
FIFTH ANNUAL REPORT
OF THE
NATIONAL LABOR
RELATIONS BOARD

For the Fiscal Year Ended
June 30, 1940

FIFTH ANNUAL REPORT

OF THE

NATIONAL LABOR BOARD

RELATIONS BOARD

For the Fiscal Year Ended
June 30, 1940



UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1941

NATIONAL LABOR RELATIONS BOARD

H. A. MILLS, *Chairman*

WILLIAM M. LEISERSON

EDWIN S. SMITH

BEATRICE M. STERN, *Executive Secretary*

ROBERT B. WATTS, *General Counsel*

LAURENCE A. KNAPP, *Associate General Counsel*

MALCOLM F. HALLIDAY, *Assistant General Counsel*

ERNEST A. GROSS, *Assistant General Counsel*

MORTIMER KOLLENDER, *Assistant General Counsel*

GARNET L. PATTERSON, *Director of Field Division*

GEORGE O. PRATT, *Chief Trial Examiner*

MALCOLM ROSS, *Director of Information*

J. C. SHOVER, *Director of Personnel*

HERBERT R. GLASER, *Chief Clerk*

LETTER OF TRANSMITTAL

NATIONAL LABOR RELATIONS BOARD,
Washington, D. C., February 26, 1941.

SIR:

I have the honor to submit to you the Fifth Annual Report of the National Labor Relations Board, for the fiscal year ended June 30, 1940, in compliance with the provisions of section 3 (c) of the National Labor Relations Act, approved July 4, 1935.

H. A. MILLIS, *Chairman.*

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



CONTENTS

	Page
I. Introduction.....	1
A. Work of the Board.....	1
B. Relation of Board activities to industrial peace.....	2
C. Court review of Board orders and miscellaneous litigation...	3
D. The effect of the conflict between the American Federation of Labor and the Congress of Industrial Organization upon the work of the Board.....	6
E. Investigation by special House Committee.....	8
F. Certification of representatives as bona fide under the Fair Labor Standards Act of 1938.....	8
II. The National Labor Relations Board.....	9
A. The Board.....	9
B. Organization—Washington office.....	9
C. Organization—Regional offices.....	9
D. Regional offices—Location and directing personnel.....	9
III. Procedure of the Board.....	11
IV. Statistical record of Board activity.....	13
A. Case load and disposition of all cases handled during 1939- 40.....	13
B. Unfair labor practice cases.....	15
C. Representation cases.....	17
D. Statistical tables.....	20
Table I. Disposition of all cases on docket during the fiscal year: by types of complainant or petitioner...	20
Table II. Types of unfair labor practices alleged in cases pending June 30, 1939: by regions.....	21
Table III. Types of unfair labor practices alleged in cases received during the fiscal year: by regions....	22
Table IV. Disposition of unfair labor practice cases on docket during the fiscal year: by types of com- plainant.....	23
Table V. Disposition of unfair labor practice cases on docket during the fiscal year: by regions.....	24
Table VI. Types of formal action taken in unfair labor practice cases during the fiscal year: by regions....	25
Table VII. Disposition of representation cases on docket during the fiscal year: by types of petitioner...	26
Table VIII. Disposition of representation cases on docket during the fiscal year: by regions.....	27
Table IX. Types of formal action taken in representa- tion cases during the fiscal year: by regions.....	28
Table X. Character and results of elections conducted during the fiscal year: by regions.....	29
Table XI. Number of elections participated in, won, and lost during the fiscal year: by different types of labor organizations.....	30
V. Principles Established.....	31
A. Interference, restraint, and coercion in the exercise of the rights guaranteed in section 7 of the Act.....	32
B. Encouragement or discouragement of membership in a labor organization by discrimination.....	37
C. Collective bargaining.....	43
D. Domination and interference with the formation or admin- istration of a labor organization and contributing finan- cial or other support to it.....	49

	Page
V. Principles Established—Continued.	
E. Investigation and certification of representatives.....	53
F. Adequate proof of majority representation.....	60
G. The unit appropriate for the purposes of collective bargaining.....	63
H. Remedies.....	72
I. Miscellaneous.....	78
VI. Jurisdiction.....	82
VII. Litigation.....	85
A. Enforcement and review.....	85
B. Proceedings for contempt of court decrees enforcing Board orders.....	88
C. Miscellaneous court proceedings.....	89
D. Principles established.....	91
E. Summary of litigation fiscal year 1940.....	110
VIII. The Trial Examiners Division.....	123
IX. Division of Economic Research.....	124
A. Volume and character of work.....	124
B. Case work, illustrated.....	125
X. Information Division.....	131
A. Functions of the Information Division.....	131
B. Stages at which information is available.....	131
C. Activities of Information Division.....	132
XI. List of cases heard and decisions rendered during the fiscal year.....	133
A. Cases heard prior to the fiscal year 1939-40, in which action was taken during the fiscal year.....	133
B. Cases heard during the fiscal year 1939-40.....	145
C. Cases in which decisions were issued by stipulation before hearing.....	157
XII. Fiscal statement.....	158
Appendix.....	159
Table A. Number of cases brought before the National Labor Relations Board and number of strikes, by month, October 1935-June 1940.....	159
Table B. Number of workers involved in cases brought before the National Labor Relations Board and number of workers involved in strikes, by month, October 1935-June 1940.....	161
Table C. Man-days of idleness due to strikes and index of industrial production, by months, January 1935-June 1940.....	162

FIFTH ANNUAL REPORT OF THE NATIONAL LABOR RELATIONS BOARD

I. INTRODUCTION

A. WORK OF THE BOARD¹

The Board is gratified to report that its record for the year ended June 30, 1940, continues to show a marked increase in the percentage of cases disposed of and closed within the fiscal period. The percentage of cases on docket closed during the year was 72, contrasted with 62 percent for the preceding year. Somewhat fewer cases were pending at the close of the past year than had been pending on June 30, 1939.

