | 195 | 156 | 9 | 30 | 4 | 0 | 2 |
| New Mexico | 317 | 210 | 168 | 38 | 1 | 1 | 1 | 1 | 0 | 83 | 57 | 3 | 23 | 0 | 0 | 24 |
| Arizona | 659 | 540 | 350 | 146 | 26 | 6 | 7 | 0 | 5 | 116 | 90 | 8 | 18 | 0 | 1 | 2 |
| Utah | 100 | 53 | 39 | 12 | 2 | 0 | 0 | 0 | 0 | 45 | 37 | 4 | 4 | 0 | 0 | 2 |
| Nevada | 312 | 224 | 150 | 52 | 13 | 5 | 1 | 0 | 3 | 87 | 56 | 7 | 24 | 0 | 0 | 1 |
| Mountain | 2,650 | 1,920 | 1,416 | 373 | 82 | 23 | 11 | 2 | 13 | 677 | 499 | 55 | 123 | 14 | 1 | 38 |
| Washington | 1,375 | 832 | 622 | 158 | 28 | 9 | 5 | 1 | 9 | 502 | 295 | 80 | 127 | 16 | 1 | 24 |
| Oregon | 563 | 272 | 194 | 33 | 29 | 5 | 5 | 2 | 4 | 271 | 187 | 33 | 51 | 11 | 0 | 9 |
| California | 7,402 | 5,213 | 3,333 | 1,181 | 469 | 52 | 43 | 9 | 126 | 2,071 | 1,427 | 291 | 353 | 64 | 16 | 38 |
| Alaska | 258 | 181 | 124 | 45 | 5 | 2 | 1 | 0 | 4 | 74 | 61 | 7 | 6 | 0 | 0 | 3 |
| Hawaii | 284 | 181 | 121 | 36 | 18 | 2 | 1 | 0 | 3 | 100 | 79 | 9 | 12 | 0 | 0 | 3 |
| Guam | 7 | 5 | 4 | 1 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 1 | 1 | 0 | 0 |
| Pacific | 9,889 | 6,684 | 4,398 | 1,454 | 549 | 70 | 55 | 12 | 146 | 3,019 | 2,049 | 420 | 550 | 92 | 17 | 77 |
| Puerto Rico | 397 | 158 | 123 | 28 | 5 | 0 | 0 | 0 | 2 | 221 | 191 | 7 | 23 | 5 | 4 | 9 |
| Virgin Islands | 27 | 9 | 9 | 0 | 0 | 0 | 0 | 0 | 0 | 18 | 17 | 0 | 1 | 0 | 0 | 0 |
| Outlying Areas | 424 | 167 | 132 | 28 | 5 | 0 | 0 | 0 | 2 | 239 | 208 | 7 | 24 | 5 | 4 | 9 |
| Total, All States and Areas | 52,943 | 37,828 | 26,105 | 8,956 | 1,737 | 391 | 122 | 68 | 449 | 14,358 | 11,578 | 987 | 1,793 | 305 | 65 | 387 |

[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 1977[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 | CG | CP | All R cases | RC | RM | RD | UD | AC | UC |
| Connecticut | 656 | 436 | 307 | 107 | 12 | 5 | 0 | 1 | 4 | 193 | 169 | 4 | 20 | 10 | 11 | 6 |
| Maine | 201 | 132 | 103 | 20 | 8 | 0 | 0 | 0 | 1 | 65 | 57 | 2 | 6 | 3 | 0 | 1 |
| Massachusetts | 1,684 | 1,236 | 876 | 269 | 52 | 28 | 2 | 4 | 5 | 417 | 350 | 26 | 41 | 7 | 0 | 24 |
| New Hampshire | 112 | 75 | 58 | 14 | 1 | 0 | 2 | 0 | 0 | 35 | 28 | 1 | 6 | 1 | 0 | 1 |
| Rhodel Island | 210 | 155 | 111 | 29 | 13 | 1 | 0 | 0 | 1 | 52 | 39 | 6 | 7 | 1 | 0 | 2 |
| Vermont | 72 | 41 | 34 | 7 | 0 | 0 | 0 | 0 | 0 | 31 | 30 | 0 | 1 | 0 | 0 | 0 |
| Region I | 2,935 | 2,075 | 1,489 | 446 | 86 | 34 | 4 | 5 | 11 | 793 | 673 | 39 | 81 | 22 | 11 | 34 |
| Delaware | 128 | 67 | 36 | 18 | 7 | 2 | 0 | 1 | 3 | 57 | 50 | 2 | 5 | 3 | 0 | 1 |
| New Jersey | 1,941 | 1,339 | 875 | 391 | 32 | 15 | 3 | 3 | 20 | 563 | 487 | 34 | 45 | 22 | 5 | 9 |
| New York | 4,587 | 3,323 | 1,895 | 1,154 | 141 | 33 | 18 | 9 | 73 | 1,190 | 1,005 | 92 | 93 | 26 | 2 | 46 |
| Puerto Rico | 397 | 158 | 123 | 28 | 5 | 0 | 0 | 0 | 2 | 221 | 191 | 7 | 23 | 5 | 4 | 9 |
| Virgin Islands | 27 | 9 | 9 | 0 | 0 | 0 | 0 | 0 | 0 | 18 | 17 | 0 | 1 | 0 | 0 | 0 |
| Region II | 7,080 | 4,896 | 2,938 | 1,591 | 185 | 50 | 21 | 13 | 98 | 2,052 | 1,750 | 135 | 167 | 56 | 11 | 65 |
| District of Columbia | 345 | 228 | 158 | 60 | 4 | 1 | 1 | 2 | 2 | 110 | 92 | 3 | 15 | 0 | 2 | 5 |
| Maryland | 754 | 543 | 324 | 186 | 14 | 7 | 5 | 2 | 5 | 205 | 176 | 8 | 21 | 5 | 0 | 1 |
| Pennsylvania | 3,160 | 2,285 | 1,484 | 587 | 130 | 47 | 2 | 8 | 27 | 831 | 731 | 33 | 67 | 21 | 1 | 22 |
| Virginia | 524 | 389 | 283 | 97 | 8 | 1 | 0 | 0 | 0 | 132 | 111 | 8 | 13 | 0 | 1 | 2 |
| West Virginia | 484 | 379 | 271 | 80 | 16 | 7 | 0 | 1 | 4 | 101 | 89 | 3 | 9 | 1 | 0 | 3 |
| Region III | 5,267 | 3,824 | 2,520 | 1,010 | 172 | 63 | 8 | 13 | 38 | 1,379 | 1,199 | 55 | 125 | 27 | 4 | 33 |
| Alabama | 612 | 404 | 319 | 66 | 12 | 3 | 0 | 2 | 2 | 203 | 180 | 7 | 16 | 0 | 2 | 3 |
| Florida | 959 | 733 | 579 | 120 | 28 | 4 | 0 | 1 | 1 | 224 | 195 | 7 | 22 | 0 | 2 | 0 |
| Georgia | 800 | 596 | 485 | 101 | 3 | 3 | 0 | 1 | 2 | 203 | 183 | 6 | 14 | 0 | 0 | 1 |
| Kentucky | 835 | 625 | 502 | 76 | 40 | 5 | 1 | 2 | 5 | 203 | 180 | 5 | 18 | 3 | 0 | 4 |
| Mississippi | 260 | 180 | 155 | 21 | 4 | 0 | 0 | 0 | 0 | 78 | 70 | 3 | 5 | 0 | 0 | 2 |
| North Carolina | 557 | 438 | 362 | 71 | 3 | 2 | 0 | 0 | 0 | 118 | 109 | 3 | 6 | 0 | 0 | 1 |
| South Carolina | 237 | 174 | 152 | 22 | 0 | 0 | 0 | 0 | 0 | 62 | 55 | 2 | 5 | 0 | 0 | 1 |
| Tennessee | 982 | 726 | 567 | 123 | 23 | 2 | 2 | 7 | 2 | 242 | 211 | 5 | 26 | 0 | 1 | 13 |
| Region IV | 5,242 | 3,876 | 3,122 | 594 | 113 | 19 | 3 | 13 | 12 | 1,333 | 1,183 | 38 | 112 | 3 | 5 | 25 |

| | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Illinois | 3,469 | 2,669 | 1,659 | 803 | 144 | 14 | 4 | 0 | 45 | 757 | 615 | 37 | 105 | 15 | 6 | 22 |
| Indiana | 2,292 | 1,878 | 1,281 | 529 | 43 | 11 | 4 | 0 | 10 | 387 | 320 | 9 | 58 | 15 | 2 | 10 |
| Michigan | 2,460 | 1,606 | 1,184 | 336 | 49 | 21 | 0 | 4 | 12 | 814 | 675 | 41 | 98 | 19 | 2 | 19 |
| Minnesota | 653 | 345 | 234 | 54 | 47 | 10 | 2 | 1 | 7 | 295 | 241 | 19 | 35 | 5 | 0 | 8 |
| Ohio | 3,325 | 2,407 | 1,706 | 578 | 93 | 16 | 1 | 0 | 13 | 880 | 774 | 33 | 73 | 18 | 0 | 20 |
| Wisconsin | 1,214 | 852 | 638 | 193 | 12 | 6 | 2 | 1 | 0 | 347 | 271 | 18 | 58 | 6 | 2 | 7 |
| Region V | 13,413 | 9,757 | 6,702 | 2,493 | 378 | 78 | 13 | 6 | 87 | 3,480 | 2,896 | 157 | 427 | 78 | 12 | 86 |
| Arkansas | 293 | 181 | 152 | 27 | 2 | 0 | 0 | 0 | 0 | 106 | 84 | 3 | 19 | 0 | 0 | 6 |
| Louisiana | 511 | 389 | 264 | 98 | 15 | 7 | 3 | 1 | 1 | 119 | 100 | 5 | 14 | 0 | 1 | 2 |
| New Mexico | 317 | 210 | 168 | 38 | 1 | 1 | 1 | 1 | 0 | 83 | 57 | 3 | 23 | 0 | 0 | 24 |
| Oklahoma | 428 | 282 | 238 | 25 | 14 | 0 | 1 | 2 | 2 | 143 | 110 | 12 | 21 | 2 | 0 | 1 |
| Texas | 1,868 | 1,448 | 1,092 | 278 | 47 | 19 | 0 | 0 | 12 | 411 | 328 | 21 | 62 | 1 | 1 | 7 |
| Region VI | 3,417 | 2,510 | 1,914 | 466 | 79 | 27 | 5 | 4 | 15 | 862 | 679 | 44 | 139 | 3 | 2 | 40 |
| Iowa | 482 | 266 | 208 | 44 | 11 | 1 | 0 | 0 | 2 | 213 | 190 | 6 | 17 | 0 | 0 | 3 |
| Kansas | 372 | 279 | 200 | 66 | 5 | 6 | 1 | 0 | 1 | 87 | 70 | 5 | 12 | 4 | 1 | 1 |
| Missouri | 2,169 | 1,743 | 1,219 | 420 | 65 | 18 | 2 | 1 | 18 | 414 | 337 | 25 | 52 | 5 | 1 | 6 |
| Nebraska | 216 | 144 | 96 | 34 | 9 | 1 | 0 | 0 | 4 | 70 | 61 | 2 | 7 | 1 | 0 | 1 |
| Region VII | 3,239 | 2,432 | 1,723 | 564 | 90 | 26 | 3 | 1 | 25 | 784 | 658 | 38 | 88 | 10 | 2 | 11 |
| Colorado | 767 | 566 | 463 | 74 | 19 | 8 | 1 | 0 | 1 | 195 | 156 | 9 | 30 | 4 | 0 | 2 |
| Montana | 230 | 137 | 87 | 27 | 16 | 3 | 1 | 0 | 3 | 82 | 55 | 16 | 11 | 7 | 0 | 4 |
| North Dakota | 69 | 33 | 28 | 2 | 2 | 0 | 0 | 0 | 1 | 35 | 28 | 4 | 3 | 0 | 0 | 1 |
| South Dakota | 59 | 31 | 23 | 1 | 2 | 2 | 0 | 0 | 3 | 27 | 21 | 5 | 1 | 0 | 0 | 1 |
| Utah | 100 | 53 | 39 | 12 | 2 | 0 | 0 | 0 | 0 | 45 | 37 | 4 | 4 | 0 | 0 | 2 |
| Wyoming | 92 | 58 | 41 | 13 | 2 | 0 | 0 | 1 | 1 | 33 | 22 | 3 | 8 | 0 | 0 | 1 |
| Region VIII | 1,317 | 878 | 681 | 129 | 43 | 13 | 2 | 1 | 9 | 417 | 319 | 41 | 57 | 11 | 0 | 11 |
| Arizona | 659 | 540 | 350 | 146 | 26 | 6 | 7 | 0 | 5 | 116 | 90 | 8 | 18 | 0 | 1 | 2 |
| California | 7,402 | 5,213 | 3,333 | 1,181 | 469 | 52 | 43 | 9 | 126 | 2,071 | 1,427 | 291 | 353 | 64 | 16 | 38 |
| Hawaii | 284 | 181 | 121 | 36 | 18 | 2 | 1 | 0 | 3 | 100 | 79 | 9 | 12 | 0 | 0 | 3 |
| Guam | 7 | 5 | 4 | 1 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 1 | 1 | 0 | 0 |
| Nevada | 312 | 224 | 150 | 52 | 13 | 5 | 1 | 0 | 3 | 87 | 56 | 7 | 24 | 0 | 0 | 1 |
| Region IX | 8,664 | 6,163 | 3,958 | 1,416 | 526 | 65 | 52 | 9 | 137 | 2,375 | 1,652 | 315 | 408 | 65 | 17 | 44 |
| Alaska | 258 | 181 | 124 | 45 | 5 | 2 | 1 | 0 | 4 | 74 | 61 | 7 | 6 | 0 | 0 | 3 |
| Idaho | 173 | 132 | 118 | 11 | 3 | 0 | 0 | 0 | 0 | 36 | 26 | 5 | 5 | 3 | 0 | 2 |
| Oregon | 563 | 272 | 194 | 33 | 29 | 5 | 5 | 2 | 4 | 271 | 187 | 33 | 51 | 11 | 0 | 9 |
| Washington | 1,375 | 832 | 622 | 158 | 28 | 9 | 5 | 1 | 9 | 502 | 295 | 80 | 127 | 16 | 1 | 24 |
| Region X | 2,369 | 1,417 | 1,058 | 247 | 65 | 16 | 11 | 3 | 17 | 883 | 569 | 125 | 189 | 30 | 1 | 38 |
| Total, All Federal Regions | 52,943 | 37,828 | 26,105 | 8,956 | 1,737 | 391 | 122 | 68 | 449 | 14,358 | 11,578 | 987 | 1,793 | 305 | 65 | 387 |

[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 1977[1]

| Method and stage of disposition | All C cases | | | CA cases | | CB cases | | CC cases | | CD cases | | CE cases | | CG 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 | Number | Percent of total closed |
| Total number of cases closed | 37,602 | 100.0 | ------- | 25,448 | 100.0 | 9,021 | 100.0 | 1,942 | 100.0 | 475 | 100.0 | 138 | 100.0 | 110 | 100.0 | 468 | 100.0 |
| Agreement of the parties | 9,171 | 24.4 | 100.0 | 6,650 | 26.1 | 1,452 | 16.0 | 838 | 43.2 | 3 | 0.6 | 38 | 27.5 | 52 | 47.3 | 138 | 29.5 |
| Informal settlement | 8,921 | 23.7 | 97.3 | 6,499 | 25.5 | 1,410 | 15.6 | 787 | 40.6 | 3 | 0.6 | 37 | 26.8 | 52 | 47.3 | 133 | 28.4 |
| Before issuance of complaint | 6,200 | 16.4 | 67.6 | 4,249 | 16.7 | 1,123 | 12.4 | 651 | 33.6 | 0 | ------- | 23 | 16.7 | 40 | 36.4 | 114 | 24.4 |
| After issuance of complaint, before opening of hearing | 2,512 | 6.7 | 27.4 | 2,067 | 8.1 | 271 | 3.0 | 130 | 6.7 | 3 | 0.6 | 12 | 8.6 | 11 | 10.0 | 18 | 3.8 |
| After hearing opened, before issuance of administrative law judge's decision | 209 | 0.6 | 2.3 | 183 | 0 7 | 16 | 0.2 | 6 | 0.3 | 0 | ------- | 2 | 1.5 | 1 | 0.9 | 1 | 0.2 |
| Formal settlement | 250 | 0.7 | 2.7 | 151 | 0.6 | 42 | 0.4 | 51 | 2.6 | 0 | ------- | 1 | 0.7 | 0 | ------- | 5 | 1.1 |
| After issuance of complaint, before opening of hearing | 165 | 0.5 | 1.8 | 94 | 0.4 | 24 | 0.2 | 41 | 2.1 | 0 | ------- | 1 | 0.7 | 0 | ------- | 5 | 1.1 |
| Stipulated decision | 34 | 0.1 | 0.4 | 23 | 0.1 | 4 | 0.0 | 6 | 0.3 | 0 | ------- | 0 | ------- | 0 | ------- | 1 | 0 2 |
| Consent decree | 131 | 0.4 | 1.4 | 71 | 0.3 | 20 | 0.2 | 35 | 1.8 | 0 | ------- | 1 | 0.7 | 0 | ------- | 4 | 0.9 |
| After hearing opened | 85 | 0.2 | 0.9 | 57 | 0.2 | 18 | 0.2 | 10 | 0.5 | 0 | ------- | 0 | ------- | 0 | ------- | 0 | ------- |
| Stipulated decision | 13 | 0.0 | 0.1 | 8 | 0 0 | 4 | 0 0 | 1 | 0.1 | 0 | ------- | 0 | ------- | 0 | ------- | 0 | ------- |
| Consent decree | 72 | 0 2 | 0.8 | 49 | 0.2 | 14 | 0.2 | 9 | 0.4 | 0 | ------- | 0 | ------- | 0 | ------- | 0 | ------- |
| Compliance with | 1,258 | 3.4 | 100 0 | 1,029 | 4.0 | 114 | 1.3 | 70 | 3.6 | 11 | 2.3 | 19 | 13.8 | 2 | 1.8 | 13 | 2.7 |
| Administrative law judge's decision | 9 | 0.0 | 0 7 | 9 | 0.0 | 0 | ------- | 0 | ------- | 0 | ------- | 0 | ------- | 0 | ------- | 0 | ------- |
| Board decision | 776 | 2.1 | 61.7 | 623 | 2.4 | 86 | 1.0 | 45 | 2 3 | 7 | 1.5 | 3 | 2.2 | 2 | 1.8 | 10 | 2.1 |

| | | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Adopting administrative law judge's decision (no exceptions filed) | 169 | 0.4 | 13.4 | 137 | 0.5 | 15 | 0.2 | 11 | 0 5 | 0 | ------ | 1 | 0.7 | 2 | 1.8 | 3 | 0.6 |
| Contested | 607 | 1.6 | 48.3 | 486 | 1 9 | 71 | 0 8 | 34 | 1.8 | 7 | 1.5 | 2 | 1.5 | 0 | ------ | 7 | 1.5 |
| Circuit court of appeals decree | 385 | 1.1 | 30.6 | 322 | 1.3 | 26 | 0.3 | 24 | 1.2 | 3 | 0.6 | 7 | 5 1 | 0 | ------ | 3 | 0.6 |
| Supreme Court action | 88 | 0.2 | 7.0 | 75 | 0 3 | 2 | 0 0 | 1 | 0.1 | 1 | 0.2 | 9 | 6.5 | 0 | ------ | 0 | ------ |
| Withdrawal | 12,781 | 34.0 | 100 0 | 8,606 | 33.9 | 3,261 | 36.2 | 659 | 33.9 | 1 | 0.2 | 48 | 34.8 | 29 | 26.4 | 177 | 37.9 |
| Before issuance of complaint | 12,202 | 32.5 | 95.5 | 8,119 | 31 9 | 3,196 | 35.5 | 639 | 32.9 | 0 | ------ | 45 | 32 6 | 29 | 26.4 | 174 | 37.2 |
| After issuance of complaint, before opening of hearing | 511 | 1 4 | 4.0 | 429 | 1 7 | 61 | 0.7 | 16 | 0.8 | 1 | 0.2 | 3 | 2.2 | 0 | ------ | 1 | 0.2 |
| After hearing opened, before administrative law judge's decision | 49 | 0 1 | 0 4 | 40 | 0 2 | 3 | 0.0 | 4 | 0 2 | 0 | ------ | 0 | ------ | 0 | ------ | 2 | 0.5 |
| After administrative law judge's decision, before Board decision | 4 | 0.0 | 0 0 | 4 | 0.0 | 0 | ------ | 0 | ------ | 0 | ------ | 0 | ------ | 0 | ------ | 0 | ------ |
| After Board or court decision | 15 | 0 0 | 0.1 | 14 | 0.1 | 1 | 0.0 | 0 | ------ | 0 | ------ | 0 | ------ | 0 | ------ | 0 | ------ |
| Dismissal | 13,931 | 37 0 | 100.0 | 9,159 | 36.0 | 4,194 | 46.5 | 375 | 19.3 | 3 | 0.6 | 33 | 23 9 | 27 | 24.5 | 140 | 29 9 |
| Before issuance of complaint | 13,337 | 35 5 | 95.7 | 8,730 | 34.3 | 4,089 | 45.4 | 333 | 17.1 | 0 | ------ | 29 | 21.0 | 25 | 22.7 | 131 | 27.9 |
| After issuance of complaint, before opening of hearing | 119 | 0.3 | 0 9 | 79 | 0.3 | 15 | 0.2 | 23 | 1 2 | 0 | ------ | 0 | ------ | 0 | ------ | 2 | 0.5 |
| After hearing opened, before administrative law judge's decision | 20 | 0 1 | 0.1 | 12 | 0.1 | 3 | 0.0 | 5 | 0.3 | 0 | ------ | 0 | ------ | 0 | ------ | 0 | ------ |
| By administrative law judge's decision | 15 | 0 0 | 0 1 | 10 | 0.0 | 5 | 0.1 | 0 | ------ | 0 | ------ | 0 | ------ | 0 | ------ | 0 | ------ |
| By Board decision | 353 | 0.9 | 2.5 | 250 | 1 0 | 74 | 0.8 | 13 | 0.6 | 3 | 0.6 | 4 | 2.9 | 2 | 1.8 | 7 | 1 5 |
| Adopting administrative law judge's decision (no exceptions filed) | 117 | 0 3 | 0.8 | 100 | 0 4 | 17 | 0.2 | 0 | ------ | 0 | ------ | 0 | ------ | 0 | ------ | 0 | ------ |
| Contested | 236 | 0.6 | 1 7 | 150 | 0 6 | 57 | 0 6 | 13 | 0 6 | 3 | 0 6 | 4 | 2 9 | 2 | 1 8 | 7 | 1.5 |
| By circuit court of appeals decree | 78 | 0 2 | 0.6 | 73 | 0.3 | 4 | 0.0 | 1 | 0.1 | 0 | ------ | 0 | ------ | 0 | ------ | 0 | ------ |
| By Supreme Court action | 9 | 0.0 | 0 1 | 5 | 0 0 | 4 | 0 0 | 0 | ------ | 0 | ------ | 0 | ------ | 0 | ------ | 0 | ------ |
| 10 (k) actions (see table 7A for details of dispositions) | 457 | 1 2 | ------ | ------ | ------ | ------ | ------ | ------ | ------ | 457 | 96.3 | ------ | ------ | ------ | ------ | ------ | ------ |
| Otherwise (compliance with order of administrative law judge or Board not achieved—firm went out of business) | 4 | 0.0 | ------ | 4 | 0 0 | 0 | ------ | 0 | ------ | 0 | ------ | 0 | ------ | 0 | ------ | 0 | ------ |

[1] See table 8 for summary of disposition by stage. See Glossary for definitions of terms.
[2] CD cases closed in this stage are processed as jurisdictional disputes under sec. 10(k) of the Act See table 7A.

# Table 7A.—Analysis of Methods of Disposition of Jurisdictional Dispute Cases Closed Prior to Unfair Labor Practice Proceedings, Fiscal Year 1977 [1]

| Method and stage of disposition | Number of cases | Percent of total closed |
|---|---|---|
| Total number of cases closed before issuance of complaint | 457 | 100 0 |
| Agreement of the parties—informal settlement | 162 | 35 5 |
| Before 10(k) notice | 145 | 31 8 |
| After 10(k) notice, before opening of 10(k) hearing | 16 | 3. 5 |
| After opening of 10(k) hearing, before issuance of Board decision and determination of dispute | 1 | 0 2 |
| Compliance with Board decision and determination of dispute | 16 | 3 5 |
| Withdrawal | 166 | 36. 3 |
| Before 10(k) notice | 135 | 29 5 |
| After 10(k) notice, before opening of 10(k) hearing | 9 | 2 0 |
| After opening of 10(k) hearing, before issuance of Board decision and determination of dispute | 1 | 0 2 |
| After Board decision and determination of dispute | 21 | 4 6 |
| Dismissal | 113 | 24 7 |
| Before 10(k) notice | 73 | 16 0 |
| After 10(k) notice, before opening of 10(k) hearing | 1 | 0 2 |
| After opening of 10(k) hearing, before issuance of Board decision and determination of dispute | 0 | |
| By Board decision and determination of dispute | 39 | 8. 5 |

[1] See Glossary for definitions of terms

# Table 8.—Disposition by Stage of Unfair Labor Practice Cases Closed, Fiscal Year 1977 [1]

| Stage of disposition | All C cases | | CA cases | | CB cases | | CC cases | | CD cases | | CE cases | | CG 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 | Number of cases | Percent of cases closed |
| Total number of cases closed | 37,602 | 100.0 | 25,448 | 100.0 | 9,021 | 100.0 | 1,942 | 100.0 | 475 | 100.0 | 138 | 100.0 | 110 | 100.0 | 468 | 100.0 |
| Before issuance of complaint | 32,196 | 85.6 | 21,098 | 82.9 | 8,408 | 93.2 | 1,623 | 83.6 | 457 | 96.2 | 97 | 70.3 | 94 | 85.5 | 419 | 89.6 |
| After issuance of complaint, before opening of hearing | 3,307 | 8.8 | 2,669 | 10.5 | 371 | 4.1 | 210 | 10.8 | 4 | 0.9 | 16 | 11 6 | 11 | 10.0 | 26 | 5.6 |
| After hearing opened, before issuance of administrative law judge's decision | 363 | 0.9 | 292 | 1.1 | 40 | 0.4 | 25 | 1.3 | 0 | ------- | 2 | 1.5 | 1 | 0.9 | 3 | 0 6 |
| After administrative law judge's decision, before issuance of Board decision | 28 | 0.1 | 23 | 0.1 | 5 | 0.1 | 0 | ------- | 0 | ------- | 0 | ------- | 0 | ------- | 0 | ------- |
| After Board order adopting administrative law judge's decision in absence of exceptions | 286 | 0 8 | 237 | 0.9 | 32 | 0.4 | 11 | 0.5 | 0 | ------- | 1 | 0.7 | 2 | 1.8 | 3 | 0.6 |
| After Board decision, before circuit court decree | 860 | 2.3 | 652 | 2.6 | 129 | 1.4 | 47 | 2.4 | 10 | 2.1 | 6 | 4.3 | 2 | 1.8 | 14 | '3.0 |
| After circuit court decree, before Supreme Court action | 465 | 1.2 | 397 | 1.6 | 30 | 0.3 | 25 | 1.3 | 3 | 0.6 | 7 | 5.1 | 0 | ------- | 3 | 0.6 |
| After Supreme Court action | 97 | 0.3 | 80 | 0.3 | 6 | 0.1 | 1 | 0.1 | 1 | 0.2 | 9 | 6.5 | 0 | ------- | 0 | ------- |

[1] See Glossary for definitions of terms

# Table 9.—Disposition by Stage of Representation and Union Deauthorization Cases Closed, Fiscal Year 1977 [1]

| Stage of disposition | All R cases | | CR 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 | 15,436 | 100.0 | 12,471 | 100 0 | 1,098 | 100 0 | 1,867 | 100 0 | 332 | 100.0 |
| Before issuance of notice of hearing | 5,584 | 36.3 | 3,858 | 30 9 | 696 | 63 2 | 1,030 | 55 2 | 213 | 64 1 |
| After issuance of notice before close of hearing | 7,068 | 45 7 | 6,186 | 49.6 | 268 | 24 6 | 614 | 32 8 | 25 | 7.6 |
| After hearing closed before issuance of decision | 195 | 1.2 | 164 | 1 3 | 13 | 1 2 | 18 | 1 1 | 2 | 0 6 |
| After issuance of regional director's decision | 2,478 | 16.1 | 2,165 | 17.4 | 115 | 10 4 | 198 | 10 5 | 92 | 27 7 |
| After issuance of Board decision | 111 | 0.7 | 98 | 0.8 | 6 | 0 6 | 7 | 0.4 | 0 | ---- |

[1] See Glossary for definitions of terms.

# Table 10.—Analysis of Methods of Disposition of Representation and Union Deauthorization Cases Closed, Fiscal Year 1977 [1]

| Method and stage of disposition | All R cases | | RC cases | | RM cases | | RD cases | | UD cases | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Number | Percent | Number | Percent | Number | Percent | Number | Percent | Number | Percent |
| Total, all | 15,436 | 100 0 | 12,471 | 100.0 | 1,098 | 100 0 | 1,867 | 100 0 | 332 | 100.0 |
| Certification issued, total | 9,960 | 64 5 | 8,651 | 69.4 | 415 | 37 8 | 894 | 47.9 | 161 | 48.5 |
| After: | | | | | | | | | | |
| Consent election | 919 | 6.0 | 761 | 6.1 | 44 | 4 0 | 114 | 6.1 | 31 | 9.3 |
| Before notice of hearing | 457 | 3 0 | 357 | 2 9 | 34 | 3 1 | 66 | 3 5 | 27 | 8.1 |
| After notice of hearing, before hearing closed | 458 | 3 0 | 401 | 3 2 | 10 | 0.9 | 47 | 2.5 | 3 | 0.9 |
| After hearing closed, before decision | 4 | 0 0 | 3 | 0 0 | 0 | ---------- | 1 | 0 1 | 1 | 0.3 |
| Stipulated election | 7,197 | 46 5 | 6,273 | 50 3 | 284 | 25 9 | 640 | 34.3 | 42 | 12.7 |
| Before notice of hearing | 2,484 | 16.1 | 2,040 | 16.3 | 155 | 14.1 | 289 | 15 5 | 33 | 9 9 |
| After notice of hearing, before hearing closed | 4,675 | 30.2 | 4,201 | 33 7 | 128 | 11.7 | 346 | 18.5 | 8 | 2.5 |
| After hearing closed, before decision | 38 | 0.2 | 32 | 0.3 | 1 | 0.1 | 5 | 0.3 | 1 | 0.3 |
| Expedited election | 25 | 0 2 | 5 | 0 0 | 20 | 1.8 | 0 | ---------- | 0 | ---------- |
| Regional director directed election | 1,758 | 11.4 | 1,554 | 12.5 | 65 | 5.9 | 139 | 7.4 | 88 | 26.5 |
| Board directed election | 61 | 0 4 | 58 | 0 5 | 2 | 0.2 | 1 | 0.1 | 0 | ---------- |
| By withdrawal, total | 4,120 | 26 7 | 3,054 | 24.5 | 433 | 39.4 | 633 | 33.9 | 129 | 38.9 |
| Before notice of hearing | 1,940 | 12.5 | 1,200 | 9.6 | 310 | 28 1 | 430 | 23.0 | 121 | 36.5 |
| After notice of hearing, before hearings closed | 1,748 | 11.3 | 1,479 | 11 9 | 95 | 8.7 | 174 | 9.3 | 7 | 2.1 |
| After hearing closed, before decision | 87 | 0 6 | 77 | 0 6 | 5 | 0.5 | 5 | 0.3 | 0 | ---------- |
| After regional director's decision and direction of election | 332 | 2 2 | 288 | 2.3 | 21 | 1 9 | 23 | 1.2 | 1 | 0.3 |
| After Board decision and direction of election | 13 | 0 1 | 10 | 0.1 | 2 | 0 2 | 1 | 0.1 | 0 | ---------- |
| By dismissal, total | 1,356 | 8 8 | 766 | 6.1 | 250 | 22.8 | 340 | 18.2 | 42 | 12.6 |
| Before notice of hearing | 678 | 4 5 | 256 | 2.1 | 177 | 16 1 | 245 | 13.1 | 32 | 9 6 |
| After notice of hearing, before hearing closed | 187 | 1.2 | 105 | 0 8 | 35 | 3.3 | 47 | 2.5 | 7 | 2.1 |
| After hearing closed, before decision | 66 | 0 4 | 52 | 0 4 | 7 | 0 6 | 7 | 0 4 | 0 | ---------- |
| By regional director's decision | 388 | 2.5 | 323 | 2 6 | 29 | 2.6 | 36 | 1.9 | 3 | 0.9 |
| By Board decision | 37 | 0 2 | 30 | 0.2 | 2 | 0.2 | 5 | 0.3 | 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 1977

| | AC | UC |
|---|---|---|
| Total, all | 90 | 448 |
| Certification amended or unit clarified | 34 | 82 |
| Before hearing | 31 | 16 |
| By regional director's decision | 31 | 16 |
| By Board decision | 0 | 0 |
| After hearing | 3 | 66 |
| By regional director's decision | 3 | 58 |
| By Board decision | 0 | 8 |
| Dismissed | 21 | 151 |
| Before hearing | 13 | 61 |
| By regional director's decision | 13 | 61 |
| By Board decision | 0 | 0 |
| After hearing | 8 | 90 |
| By regional director's decision | 7 | 88 |
| By Board decision | 1 | 2 |
| Withdrawn | 35 | 215 |
| Before hearing | 35 | 199 |
| After hearing | 0 | 16 |

## Table 11.—Types of Elections Resulting in Certification in Cases Closed, Fiscal Year 1977 [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 | 9,626 | 856 | 6,967 | 59 | 1,720 | 24 |
| Eligible voters | 579,841 | 26,801 | 421,361 | 8,141 | 122,899 | 639 |
| Valid votes | 511,336 | 22,508 | 374,863 | 6,970 | 106,469 | 526 |
| RC cases | | | | | | |
| Elections | 8,308 | 697 | 6,091 | 54 | 1,462 | 4 |
| Eligible voters | 519,102 | 21,869 | 379,431 | 8,046 | 109,634 | 122 |
| Valid votes | 460,300 | 18,659 | 339,175 | 6,880 | 95,487 | 99 |
| RM cases | | | | | | |
| Elections | 327 | 26 | 225 | 4 | 52 | 20 |
| Eligible voters | 9,764 | 807 | 6,937 | 85 | 1,418 | 517 |
| Valid votes | 8,172 | 607 | 5,893 | 81 | 1,164 | 427 |
| RD cases | | | | | | |
| Elections | 849 | 113 | 609 | 1 | 126 | 0 |
| Eligible voters | 41,850 | 3,144 | 32,367 | 10 | 6,329 | 0 |
| Valid votes | 35,769 | 2,574 | 27,871 | 9 | 5,315 | 0 |
| UD cases: | | | | | | |
| Elections | 142 | 20 | 42 | 0 | 80 | ---- |
| Eligible voters | 9,125 | 981 | 2,626 | 0 | 5,518 | ---- |
| Valid votes | 7,095 | 668 | 1,924 | 0 | 4,503 | ---- |