During the past year the Board was able to close without formal action 83 percent of all cases finally disposed of. Forty percent of the cases were closed by settlement. Slightly less than half of the unfair labor practice cases disposed of during the year were closed through settlements voluntarily accepted by the parties and through substantial compliance with the Act. Nearly 38 percent of the representation cases disposed of during the year were closed by informal determination of bargaining representatives. Thus, a large number of elections were held with the consent of the interested parties, making hearings unnecessary, facilitating quick determinations, and encouraging collective bargaining.

Of the new cases filed during the year, an increasing proportion involved representation disputes. Unfair labor practice cases remained, as heretofore, the most numerous group. However, the number of representation cases, as a percentage of the total number of cases filed, increased from 33 to 36 percent between 1938-39 and 1939-40.

Comparatively few petitions were filed by employers during the fiscal year,² 74 involving close to 12,000 workers. Contrasted with these small numbers are 2,243 petitions filed by labor organizations during the year, affecting over 400,000 workers.

The number of elections conducted by the Board during the past year and the number of workers eligible to vote increased almost 60 percent over the corresponding figures for the preceding year. Again, as in the past, the secrecy of the ballot was not questioned in the many elections in which over 500,000 workers participated. The Board's

¹ A detailed statistical record of the Board's work during the past fiscal year will be found in ch. IV, pp. 13-30.

² The Board's amended Rules and Regulations, issued July 14, 1939, permit the filing of petitions by employers faced with conflicting claims to exclusive recognition by two or more labor organizations.

election machinery received frequent praise for its competence, thoroughness, and efficiency, both from employers and unions.

There was a notable increase during the year in the number of decisions issued by the Board, particularly in unfair labor practice cases. The number of hearings, however, declined. The proportion of Board decisions dismissing unfair labor practice cases continued to increase. The unfair labor practice cases in which compliance was secured with Board orders and decisions also increased in number.

B. RELATION OF BOARD ACTIVITIES TO INDUSTRIAL PEACE³

Past reports have contrasted the record of industrial disputes with the record of Board cases to indicate possible effects of the act's administration. Available statistics provide only a partial measure of industrial strife. The use of such data to measure the effects of Board activity is limited for an additional reason: the Board is confined to disputes over the right to organize and bargain collectively. Thus, the immediate effect of Board activity is evident only from the record of strikes for recognition or against discrimination.⁴

Earlier reports noted the low volume of Board cases and widespread strikes during the period immediately following passage of the Act, until April 1937 when it was validated by the Supreme Court. This initial effect was attributed to the difficulty of administering the Act in the face of employer opposition and court injunctions restraining the Board. After April 1937 the volume of Board cases rose steadily. Strike activity declined.

During the past fiscal year, the number of Board cases tapered off from ranges of 500-800 monthly during the preceding year to a monthly average of 514. The total number of strikes remained at the relatively low level established during 1938 and early 1939. The number of strikes involving recognition and discrimination declined from a monthly average of 75 during the preceding fiscal year to an average of 57 in 1939-40. During the latter year the ratio of Board cases to strikes involving causes related to the act was relatively high; in December there were 13 Board cases for every strike involving recognition or discrimination.

The number of workers involved in Board cases and the number involved in strikes fluctuated during the year. Board cases during July involved more than 200,000 workers, recording a high figure for the period. The number declined to slightly more than 50,000 in the following month, increased in succeeding months, and averaged 92,056 monthly for the entire year. The number of workers involved in strikes was less than the number involved in Board cases during each month except August and October.

³ A detailed monthly and annual record of strike activity and Board cases is found in tables appended to this report, on pp. 159-162. The record covers the period October 1935-June 1940 and includes the number of strikes, the number of Board cases, the number of workers involved in strikes, the number involved in Board cases, and man-days of idleness attributable to industrial disputes. The number of strikes and of workers involved are given separately for strikes involving recognition and discrimination and for strikes arising out of all causes. The former measure is the more significant one in its relation to Board activity.

⁴ Indirectly there may be a larger effect, but the relationship between the act and all strikes is a tenuous one. That record is influenced by the attitude of employers, by the attitude and policies of labor unions, by labor disunity, by the stage of the business cycle, and by differences over the substantive conditions of employment.

The number of workers involved in strikes for recognition or against discrimination was consistently low during the entire year; beginning in November the number did not exceed 8,000, compared with a monthly average of 79,152 workers involved in Board cases during the same period. The ratio of workers involved in Board cases to the number involved in recognition and discrimination strikes is even higher than the ratio for number of cases and number of strikes.

The decline in strike activity is emphasized by a comparison of data for 1936-37 and 1939-40, periods of comparable business activity. The total number of strikes declined 49 percent between the two periods; the number of workers involved declined 63 percent, and man-days of idleness declined 66 percent. The number of strikes for recognition and against discrimination declined 62 percent.

C. COURT REVIEW OF BOARD ORDERS AND MISCELLANEOUS LITIGATION

The major portion of the Board's litigation during the past year involved actions in the various United States circuit courts of appeals for enforcement or review of the Board's orders pursuant to section 10 (e) and (f) of the act. Some 69 final decisions were rendered in such cases during the year by the circuit courts of appeals and by the Supreme Court of the United States, representing an increase of 60 percent over the preceding year. Questions of compliance with court decrees enforcing Board orders may sometimes require additional litigation, in some cases even more extensive than the original enforcement proceedings. During the past year there were 8 decisions of the courts involving contempt proceedings initiated by the Board, and it is expected that type of litigation may increase in the coming year. Fortunately, however, the fiscal year 1940 also marked an expansion in the number of cases amicably settled through the entry of consent decrees in the circuit courts of appeals, 169 such decrees having been entered during the year as compared with 147 listed in the Fourth Annual Report and 11 entered in the preceding year.

Supreme Court litigation was more extensive during the past year than during any previous year of the Board's history. Eighteen petitions for certiorari involving Board orders came before the Court, in addition to the 3 pending at the beginning of the year. Of this number, the Court denied 11, all of which sought review of a lower court decision favorable to the Board. In 2 such cases rehearings were sought, a partial rehearing being granted in 1 while the other remained pending at the end of the year, as was 1 petition for certiorari filed late in the term. In the 9 cases accepted by the Supreme Court, review was sought by the Board and the employer in 4 each, and by a union in the remaining case. Two of these cases remained on the Court's docket at the conclusion of the term. The Board's position was fully sustained in each of the 8 cases in which argument was heard and an opinion rendered by the Court, although in 2 instances the Board's order was modified slightly.

Two of these cases, while not involving enforcement of Board orders, are of greatest significance in the administration of the act

for they foreclose further collateral attack on the Board through attempted review of or injunctive relief directed against representation proceedings arising under section 9 of the Act. In the principal case, *American Federation of Labor v. N. L. R. B.*,⁵ the Supreme Court held that Congress intended to provide for court review only of orders issued by the Board in proceedings instituted to prevent unfair labor practices, and that actions taken by the Board under the fact-finding provisions of section 9 were not reviewable under the statutory procedure there established. In the second case, *N. L. R. B. v. International Brotherhood of Electrical Workers*,⁶ the Supreme Court held, in accordance with its ruling in the *Federation* case above, that a reviewing court was without jurisdiction to set aside a direction of election issued by the Board in a section 9 proceeding.⁷

Each of the six cases in which substantive matters were passed upon involved a number of issues of importance. In *N. L. R. B. v. Newport News Shipbuilding & Dry Dock Co.*,⁸ it was determined that the Board could properly find that only complete disestablishment of a company-dominated labor organization would eliminate the effects of years of such domination and restore the employees' freedom of choice, despite the fact that a majority of the employees had endorsed the organization.

The right of the Board to control its own election procedure was sustained in *N. L. R. B. v. Falk Corp.*⁹ and in *N. L. R. B. v. Waterman Steamship Corp.*¹⁰ In the first case the Board had ordered the disestablishment of a company-dominated labor organization and had, in a consolidated representation proceeding, directed that an election be held without the disestablished organization appearing on the ballot. The Seventh Circuit sustained the disestablishment order but required that the dominated organization be placed upon a subsequent ballot. Such action was held unwarranted by the Supreme Court, which stated that the Board could properly conclude that full restoration of the employees' freedom of choice required complete elimination of the company union as a candidate for selection by the employees. In the *Waterman* case the Board was sustained in its view that during a union election campaign a shipowner may grant ship passes to all competitors or to none, but that he may not discriminate between them in this matter.

In the *Waterman* case and in *N. L. R. B. v. Bradford Dyeing Association*¹¹ questions as to the sufficiency of evidence supporting fact findings of the Board were considered. The first decision is of considerable importance to the field of administrative law generally, for the Court, in holding that the Fifth Circuit had exceeded its power, stressed the strict necessity of judicial adherence to the congressional demarcation of power between administrative agencies and the reviewing courts and admonished the lower court to refrain from encroaching upon the exclusive jurisdiction of the Board in its fact-

⁵ 308 U. S. 401.

⁶ 308 U. S. 413.

⁷ A similar issue was also involved in the *Falk* case, *infra*, where the Seventh Circuit had attempted to alter the terms of a Board direction of election.

⁸ 308 U. S. 241.

⁹ 308 U. S. 453.

¹⁰ 309 U. S. 206.

¹¹ 310 U. S. 318.

finding powers. In addition to a similar treatment of the lower court's disregard of Board findings in the *Bradford* case, the Supreme Court there ruled that a shift in majority status of a union due to unfair labor practices of the employer did not affect the validity of an order to bargain based upon the original designations.

In *National Licorice Co. v. N. L. R. B.*¹³ and *American Manufacturing Co. v. N. L. R. B.*¹⁴ Board orders setting aside illegal contracts of employment exacted from employees in derogation of rights guaranteed to them by the Act were sustained with slight modification of the notice ordered to be posted, despite the fact that employees were not made parties in the proceedings before the Board.

The Board was equally successful in litigation before the various circuit courts of the country; 63 Board decisions were ruled upon during the fiscal year, representing an increase of 65 percent over the 38 decisions rendered in 1939. On these, Board orders were enforced in full in 22 cases, and were enforced as modified in 30 cases. In 11 of the cases, the Board's orders were set aside, although in 2 cases new hearings were ordered, in another the decision was subsequently reversed by the Supreme Court, and in the fourth, the court itself vacated its decision.

In the past year the circuit courts have enforced Board orders dealing with a multitude of issues. In connection with reinstatement orders, the decisions have continued to turn principally upon questions of evidence. Some division of authority has appeared as to the validity of the "work relief" provision of back pay orders and the matter before the Supreme Court at the end of the year.¹⁵ One circuit set aside a Board order based upon a finding of discriminatory refusal to hire; a second case involving a similar issue was pending decision at the close of the fiscal year.¹⁶ Following the views set forth in the *Newport News* decision, the courts have, in the past year, interpreted a Board order of disestablishment to mean complete dissolution of the illegal organization. The requirement that the parties should enter into a signed agreement should bargaining result in a meeting of minds has been enforced in numerous decisions.¹⁷

In summary, the Board has engaged in more litigation during the past year than ever before and has continued to maintain its high ratio of success in the courts. Of the 69 final decisions involving enforcement or review of Board orders rendered during the fiscal year 1940, the Board was sustained in whole or in part in 58 cases, or 84 percent of the total cases decided, which compares with its record of 74 percent during 1939. No Board order was reversed by the Supreme Court. In addition, at the close of the fiscal year, 109 cases involving enforcement or review of Board orders were pending before the various circuit courts of appeals in comparison to the 74 cases pending at the close of 1939.