[1] See Glossary for definitions of terms

# Table 11A.—Analysis of Elections Conducted in Representation Cases Closed, Fiscal Year 1977

| 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 | 9,795 | 91 | 220 | 9,484 | 8,608 | 88 | 212 | 8,308 | 331 | 3 | 1 | 327 | 856 | 0 | 7 | 849 |
| Rerun required | | | 170 | | | | 162 | | | | 1 | | | | 7 | |
| Runoff required | | | 50 | | | | 50 | | | | 0 | | | | 0 | |
| Consent elections | 858 | 2 | 20 | 836 | 719 | 2 | 20 | 697 | 26 | 0 | 0 | 26 | 113 | 0 | 0 | 113 |
| Rerun required | | | 16 | | | | 16 | | | | 0 | | | | 0 | |
| Runoff required | | | 4 | | | | 4 | | | | 0 | | | | 0 | |
| Stipulated elections | 7,128 | 57 | 146 | 6,925 | 6,288 | 56 | 141 | 6,091 | 227 | 1 | 1 | 225 | 613 | 0 | 4 | 609 |
| Rerun required | | | 113 | | | | 108 | | | | 1 | | | | 4 | |
| Runoff required | | | 33 | | | | 33 | | | | 0 | | | | 0 | |
| Regional director-directed | 1,721 | 32 | 49 | 1,640 | 1,538 | 30 | 46 | 1,462 | 54 | 2 | 0 | 52 | 129 | 0 | 3 | 126 |
| Rerun required | | | 38 | | | | 35 | | | | 0 | | | | 3 | |
| Runoff required | | | 11 | | | | 11 | | | | 0 | | | | 0 | |
| Board-directed | 64 | 0 | 5 | 59 | 59 | 0 | 5 | 54 | 4 | 0 | 0 | 4 | 1 | 0 | 0 | 1 |
| Rerun required | | | 3 | | | | 3 | | | | 0 | | | | 0 | |
| Runoff required | | | 2 | | | | 2 | | | | 0 | | | | 0 | |
| Expedited—sec. 8(b)(7)(C) | 24 | 0 | 0 | 24 | 4 | 0 | 0 | 4 | 20 | 0 | 0 | 20 | 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 1977

| | 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 | 9,795 | 944 | 9.6 | 334 | 3.4 | 188 | 1 9 | 1,132 | 11.6 | 522 | 5 3 |
| By type of case, | | | | | | | | | | | |
| In RC cases | 8,608 | 862 | 10 0 | 291 | 3.4 | 169 | 2 0 | 1,031 | 12 0 | 460 | 5.4 |
| In RM cases | 331 | 31 | 9 4 | 17 | 5.1 | 4 | 1 2 | 35 | 10.6 | 21 | 6.3 |
| In RD cases | 856 | 51 | 6 0 | 26 | 3.0 | 15 | 1 8 | 66 | 7.8 | 41 | 4.8 |
| By type of election, | | | | | | | | | | | |
| Consent elections | 858 | 47 | 5 5 | 4 | 0 5 | 0 | ---------- | 47 | 5 5 | 4 | 0.5 |
| Stipulated elections | 7,128 | 638 | 9.0 | 233 | 3 3 | 117 | 1.6 | 755 | 10 6 | 350 | 4 9 |
| Expedited elections | 24 | 5 | 20.8 | 0 | ---------- | 0 | ---------- | 5 | 20 8 | 0 | ---------- |
| Regional director-directed elections | 1,721 | 250 | 14.5 | 83 | 4 8 | 61 | 3.5 | 311 | 18 0 | 144 | 8.3 |
| Board-directed elections | 64 | 4 | 6.3 | 14 | 21 9 | 10 | 15 6 | 14 | 21.9 | 24 | 37.5 |

[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 individual ballots challenged in each election

## Table 11C.—Objections Filed in Representation Cases Closed, by Party Filing, Fiscal Year 1977 [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 | 1,310 | 100.0 | 537 | 41 0 | 742 | 56.6 | 31 | 2.4 |
| By type of case. | | | | | | | | |
| RC cases | 1,197 | 100 0 | 508 | 42.4 | 663 | 55 4 | 26 | 2.2 |
| RM cases | 40 | 100 0 | 12 | 30 0 | 26 | 65.0 | 2 | 5.0 |
| RD cases | 73 | 100.0 | 17 | 23.3 | 53 | 72 6 | 3 | 4.1 |
| By type of election | | | | | | | | |
| Consent elections | 58 | 100 0 | 27 | 46.5 | 31 | 53.5 | 0 | ------- |
| Stipulated elections | 884 | 100.0 | 357 | 40 4 | 507 | 57.3 | 20 | 2 3 |
| Expedited elections | 6 | 100 0 | 0 | ------- | 6 | 100.0 | 0 | ------- |
| Regional director-directed elections | 346 | 100 0 | 146 | 42.2 | 190 | 54 9 | 10 | 2 9 |
| Board-directed elections | 16 | 100 0 | 7 | 43 8 | 8 | 50 0 | 1 | 6 2 |

[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 1977 [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 | 1,310 | 178 | 1,132 | 925 | 81.7 | 207 | 18 3 |
| By type of case | | | | | | | |
| RC cases | 1,197 | 166 | 1,031 | 833 | 80 8 | 198 | 19.2 |
| RM cases | 40 | 5 | 35 | 31 | 88 6 | 4 | 11.4 |
| RD cases | 73 | 7 | 66 | 61 | 92 4 | 5 | 7.6 |
| By type of election | | | | | | | |
| Consent elections | 58 | 11 | 47 | 36 | 76.6 | 11 | 23.4 |
| Stipulated elections | 884 | 129 | 755 | 619 | 82 0 | 136 | 18.0 |
| Expedited elections | 6 | 1 | 5 | 5 | 100.0 | 0 | ---------- |
| Regional director-directed elections | 346 | 35 | 311 | 253 | 81.4 | 58 | 18.6 |
| Board-directed elections | 16 | 2 | 14 | 12 | 85 7 | 2 | 14.3 |

[1] See Glossary for definitions of terms
[2] See table 11E for rerun elections held after objections were sustained In 37 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 1977 [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 | 129 | 100 0 | 41 | 31.8 | 88 | 68.2 | 7 | 5 4 |
| By type of case | | | | | | | | |
| RC cases | 123 | 100.0 | 40 | 32.5 | 83 | 67.5 | 6 | 4 9 |
| RM cases | 1 | 100 0 | 0 | ---------- | 1 | 100.0 | 0 | ---------- |
| RD cases | 5 | 100.0 | 1 | 20 0 | 4 | 80.0 | 1 | 20 0 |
| By type of election | | | | | | | | |
| Consent elections | 10 | 100.0 | 4 | 40 0 | 6 | 60.0 | 0 | ---------- |
| Stipulated elections | 86 | 100 0 | 27 | 31 4 | 59 | 68.6 | 4 | 4.7 |
| Expedited elections | 0 | ---------- | 0 | ---------- | 0 | ---------- | 0 | ---------- |
| Regional director-directed elections | 31 | 100 0 | 10 | 32.3 | 21 | 67 7 | 3 | 9.7 |
| Board-directed elections | 2 | 100 0 | 0 | ---------- | 2 | 100.0 | 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 41 rerun elections which were conducted and subsequently set aside pursuant to sustained objections The 41 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 1977

| 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 | 142 | 81 | 57.0 | 61 | 43.0 | 9,125 | 3,036 | 33.3 | 6,089 | 66.7 | 7,095 | 77.8 | 3,551 | 38.9 |
| AFL-CIO unions | 85 | 46 | 54.1 | 39 | 45.9 | 5,973 | 2,289 | 38 3 | 3,684 | 61.7 | 4,647 | 77.8 | 2,458 | 41.2 |
| Teamsters | 47 | 31 | 66.0 | 16 | 34.0 | 2,336 | 558 | 23.9 | 1,778 | 76 1 | 1,810 | 77.5 | 791 | 33.9 |
| Other national unions | 5 | 0 | 0.0 | 5 | 100 0 | 615 | 0 | 0 0 | 615 | 100.0 | 495 | 80.5 | 188 | 30.6 |
| Other local unions | 5 | 4 | 80.0 | 1 | 20.0 | 201 | 189 | 94.0 | 12 | 6.0 | 143 | 71.1 | 114 | 56.7 |

[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 deauthoriaztion.

# Table 13.—Final Outcome of Representation Elections in Cases Closed, Fiscal Year 1977 [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 | | | Other local unions | | |
| | | | | | | | | | | | AFL–CIO unions | Teamsters | Other national unions | | | |
| | A. All representation elections | | | | | | | | | | | | | | | |
| AFL–CIO | 5,278 | 44.4 | 2,346 | 2,346 | | | | 2,932 | 330,408 | 110,185 | 110,185 | | | | | 220,223 |
| Teamsters | 2,821 | 41.5 | 1,170 | | 1,170 | | | 1,651 | 91,965 | 31,602 | | 31,602 | | | | 60,363 |
| Other national unions | 470 | 46.0 | 216 | | | 216 | | 254 | 47,205 | 14,719 | | | 14,719 | | | 32,486 |
| Other local unions | 375 | 59.2 | 222 | | | | 222 | 153 | 24,853 | 10,911 | | | | 10,911 | | 13,942 |
| 1-union elections | 8,944 | 44.2 | 3,954 | 2,346 | 1,170 | 216 | 222 | 4,990 | 494,431 | 167,417 | 110,185 | 31,602 | 14,719 | 10,911 | | 327,014 |
| AFL–CIO v. AFL–CIO | 97 | 57.7 | 56 | 56 | | | | 41 | 11,044 | 4,807 | 4,807 | | | | | 6,237 |
| AFL–CIO v. Teamsters | 137 | 73.0 | 100 | 39 | 61 | | | 37 | 14,279 | 9,062 | 3,250 | 5,812 | | | | 5,217 |
| AFL–CIO v. national | 49 | 77.6 | 38 | 17 | | 21 | | 11 | 8,632 | 4,923 | 2,409 | | 2,514 | | | 3,709 |
| AFL–CIO v. local | 139 | 87.8 | 122 | 63 | | | 59 | 17 | 28,040 | 26,175 | 8,209 | | | 17,966 | | 1,865 |
| Teamsters v. national | 8 | 50.0 | 4 | | 1 | 3 | | 4 | 1,156 | 138 | | 51 | 87 | | | 1,018 |
| Teamsters v. local | 32 | 87.5 | 28 | | 15 | | 13 | 4 | 3,647 | 3,310 | | 2,335 | | 975 | | 337 |
| Teamsters v. Teamsters | 10 | 60.0 | 6 | | 6 | | | 4 | 236 | 185 | | 185 | | | | 51 |
| National v. local | 15 | 93.3 | 14 | | | 8 | 6 | 1 | 1,832 | 1,558 | | | 1,238 | 320 | | 274 |
| Local v. local | 24 | 79.2 | 19 | | | | 19 | 5 | 2,587 | 2,286 | | | | 2,286 | | 301 |
| 2-union elections | 511 | 75.7 | 387 | 175 | 83 | 32 | 97 | 124 | 71,453 | 52,444 | 18,675 | 8,383 | 3,839 | 21,547 | | 19,009 |
| AFL–CIO v. AFL–CIO v. Teamsters | 6 | 50.0 | 3 | 3 | 0 | | | 3 | 1,088 | 581 | 581 | 0 | | | | 507 |
| AFL–CIO v. AFL–CIO v. National | 2 | 100.0 | 2 | 2 | | 0 | | 0 | 75 | 75 | 75 | | 0 | | | 0 |
| AFL–CIO v. AFL–CIO v. Local | 4 | 100.0 | 4 | 4 | | | 0 | 0 | 344 | 344 | 344 | | | 0 | | 0 |
| AFL–CIO v. Teamsters v. Teamsters | 1 | 0.0 | 0 | 0 | 0 | | | 1 | 196 | 0 | 0 | 0 | | | | 196 |
| AFL–CIO v. Teamsters v. National | 2 | 100.0 | 2 | 0 | 0 | 2 | | 0 | 465 | 465 | 0 | 0 | 465 | | | 0 |
| AFL–CIO v. Teamsters v. Local | 3 | 66.7 | 2 | 0 | 1 | | 1 | 1 | 532 | 405 | 0 | 365 | | 40 | | 127 |
| AFL–CIO v. National v. National | 1 | 100.0 | 1 | 1 | | 0 | | 0 | 16 | 16 | 16 | | 0 | | | 0 |
| AFL–CIO v. Local v. Local | 6 | 100.0 | 6 | 3 | | | 3 | 0 | 1,818 | 1,818 | 892 | | | 926 | | 0 |
| Local v. Local v. Local | 1 | 100.0 | 1 | | | | 1 | 0 | 86 | 86 | | | | 86 | | 0 |
| AFL–CIO v. AFL–CIO v. AFL–CIO v. AFL–CIO | 1 | 0.0 | 0 | 0 | | | | 1 | 123 | 0 | 0 | | | | | 123 |
| AFL–CIO v. AFL–CIO v. AFL–CIO v. National | 1 | 100.0 | 1 | 1 | | 0 | | 0 | 38 | 38 | 38 | | 0 | | | 0 |
| AFL–CIO v. AFL–CIO v. AFL–CIO v. Teamsters v. Local | 1 | 0.0 | 0 | 0 | 0 | | 0 | 1 | 51 | 0 | 0 | 0 | | 0 | | 51 |
| 3 (or more)-union elections | 29 | 75.9 | 22 | 14 | 1 | 2 | 5 | 7 | 4,832 | 3,828 | 1,946 | 365 | 465 | 1,052 | | 1,004 |
| Total representation elections | 9,484 | 46.0 | 4,363 | 2,535 | 1,254 | 250 | 324 | 5,121 | 570,716 | 223,689 | 130,806 | 40,350 | 19,023 | 33,510 | | 347,027 |

B. Elections in RC cases

| | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| AFL-CIO | 4,608 | 47.5 | 2,188 | 2,188 | | | | 2,420 | 301,295 | 99,050 | 99,050 | | | | | 202,245 |
| Teamsters | 2,431 | 44 8 | 1,089 | | 1,089 | | | 1,342 | 83,093 | 29,186 | | 29,186 | | | | 53,907 |
| Other national unions | 431 | 46.9 | 202 | | | 202 | | 229 | 43,932 | 13,950 | | | 13,950 | | | 29,982 |
| Other local unions | 348 | 60.1 | 209 | | | | 209 | 139 | 22,486 | 9,355 | | | | 9,355 | | 13,131 |
| 1-union elections | 7,818 | 47.2 | 3,688 | 2,188 | 1,089 | 202 | 209 | 4,130 | 450,806 | 151,541 | 99,050 | 29,186 | 13,950 | 9,355 | | 299,265 |
| AFL-CIO v. AFL-CIO | 90 | 57.8 | 52 | 52 | | | | 58 | 10,907 | 4,730 | 4,730 | | | | | 6,177 |
| AFL-CIO v. Teamsters | 121 | 70 2 | 85 | 35 | 50 | | | 36 | 12,233 | 7,020 | 3,040 | 3,980 | | | | 5,213 |
| AFL-CIO v. national | 47 | 76 6 | 36 | 15 | | 21 | | 11 | 8,485 | 4,776 | 2,262 | | 2,514 | | | 3,709 |
| AFL-CIO v. local | 124 | 86 3 | 107 | 55 | | | 52 | 17 | 24,820 | 22,955 | 6,133 | | | 16,822 | | 1,865 |
| Teamsters v national | 7 | 57.1 | 4 | | 1 | 3 | | 3 | 423 | 138 | | 51 | 87 | | | 285 |
| Teamsters v. local | 30 | 86.7 | 26 | | 14 | | 12 | 4 | 2,092 | 1,755 | | 816 | | 939 | | 337 |
| Teamsters v. Teamsters | 5 | 80.0 | 4 | | 4 | | | 1 | 165 | 158 | | 158 | | | | 7 |
| National v. local | 15 | 93.3 | 14 | | | 8 | 6 | 1 | 1,832 | 1,558 | | | 1,238 | 320 | | 274 |
| Local v local | 23 | 82.6 | 19 | | | | 19 | 4 | 2,547 | 2,286 | | | | 2,286 | | 261 |
| 2-union elections | 462 | 75.1 | 347 | 157 | 69 | 32 | 89 | 115 | 63,504 | 45,376 | 16,165 | 5,005 | 3,839 | 20,367 | | 18,128 |
| AFL-CIO v. AFL-CIO v. Teamsters | 6 | 50 0 | 3 | 3 | 0 | | | 3 | 1,088 | 581 | 581 | 0 | | | | 507 |
| AFL-CIO v AFL-CIO v. National | 2 | 100 0 | 2 | 2 | | 0 | | 0 | 75 | 75 | 75 | | 0 | | | 0 |
| AFL-CIO v. AFL-CIO v. Local | 4 | 100 0 | 4 | 4 | | | 0 | 0 | 344 | 344 | 344 | | | 0 | | 0 |
| AFL-CIO v. Teamsters v. Teamsters | 1 | 0.0 | 0 | 0 | 0 | | | 1 | 196 | 0 | 0 | 0 | | | | 196 |
| AFL-CIO v Teamsters v National | 2 | 100 0 | 2 | 0 | 0 | 2 | | 0 | 465 | 465 | 0 | 0 | 465 | | | 0 |
| AFL-CIO v. Teamsters v. Local | 2 | 50.0 | 1 | 0 | 1 | | 0 | 1 | 492 | 365 | 0 | 365 | | 0 | | 127 |
| AFL-CIO v. National v National | 1 | 100 0 | 1 | 1 | | 0 | | 0 | 16 | 16 | 16 | | 0 | | | 0 |
| AFL-CIO v. Local v. Local | 6 | 100 0 | 6 | 3 | | | 3 | 0 | 1,818 | 1,818 | 892 | | | 926 | | 0 |
| Local v. Local v Local | 1 | 100 0 | 1 | | | | 1 | 0 | 86 | 86 | | | | 86 | | 0 |
| AFL-CIO v AFL-CIO v. AFL-CIO v. AFL-CIO | 1 | 0 0 | 0 | 0 | | | | 1 | 123 | 0 | 0 | | | | | 123 |
| AFL-CIO v. AFL-CIO v. AFL-CIO v. National | 1 | 100 0 | 1 | 1 | | 0 | | 0 | 38 | 38 | 38 | | 0 | | | 0 |
| AFL-CIO v. AFL-CIO v. AFL-CIO v. Teamsters v. Local | 1 | 0 0 | 0 | 0 | 0 | | 0 | 1 | 51 | 0 | 0 | 0 | | 0 | | 51 |
| 3 (or more)-union elections | 28 | 75 0 | 21 | 14 | 1 | 2 | 4 | 7 | 4,792 | 3,788 | 1,946 | 365 | 465 | 1,012 | | 1,004 |
| Total RC elections | 8,308 | 48.8 | 4,056 | 2,359 | 1,559 | 236 | 302 | 4,252 | 519,102 | 200,705 | 117,161 | 34,556 | 18,254 | 30,734 | | 318,397 |

C. Elections in RM cases

| | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| AFL-CIO | 175 | 29 7 | 52 | 52 | | | | 123 | 5,539 | 1,699 | 1,699 | | | | | 3,840 |
| Teamsters | 121 | 27.3 | 33 | | 33 | | | 88 | 2,275 | 602 | | 602 | | | | 1,673 |
| Other national unions | 6 | 16.7 | 1 | | | 1 | | 5 | 520 | 197 | | | 197 | | | 323 |
| Other local unions | 11 | 72.7 | 8 | | | | 8 | 3 | 1,111 | 805 | | | | 805 | | 306 |
| 1-union elections | 313 | 30.0 | 94 | 52 | 33 | 1 | 8 | 219 | 9,445 | 3,303 | 1,699 | 602 | 197 | 805 | | 6,142 |

See footnotes at end of table.