¹³ 309 U. S. 350.

¹⁴ 309 U. S. 629.

¹⁵ In *Republic Steel Corp. v. N. L. R. B.*, 311 U. S. 7, decided November 12, 1940, the Supreme Court ruled that such "work relief" provisions may not be included in the Board's orders.

¹⁶ This issue is now before the Supreme Court in *N. L. R. B. v. Phelps Dodge Corp.*, 113 F. (2d) 202 (C. C. A. 2), certiorari granted January 13, 1941.

¹⁷ The Board's position has since been sustained by the Supreme Court, *H. J. Heinz v. N. L. R. B.*, 61 S. Ct. 320.

Repeating the preceding year's experience, the Board's court work during the past year also included a small amount of miscellaneous litigation.¹⁹

D. THE EFFECT OF THE CONFLICT BETWEEN THE AMERICAN FEDERATION OF LABOR AND THE CONGRESS OF INDUSTRIAL ORGANIZATIONS UPON THE WORK OF THE BOARD

The conflict between the American Federation of Labor and the Congress of Industrial Organizations has continued to present problems to the Board. In this connection there is nothing to add to the Board's statement in its Fourth Annual Report: "The Board has continued, too, in the exercise of its manifest duty under the act, with full regard for its primary objective of encouraging and protecting the processes of genuine collective bargaining through freely chosen representatives and with scrupulous consideration for all of the circumstances of each particular case."

With the exception of indications that a slightly greater proportion of American Federation of Labor cases were handled, the statistics of the Board's work for the fiscal year show no marked changes from those of the preceding year on the division of cases initiated by the two organizations.²⁰ Thus, during the past year again, there was little difference between the total number of the cases handled by the Board for each of the two organizations. American Federation of Labor cases represented approximately 43 percent of the total cases handled and those of the Congress of Industrial Organizations approximately 41 percent, thus reversing the situation during the preceding year when the cases of the latter organization were almost half of the total and of the former a little less than half. The American Federation of Labor filed more new cases during the fiscal year than did the Congress of Industrial Organizations, as it did the preceding year. Of the cases closed during the year, the total number of American Federation of Labor cases was greater than the total number of Congress of Industrial Organizations cases, reversing the situation during the preceding year; also 73 percent of the American Federation of Labor cases handled were closed, while 68 percent of such cases of the Congress of Industrial Organizations were closed. In addition, the total number of American Federation of Labor cases settled by the Board was greater than the total number of Congress of Industrial Organizations cases, in reverse of the situation during the preceding year.

The American Federation of Labor participated in more elections during the past fiscal year than the Congress of Industrial Organizations, reversing the statistics for the preceding year. But, also in reverse of the preceding year, the Congress of Industrial Organizations won more elections and a slightly greater percentage of its elections than did the American Federation of Labor.

The number of American Federation of Labor cases which went to hearing during the fiscal year, compared with the preceding year, increased substantially, while the number of hearings in Congress of Industrial Organizations cases was decreased by more than 50

¹⁹ See ch. VII, post, for detailed discussion of such cases.

²⁰ Where used in this section, the names "American Federation of Labor" and "Congress of Industrial Organizations" include these organizations and their affiliates, respectively.

percent. There was also a great increase in the number of decisions in American Federation of Labor cases, and a slight decrease in the number of decisions in Congress of Industrial Organizations cases.

Statistics on the benefits of settlement of cases and compliance with Board decisions and orders during the fiscal year show more marked differences in some instances in the division between the two organizations than these figures showed during the preceding year, and some reversals of the results during the preceding year. Thus, while during the preceding year settlements and compliance resulted in union recognition in practically the same number of cases for each organization, this year the American Federation of Labor received such recognition in 522 cases compared to 309 for the Congress of Industrial Organizations; the former organization also secured written and oral agreements in many more such cases than the latter, as was the situation during the preceding year. Again, during the fiscal year, more compliance notices were posted in American Federation of Labor cases; but more cases involving disestablishment of employer-dominated labor organizations were informally adjusted in Congress of Industrial Organizations cases, as was the situation during the preceding year. However, in contrast to the figure during the preceding fiscal year, settlement of and compliance in American Federation of Labor cases resulted in more employees reinstated than in the cases of the Congress of Industrial Organizations, but the settlements resulted in more workers receiving back pay and more back pay in the latter's cases, as was the situation during the preceding year. Also, such settlements resulted in nearly twice as many workers reinstated after strikes in Congress of Industrial Organizations cases than in American Federation of Labor cases.

During the fiscal year, the Board decided 198 cases in which both American Federation of Labor and Congress of Industrial Organizations participated and in which the question of appropriate unit was involved. In 72 of these cases the American Federation of Labor and the Congress of Industrial Organizations agreed completely upon the appropriate unit. In 40 cases both organizations agreed upon the general outlines of the unit and disagreed only concerning the inclusion or exclusion of minor groups or isolated individuals. In an additional 15 cases, they agreed completely or substantially that each was to have jurisdiction over a particular group of employees. The 71 remaining cases, in which there was important disagreement between the American Federation of Labor and the Congress of Industrial Organizations upon the appropriate unit, were decided as follows:

American Federation of Labor contention upheld.....	50
Congress of Industrial Organizations contention upheld.....	19
No decision necessary.....	2

In 49 of these 71 cases the main controversy centered around whether the appropriate unit should be a craft unit or an industrial one; in 22 this issue was not involved.²¹ Out of the 19 cases in which

²¹ The issue in these 22 cases concerned mainly whether the unit should be confined to 1 plant or 1 employer or whether it should extend to many plants or many employers. In the 20 cases where this issue was decided, the American Federation of Labor was sustained in 14 cases, and the Congress of Industrial Organizations in 6 cases.

the contention of the Congress of Industrial Organizations was fully upheld, 13 involved this issue.²²

It is interesting to note that during the fiscal year the American Federation of Labor requested some form of industrial unit in approximately 230 cases, and a craft form in approximately 109 cases.²³ In 92 of these 109 cases, the Board granted the claim of the American Federation of Labor in full, either by setting up the craft employees directly as a separate unit or by permitting the craft employees to make their own choice. In only 17 instances did the Board reject a claim for craft units.²⁴

The Board has had no alternative but to decide these and other issues caused by the conflict between the two organizations when presented before it, as required by the Act. The conflict has, as in preceding years, created problems which have occupied much of the Board's energies and time. With a united labor movement, these problems might be removed.

E. INVESTIGATION BY SPECIAL HOUSE COMMITTEE

For the last 9 months of the fiscal year ending July 1, 1940, the operations of the Board were investigated by a Special Committee of the House of Representatives, appointed pursuant to H. R. 258. During this entire period, the time of a considerable number of the Board's personnel and substantial amounts of its appropriation were devoted to the necessary work in connection with the investigation.

F. CERTIFICATION OF REPRESENTATIVES AS BONA FIDE UNDER THE FAIR LABOR STANDARDS ACT OF 1938

During the fiscal year, the Board certified a number of labor organizations as bona fide under the provisions of section 7 (b) of the Fair Labor Standards Act of 1938.²⁵ During the year, the Board issued 115 such certifications. Eight requests for certification were denied and 6 were pending on June 30, 1940. One hundred and two American Federation of Labor unions were so certified, 12 Congress of Industrial Organizations unions, and 1 unaffiliated union. The Board has certified labor organizations as bona fide where the labor organization has previously been certified by the Board under section 9 of the National Labor Relations Act, or where the labor organization is an affiliate of an international or parent organization which has previously been certified by the Board under section 9, or where another local of the same international or parent organization has previously been certified under section 9.

The following chapters review in detail the work of the Board during the fiscal year.

²² See ch. V, post, for discussion and citation of the Board decisions.

²³ These figures are not altogether exact since it is sometimes very difficult to know whether a particular group requested as an appropriate unit should properly be considered a "craft" or an "industrial" group.

²⁴ See ch. VII, post, for a detailed discussion and citation of the Board decisions.

²⁵ 52 Stat. 1060; 29 U. S. C. 291-219.

II. THE NATIONAL LABOR RELATIONS BOARD

A. THE BOARD

During the fiscal year 1940, the members of the Board were J. Warren Madden, of Pennsylvania, chairman;¹ Edwin S. Smith of Massachusetts, member; and William M. Leiserson, of Ohio, member.

B. ORGANIZATION—WASHINGTON OFFICE

The organization of the Washington office remains the same as in the fiscal year 1939, with the exception of certain changes which are detailed below.

The Administrative Division, under the general supervision of the Secretary, has been augmented by the establishment of an additional group of personnel to assist in handling administrative case work.

The Legal Division is now divided into three main sections: Trial, Litigation, and Review. The Review and Litigation Sections remain the same as in previous years. The Trial Section includes a miscellany of duties. It supervises preparation and trial of cases in the regional offices and handles problems of legal personnel in the field. It clears all cases which have been authorized by the Board or the Secretary's office by considering them in relation to trial problems which are raised by the issues. It handles miscellaneous litigation, such as enforcement of subpoenas and contempt matters. It comprises also a compliance unit and a staff of attorneys to handle miscellaneous legal problems so that the Assistant General Counsel in charge may act as legal counsellor to the Board in respect to such problems.

The Division of Economic Research has been abolished pursuant to provisions of a rider attached to a supplemental appropriation act (H. R. 10539) adopted by Congress. Some of the personnel attached to this Division have been transferred to other divisions of the Board to assist in carrying on the functions required by the National Labor Relations Act.

C. ORGANIZATION—REGIONAL OFFICES

No changes in the organization of the regional offices have been made.

The territories assigned to the regional offices have not been changed in the last fiscal year. Therefore, they remain as they were set up in the Fourth Annual Report of the Board. There have, however, been some changes in directing personnel as is reflected by the following table.

D. REGIONAL OFFICES—LOCATION AND DIRECTING PERSONNEL

Region 1, Old South Building, Boston, Mass.: A. Howard Myers, director; Edward Schneider, attorney.
Region 2, 120 Wall Street, New York, N. Y.: Mrs. Elinore M. Herrick, director; Alan Perl, attorney.
Region 3, Federal Building, Buffalo, N. Y.: Henry J. Winters, director; Edward Flaherty, attorney.

¹ Mr. Madden's term expired August 26, 1940.