# Table 13.—Final Outcome of Representation Elections in Cases Closed, Fiscal Year 1977 [1]—Contd.

| Participating unions | Total elections [2] | Elections won by unions | | | | | | Elections in which no representative chosen | Employees eligible to vote | | | | | | | In elections where no representative chosen |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Percent won | Total won | AFL-CIO unions | Teamsters | Other national unions | Other local unions | | Total | In elections won | In units won by | | | | | |
| | | | | | | | | | | | AFL-CIO unions | Teamsters | Other national unions | Other local unions | | |
| **C. Elections in RM Cases—Continued** | | | | | | | | | | | | | | | | |
| AFL-CIO v. AFL-CIO | 4 | 50.0 | 2 | 2 | | | | 2 | 92 | 46 | 46 | | | | | 46 |
| AFL-CIO v. National | 1 | 100 0 | 1 | 1 | | 0 | | 0 | 47 | 47 | 47 | | 0 | | | 0 |
| AFL-CIO v. local | 4 | 100 0 | 4 | 3 | | | 1 | 0 | 109 | 109 | 89 | | | 20 | | 0 |
| Teamsters v. Teamsters | 5 | 40 0 | 2 | | 2 | | | 3 | 71 | 27 | | 27 | | | | 44 |
| 2-union elections | 14 | 64.3 | 9 | 6 | 2 | 0 | 1 | 5 | 319 | 229 | 182 | 27 | 0 | 20 | | 90 |
| Total RM elections | 327 | 31.5 | 103 | 58 | 35 | 1 | 9 | 224 | 9,764 | 3,532 | 1,881 | 629 | 197 | 825 | | 6,232 |
| **D Elections in RD cases** | | | | | | | | | | | | | | | | |
| AFL-CIO | 495 | 21.4 | 106 | 106 | | | | 389 | 23,574 | 9,436 | 9,436 | | | | | 14,138 |
| Teamsters | 269 | 17.8 | 48 | | 48 | | | 221 | 6,597 | 1,814 | | 1,814 | | | | 4,783 |
| Other national unions | 33 | 39.4 | 13 | | | 13 | | 20 | 2,753 | 572 | | | 572 | | | 2,181 |
| Other local unions | 16 | 31.3 | 5 | | | | 5 | 11 | 1,256 | 751 | | | | 751 | | 505 |
| 1-union elections | 813 | 21.2 | 172 | 106 | 48 | 13 | 5 | 641 | 34,180 | 12,573 | 9,436 | 1,814 | 572 | 751 | | 21,607 |
| AFL-CIO v AFL-CIO | 3 | 66.7 | 2 | 2 | | | | 1 | 45 | 31 | 31 | | | | | 14 |
| AFL-CIO v Teamsters | 16 | 93 8 | 15 | 4 | 11 | | | 1 | 2,046 | 2,042 | 210 | 1,832 | | | | 4 |
| AFL-CIO v National | 1 | 100.0 | 1 | 1 | | 0 | | 0 | 100 | 100 | 100 | | 0 | | | 0 |
| AFL-CIO v Local | 11 | 100.0 | 11 | 5 | | | 6 | 0 | 3,111 | 3,111 | 1,987 | | | 1,124 | | 0 |
| Teamsters v National | 1 | 0 0 | 0 | | 0 | 0 | | 1 | 733 | 0 | | 0 | 0 | | | 733 |
| Teamsters v Local | 2 | 100 0 | 2 | | 1 | | 1 | 0 | 1,555 | 1,555 | | 1,519 | | 36 | | 0 |
| Local v Local | 1 | 0.0 | 0 | | | | 0 | 1 | 40 | 0 | | | | 0 | | 40 |
| 2-union elections | 35 | 88.6 | 31 | 12 | 12 | 0 | 7 | 4 | 7,630 | 6,839 | 2,328 | 3,351 | 0 | 1,160 | | 791 |
| AFL-CIO v Teamsters v Local | 1 | 100 0 | 1 | 0 | 0 | | 1 | 0 | 40 | 40 | 0 | 0 | | 40 | | 0 |
| 3 (or more)-union elections | 1 | 100 0 | 1 | 0 | 0 | 0 | 1 | 0 | 40 | 40 | 0 | 0 | 0 | 40 | | 0 |
| Total RD elections | 849 | 24 0 | 204 | 118 | 60 | 13 | 13 | 645 | 41,850 | 19,452 | 11,764 | 5,165 | 572 | 1,951 | | 22,398 |

[1] See Glossary for definitions of terms

[2] Includes each unit in which a choice as to collective-bargaining agent was made, for example, there may have been more than one election in a single case, or several cases may have been involved in one election unit

# Table 14.—Valid Votes Cast in Representation Elections, by Final Results of Election, in Cases Closed, Fiscal Year 1977 [1]

| Participating unions | Total valid votes cast | Valid votes cast in elections won | | | | | | Valid votes cast in elections lost | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | Votes for unions | | | | Total votes for no union | | Votes for unions | | | | Total votes for no union |
| | | Total | AFL-CIO unions | Teamsters | Other national unions | Other local unions | | Total | AFL-CIO unions | Teamsters | Other national unions | Other local unions | |
| | A. All representation elections | | | | | | | | | | | | |
| AFL-CIO | 293,142 | 63,690 | 63,690 | | | | 32,644 | 65,119 | 65,119 | | | | 131,689 |
| Teamsters | 82,074 | 18,557 | | 18,557 | | | 9,440 | 17,144 | | 17,144 | | | 36,933 |
| Other national unions | 42,842 | 8,257 | | | 8,257 | | 4,988 | 10,133 | | | 10,133 | | 19,464 |
| Other local unions | 20,960 | 6,710 | | | | 6,710 | 2,335 | 4,065 | | | | 4,065 | 7,850 |
| 1-union elections | 439,018 | 97,214 | 63,690 | 18,557 | 8,257 | 6,710 | 49,407 | 96,461 | 65,119 | 17,144 | 10,133 | 4,065 | 195,936 |
| AFL-CIO v. AFL-CIO | 9,056 | 2,791 | 2,791 | | | | 741 | 1,860 | 1,860 | | | | 3,664 |
| AFL-CIO v. Teamsters | 12,372 | 7,233 | 3,114 | 4,119 | | | 617 | 1,836 | 881 | 955 | | | 2,686 |
| AFL-CIO v. national | 7,760 | 4,115 | 1,773 | | 2,342 | | 271 | 1,356 | 716 | | 640 | | 2,018 |
| AFL-CIO v. local | 23,894 | 21,491 | 9,821 | | | 11,670 | 748 | 536 | 194 | | | 342 | 1,119 |
| Teamsters v national | 1,053 | 109 | | 36 | 73 | | 4 | 313 | | 28 | 285 | | 627 |
| Teamsters v. local | 3,094 | 2,759 | | 1,553 | | 1,206 | 47 | 77 | | 74 | | 3 | 211 |
| Teamsters v. Teamsters | 216 | 156 | | 156 | | | 9 | 12 | | 12 | | | 39 |
| National v local | 1,598 | 1,346 | | | 821 | 525 | 17 | 111 | | | 97 | 14 | 124 |
| Local v local | 2,182 | 1,605 | | | | 1,605 | 307 | 85 | | | | 85 | 185 |
| 2-union elections | 61,225 | 41,605 | 17,499 | 5,864 | 3,236 | 15,006 | 2,761 | 6,186 | 3,651 | 1,069 | 1,022 | 444 | 10,673 |
| AFL-CIO v AFL-CIO v. Teamsters | 911 | 436 | 356 | 80 | | | 30 | 157 | 149 | 8 | | | 288 |
| AFL-CIO v AFL-CIO v National | 65 | 65 | 59 | | 6 | | 0 | 0 | 0 | | 0 | | 0 |
| AFL-CIO v. AFL-CIO v. Local | 263 | 247 | 190 | | | 57 | 16 | 0 | 0 | | | 0 | 0 |
| AFL-CIO v. Teamsters v Teamsters | 162 | 0 | 0 | 0 | | | 0 | 77 | 0 | 77 | | | 85 |
| AFL-CIO v Teamsters v National | 465 | 456 | 17 | 1 | 438 | | 9 | 0 | 0 | 0 | 0 | | 0 |
| AFL-CIO v. Teamsters v. Local | 474 | 350 | 43 | 268 | | 39 | 3 | 53 | 0 | 9 | | 44 | 68 |
| AFL-CIO v National v. National | 16 | 11 | 11 | | 0 | | 5 | 0 | 0 | | 0 | | 0 |
| AFL-CIO v. Local v. Local | 1,361 | 1,271 | 479 | | | 792 | 90 | 0 | 0 | | | 0 | 0 |
| Local v Local v. Local | 86 | 85 | | | | 85 | 1 | 0 | | | | 0 | 0 |
| AFL-CIO v. AFL-CIO v. AFL-CIO v AFL-CIO | 110 | 0 | 0 | | | | 0 | 33 | 33 | | | | 77 |
| AFL-CIO v. AFL-CIO v. AFL-CIO v. National | 35 | 35 | 23 | | 12 | | 0 | 0 | 0 | | 0 | | 0 |
| AFL-CIO v. AFL-CIO v. AFL-CIO v. Teamsters v. Local | 50 | 0 | 0 | 0 | | 0 | 0 | 22 | 18 | 4 | | 0 | 28 |
| 3 (or more)-union elections | 3,998 | 2,956 | 1,178 | 349 | 456 | 973 | 154 | 342 | 200 | 98 | 0 | 44 | 546 |
| Total representation elections | 504,241 | 141,775 | 82,367 | 24,770 | 11,949 | 22,689 | 52,322 | 102,989 | 68,970 | 18,311 | 11,155 | 4,553 | 207,155 |

See footnote at end of table

# Table 14.—Valid Votes Cast in Representation Elections, by Final Results of Election, in Cases Closed, Fiscal Year 1977—Contd.

| 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 | |
| | B Elections in RC cases | | | | | | | | | | | | |
| AFL-CIO | 268,275 | 57,352 | 57,352 | | | | 29,216 | 60,752 | 60,752 | | | | 120,955 |
| Teamsters | 74,459 | 17,148 | | 17,148 | | | 8,733 | 15,773 | | 15,773 | | | 32,805 |
| Other national unions | 40,244 | 7,842 | | | 7,842 | | 4,753 | 9,513 | | | 9,513 | | 18,136 |
| Other local unions | 19,000 | 5,703 | | | | 5,703 | 2,065 | 3,910 | | | | 3,910 | 7,322 |
| 1-union elections | 401,978 | 88,045 | 57,352 | 17,148 | 7,842 | 5,703 | 44,767 | 89,948 | 60,752 | 15,773 | 9,513 | 3,910 | 179,218 |
| AFL-CIO v AFL-CIO | 8,939 | 2,724 | 2,724 | | | | 740 | 1,850 | 1,850 | | | | 3,625 |
| AFL-CIO v Teamsters | 10,564 | 5,547 | 2,643 | 2,904 | | | 499 | 1,834 | 881 | 953 | | | 2,684 |
| AFL-CIO v National | 7,653 | 4,024 | 1,695 | | 2,329 | | 255 | 1,356 | 716 | | 640 | | 2,018 |
| AFL-CIO v Local | 21,063 | 18,771 | 8,204 | | | 10,567 | 637 | 536 | 194 | | | 342 | 1,119 |
| Teamsters v National | 375 | 109 | | 36 | 73 | | 4 | 66 | | 25 | 41 | | 196 |
| Teamsters v Local | 1,874 | 1,561 | | 833 | | 728 | 25 | 77 | | 74 | | 3 | 211 |
| Teamsters v Teamsters | 151 | 137 | | 137 | | | 7 | 0 | | 0 | | | 7 |
| National v Teamsters | 1,598 | 1,346 | | | 821 | 525 | 17 | 111 | | | 97 | 14 | 124 |
| Local v Local | 2,144 | 1,605 | | | | 1,605 | 307 | 71 | | | | 71 | 161 |
| 2-union elections | 54,361 | 35,824 | 15,266 | 3,910 | 3,223 | 13,425 | 2,491 | 5,901 | 3,641 | 1,052 | 778 | 430 | 10,145 |
| AFL-CIO v AFL-CIO v Teamsters | 911 | 436 | 356 | 80 | | | 30 | 157 | 149 | 8 | | | 288 |
| AFL-CIO v AFL-CIO v National | 65 | 65 | 59 | | 6 | | 0 | 0 | 0 | | 0 | | 0 |
| AFL-CIO v AFL-CIO v Local | 263 | 247 | 190 | | | 57 | 16 | 0 | 0 | | | 0 | 0 |
| AFL-CIO v Teamsters v Teamsters | 162 | 0 | 0 | 0 | | | 0 | 77 | 0 | 77 | | | 85 |
| AFL-CIO v Teamsters v National | 465 | 456 | 17 | 1 | 438 | | 9 | 0 | 0 | 0 | 0 | | 0 |
| AFL-CIO v Teamsters v Local | 437 | 313 | 43 | 265 | | 5 | 3 | 53 | 0 | 9 | | 44 | 68 |
| AFL-CIO v National v National | 16 | 11 | 11 | | 0 | | 5 | 0 | 0 | | 0 | | 0 |
| AFL-CIO v Local v Local | 1,361 | 1,271 | 479 | | | 792 | 90 | 0 | 0 | | | 0 | 0 |
| Local v Local v Local | 86 | 85 | | | | 85 | 1 | 0 | | | | 0 | 0 |
| AFL-CIO v AFL-CIO v AFL-CIO v AFL-CIO | 110 | 0 | 0 | | | | 0 | 33 | 33 | | | | 77 |
| AFL-CIO v AFL-CIO v AFL-CIO v National | 35 | 35 | 23 | | 12 | | 0 | 0 | 0 | | 0 | | 0 |
| AFL-CIO v AFL-CIO v AFL-CIO v Teamsters v Local | 50 | 0 | 0 | 0 | | 0 | 0 | 22 | 18 | 4 | | 0 | 28 |
| 3 (or more)-union elections | 3,961 | 2,919 | 1,178 | 346 | 456 | 939 | 154 | 342 | 200 | 98 | 0 | 44 | 546 |
| Total RC elections | 460,300 | 126,788 | 73,796 | 21,404 | 11,521 | 20,067 | 47,412 | 96,191 | 64,593 | 16,923 | 10,291 | 4,384 | 189,909 |

253-831 O - 78 - 20

| | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | C. Elections in RM cases | | | | | | | | | | | | |
| AFL-CIO | 4,638 | 991 | 991 | | | | 436 | 766 | 766 | | | | 2,445 |
| Teamsters | 1,987 | 365 | | 365 | | | 160 | 354 | | 354 | | | 1,108 |
| Other national unions | 398 | 82 | | | 82 | | 38 | 97 | | | 97 | | 181 |
| Other local unions | 862 | 545 | | | | 545 | 65 | 55 | | | | 55 | 197 |
| 1-union elections | 7,885 | 1,983 | 991 | 365 | 82 | 545 | 699 | 1,272 | 766 | 354 | 97 | 55 | 3,931 |
| AFL-CIO v AFL-CIO | 76 | 40 | 40 | | | | 0 | 10 | 10 | | | | 26 |
| AFL-CIO v. National | 46 | 46 | 33 | | 13 | | 0 | 0 | 0 | | 0 | | 0 |
| AFL-CIO v. Local | 100 | 86 | 62 | | | 24 | 14 | 0 | 0 | | | 0 | 0 |
| Teamsters v. Teamsters | 65 | 19 | | 19 | | | 2 | 12 | | 12 | | | 32 |
| 2-union elections | 287 | 191 | 135 | 19 | 13 | 24 | 16 | 22 | 10 | 12 | 0 | 0 | 58 |
| Total RM elections | 8,172 | 2,174 | 1,126 | 384 | 95 | 569 | 715 | 1,294 | 776 | 366 | 97 | 55 | 3,989 |
| | D. Elections in RD cases | | | | | | | | | | | | |
| AF-LCIO | 20,229 | 5,347 | 5,347 | | | | 2,992 | 3,601 | 3,601 | | | | 8,289 |
| Teamsters | 5,628 | 1,044 | | 1,044 | | | 547 | 1,017 | | 1,017 | | | 3,020 |
| Other national unions | 2,200 | 333 | | | 333 | | 197 | 523 | | | 523 | | 1,147 |
| Other local unions | 1,098 | 462 | | | | 462 | 205 | 100 | | | | 100 | 331 |
| 1-union elections | 29,155 | 7,186 | 5,347 | 1,044 | 333 | 462 | 3,941 | 5,241 | 3,601 | 1,017 | 523 | 100 | 12,787 |
| AFL-CIO v AFL-CIO | 41 | 27 | 27 | | | | 1 | 0 | 0 | | | | 13 |
| AFL-CIO v Teamsters | 1,808 | 1,686 | 471 | 1,215 | | | 118 | 2 | 0 | 2 | | | 2 |
| AFL-CIO v National | 61 | 45 | 45 | | 0 | | 16 | 0 | 0 | | 0 | | 0 |
| AFL-CIO v Local | 2,731 | 2,634 | 1,555 | | | 1,079 | 97 | 0 | 0 | | | 0 | 0 |
| Teamsters v National | 678 | 0 | | 0 | 0 | | 0 | 247 | | 3 | 244 | | 431 |
| Teamsters v Local | 1,220 | 1,198 | | 720 | | 478 | 22 | 0 | | 0 | | 0 | 0 |
| Local v Local | 38 | 0 | | | | 0 | 0 | 14 | | | | 14 | 24 |
| 2-union elections | 6,577 | 5,590 | 2,098 | 1,935 | 0 | 1,557 | 254 | 263 | 0 | 5 | 244 | 14 | 470 |
| AFL-CIO v Teamsters v Local | 37 | 37 | 0 | 3 | | 34 | 0 | 0 | 0 | 0 | | 0 | 0 |
| 3 (or more) union elections | 37 | 37 | 0 | 3 | 0 | 34 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Total RD elections | 35,769 | 12,813 | 7,445 | 2,982 | 333 | 2,053 | 4,195 | 5,504 | 3,601 | 1,022 | 767 | 114 | 13,257 |