10 FIFTH ANNUAL REPORT OF NATIONAL LABOR RELATIONS BOARD

- Region 4, 3002 United States Courthouse, Philadelphia, Pa.: Bennet F. Schauf-
fler, director; Samuel G. Zack, attorney.
- Region 5, 1109 Standard Oil Building, Baltimore, Md.: William M. Aicher,
director; Lester M. Levin, attorney.
- Region 6, 2107 Clark Building, Pittsburgh, Pa.: Charles T. Douds, director;
Robert H. Kleeb, attorney.
- Region 7, 1342 National Bank Building, Detroit, Mich.: Frank H. Bowen, direc-
tor; Harold Cranefield, attorney.
- Region 8, 713 Public Square Building, Cleveland, Ohio.: Oscar Smith, director;
Harry L. Lodish, attorney.
- Region 9, 445 United States Post Office and Courthouse, Cincinnati, Ohio.:
Philip G. Phillips, director; Alba B. Martin, attorney.
- Region 10, 10 Forsyth Street Building, Atlanta, Ga.: Charles N. Feidelson,
director; Alexander E. Wilson, Jr., attorney.
- Region 11, Architects Building, Indianapolis, Ind.: Robert H. Cowdrill, direc-
tor; Arthur Donovan, attorney.
- Region 12, Madison Building, Milwaukee, Wis.: John G. Shott, director; Fred-
erick P. Mett, attorney.
- Region 13, 2200 Midland Building, Chicago, Ill.; Isalah S. Dorfman, attorney
and acting director.
- Region 14, United States Court and Customhouse, St. Louis, Mo.: Miss Dor-
othea de Schweinitz, director; L. N. D. Wells, Jr., attorney.
- Region 15, Federal Office Building, New Orleans, La.: Charles H. Logan, direc-
tor; Warren Woods, attorney.
- Region 16, Federal Court Building, Fort Worth, Tex.: Edwin A. Elliott, direc-
tor; Elmer P. Davis, attorney.
- Region 17, 245 United States Courthouse and Post Office, Kansas City, Mo.:
Hugh E. Sperry, director; Joseph A. Hoskins, attorney.
- Region 18, New Post Office Building, Minneapolis, Minn.: Robert J. Wiener,
director; Lee Loevinger, attorney.
- Region 19, 407 United States Courthouse, Seattle, Wash.: E. J. Eagen, director;
Thomas Graham, attorney.
- Region 20, 1095 Market Street, San Francisco, Calif.: Mrs. Alice M. Rosseter,
director; John McTernan, attorney.
- Region 21, 808 United States Post Office and Courthouse, Los Angeles, Calif.:
Walter P. Spreckels, director; William R. Walsh, attorney.
- Region 22, Central Savings Bank Building, Denver, Colo.: Charles A. Graham,
director; Paul E. Kuethau, attorney.

III. PROCEDURE OF THE BOARD

Previous annual reports of the Board have set forth in detail the procedure of the Board.¹ Changes in the Board's Rules and Regulations have occurred during the last year and have naturally affected procedure.

On July 14, 1939, the Board published its revised Rules and Regulations, entitled "Rules and Regulations—Series 2," in the Federal Register and they became effective on that date. Some of the more significant changes were:

1. The Board's complaint must now be served on any labor organization named as a subject of allegations under section 8 (2) of the Act.²

2. When the legality of any contract of any labor organization, not the subject of a section 8 (2) allegation, is put in issue by any allegation in the complaint, such labor organization shall be served a copy of the complaint and treated as a party to the proceeding.³

3. Notice of hearing was extended from 5 days to 10 days from the date of the issuance of the complaint.⁴

4. The procedure for amending the complaint was clarified; the regional director to amend prior to hearing, the trial examiner at the hearing and until the case is transferred to the Board, and, after transfer, the Board.⁵

5. The making and disposition of motions was made more definite in a manner similar to that of amendments.⁶

6. Respondents were given 10 days within which to file their answers instead of 5.⁷

7. Applications for subpoenas by parties were expedited by giving the trial examiner the power to grant or deny the application.⁸

8. The filing of briefs with the trial examiner became a matter of right and not, as in the old Rules, with the permission of the trial examiner.⁹

9. The procedure in the transfer of cases to the Board was made more specific; orders were to be entered by the Board informing all parties of the date of such transfer.¹⁰

10. The time for filing of exceptions to the Intermediate Report was extended to 20 days.¹¹

11. The issuance of proposed findings of fact, proposed conclusions of law and proposed order of the Board was provided for, together with exceptions thereto.¹²

¹ First Annual Report, ch. V, pp. 21-28; Third Annual Report, ch. III, pp. 16-17.

² Series 2, Rules and Regulations, art. II, sec. 5; Federal Register No. 202.5.

³ *Idem*.

⁴ *Idem*.

⁵ *Idem*, art. II, sec. 7 (F. R. No. 202.7).

⁶ *Idem*, art. II, secs. 14, 15, and 34 (F. R. Nos. 202.14, 202.15, and 202.34).

⁷ *Idem*, art. II, sec. 10 (F. R. No. 202.10).

⁸ *Idem*, art. II, sec. 21 (F. R. No. 202.21).

⁹ *Idem*, art. II, sec. 29 (F. R. No. 202.29).

¹⁰ *Idem*, art. II, sec. 32 (F. R. No. 202.32).

¹¹ *Idem*, art. II, sec. 33 (F. R. No. 202.33).

¹² *Idem*, art. II, sec. 37 (F. R. No. 202.37).

12. Employers were given the opportunity to file petitions to determine representatives under section 9 (c) of the Act in situations where the employer is confronted with rival claims from labor organizations claiming to represent a majority of employees in the unit or units claimed to be appropriate.¹³ A detailed description is given of the matters required to be set forth in such petitions.¹⁴

13. Post-election procedure was clarified and the report of the agent conducting the election upon objections made to the conduct thereof is now served upon the parties and the Board.¹⁵

On January 27, 1940, the Rules were further amended to include an entirely new article prohibiting practice before the Board of former employees of its Washington and field offices within certain limits set forth.¹⁶ On the same date another amendment was made, granting parties the right to file briefs with the Board a matter of right, not subject to permission of the Board.¹⁷

An additional amendment became effective on March 13, 1940. This related to the filing of briefs on proposed findings of fact, proposed conclusions of law, and proposed order of the Board. Parties were given the right to file briefs thereon without seeking permission of the Board.¹⁸

The above amendments of January 27 and March 13, 1940, were, on April 10, 1940, published by the Board in consolidated form with those effective on July 14, 1939 (Series 2) under the title of "Rules and Regulations—Series 2 as amended." Copies of these Rules may be obtained from the Board in Washington or from any of the Board's regional offices.

¹³ *Idem*, art. III, sec. 1 (F. R. No. 203.01).

¹⁴ *Idem*, art. III, sec. 2 (b) (F. R. No. 203.2).

¹⁵ *Idem*, art. III, sec. 9 (F. R. No. 203.9).

¹⁶ Series 2—as amended, Rules and Regulations, art. VII, secs. 1 and 2 (F. R. Nos. 207.1 and 207.2).

¹⁷ *Idem*, art. II, sec. 35 (F. R. No. 202.35).

¹⁸ *Idem*, art. II, sec. 37 (F. R. No. 202.37).

IV. STATISTICAL RECORD OF BOARD ACTIVITY¹

A. CASE LOAD AND DISPOSITION OF ALL CASES HANDLED DURING 1939-40

Case load.—At the beginning of the fiscal year 4,113 cases involving approximately a million and a half workers² were pending, either awaiting action in the regional offices or being handled at a later stage of Board activity. This number was slightly higher than a comparable figure for the preceding year. The number of new cases received, however, declined between the two years by approximately 700. A total of 6,177 new cases were received, involving somewhat more than 1,000,000 workers.

Sixty-four percent of the new cases, 3,934, were unfair labor practice cases and 36 percent, 2,243, were representation cases. The former group has always been more numerous, but in the past year the proportions shifted, giving increasing weight to representation cases. In the preceding year these cases represented 33 percent of all new cases, contrasted with 36 percent in the past year. Furthermore, the number of unfair labor practice cases decreased 15 percent between the two fiscal years, in terms both of cases and workers involved, but representation cases decreased only 2 percent.

The statistical record is presented largely in terms of the 4 types of complainants and petitioners who come before the Board: Affiliates of the A. F. of L., affiliates of the C. I. O., unaffiliated unions,³ and individual persons, including workers who file unfair labor practice charges and employers who file petitions for certification of bargaining representatives. Prior to the past fiscal year there were no employer petitioners. Amendment of the Board's Rules and Regulations in July 1939 making it possible for employers to petition the Board under prescribed conditions introduced a new group of cases. During the 1 year's experience, however, only 74 employer petitions, involving 12,000 workers, were received by the Board. This number represents only 1 percent of the total number of cases received and only 1 percent of the total number of workers involved.

A. F. of L. affiliates were responsible for the largest single group of cases, numbering 2,933. The cases of C. I. O. affiliates were fewer in number, 2,201, but these involved more than half a million workers, compared with the 450,000 workers involved in Federation cases. Unaffiliated unions continued to present a relatively small number of cases. The 486 cases in this group involved only 98,000 workers, considerably less than the 210,000 involved in a similar number of

¹ The detailed tabular record of Board cases is found on pp. 20-30. See Contents for list of tables.

² Throughout this discussion the number of workers involved in Board cases is given as a rounded figure.

³ Including national and local unions. The national unions are those which represent more than one plant or company, in contrast with the local union which represents only one plant or company.

cases received during the preceding fiscal year. Individual persons presented 558 cases involving 51,000 workers.

Disposition of all cases, total.—Of the 10,290 cases on docket during the fiscal year, 72 percent were closed during the same period. In terms of number of workers involved the percentage was 59. During the preceding year, when the number of cases on docket was substantially the same, 62 percent of them were closed. These closed cases represented 42 percent in terms of workers involved. The increase in Board activity is also evident in absolute figures. The number of cases closed during the past year, 7,354, exceeded the number for the preceding year by almost 1,000, and the number of workers increased similarly. Of the total number of cases closed, 3,284 were A. F. of L. cases and 2,881 were C. I. O. cases; the latter group, however, involved almost twice as many workers, 800,000, compared with 492,000.

An overwhelming proportion of all cases closed during the past fiscal year, as in previous years, were disposed of before any kind of formal action was taken, i. e., before the issuance of a complaint in unfair labor practice cases and before the issuance of a notice of hearing in representation cases. Only 17.1 percent of all cases closed were involved in formal proceedings. The percentage in terms of workers involved was considerably higher (26.7 percent), chiefly because of the large number of workers affected by certifications for collective bargaining representatives.

Of the 6,098 cases closed before formal action, 2,805 were settled, representing 38 percent of the total number of cases closed; 1,244 cases representing 17 percent were dismissed; and 2,020 cases representing 28 percent were withdrawn by the complainant or petitioner. The bulk of the remaining 1,256 cases closed during the year were disposed of through certification of bargaining representatives or through compliance with a Board decision or court order.

This general distribution of cases by methods of disposition does not differ noticeably from the patterns of earlier years. The majority of cases brought before the Board are settled informally without the issuance of a complaint or notice of hearing. Relatively few cases are disposed of between the time that formal action is initiated and a final Board decision is reached. Approximately two-thirds of the cases involved in formal proceedings and disposed of during the past year were not finally closed until after a Board or court decision.

At the end of the fiscal year, on June 30, 1940, there were a total of 2,936 cases pending, involving roughly 1,000,000 workers. On the same date in 1939, 4,113 cases, involving 1,500,000 workers, were pending. Approximately three-quarters of the cases pending in June 1940 were unfair labor practice cases; the exact division was 2,172 unfair labor practice cases and 764 representation cases.

Disposition of all cases, by types of petitioner and complainant.—The disposition of cases by types of petitioner and complainant did not differ from the over-all patterns. The majority of the 3,284 A. F. of L. cases closed during the year, involving 72 percent of workers involved, were closed before formal action. Only 14 percent of the cases became involved in formal proceedings; the largest number of these, 5 percent of the total number of cases closed, were disposed of

with the certification of bargaining representatives. Half of the A. F. of L. cases, numbering 1,487 and affecting approximately one-fourth of workers involved, were settled informally.

The pattern of disposition for the 2,881 C. I. O. cases closed during the past fiscal year differed from that for A. F. of L. cases only by the appearance of a relatively large number of cases closed after formal action. This difference is accounted for by the number of C. I. O. cases in which compliance was secured only after court action. The percentage of all cases closed in this category was 2.8, contrasted with 4.6 percent for C. I. O. affiliates. The C. I. O. percentage was even larger in terms of workers involved, i. e., 7.3.