[1] See Glossary for definitions of terms

# Table 15A.—Geographic Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1977

| Division and State [1] | Total elections | Number of elections in which representation rights were won by unions | | | | | Number of elections in which no representative was chosen | Number of employees eligible to vote | Total valid votes cast | Valid votes cast for unions | | | | | Total votes for no union | Eligible employees in units choosing representation |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Total | AFL-CIO unions | Teamsters | Other national unions | Other local unions | | | | Total | AFL-CIO unions | Teamsters | Other national unions | Other local unions | | |
| Maine | 61 | 34 | 26 | 8 | 0 | 0 | 27 | 2,697 | 2,406 | 1,143 | 903 | 240 | 0 | 0 | 1,263 | 1,250 |
| New Hampshire | 27 | 15 | 9 | 6 | 0 | 0 | 12 | 1,080 | 985 | 413 | 334 | 63 | 16 | 0 | 572 | 522 |
| Vermont | 23 | 5 | 3 | 1 | 1 | 0 | 18 | 1,547 | 1,413 | 734 | 498 | 51 | 185 | 0 | 679 | 460 |
| Massachusetts | 304 | 115 | 65 | 38 | 3 | 9 | 189 | 15,232 | 13,616 | 5,913 | 3,705 | 1,048 | 107 | 1,053 | 7,703 | 4,399 |
| Rhode Island | 33 | 21 | 7 | 3 | 0 | 11 | 12 | 1,011 | 822 | 410 | 151 | 26 | 0 | 233 | 412 | 657 |
| Connecticut | 122 | 57 | 27 | 11 | 3 | 16 | 65 | 13,501 | 11,684 | 5,467 | 3,096 | 251 | 277 | 1,843 | 6,217 | 3,971 |
| New England | 570 | 247 | 137 | 67 | 7 | 36 | 323 | 35,068 | 30,926 | 14,080 | 8,687 | 1,679 | 585 | 3,129 | 16,846 | 11,259 |
| New York | 605 | 311 | 170 | 74 | 16 | 51 | 294 | 31,809 | 27,007 | 15,322 | 7,994 | 1,969 | 637 | 4,722 | 11,685 | 15,77 |
| New Jersey | 344 | 166 | 86 | 47 | 8 | 25 | 178 | 17,304 | 15,172 | 7,517 | 3,808 | 1,599 | 457 | 1,653 | 7,655 | 6,224 |
| Pennsylvania | 579 | 269 | 143 | 94 | 12 | 20 | 310 | 34,869 | 31,539 | 15,443 | 9,014 | 2,882 | 1,508 | 2,039 | 16,096 | 13,030 |
| Middle Atlantic | 1,528 | 746 | 399 | 215 | 36 | 96 | 782 | 83,982 | 73,718 | 38,282 | 20,816 | 6,450 | 2,602 | 8,414 | 35,436 | 35,032 |
| Ohio | 595 | 301 | 165 | 92 | 27 | 17 | 294 | 32,743 | 29,287 | 13,538 | 8,104 | 1,787 | 2,826 | 821 | 15,749 | 11,580 |
| Indiana | 292 | 128 | 62 | 51 | 11 | 4 | 164 | 18,841 | 17,102 | 9,103 | 5,314 | 1,477 | 1,689 | 623 | 7,999 | 7,468 |
| Illinois | 496 | 230 | 124 | 75 | 19 | 12 | 266 | 33,688 | 29,761 | 15,738 | 7,496 | 4,227 | 2,077 | 1,938 | 14,023 | 14,846 |
| Michigan | 557 | 254 | 129 | 51 | 55 | 19 | 303 | 30,268 | 25,676 | 12,400 | 6,734 | 1,376 | 3,558 | 732 | 13,276 | 13,462 |
| Wisconsin | 245 | 119 | 76 | 30 | 8 | 5 | 126 | 14,153 | 12,401 | 6,426 | 4,442 | 1,107 | 291 | 586 | 5,975 | 6,426 |
| East North Central | 2,185 | 1,032 | 556 | 299 | 120 | 57 | 1,153 | 129,693 | 114,227 | 57,205 | 32,090 | 9,974 | 10,441 | 4,700 | 57,022 | 53,782 |
| Iowa | 165 | 89 | 59 | 25 | 2 | 3 | 76 | 8,549 | 7,700 | 4,176 | 2,148 | 660 | 820 | 548 | 3,524 | 4,402 |
| Minnesota | 204 | 100 | 61 | 32 | 2 | 5 | 104 | 7,531 | 6,716 | 3,146 | 2,280 | 560 | 72 | 234 | 3,570 | 2,930 |
| Missouri | 251 | 104 | 47 | 43 | 9 | 5 | 147 | 12,890 | 11,368 | 4,881 | 3,100 | 1,134 | 459 | 188 | 6,487 | 2,908 |
| North Dakota | 18 | 4 | 2 | 2 | 0 | 0 | 14 | 794 | 658 | 257 | 152 | 105 | 0 | 0 | 401 | 114 |
| South Dakota | 14 | 7 | 5 | 1 | 0 | 1 | 7 | 513 | 467 | 309 | 134 | 98 | 0 | 77 | 158 | 340 |
| Nebraska | 38 | 17 | 9 | 8 | 0 | 0 | 21 | 1,399 | 1,260 | 570 | 375 | 195 | 0 | 0 | 690 | 567 |
| Kansas | 82 | 37 | 23 | 12 | 1 | 1 | 45 | 3,947 | 3,584 | 1,610 | 1,015 | 512 | 55 | 28 | 1,974 | 1,744 |
| West North Central | 772 | 358 | 206 | 123 | 14 | 15 | 414 | 35,623 | 31,753 | 14,949 | 9,204 | 3,264 | 1,406 | 1,075 | 16,804 | 13,005 |
| Delaware | 27 | 12 | 6 | 4 | 0 | 2 | 15 | 2,424 | 2,239 | 1,028 | 774 | 138 | 43 | 73 | 1,211 | 552 |
| Maryland | 143 | 58 | 39 | 15 | 1 | 3 | 85 | 8,540 | 7,513 | 3,940 | 2,467 | 514 | 7 | 952 | 3,573 | 3,814 |
| District of Columbia | 59 | 39 | 31 | 1 | 0 | 7 | 20 | 5,925 | 4,564 | 3,603 | 1,628 | 37 | 0 | 1,938 | 961 | 5,264 |

| | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Virginia | 78 | 40 | 28 | 9 | 1 | 2 | 38 | 7,111 | 6,569 | 3,547 | 2,437 | 373 | 47 | 266 | 3,022 | 3,596 |
| West Virginia | 65 | 32 | 20 | 6 | 4 | 2 | 33 | 3,634 | 3,344 | 1,711 | 1,332 | 170 | 166 | 43 | 1,633 | 1,609 |
| North Carolina | 94 | 30 | 21 | 9 | 0 | 0 | 64 | 11,473 | 10,045 | 4,129 | 3,710 | 203 | 216 | 0 | 5,916 | 1,872 |
| South Carolina | 46 | 20 | 15 | 4 | 1 | 0 | 26 | 7,669 | 6,969 | 3,280 | 2,658 | 266 | 356 | 0 | 3,689 | 4,513 |
| Georgia | 149 | 71 | 55 | 12 | 1 | 3 | 78 | 11,173 | 10,137 | 4,429 | 3,583 | 646 | 14 | 186 | 5,708 | 3,427 |
| Florida | 168 | 70 | 42 | 22 | 1 | 5 | 98 | 10,572 | 9,372 | 3,703 | 2,855 | 626 | 75 | 147 | 5,669 | 2,923 |
| South Atlantic | 829 | 372 | 257 | 82 | 9 | 24 | 457 | 68,521 | 60,752 | 29,370 | 21,444 | 2,973 | 1,348 | 3,605 | 31,382 | 27,570 |
| Kentucky | 139 | 55 | 31 | 15 | 7 | 2 | 84 | 11,722 | 10,905 | 5,141 | 2,121 | 1,787 | 1,209 | 24 | 5,764 | 4,352 |
| Tennessee | 174 | 80 | 50 | 25 | 1 | 4 | 94 | 17,640 | 16,141 | 6,995 | 4,932 | 1,536 | 219 | 308 | 9,146 | 6,258 |
| Alabama | 155 | 70 | 61 | 6 | 3 | 0 | 85 | 19,078 | 17,452 | 8,472 | 7,533 | 572 | 367 | 0 | 8,980 | 7,991 |
| Mississippi | 64 | 26 | 16 | 8 | 0 | 2 | 38 | 5,856 | 5,386 | 2,453 | 1,875 | 272 | 0 | 306 | 2,933 | 1,944 |
| East South Central | 532 | 231 | 158 | 54 | 11 | 8 | 301 | 54,296 | 49,884 | 23,061 | 16,461 | 4,167 | 1,795 | 638 | 26,823 | 20,545 |
| Arkansas | 71 | 29 | 22 | 6 | 0 | 1 | 42 | 6,754 | 6,068 | 2,685 | 2,426 | 238 | 0 | 21 | 3,383 | 1,897 |
| Louisiana | 95 | 44 | 27 | 13 | 3 | 1 | 51 | 8,089 | 7,416 | 3,350 | 2,095 | 262 | 945 | 48 | 4,066 | 3,161 |
| Oklahoma | 98 | 26 | 17 | 7 | 1 | 1 | 72 | 8,347 | 7,351 | 2,878 | 1,672 | 517 | 661 | 28 | 4,473 | 1,829 |
| Texas | 307 | 132 | 98 | 27 | 4 | 3 | 175 | 26,197 | 23,587 | 9,788 | 7,446 | 1,721 | 362 | 259 | 13,799 | 7,570 |
| West South Central | 571 | 231 | 164 | 53 | 8 | 6 | 340 | 49,387 | 44,422 | 18,701 | 13,639 | 2,738 | 1,968 | 356 | 25,721 | 14,457 |
| Montana | 43 | 23 | 14 | 9 | 0 | 0 | 20 | 919 | 809 | 293 | 238 | 55 | 0 | 0 | 516 | 306 |
| Idaho | 25 | 10 | 8 | 2 | 0 | 0 | 15 | 2,978 | 2,539 | 2,211 | 1,222 | 989 | 0 | 0 | 328 | 2,588 |
| Wyoming | 15 | 7 | 5 | 1 | 1 | 0 | 8 | 1,048 | 935 | 393 | 304 | 60 | 29 | 0 | 542 | 226 |
| Colorado | 144 | 65 | 39 | 20 | 1 | 5 | 79 | 7,659 | 6,819 | 2,817 | 2,212 | 448 | 57 | 100 | 4,002 | 2,279 |
| New Mexico | 43 | 20 | 16 | 2 | 0 | 2 | 23 | 1,137 | 994 | 484 | 426 | 23 | 0 | 35 | 510 | 446 |
| Arizona | 84 | 39 | 27 | 8 | 1 | 3 | 45 | 4,638 | 3,934 | 2,271 | 1,368 | 820 | 20 | 63 | 1,663 | 2,707 |
| Utah | 30 | 19 | 14 | 5 | 0 | 0 | 11 | 1,471 | 1,254 | 578 | 480 | 98 | 0 | 0 | 676 | 566 |
| Nevada | 50 | 20 | 12 | 7 | 0 | 1 | 30 | 1,996 | 1,630 | 640 | 456 | 148 | 0 | 36 | 990 | 387 |
| Mountain | 434 | 203 | 135 | 54 | 3 | 11 | 231 | 21,846 | 18,914 | 9,687 | 6,706 | 2,641 | 106 | 234 | 9,227 | 9,505 |
| Washington | 319 | 144 | 96 | 40 | 3 | 5 | 175 | 9,460 | 8,136 | 3,993 | 2,866 | 688 | 94 | 345 | 4,143 | 4,053 |
| Oregon | 176 | 72 | 43 | 27 | 0 | 2 | 104 | 6,212 | 5,275 | 2,597 | 1,698 | 636 | 3 | 260 | 2,678 | 2,299 |
| California | 1,349 | 614 | 336 | 211 | 29 | 38 | 735 | 62,440 | 53,940 | 25,680 | 13,814 | 7,091 | 2,254 | 2,521 | 28,260 | 24,628 |
| Alaska | 32 | 16 | 6 | 10 | 0 | 0 | 16 | 1,115 | 912 | 410 | 238 | 172 | 0 | 0 | 502 | 355 |
| Hawaii | 55 | 26 | 10 | 4 | 7 | 5 | 29 | 2,022 | 1,771 | 971 | 750 | 61 | 118 | 42 | 800 | 993 |
| Guam | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 22 | 19 | 13 | 13 | 0 | 0 | 0 | 6 | 22 |
| Pacific | 1,932 | 873 | 492 | 292 | 39 | 50 | 1,059 | 81,271 | 70,053 | 33,664 | 19,379 | 8,648 | 2,469 | 3,168 | 36,389 | 32,350 |
| Puerto Rico | 124 | 65 | 26 | 15 | 2 | 22 | 59 | 10,827 | 9,399 | 5,634 | 2,789 | 547 | 124 | 2,174 | 3,765 | 6,033 |
| Virgin Islands | 7 | 5 | 5 | 0 | 0 | 0 | 2 | 202 | 193 | 131 | 131 | 0 | 0 | 0 | 62 | 151 |
| Outlying areas | 131 | 70 | 31 | 15 | 2 | 22 | 61 | 11,029 | 9,592 | 5,765 | 2,920 | 547 | 124 | 2,174 | 3,827 | 6,184 |
| Total all States and areas | 9,484 | 4,363 | 2,535 | 1,254 | 249 | 325 | 5,121 | 570,716 | 504,241 | 244,764 | 151,346 | 43,081 | 22,844 | 27,493 | 259,477 | 223,689 |

[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 1977

| 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 | | |
| Standard Federal regions [1] | | | | | | | | | | | | | | | | |
| Connecticut | 122 | 57 | 27 | 11 | 3 | 16 | 65 | 13,501 | 11,684 | 5,467 | 3,096 | 251 | 277 | 1,843 | 6,217 | 3,971 |
| Maine | 61 | 34 | 26 | 8 | 0 | 0 | 27 | 2,697 | 2,406 | 1,143 | 903 | 240 | 0 | 0 | 1,263 | 1,250 |
| Massachusetts | 304 | 115 | 65 | 38 | 3 | 9 | 189 | 15,232 | 13,616 | 5,913 | 3,705 | 1,048 | 107 | 1,053 | 7,703 | 4,399 |
| New Hampshire | 27 | 15 | 9 | 6 | 0 | 0 | 12 | 1,080 | 985 | 413 | 334 | 63 | 16 | 0 | 572 | 522 |
| Rhode Island | 33 | 21 | 7 | 3 | 0 | 11 | 12 | 1,011 | 822 | 410 | 151 | 26 | 0 | 233 | 412 | 657 |
| Vermont | 23 | 5 | 3 | 1 | 1 | 0 | 18 | 1,547 | 1,413 | 734 | 498 | 51 | 185 | 0 | 679 | 460 |
| Region I | 570 | 247 | 137 | 67 | 7 | 36 | 323 | 35,068 | 30,926 | 14,080 | 8,687 | 1,679 | 585 | 3,129 | 16,846 | 11,259 |
| Delaware | 27 | 12 | 6 | 4 | 0 | 2 | 15 | 2,424 | 2,239 | 1,028 | 774 | 138 | 43 | 73 | 1,211 | 552 |
| New Jersey | 344 | 166 | 86 | 47 | 8 | 25 | 178 | 17,304 | 15,172 | 7,517 | 3,808 | 1,599 | 457 | 1,653 | 7,655 | 6,224 |
| New York | 605 | 311 | 170 | 74 | 16 | 51 | 294 | 31,809 | 27,007 | 15,322 | 7,994 | 1,969 | 637 | 4,722 | 11,685 | 15,778 |
| Puerto Rico | 124 | 65 | 26 | 15 | 2 | 22 | 59 | 10,827 | 9,399 | 5,634 | 2,789 | 547 | 124 | 2,174 | 3,765 | 6,033 |
| Virgin Islands | 7 | 5 | 5 | 0 | 0 | 0 | 2 | 202 | 193 | 131 | 131 | 0 | 0 | 0 | 62 | 151 |
| Region II | 1,107 | 559 | 293 | 140 | 26 | 100 | 548 | 62,566 | 54,010 | 29,632 | 15,496 | 4,253 | 1,261 | 8,622 | 24,378 | 28,738 |
| District of Columbia | 59 | 39 | 31 | 1 | 0 | 7 | 20 | 5,925 | 4,564 | 3,603 | 1,628 | 37 | 0 | 1,938 | 961 | 5,264 |
| Maryland | 143 | 58 | 39 | 15 | 1 | 3 | 85 | 8,540 | 7,513 | 3,940 | 2,467 | 514 | 7 | 952 | 3,573 | 3,814 |
| Pennsylvania | 579 | 269 | 143 | 94 | 12 | 20 | 310 | 34,869 | 31,539 | 15,443 | 9,014 | 2,882 | 1,508 | 2,039 | 16,096 | 13,030 |
| Virginia | 78 | 40 | 28 | 9 | 1 | 2 | 38 | 7,111 | 6,569 | 3,547 | 2,437 | 373 | 471 | 266 | 3,022 | 3,596 |
| West Virginia | 65 | 32 | 20 | 6 | 4 | 2 | 33 | 3,634 | 3,344 | 1,711 | 1,332 | 170 | 166 | 43 | 1,633 | 1,609 |
| Region III | 924 | 438 | 261 | 125 | 18 | 34 | 486 | 60,079 | 53,529 | 28,244 | 16,878 | 3,976 | 2,152 | 5,238 | 25,285 | 27,313 |
| Alabama | 155 | 70 | 61 | 6 | 3 | 0 | 85 | 19,078 | 17,452 | 8,472 | 7,533 | 572 | 367 | 0 | 8,980 | 7,991 |
| Florida | 168 | 70 | 42 | 22 | 1 | 5 | 98 | 10,572 | 9,372 | 3,703 | 2,855 | 626 | 75 | 147 | 5,669 | 2,923 |
| Georgia | 149 | 71 | 55 | 12 | 1 | 3 | 78 | 11,173 | 10,137 | 4,429 | 3,583 | 646 | 14 | 186 | 5,708 | 3,427 |
| Kentucky | 139 | 55 | 31 | 15 | 7 | 2 | 84 | 11,722 | 10,905 | 5,141 | 2,121 | 1,787 | 1,209 | 24 | 5,764 | 4,352 |
| Mississippi | 64 | 26 | 16 | 8 | 0 | 2 | 38 | 5,856 | 5,386 | 2,453 | 1,875 | 272 | 0 | 306 | 2,933 | 1,944 |
| North Carolina | 94 | 30 | 21 | 9 | 0 | 0 | 64 | 11,473 | 10,045 | 4,129 | 3,710 | 203 | 216 | 0 | 5,916 | 1,872 |
| South Carolina | 46 | 20 | 15 | 4 | 1 | 0 | 26 | 7,669 | 6,969 | 3,280 | 2,658 | 266 | 356 | 0 | 3,689 | 4,513 |
| Tennessee | 174 | 80 | 50 | 25 | 1 | 4 | 94 | 17,640 | 16,141 | 6,995 | 4,932 | 1,536 | 219 | 308 | 9,146 | 6,258 |
| Region IV | 989 | 422 | 291 | 101 | 14 | 16 | 567 | 95,183 | 86,407 | 38,602 | 29,267 | 5,908 | 2,456 | 971 | 47,805 | 33,280 |

| | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Illinois | 496 | 230 | 124 | 75 | 19 | 12 | 266 | 33,688 | 29,761 | 15,738 | 7,496 | 4,227 | 2,077 | 1,938 | 14,023 | 14,846 |
| Indiana | 292 | 128 | 62 | 51 | 11 | 4 | 164 | 18,841 | 17,102 | 9,103 | 5,314 | 1,477 | 1,689 | 623 | 7,999 | 7,468 |
| Michigan | 557 | 254 | 129 | 51 | 55 | 19 | 303 | 30,268 | 25,676 | 12,400 | 6,734 | 1,376 | 3,558 | 732 | 13,276 | 13,462 |
| Minnesota | 204 | 100 | 61 | 32 | 2 | 5 | 104 | 7,531 | 6,716 | 3,146 | 2,280 | 560 | 72 | 234 | 3,570 | 2,930 |
| Ohio | 595 | 301 | 165 | 92 | 27 | 17 | 294 | 32,743 | 29,287 | 13,538 | 8,104 | 1,787 | 2,826 | 821 | 15,749 | 11,580 |
| Wisconsin | 245 | 119 | 76 | 30 | 8 | 5 | 126 | 14,153 | 12,401 | 6,426 | 4,442 | 1,107 | 291 | 586 | 5,975 | 6,426 |
| Region V | 2,389 | 1,132 | 617 | 331 | 122 | 62 | 1,257 | 137,224 | 120,943 | 60,351 | 34,370 | 10,534 | 10,513 | 4,934 | 60,592 | 56,712 |
| Arkansas | 71 | 29 | 22 | 6 | 0 | 1 | 42 | 6,754 | 6,068 | 2,685 | 2,426 | 238 | 0 | 21 | 3,383 | 1,897 |
| Louisiana | 95 | 44 | 27 | 13 | 3 | 1 | 51 | 8,089 | 7,416 | 3,350 | 2,095 | 262 | 945 | 48 | 4,066 | 3,161 |
| New Mexico | 43 | 20 | 16 | 2 | 0 | 2 | 23 | 1,137 | 994 | 484 | 426 | 23 | 0 | 35 | 510 | 446 |
| Oklahoma | 98 | 26 | 17 | 7 | 1 | 1 | 72 | 8,347 | 7,351 | 2,878 | 1,672 | 517 | 661 | 28 | 4,473 | 1,829 |
| Texas | 307 | 132 | 98 | 27 | 4 | 3 | 175 | 26,197 | 23,587 | 9,788 | 7,446 | 1,721 | 362 | 259 | 13,799 | 7,570 |
| Region VI | 614 | 251 | 180 | 55 | 8 | 8 | 363 | 50,524 | 45,416 | 19,185 | 14,065 | 2,761 | 1,968 | 391 | 26,231 | 14,903 |
| Iowa | 165 | 89 | 59 | 25 | 2 | 3 | 76 | 8,549 | 7,700 | 4,176 | 2,148 | 660 | 820 | 548 | 3,524 | 4,402 |
| Kansas | 82 | 37 | 23 | 12 | 1 | 1 | 45 | 3,947 | 3,584 | 1,610 | 1,015 | 512 | 55 | 28 | 1,974 | 1,744 |
| Missouri | 251 | 104 | 47 | 43 | 9 | 5 | 147 | 12,890 | 11,368 | 4,881 | 3,100 | 1,134 | 459 | 188 | 6,487 | 2,908 |
| Nebraska | 38 | 17 | 9 | 8 | 0 | 0 | 21 | 1,399 | 1,260 | 570 | 375 | 195 | 0 | 0 | 690 | 567 |
| Region VII | 536 | 247 | 138 | 88 | 12 | 9 | 289 | 26,785 | 23,912 | 11,237 | 6,638 | 2,501 | 1,334 | 764 | 12,675 | 9,621 |
| Colorado | 144 | 65 | 39 | 20 | 1 | 5 | 79 | 7,659 | 6,819 | 2,817 | 2,212 | 448 | 57 | 100 | 4,002 | 2,279 |
| Montana | 43 | 23 | 14 | 9 | 0 | 0 | 20 | 919 | 809 | 293 | 238 | 55 | 0 | 0 | 516 | 306 |
| North Dakota | 18 | 4 | 2 | 2 | 0 | 0 | 14 | 794 | 658 | 257 | 152 | 105 | 0 | 0 | 401 | 114 |
| South Dakota | 14 | 7 | 5 | 1 | 0 | 1 | 7 | 513 | 467 | 309 | 134 | 98 | 0 | 77 | 158 | 340 |
| Utah | 30 | 19 | 14 | 5 | 0 | 0 | 11 | 1,471 | 1,254 | 578 | 480 | 98 | 0 | 0 | 676 | 566 |
| Wyoming | 15 | 7 | 5 | 1 | 1 | 0 | 8 | 1,048 | 935 | 393 | 304 | 60 | 29 | 0 | 542 | 226 |
| Region VIII | 264 | 125 | 79 | 38 | 2 | 6 | 139 | 12,404 | 10,942 | 4,647 | 3,520 | 864 | 86 | 177 | 6,295 | 3,831 |
| Arizona | 84 | 39 | 27 | 8 | 1 | 3 | 45 | 4,638 | 3,934 | 2,271 | 1,368 | 820 | 20 | 63 | 1,663 | 2,707 |
| California | 1,349 | 614 | 336 | 211 | 29 | 38 | 735 | 62,440 | 53,940 | 25,680 | 13,814 | 7,091 | 2,254 | 2,521 | 28,260 | 24,628 |
| Hawaii | 55 | 26 | 10 | 4 | 7 | 5 | 29 | 2,022 | 1,771 | 971 | 750 | 61 | 118 | 42 | 800 | 993 |
| Guam | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 22 | 19 | 13 | 13 | 0 | 0 | 0 | 6 | 22 |
| Nevada | 50 | 20 | 12 | 7 | 0 | 1 | 30 | 1,996 | 1,630 | 640 | 456 | 148 | 0 | 36 | 990 | 387 |
| Region IX | 1,539 | 700 | 386 | 230 | 37 | 47 | 839 | 71,118 | 61,294 | 29,575 | 16,401 | 8,120 | 2,392 | 2,662 | 31,719 | 28,737 |
| Alaska | 32 | 16 | 6 | 10 | 0 | 0 | 16 | 1,115 | 912 | 410 | 238 | 172 | 0 | 0 | 502 | 355 |
| Idaho | 25 | 10 | 8 | 2 | 0 | 0 | 15 | 2,978 | 2,539 | 2,211 | 1,222 | 989 | 0 | 0 | 328 | 2,588 |
| Oregon | 176 | 72 | 43 | 27 | 0 | 2 | 104 | 6,212 | 5,275 | 2,597 | 1,698 | 636 | 3 | 260 | 2,678 | 2,299 |
| Washington | 319 | 144 | 96 | 40 | 3 | 5 | 175 | 9,460 | 8,136 | 3,993 | 2,866 | 688 | 94 | 345 | 4,143 | 4,053 |
| Region X | 552 | 242 | 153 | 79 | 3 | 7 | 310 | 19,765 | 16,862 | 9,211 | 6,024 | 2,485 | 97 | 605 | 7,651 | 9,295 |
| Total, all Federal regions | 9,484 | 4,363 | 2,535 | 1,254 | 249 | 325 | 5,121 | 570,716 | 504,241 | 244,764 | 151,346 | 43,081 | 22,844 | 27,493 | 259,477 | 223,689 |

[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 1977

| Industrial group [1] | Total elections | Number of elections in which representation rights were won by unions | | | | | Number of elections in which no representative was chosen | Number of employees eligible to vote | Total valid votes cast | Valid votes cast for unions | | | | | Total votes for no union | Eligible employees in units choosing representation |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Total | AFL-CIO unions | Teamsters | Other national unions | Other local unions | | | | Total | AFL-CIO unions | Teamsters | Other national unions | Other local unions | | |
| Food and kindred products | 516 | 252 | 132 | 107 | 4 | 9 | 264 | 35,973 | 31,698 | 18,147 | 10,539 | 5,479 | 291 | 1,838 | 13,551 | 18,132 |
| Tobacco manufactures | 4 | 2 | 2 | 0 | 0 | 0 | 2 | 495 | 473 | 261 | 261 | 0 | 0 | 0 | 212 | 177 |
| Textile mill products | 92 | 37 | 24 | 10 | 1 | 2 | 55 | 12,810 | 11,684 | 4,684 | 3,907 | 676 | 24 | 77 | 7,000 | 3,734 |
| Apparel and other finished products made from fabrics and similar materials | 132 | 46 | 34 | 6 | 1 | 5 | 86 | 17,087 | 15,149 | 6,063 | 5,445 | 245 | 136 | 237 | 9,086 | 3,760 |
| Lumber and wood products (except furniture) | 220 | 95 | 69 | 19 | 1 | 6 | 125 | 12,242 | 10,878 | 5,204 | 4,438 | 474 | 49 | 243 | 5,674 | 5,199 |
| Furniture and fixtures | 137 | 64 | 40 | 18 | 2 | 4 | 73 | 13,573 | 12,257 | 6,281 | 4,478 | 890 | 256 | 657 | 5,976 | 5,596 |
| Paper and allied products | 145 | 69 | 39 | 26 | 2 | 2 | 76 | 7,266 | 6,672 | 3,307 | 2,115 | 1,086 | 35 | 71 | 3,365 | 2,668 |
| Printing, publishing, and allied industries | 319 | 143 | 111 | 24 | 1 | 7 | 176 | 15,086 | 13,449 | 6,200 | 3,808 | 2,064 | 39 | 289 | 7,249 | 5,835 |
| Chemicals and allied products | 241 | 100 | 54 | 34 | 5 | 7 | 141 | 12,899 | 11,919 | 4,859 | 3,367 | 1,107 | 183 | 202 | 7,060 | 3,221 |
| Petroleum refining and related industries | 78 | 26 | 14 | 10 | 0 | 2 | 52 | 2,389 | 2,208 | 1,005 | 683 | 295 | 0 | 27 | 1,203 | 747 |
| Rubber and miscellaneous plastics products | 213 | 102 | 52 | 30 | 18 | 2 | 111 | 12,836 | 11,599 | 5,518 | 3,388 | 748 | 1,137 | 245 | 6,081 | 5,094 |
| Leather and leather products | 33 | 12 | 10 | 2 | 0 | 0 | 21 | 4,249 | 3,792 | 1,539 | 1,460 | 79 | 0 | 0 | 2,253 | 583 |
| Stone, clay, glass, and concrete products | 159 | 74 | 39 | 29 | 2 | 4 | 85 | 7,482 | 6,472 | 3,305 | 2,226 | 491 | 182 | 406 | 3,167 | 3,024 |
| Primary metal industries | 254 | 127 | 71 | 33 | 18 | 5 | 127 | 16,114 | 14,785 | 7,430 | 4,292 | 1,373 | 1,412 | 353 | 7,355 | 7,295 |
| Fabricated metal products (except machinery and transportation equipment) | 433 | 198 | 123 | 40 | 27 | 8 | 235 | 25,303 | 23,132 | 11,038 | 6,963 | 1,381 | 1,909 | 785 | 12,094 | 9,591 |
| Machinery (except electrical) | 465 | 211 | 128 | 33 | 37 | 13 | 254 | 44,937 | 41,476 | 20,260 | 10,458 | 1,863 | 5,543 | 2,396 | 21,216 | 15,748 |
| Electrical and electronic machinery, equipment, and supplies | 299 | 109 | 70 | 23 | 11 | 5 | 190 | 36,865 | 33,588 | 13,996 | 8,281 | 2,095 | 3,392 | 228 | 19,592 | 10,245 |
| Aircraft and parts | 233 | 115 | 52 | 27 | 31 | 5 | 118 | 20,262 | 18,615 | 9,478 | 4,427 | 1,125 | 3,474 | 452 | 9,137 | 8,784 |
| Ship and boat building and repairing | 33 | 13 | 10 | 2 | 1 | 0 | 20 | 4,021 | 3,562 | 2,231 | 1,733 | 200 | 85 | 213 | 1,331 | 1,991 |
| Automotive and other transportation equipment | 51 | 24 | 15 | 2 | 4 | 3 | 27 | 3,521 | 3,189 | 1,595 | 893 | 240 | 349 | 113 | 1,594 | 1,278 |
| Measuring, analyzing, and controlling instruments, photographic, medical, and optical goods, watches and clocks | 57 | 24 | 17 | 6 | 1 | 0 | 33 | 4,977 | 4,531 | 1,913 | 1,187 | 176 | 524 | 26 | 2,618 | 1,281 |
| Miscellaneous manufacturing industries | 223 | 98 | 54 | 30 | 5 | 9 | 125 | 15,400 | 13,713 | 6,648 | 3,301 | 1,549 | 459 | 1,339 | 7,065 | 5,877 |
| Manufacturing | 4,337 | 1,941 | 1,160 | 511 | 172 | 98 | 2,396 | 325,787 | 294,841 | 140,962 | 87,650 | 23,636 | 19,479 | 10,197 | 153,879 | 119,860 |

| | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Metal mining | 11 | 6 | 5 | 1 | 0 | 0 | 5 | 2,618 | 2,116 | 1,375 | 897 | 478 | 0 | 0 | 741 | 1,832 |
| Coal mining | 34 | 14 | 5 | 1 | 7 | 1 | 20 | 2,683 | 2,495 | 922 | 279 | 6 | 615 | 22 | 1,573 | 807 |
| Crude petroleum and natural gas production | 14 | 2 | 2 | 0 | 0 | 0 | 12 | 1,849 | 1,409 | 451 | 67 | 29 | 355 | 0 | 958 | 73 |
| Mining and quarrying of nonmetallic minerals (except fuels) | 29 | 11 | 7 | 4 | 0 | 0 | 18 | 945 | 854 | 373 | 252 | 121 | 0 | 0 | 481 | 271 |
| Mining | 88 | 33 | 19 | 6 | 7 | 1 | 55 | 8,095 | 6,874 | 3,121 | 1,495 | 643 | 970 | 22 | 3,753 | 2,983 |
| Construction | 191 | 89 | 49 | 28 | 5 | 7 | 102 | 5,514 | 4,845 | 2,311 | 1,376 | 634 | 268 | 221 | 2,534 | 2,305 |
| Wholesale trade | 728 | 285 | 93 | 173 | 11 | 8 | 443 | 18,676 | 16,993 | 7,558 | 2,742 | 4,008 | 285 | 523 | 9,435 | 6,194 |
| Retail trade | 1,203 | 526 | 349 | 137 | 17 | 23 | 677 | 41,011 | 35,494 | 16,302 | 11,494 | 3,547 | 437 | 824 | 19,192 | 14,885 |
| Finance, insurance, and real estate | 176 | 83 | 73 | 4 | 3 | 3 | 93 | 10,854 | 9,659 | 4,550 | 3,321 | 996 | 91 | 142 | 5,109 | 5,224 |
| U.S. Postal Service | 3 | 2 | 1 | 0 | 0 | 1 | 1 | 133 | 93 | 84 | 69 | 3 | 0 | 12 | 9 | 123 |
| Local and suburban transit and interurban highway passenger transportation | 62 | 36 | 15 | 17 | 2 | 2 | 26 | 2,792 | 2,206 | 1,197 | 551 | 328 | 143 | 175 | 1,009 | 1,322 |
| Motor freight transportation and warehousing | 573 | 269 | 41 | 211 | 5 | 12 | 304 | 12,817 | 11,393 | 5,350 | 1,132 | 3,793 | 174 | 251 | 6,043 | 5,236 |
| Water transportation | 25 | 12 | 7 | 3 | 1 | 1 | 13 | 538 | 446 | 231 | 173 | 32 | 10 | 16 | 215 | 292 |
| Other transportation | 37 | 25 | 10 | 13 | 2 | 0 | 12 | 1,118 | 897 | 533 | 249 | 186 | 25 | 73 | 364 | 733 |
| Communication | 254 | 144 | 125 | 5 | 2 | 12 | 110 | 16,571 | 14,572 | 9,987 | 6,750 | 197 | 24 | 3,106 | 4,585 | 12,248 |
| Electric, gas, and sanitary services | 162 | 77 | 53 | 21 | 1 | 2 | 85 | 11,184 | 9,957 | 5,515 | 3,431 | 466 | 9 | 1,609 | 4,442 | 5,597 |
| Transportation, communication, and other utilities | 1,113 | 563 | 251 | 270 | 13 | 29 | 550 | 45,020 | 39,471 | 22,813 | 12,286 | 4,912 | 385 | 5,230 | 16,658 | 25,428 |
| Hotels, rooming houses, camps, and other lodging places | 118 | 41 | 35 | 4 | 0 | 2 | 77 | 8,130 | 6,780 | 2,446 | 2,263 | 143 | 0 | 40 | 4,334 | 1,423 |
| Personal services | 52 | 21 | 4 | 15 | 0 | 2 | 31 | 1,710 | 1,528 | 840 | 246 | 365 | 48 | 181 | 688 | 720 |
| Automotive repair, services, and garages | 141 | 53 | 24 | 27 | 2 | 0 | 88 | 3,449 | 2,969 | 1,236 | 573 | 526 | 132 | 5 | 1,733 | 991 |
| Motion pictures | 17 | 10 | 9 | 1 | 0 | 0 | 7 | 758 | 603 | 240 | 184 | 56 | 0 | 0 | 363 | 281 |
| Amusement and recreation services (except motion pictures) | 40 | 24 | 18 | 4 | 1 | 1 | 16 | 1,516 | 1,178 | 754 | 431 | 143 | 91 | 89 | 424 | 1,232 |
| Health services | 746 | 408 | 283 | 20 | 4 | 101 | 338 | 71,511 | 58,947 | 28,623 | 19,762 | 1,692 | 118 | 7,051 | 30,324 | 29,826 |
| Educational services | 81 | 47 | 24 | 6 | 1 | 16 | 34 | 11,102 | 9,367 | 5,537 | 2,726 | 937 | 78 | 1,796 | 3,830 | 4,355 |
| Membership organizations | 25 | 15 | 9 | 1 | 0 | 5 | 10 | 548 | 512 | 293 | 230 | 2 | 0 | | 219 | 300 |
| Business services | 346 | 174 | 99 | 39 | 11 | 25 | 173 | 13,999 | 11,566 | 5,673 | 3,420 | 772 | 429 | 1,052 | 5,893 | 5,946 |
| Miscellaneous repair services | 35 | 19 | 11 | 5 | 2 | 1 | 16 | 707 | 651 | 399 | 226 | 134 | 33 | 6 | 252 | 549 |
| Museums, art galleries, botanical and zoological gardens | 1 | 1 | 0 | 0 | 0 | 1 | 0 | 15 | 15 | 10 | 0 | 0 | 0 | 10 | 5 | 15 |
| Legal services | 2 | 2 | 1 | 0 | 0 | 1 | 0 | 59 | 45 | 43 | 21 | 0 | 0 | 22 | 2 | 59 |
| Social services | 23 | 18 | 16 | 2 | 0 | 0 | 5 | 1,303 | 1,061 | 666 | 564 | 102 | 0 | 0 | 395 | 852 |
| Miscellaneous services | 8 | 5 | 4 | 1 | 0 | 0 | 3 | 440 | 421 | 155 | 129 | 17 | 0 | 9 | 266 | 78 |
| Services | 1,635 | 838 | 537 | 125 | 21 | 155 | 797 | 115,247 | 95,643 | 46,915 | 30,775 | 4,889 | 929 | 10,322 | 48,728 | 46,627 |
| Public administration | 10 | 3 | 3 | 0 | 0 | 0 | 7 | 379 | 328 | 148 | 138 | 10 | 0 | 0 | 180 | 60 |
| Total, all industrial groups | 9,484 | 4,363 | 2,535 | 1,254 | 249 | 325 | 5,121 | 570,716 | 504,241 | 244,764 | 151,346 | 43,081 | 22,844 | 27,493 | 259,477 | 223,689 |

[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 1977 [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 | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | AFO-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 | 528,866 | 8,635 | 100.0 | | 2,417 | 100.0 | 1,194 | 100 0 | 236 | 100.0 | 312 | 100.0 | 4,476 | 100.0 |
| Under 10 | 11,083 | 1,968 | 22 9 | 22.9 | 585 | 24.4 | 469 | 39 1 | 36 | 15 3 | 44 | 14.1 | 834 | 18.6 |
| 10 to 19 | 25,877 | 1,863 | 21 6 | 44.5 | 537 | 22 2 | 328 | 27 5 | 43 | 18 4 | 63 | 20.4 | 892 | 19 9 |
| 20 to 29 | 26,286 | 1,093 | 12 7 | 57 2 | 324 | 13 4 | 139 | 11.6 | 32 | 13.6 | 41 | 13.1 | 557 | 12.4 |
| 30 to 39 | 24,859 | 727 | 8 4 | 65.6 | 199 | 8.2 | 84 | 7.0 | 24 | 10 2 | 26 | 8.3 | 394 | 8.8 |
| 40 to 49 | 23,686 | 536 | 6 2 | 71 8 | 153 | 6 3 | 44 | 3 7 | 15 | 6 4 | 19 | 6.1 | 305 | 6 8 |
| 50 to 59 | 19,979 | 368 | 4.3 | 76 1 | 94 | 3.9 | 32 | 2.7 | 13 | 5 5 | 19 | 6.1 | 210 | 4.7 |
| 60 to 69 | 18,405 | 288 | 3 3 | 79 4 | 87 | 3 6 | 17 | 1 4 | 9 | 3 8 | 14 | 4.5 | 161 | 3 6 |
| 70 to 79 | 15,946 | 215 | 2 5 | 81 9 | 60 | 2 5 | 14 | 1 2 | 10 | 4.2 | 5 | 1 6 | 126 | 2 8 |
| 80 to 89 | 15,576 | 184 | 2.1 | 84 0 | 57 | 2.4 | 9 | 0 8 | 5 | 2.1 | 10 | 3 2 | 103 | 2.3 |
| 90 to 99 | 10,918 | 116 | 1 3 | 85 3 | 34 | 1 4 | 4 | 0.3 | 2 | 0 8 | 10 | 3 2 | 66 | 1 5 |
| 100 to 109 | 13,990 | 134 | 1 6 | 86 9 | 38 | 1 6 | 6 | 0 5 | 5 | 2.1 | 5 | 1 6 | 80 | 1.8 |
| 110 to 119 | 12,185 | 107 | 1 2 | 88 1 | 27 | 1 1 | 6 | 0 5 | 2 | 0 8 | 4 | 1.3 | 68 | 1.5 |
| 120 to 129 | 11,054 | 89 | 1 0 | 89 1 | 25 | 1 0 | 4 | 0 3 | 3 | 1.3 | 4 | 1 3 | 53 | 1 2 |
| 130 to 139 | 11,259 | 84 | 1 0 | 90 1 | 19 | 0 8 | 3 | 0 3 | 4 | 1.7 | 2 | 0.6 | 56 | 1.3 |
| 140 to 149 | 10,985 | 76 | 0 9 | 91.0 | 19 | 0 8 | 6 | 0.5 | 2 | 0.8 | 4 | 1 3 | 45 | 1 0 |
| 150 to 159 | 10,658 | 69 | 0 8 | 91 8 | 15 | 0 6 | 4 | 0.3 | 2 | 0.8 | 7 | 2 2 | 41 | 0 9 |
| 160 to 169 | 7,895 | 48 | 0 6 | 92 4 | 10 | 0 4 | 5 | 0.4 | 1 | 0 4 | 2 | 0.6 | 30 | 0.7 |
| 170 to 179 | 7,356 | 42 | 0 5 | 92 9 | 10 | 0 4 | 1 | 0 1 | 3 | 1 3 | 2 | 0.6 | 26 | 0.6 |
| 180 to 189 | 10,126 | 55 | 0 6 | 93,5 | 20 | 0 8 | 1 | 0.1 | 1 | 0.4 | 0 | ---- | 33 | 0.7 |
| 190 to 199 | 10,685 | 55 | 0.6 | 94 1 | 13 | 0.5 | 1 | 0 1 | 2 | 0 8 | 2 | 0.6 | 37 | 0 8 |
| 200 to 299 | 51,109 | 214 | 2 5 | 96.6 | 41 | 1 7 | 6 | 0 5 | 12 | 5 1 | 15 | 4.8 | 140 | 3 1 |
| 300 to 399 | 42,014 | 124 | 1 4 | 98 0 | 23 | 1 0 | 3 | 0 3 | 2 | 0 8 | 4 | 1 3 | 92 | 2.1 |
| 400 to 499 | 25,520 | 57 | 0.7 | 98 7 | 8 | 0 3 | 0 | ---- | 3 | 1 3 | 3 | 1 0 | 43 | 1 0 |
| 500 to 599 | 15,611 | 29 | 0.3 | 99 0 | 5 | 0 2 | 2 | 0 2 | 1 | 0 4 | 1 | 0 3 | 20 | 0 4 |
| 600 to 799 | 31,984 | 46 | 0 5 | 99 5 | 6 | 0 2 | 2 | 0.2 | 3 | 1.3 | 1 | 0.3 | 34 | 0 8 |
| 800 to 999 | 13,171 | 15 | 0.2 | 99 7 | 2 | 0 1 | 1 | 0.1 | 0 | ---- | 0 | ---- | 12 | 0 3 |
| 1,000 to 1,999 | 34,497 | 27 | 0 3 | 100 0 | 6 | 0.2 | 2 | 0 2 | 1 | 0.4 | 3 | 1.0 | 15 | 0 3 |
| 2,000 to 2,999 | 9,295 | 4 | 0 0 | 100 0 | 0 | ---- | 1 | 0.1 | 0 | ---- | 0 | ---- | 3 | 0 1 |
| 3,000 to 9,999 | 6,857 | 2 | 0 0 | 100.0 | 0 | ---- | 0 | ---- | 0 | ---- | 2 | 0 6 | 0 | ---- |

| | B. Decertification elections (RD) | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Total RD elections | 41,850 | 849 | 100.0 | | 118 | 100 0 | 60 | 100.0 | 13 | 100.0 | 13 | 100.0 | 645 | 100 0 |
| Under 0 | 1,503 | 270 | 31 9 | 31 9 | 15 | 12 7 | 12 | 20 1 | 1 | 7 7 | 0 | | 242 | 37 3 |
| 10 to 19 | 2,738 | 199 | 23.4 | 55 3 | 24 | 20 6 | 20 | 33 3 | 1 | 7 7 | 4 | 30 7 | 150 | 23 3 |
| 20 to 29 | 2,516 | 104 | 12 2 | 67 5 | 11 | 9.3 | 4 | 6.7 | 4 | 30 7 | 1 | 7.7 | 84 | 13 0 |
| 30 to 39 | 1,612 | 47 | 5.5 | 73 0 | 8 | 6 8 | 2 | 3 3 | 1 | 7 7 | 1 | 7.7 | 35 | 5.4 |
| 40 to 49 | 2,258 | 52 | 6 1 | 79.1 | 12 | 10 2 | 2 | 3 3 | 1 | 7.7 | 1 | 7 7 | 36 | 5.6 |
| 50 to 59 | 1,246 | 23 | 2 7 | 81 8 | 9 | 7.6 | 2 | 3 3 | 0 | | 0 | | 12 | 1.9 |
| 60 to 69 | 1,805 | 28 | 3 3 | 85 1 | 8 | 6 8 | 3 | 5 0 | 3 | 23 1 | 0 | | 14 | 2 2 |
| 70 to 79 | 1,339 | 18 | 2 1 | 87.2 | 6 | 5 1 | 2 | 3 3 | 0 | | 0 | | 10 | 1 6 |
| 80 to 89 | 1,518 | 18 | 2 1 | 89 3 | 3 | 2.5 | 3 | 5 0 | 1 | 7 7 | 0 | | 11 | 1.7 |
| 90 to 99 | 570 | 6 | 0 7 | 90 0 | 2 | 1 7 | 0 | | 1 | 7 7 | 0 | | 3 | 0.5 |
| 100 to 109 | 934 | 9 | 1 1 | 91 1 | 1 | 0.8 | 1 | 1.7 | 0 | | 1 | 7 7 | 6 | 0.9 |
| 110 to 119 | 570 | 5 | 0.6 | 91 7 | 0 | | 0 | | 0 | | 0 | | 5 | 0 8 |
| 120 to 129 | 624 | 5 | 0 6 | 92 3 | 2 | 1 7 | 0 | | 0 | | 0 | | 3 | 0.5 |
| 130 to 139 | 1,066 | 8 | 0 9 | 93 2 | 1 | 0.8 | 1 | 1.7 | 0 | | 0 | | 6 | 0 9 |
| 140 to 149 | 281 | 2 | 0 2 | 93 4 | 0 | | 0 | | 0 | | 0 | | 2 | 0 3 |
| 150 to 159 | 614 | 4 | 0 5 | 93 9 | 2 | 1 7 | 0 | | 0 | | 0 | | 2 | 0 3 |
| 160 to 169 | 0 | 0 | 0 0 | 93 9 | 0 | | 0 | | 0 | | 0 | | 0 | |
| 170 to 199 | 2,913 | 16 | 1.9 | 95 8 | 2 | 1 7 | 4 | 6 7 | 0 | | 0 | | 10 | 1 6 |
| 200 to 299 | 3,531 | 15 | 1 8 | 97 6 | 5 | 4 2 | 2 | 3.3 | 0 | | 3 | 23 1 | 5 | 0.8 |
| 300 to 499 | 4,142 | 11 | 1.3 | 98.9 | 3 | 2 5 | 0 | | 0 | | 2 | 15 4 | 6 | 0.9 |
| 500 to 799 | 1,979 | 3 | 0 4 | 99.3 | 1 | 0 8 | 0 | | 0 | | 0 | | 2 | 0.3 |
| 800 and over | 8,091 | 6 | 0.7 | 100 0 | 3 | 2 5 | 2 | 3 3 | 0 | | 0 | | 1 | 0 2 |

[1] See Glossary for definitions of terms.

# Table 18.—Distribution of Unfair Labor Practice Situations Received, by Number of Employees in Establishments, Fiscal Year 1977 [1]

| Size of establishment (number of employees) | Total number of situations | Total | | Type of situations | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Percent of all situations | Cumulative percent of all situations | CA | | CB | | CC | | CD | | CE | | CG | | CP | | CA-CB combinations | | Other C combinations | |
| | | | | 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 | Number of situations | Percent by size class |
| Total | [2]33,547 | 100 0 | ------- | 22,751 | 110 0 | 6,564 | 100 0 | 1,391 | 100 0 | 294 | 100 0 | 90 | 100 0 | 57 | 100 0 | 384 | 100 0 | 1,768 | 100 0 | 248 | 100.0 |
| Under 10 | 9,244 | 27 6 | 27 6 | 6,001 | 26 3 | 1,859 | 28 2 | 547 | 39 2 | 101 | 34 5 | 51 | 56.8 | 4 | 7 0 | 160 | 41 6 | 403 | 22 9 | 118 | 47 8 |
| 10 to 19 | 2,995 | 8 9 | 36. 5 | 2,212 | 9. 6 | 385 | 5.9 | 172 | 12.3 | 30 | 10 2 | 8 | 8 9 | 0 | ------- | 68 | 17 7 | 93 | 5 3 | 27 | 10.9 |
| 20 to 29 | 2,310 | 6 9 | 43 4 | 1,706 | 7 4 | 309 | 4 7 | 118 | 8 4 | 26 | 8 8 | 14 | 15 6 | 1 | 1 8 | 40 | 10 4 | 72 | 4.1 | 24 | 9 7 |
| 30 to 39 | 1,696 | 5 1 | 48 5 | 1,259 | 5 5 | 248 | 3.8 | 59 | 4.2 | 24 | 8 2 | 1 | 1.1 | 4 | 7 0 | 24 | 6.3 | 70 | 4.0 | 7 | 2 8 |
| 40 to 49 | 1,191 | 3.6 | 52 1 | 883 | 3 9 | 183 | 2 8 | 43 | 3 1 | 13 | 4 4 | 0 | ------- | 0 | ------- | 13 | 3.4 | 48 | 2.7 | 8 | 3 2 |
| 50 to 59 | 1,302 | 3 9 | 56. 0 | 925 | 4 1 | 226 | 3 4 | 63 | 4.5 | 13 | 4 4 | 4 | 4 4 | 3 | 5 3 | 10 | 2.5 | 48 | 2.7 | 10 | 4 0 |
| 60 to 69 | 885 | 2.6 | 58.6 | 655 | 2 9 | 148 | 2 3 | 25 | 1.8 | 5 | 1 7 | 0 | ------- | 0 | ------- | 10 | 2 5 | 37 | 2 1 | 5 | 2 0 |
| 70 to 79 | 715 | 2 1 | 60 7 | 558 | 2 5 | 107 | 1 6 | 9 | 0 6 | 4 | 1.4 | 1 | 1 1 | 0 | ------- | 7 | 1 8 | 25 | 1 4 | 4 | 1.6 |
| 80 to 89 | 569 | 1 7 | 62 4 | 417 | 1 8 | 87 | 1 3 | 23 | 1 7 | 7 | 2 4 | 0 | ------- | 2 | 3 5 | 6 | 1.6 | 23 | 1.3 | 4 | 1 6 |
| 90 to 99 | 355 | 1 1 | 63 5 | 268 | 1 2 | 61 | 0 9 | 10 | 0 7 | 2 | 0.7 | 0 | ------- | 0 | ------- | 3 | 0 8 | 11 | 0 6 | 0 | ------- |
| 100 to 109 | 1,302 | 3 9 | 67. 4 | 820 | 3. 6 | 306 | 4 7 | 54 | 3 9 | 6 | 2 0 | 2 | 2 2 | 2 | 3 5 | 14 | 3 6 | 90 | 5.1 | 8 | 3 2 |
| 110 to 119 | 206 | 0 6 | 68 0 | 173 | 0 8 | 21 | 0 3 | 3 | 0 2 | 2 | 0 7 | 0 | ------- | 1 | 1 8 | 0 | ------- | 5 | 0 3 | 1 | 0 4 |
| 120 to 129 | 422 | 1 3 | 69 3 | 318 | 1 4 | 66 | 1 0 | 8 | 0. 6 | 3 | 1.0 | 0 | ------- | 0 | ------- | 0 | ------- | 26 | 1 5 | 1 | 0 4 |
| 130 to 139 | 179 | 0. 5 | 69. 8 | 133 | 0. 6 | 29 | 0. 4 | 4 | 0 3 | 1 | 0 3 | 0 | ------- | 2 | 3 5 | 0 | ------- | 9 | 0. 5 | 1 | 0 4 |
| 140 to 149 | 146 | 0 4 | 70 2 | 109 | 0 5 | 22 | 0 3 | 3 | 0 2 | 1 | 0 3 | 1 | 1 1 | 0 | ------- | 2 | 0 5 | 8 | 0 5 | 0 | ------- |
| 150 to 159 | 631 | 1 9 | 72. 1 | 424 | 1. 9 | 135 | 2 1 | 16 | 1 2 | 6 | 2. 0 | 1 | 1 1 | 0 | ------- | 4 | 1 0 | 44 | 2.5 | 1 | 0 4 |
| 160 to 169 | 159 | 0 5 | 72 6 | 119 | 0 5 | 26 | 0 4 | 3 | 0 2 | 3 | 1 0 | 0 | ------- | 1 | 1 8 | 1 | 0 3 | 6 | 0.3 | 0 | ------- |
| 170 to 179 | 198 | 0 6 | 73. 2 | 133 | 0. 6 | 38 | 0 6 | 7 | 0 5 | 1 | 0 3 | 1 | 1 1 | 1 | 1 8 | 4 | 1. 0 | 12 | 0. 7 | 1 | 0. 4 |
| 180 to 189 | 145 | 0 4 | 73 6 | 116 | 0 5 | 18 | 0. 3 | 4 | 0 3 | 1 | 0. 3 | 0 | ------- | 0 | ------- | 0 | ------- | 6 | 0 3 | 0 | ------- |
| 190 to 199 | 69 | 0 2 | 73 8 | 60 | 0 3 | 6 | 0 1 | 0 | ------- | 0 | ------- | 0 | ------- | 0 | ------- | 1 | 0. 3 | 2 | 0. 1 | 0 | ------- |
| 200 to 299 | 1,760 | 5 2 | 79 0 | 1,163 | 5. 1 | 405 | 6 2 | 47 | 3 4 | 14 | 4 8 | 0 | ------- | 3 | 5. 3 | 6 | 1 6 | 117 | 6 6 | 5 | 2. 0 |
| 300 to 399 | 1,212 | 3 6 | 82 6 | 777 | 3 4 | 273 | 4 2 | 27 | 1 9 | 7 | 2 4 | 1 | 1. 1 | 6 | 10 4 | 0 | ------- | 116 | 6 6 | 5 | 2 0 |
| 400 to 499 | 714 | 2 1 | 84 7 | 502 | 2 2 | 140 | 2 1 | 9 | 0 6 | 3 | 1. 0 | 0 | ------- | 2 | 3 5 | 2 | 0. 5 | 55 | 3. 1 | 1 | 0. 4 |
| 500 to 599 | 666 | 2. 0 | 86 7 | 427 | 1 9 | 168 | 2 6 | 12 | 0. 9 | 1 | 0 3 | 0 | ------- | 2 | 3. 5 | 1 | 0 3 | 52 | 2. 9 | 3 | 1 2 |
| 600 to 699 | 381 | 1 1 | 87 8 | 254 | 1. 1 | 81 | 1. 2 | 15 | 1. 1 | 1 | 0 3 | 0 | ------- | 3 | 5. 3 | 1 | 0 3 | 25 | 1 4 | 1 | 0. 4 |
| 700 to 799 | 242 | 0 7 | 88 5 | 149 | 0 7 | 64 | 1 0 | 7 | 0 5 | 0 | ------- | 0 | ------- | 0 | ------- | 0 | ------- | 22 | 1 2 | 0 | ------- |
| 800 to 899 | 230 | 0 7 | 89. 2 | 151 | 0 7 | 58 | 0. 9 | 4 | 0 3 | 2 | 0 7 | 0 | ------- | 2 | 3. 5 | 0 | ------- | 13 | 0 7 | 0 | ------- |
| 900 to 999 | 129 | 0 4 | 89 6 | 76 | 0. 3 | 29 | 0 4 | 11 | 0. 8 | 0 | ------- | 0 | ------- | 3 | 5 3 | 1 | 0. 3 | 9 | 0 5 | 0 | ------- |
| 1,000 to 1,999 | 1,230 | 3 7 | 93 3 | 734 | 3 2 | 346 | 5 3 | 28 | 2 0 | 4 | 1 4 | 0 | ------- | 5 | 8. 7 | 0 | ------- | 110 | 6 2 | 3 | 1. 2 |
| 2,000 to 2,999 | 504 | 1. 5 | 94. 8 | 286 | 1. 3 | 145 | 2. 2 | 12 | 0 9 | 5 | 1. 7 | 1 | 1 1 | 1 | 1 8 | 0 | ------- | 50 | 2 8 | 4 | 1. 6 |
| 3,000 to 3,999 | 353 | 1 0 | 95 8 | 178 | 0 8 | 128 | 2. 0 | 4 | 0 3 | 2 | 0 7 | 0 | ------- | 2 | 3 5 | 1 | 0 3 | 37 | 2 1 | 1 | 0. 4 |
| 4,000 to 4,999 | 174 | 0 5 | 96 3 | 90 | 0 4 | 58 | 0 9 | 1 | 0. 1 | 2 | 0. 7 | 0 | ------- | 1 | 1. 8 | 0 | ------- | 21 | 1 2 | 1 | 0. 4 |
| 5,000 to 9,999 | 492 | 1 5 | 97. 8 | 247 | 1. 1 | 180 | 2 7 | 7 | 0 5 | 2 | 0 7 | 1 | 1 1 | 0 | ------- | 0 | ------- | 52 | 2. 9 | 3 | 1. 2 |
| Above 9,999 | 741 | 2 2 | 100 0 | 428 | 1 9 | 209 | 3 2 | 36 | 2. 6 | 2 | 0 7 | 3 | 3 3 | 6 | 10 4 | 5 | 1 3 | 51 | 2 9 | 1 | 0 4 |

[1] See Glossary for definition of terms

[2] Based on revised situation count which absorbs companion case, 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 1977; and Cumulative Totals, Fiscal Years 1936–1977

| | Fiscal year 1977 | | | | | | | | | July 5, 1935–Sept. 30, 1977 | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | 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 | 289 | 240 | 41 | 4 | 4 | | | | | | |
| On petitions for review and/or enforcement | 260 | 255 | 37 | 4 | 4 | 100 0 | 100 0 | 100 0 | 100 0 | 6,523 | 100 0 |
| Board orders affirmed in full | 177 | 146 | 27 | 4 | 0 | 67 9 | 73 0 | 100 0 | | 4,128 | 63 3 |
| Board orders affirmed with modification | 31 | 28 | 3 | 0 | 0 | 13 0 | 8 1 | | | 1,059 | 16 2 |
| Remanded to Board | 10 | 3 | 3 | 0 | 4 | 1 4 | 8 1 | | 100 0 | 288 | 4 4 |
| Board orders partially affirmed and partially remanded | 2 | 2 | 0 | 0 | 0 | 0 9 | | | | 99 | 1. 5 |
| Board orders set aside | 40 | 36 | 4 | 0 | 0 | 16 7 | 10 8 | | | 949 | 14 6 |
| On petitions for contempt | 29 | 25 | 4 | 0 | 0 | 100 0 | 100 0 | | | | |
| Compliance after filing of petition, before court order | 6 | 5 | 1 | 0 | 0 | 20 0 | 25 0 | | | | |
| Court orders holding respondent in contempt | 23 | 20 | 3 | 0 | 0 | 80 0 | 75 0 | | | | |
| Court orders denying petition | 0 | 0 | 0 | 0 | 0 | | | | | | |
| Proceedings decided by U S Supreme Court [3] | 2 | 1 | 1 | 0 | 0 | 100 0 | 100 0 | | | 217 | 100 0 |
| Board orders affirmed in full | 2 | 1 | 1 | 0 | 0 | 100 0 | 100 0 | | | 130 | 59 9 |
| Board order affirmed with modification | 0 | 0 | 0 | 0 | 0 | | | | | 16 | 7 3 |
| Board orders set aside | 0 | 0 | 0 | 0 | 0 | | | | | 34 | 15. 6 |
| Remanded to Board | 0 | 0 | 0 | 0 | 0 | | | | | 18 | 8 3 |
| Remanded to court of appeals | 0 | 0 | 0 | 0 | 0 | | | | | 16 | 7. 4 |
| Board's request for remand or modification of enforcement order denied | 0 | 0 | 0 | 0 | 0 | | | | | 1 | 0 5 |
| Contempt cases remanded to courts of appeals | 0 | 0 | 0 | 0 | 0 | | | | | 1 | 0. 5 |
| Contempt cases enforced | 0 | 0 | 0 | 0 | 0 | | | | | 1 | 0 5 |

[1] "Proceedings" are comparable to "cases" reported in annual reports prior to fiscal year 1964 This term more accurately describes the data inasmuch as a single "proceeding" often includes more than one "case " See Glossary for definitions of terms.
[2] A proceeding in which the Board had entered an order dismissing the complaint and the charging party appealed such dismissal in the courts of appeals
[3] The Board filed an amicus brief in one case, *Farmer* v. *Carpenters*, 430 U S 290, involving a preemption question The Board's position was not adopted by the Court.

## Table 19A.—Proceedings Decided by Circuit Courts of Appeals on Petitions for Enforcement and/or Review of Board Orders, Fiscal Year 1977, Compared With 5-Year Cumulative Totals, Fiscal Years 1972 Through 1976

| Circuit courts of appeals (headquarters) | Total fiscal year 1977 | Total fiscal years 1972–76 | Affirmed in full | | | | Modified | | | | Remanded in full | | | | Affirmed in part and remanded in part | | | | Set aside | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | Fiscal year 1977 | | Cumulative fiscal years 1972–76 | | Fiscal year 1977 | | Cumulative fiscal years 1972–76 | | Fiscal year 1977 | | Cumulative fiscal years 1972–76 | | Fiscal year 1977 | | Cumulative fiscal years 1972–76 | | Fiscal year 1977 | | Cumulative fiscal years 1972–76 | |
| | | | Number | Percent | Number | Percent | Number | Percent | Number | Percent | Number | Percent | Number | Percent | Number | Percent | Number | Percent | Number | Percent | Number | Percent |
| Total all circuits | 260 | 1,500 | 177 | 68.1 | 1,095 | 73.0 | 31 | 11.9 | 140 | 9.3 | 10 | 3.8 | 73 | 4 9 | 2 | 0.8 | 27 | 1.8 | 40 | 15.4 | 165 | 11.0 |
| 1 Boston, Mass | 17 | 53 | 12 | 70 6 | 41 | 77 4 | 4 | 23.5 | 4 | 7.6 | 1 | 5.9 | 2 | 3.8 | 0 | ------ | 0 | ------ | 0 | ------ | 6 | 11.3 |
| 2 New York, N Y | 31 | 121 | 21 | 67.7 | 95 | 78.5 | 4 | 12.9 | 10 | 8.3 | 0 | ------ | 3 | 2 5 | 0 | ------ | 2 | 1.7 | 6 | 19.4 | 11 | 9.1 |
| 3 Philadelphia, Pa | 23 | 92 | 17 | 73 9 | 69 | 75.0 | 2 | 8.7 | 4 | 4.4 | 2 | 8.7 | 7 | 7.6 | 0 | ------ | 1 | 1.0 | 2 | 8 7 | 11 | 12 0 |
| 4 Richmond, Va | 23 | 85 | 15 | 65.2 | 61 | 71.7 | 4 | 17.4 | 10 | 11.8 | 1 | 4.4 | 4 | 4.7 | 0 | ------ | 0 | ------ | 3 | 13.0 | 10 | 11.8 |
| 5 New Orleans, La | 21 | 237 | 13 | 61.9 | 190 | 80.2 | 3 | 14.3 | 15 | 6.3 | 0 | ------ | 8 | 3.4 | 0 | ------ | 3 | 1.3 | 5 | 23.8 | 21 | 8.8 |
| 6 Cincinnati, Ohio | 31 | 219 | 19 | 61 2 | 154 | 70.3 | 6 | 19.4 | 22 | 10.1 | 0 | ------ | 8 | 3.7 | 0 | ------ | 3 | 1.3 | 6 | 19.4 | 32 | 14.6 |
| 7 Chicago, Ill | 29 | 155 | 21 | 72.4 | 119 | 76.8 | 1 | 3.5 | 15 | 9.7 | 1 | 3.5 | 6 | 3.9 | 0 | ------ | 0 | ------ | 6 | 20.6 | 15 | 9.7 |
| 8 St Louis, Mo | 16 | 127 | 10 | 62.5 | 75 | 59.1 | 2 | 12.5 | 29 | 22.8 | 0 | ------ | 5 | 3.9 | 0 | ------ | 2 | 1.6 | 4 | 25.0 | 16 | 12.6 |
| 9. San Francisco, Calif | 42 | 233 | 28 | 66.7 | 165 | 70.8 | 3 | 7.1 | 22 | 9.4 | 2 | 4.8 | 14 | 6.0 | 1 | 2.4 | 5 | 2.2 | 8 | 19 0 | 27 | 11.6 |
| 10 Denver, Colo | 6 | 62 | 5 | 83.3 | 49 | 79.0 | 1 | 16.7 | 2 | 3.2 | 0 | ------ | 0 | ------ | 0 | ------ | 1 | 1.6 | 0 | ------ | 10 | 16.1 |
| Washington, D.C | 21 | 116 | 16 | 76 1 | 77 | 66.4 | 1 | 4.8 | 7 | 6.0 | 3 | 14.3 | 16 | 13.8 | 1 | 4.8 | 10 | 8.6 | 0 | ------ | 6 | 5.2 |

[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 1977

| | Total proceedings | Injunction proceedings | | Total dispositions | Disposition of injunctions | | | | | | Pending in district court September 30, 1977 |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Pending in district court October 1, 1976 | Filed in district court fiscal year 1977 | | Granted | Denied | Settled | Withdrawn | Dismissed | Inactive | |
| Under sec. 10(e), total | [1] 4 | 0 | 4 | 4 | 2 | 1 | 1 | 0 | 0 | 0 | 0 |
| Under sec 10(j), total | 50 | 5 | 45 | 40 | 24 | 8 | 5 | 1 | 1 | 1 | 10 |
| 8(a)(1) | 4 | 0 | 4 | 3 | 3 | 0 | 0 | 0 | 0 | 0 | 1 |
| 8(a)(1)(2) | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 |
| 8(a)(1)(2)(3), 8(b)(1)(2) | 5 | 1 | 4 | 4 | 3 | 0 | 1 | 0 | 0 | 0 | 1 |
| 8(a)(1)(2)(3)(4) | 1 | 0 | 1 | 1 | 0 | 0 | 1 | 0 | 0 | 0 | 0 |
| 8(a)(1)(2)(3)(5) | 2 | 1 | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 1 |
| 8(a)(1)(3) | 6 | 0 | 6 | 6 | 3 | 3 | 0 | 0 | 0 | 0 | 0 |
| 8(a)(1)(3)(5) | 11 | 1 | 10 | 10 | 3 | 3 | 3 | 1 | 0 | 0 | 1 |
| 8(a)(1)(5) | 13 | 2 | 11 | 8 | 6 | 2 | 0 | 0 | 0 | 0 | 5 |
| 8(b)(1) | 4 | 0 | 4 | 4 | 3 | 0 | 0 | 0 | 0 | 1 | 0 |
| 8(b)(1)(2) | 2 | 0 | 2 | 2 | 2 | 0 | 0 | 0 | 0 | 0 | 0 |
| 8(b)(3) | 1 | 0 | 1 | 1 | 0 | 0 | 0 | 0 | 1 | 0 | 0 |
| Under sec. 10(1), total | 196 | 12 | 184 | 174 | 95 | 7 | 53 | 7 | 3 | 9 | 22 |
| 8(b)(4)(A) | 5 | 0 | 5 | 5 | 1 | 0 | 2 | 0 | 1 | 1 | 0 |
| 8(b)(4)(A), 8(e) | 1 | 0 | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 |
| 8(b)(4)(A)(B) | 11 | 0 | 11 | 10 | 4 | 1 | 3 | 0 | 1 | 1 | 1 |
| 8(b)(4)(A)(B), 8(e) | 2 | 0 | 2 | 2 | 0 | 1 | 1 | 0 | 0 | 0 | 0 |
| 8(b)(4)(B) | 88 | 8 | 80 | 74 | 37 | 2 | 26 | 5 | 1 | 3 | 14 |
| 8(b)(4)(B), 7(A) | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 |
| 8(b)(4)(B)(C) | 1 | 0 | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 |
| 8(b)(4)(B), 4(D) | 3 | 0 | 3 | 3 | 2 | 0 | 1 | 0 | 0 | 0 | 0 |
| 8(b)(4)(D) | 29 | 1 | 28 | 28 | 19 | 1 | 7 | 0 | 0 | 1 | 1 |
| 8(b)(4)(D), 7(C) | 1 | 0 | 1 | 1 | 0 | 0 | 1 | 0 | 0 | 0 | 0 |
| 8(b)(7)(A) | 7 | 0 | 7 | 5 | 4 | 0 | 1 | 0 | 0 | 0 | 2 |
| 8(b)(7)(B) | 7 | 1 | 6 | 6 | 3 | 1 | 1 | 0 | 0 | 1 | 1 |
| 8(b)(7)(C) | 29 | 1 | 28 | 27 | 20 | 0 | 4 | 1 | 0 | 2 | 2 |
| 8(e) | 11 | 0 | 11 | 11 | 3 | 1 | 6 | 1 | 0 | 0 | 0 |

[1] In Courts of Appeals.

# Table 21.—Miscellaneous Litigation Involving NLRB; Outcome of Proceedings in Which Court Decision Issued in Fiscal Year 1977

| Type of litigation | Number of proceedings | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | Total—all courts | | | In courts of appeals | | | In district courts | | |
| | Number decided | Court determination | | Number decided | Court determination | | Number decided | Court determination | |
| | | Upholding Board position | Contrary to Board position | | Upolding Board position | Contrary to Board position | | Upholding Board position | Contrary to Board position |
| Totals—all types | 63 | 55 | 8 | 28 | 26 | 2 | 35 | 29 | 6 |
| NLRB-initiated actions or interventions | 11 | 10 | 1 | 2 | 2 | 0 | 9 | 8 | 1 |
| To enforce subpena | 3 | 3 | 0 | 1 | 1 | 0 | 2 | 2 | 0 |
| To restrain dissipation of assets by respondent | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| To defend Board's jurisdiction | 1 | 1 | 0 | 0 | 0 | 0 | 1 | 1 | 0 |
| To lift bankruptcy stay | 7 | 6 | 1 | 1 | 1 | 0 | 6 | 5 | 1 |
| Action by other parties | 52 | 45 | 7 | 26 | 24 | 2 | 26 | 21 | 5 |
| To review 10(k) determination | 1 | 1 | 0 | 1 | 1 | 0 | 0 | 0 | 0 |
| To restrain NLRB from | 19 | 17 | 2 | 7 | 7 | 0 | 12 | 10 | 2 |
| Proceeding in R case | 14 | 12 | 2 | 5 | 5 | 0 | 9 | 7 | 2 |
| Proceeding in unfair labor practice case | 5 | 5 | 0 | 2 | 2 | 0 | 3 | 3 | 0 |
| Proceeding in backpay case | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Proceeding in 10(k) case | | | | | | | | | |
| To compel NLRB to | 32 | 27 | 5 | 18 | 16 | 2 | 14 | 11 | 3 |
| Issue complaint | 7 | 7 | 0 | 7 | 7 | 0 | 0 | 0 | 0 |
| Seek injunction | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Take action in R case | 4 | 4 | 0 | 1 | 1 | 0 | 3 | 3 | 0 |
| Comply with Freedom of Information Act [1] | 19 | 15 | 4 | 9 | 8 | 1 | 10 | 7 | 3 |
| To take action in backpay case | 2 | 1 | 1 | 1 | 0 | 1 | 1 | 1 | 0 |

[1] FOIA cases are categorized as to court determination depending on whether NLRB substantially prevailed.

## Table 22.—Advisory Opinion Cases Received, Closed, and Pending, Fiscal Year 1977 [1]

| | Total | Number of cases | | | |
|---|---|---|---|---|---|
| | | Identification of petitioner | | | |
| | | Employer | Union | Courts | State boards |
| Pending Oct 1, 1976 | 4 | 4 | 0 | 0 | 0 |
| Received fiscal 1977 | 13 | 11 | 1 | 0 | 1 |
| On docket fiscal 1977 | 17 | 15 | 1 | 0 | 1 |
| Closed fiscal 1977 | 15 | 13 | 1 | 0 | 1 |
| Pending Sept 30, 1977 | 2 | 2 | 0 | 0 | 0 |

[1] See Glossary for definitions of terms

## Table 22A.—Disposition of Advisory Opinion Cases, Fiscal Year 1977 [1]

| Action taken | Total cases closed |
|---|---|
| Total | 15 |
| Board would assert jurisdiction | 5 |
| Board would not assert jurisdiction | 1 |
| Unresolved because of insufficient evidence submitted | 2 |
| Dismissed | 5 |
| Withdrawn | 2 |

[1] See Glossary for definitions of terms

U S GOVERNMENT PRINTING OFFICE 1978 O - 253-831