B. UNFAIR LABOR PRACTICE CASES

Types of unfair labor practices.—Unfair labor practice cases arise under section 8 of the act, which states that five enumerated practices on the part of employers shall be considered "unfair": (1) Interfering with, restraining, or coercing employees in the exercise of their right to self-organization;⁴ (2) dominating or interfering with the formation or administration of any labor organization; (3) discriminating against employees for membership in any labor organization; (4) discriminating against employees for filing charges or giving testimony under the act; and (5) refusing to bargain collectively with duly chosen labor representatives.

In previous years, charges of discrimination in violation of section 8 (3) have been the most numerous type of unfair labor practice alleged in cases before the Board. During the past year this type of charge continued to be the most important numerically. Out of 2,902 cases pending at the beginning of the year, 2,131 involved charges of discrimination under section 8 (3); 1,233 cases involved charges of refusal to bargain collectively; 710 involved charges of company domination; 70 involved charges of discrimination for filing charges or giving testimony under the Act.

The five charges appeared in various combinations, the most numerous of which was 8 (1) and 8 (3), including 1,004 cases. An additional 616 cases involved charges of discrimination together with charges of refusal to bargain collectively. Alleged refusal to bargain collectively was the issue in an additional 377 cases, involving only charges 8 (1) and 8 (5). Charges of company domination in the formation of labor organizations were involved in 184 cases; 277 additional cases involved both charges of discrimination and domination. Various combinations of charges were found in the few remaining cases pending June 30.

The distribution of these 5 types of charges among the 3,934 unfair labor practice cases received during the year was very much the same as the distribution found among the pending cases. Charges of discrimination in violation of section 8 (3) appeared in 2,671 cases. Charges of refusal to bargain collectively, the second most numerous group, appeared in less than half this number, in 1,253 cases. Allegations of company domination appeared in 452 cases, and the special type of discrimination under section 8 (4) appeared in 45 cases.

⁴ All charges include 8 (1).

More than 50 percent of the 3,934 cases received during the year involved charges of discrimination alone, under sections 8 (1) and 8 (3). Charges of discrimination and refusal to bargain collectively appeared in 443 cases; charges of refusal to bargain collectively appeared alone in 697 cases. Company domination was alleged in 176 cases; charges of discrimination under section 8 (3) together with charges of company domination were involved in 164 cases. A relatively large number of cases, 330, involved charges under section 8 (1) alone.

The distribution of charges pending at the beginning of the fiscal year and of charges received during the year for the different regions did not diverge from the over-all patterns described above.

Number of cases closed.—During the fiscal year there were 6,836 unfair labor practice cases on docket, involving approximately 1,500,000 workers. Sixty-eight percent of these cases, 4,664 involving 870,000 workers, were closed during the year. The closed cases were distributed among the different types of complainant as follows: 2,091 A. F. of L. cases involving 300,000 workers, 1,877 C. I. O. cases involving almost half a million workers, 203 unaffiliated union cases involving 36,000 workers, and 567 cases of individual persons involving 23,000 workers. The ratio of number of cases closed in each group to the total number of cases on docket for the respective group was fairly stable, ranging from 63 to 79 percent. The percentage for A. F. of L. affiliates was 71, for C. I. O. affiliates 63, for unaffiliated unions 67, and for individual persons 79. The percentages were almost uniformly lower in terms of workers involved.

Method of disposition.—The manner of disposition for all unfair labor practice cases and for each group of cases according to type of complainant was substantially similar to the disposition of all cases brought before the Board. More than 85 percent of all unfair labor practice cases, in terms both of number and of workers involved, were closed before formal action. Only 11 percent of the cases involved formal proceedings. In contrast with the large numbers of cases closed before formal action—1,854 A. F. of L. cases, 1,558 C. I. O. cases, 175 unaffiliated union cases, and 546 cases of individual persons—only a few hundred complaints were issued. Hearings were held in only 255 cases, and intermediate reports were issued in only 189 cases; 310 cases were transferred from the regional offices to the Washington office for Board decision. Of the 530 decisions and orders issued during the year, 132 were based upon stipulations agreed to by the parties in the case.

Among the four groups of complainants, the proportion of cases closed before formal action ranged from 83 to 96 percent of all cases closed within each group. Almost half of the A. F. of L. cases closed during the year were settled informally before issuance of a complaint; 35 percent of the C. I. O. cases were disposed of similarly; in both cases the percentage was less in terms of workers involved. More than one-quarter of the cases in each group were withdrawn; in terms of workers involved the proportions were substantially less for C. I. O. cases and cases of individuals.

Although formal proceedings were relatively unimportant in a numerical sense in the disposition of cases, a conspicuous number of C. I. O. cases were not settled until compliance had been secured

with a Board decision or court order. Less than 5 percent of the A. F. of L. cases closed involved compliance with a Board or court decision, but the corresponding percentage for C. I. O. affiliates was 10.5 (17.7 in terms of workers involved). This difference is contrasted with the relative percentages of cases closed informally before the issuance of a complaint. Almost half of the A. F. of L. cases closed during the year were disposed of informally by settlement; only 35.4 percent of C. I. O. closed cases were so handled.

Reinstatements, back-pay awards, and other forms of remedy.—Although the statistical record of remedies in unfair labor practice cases is not so complete as the record of cases received and closed, it is impressive. Approximately 31,000 workers were reinstated during the year after discrimination for union membership or after strikes in protest against alleged violation of the act. A smaller number of reinstatements had been made in the preceding year. During the past year 10,500 workers were reinstated after discrimination; 5,500 members of A. F. of L. unions, 4,500 members of C. I. O. unions, and 500 members of unaffiliated unions. More than 20,000 workers were reinstated after strikes: 7,100 members of A. F. of L. unions, 13,500 members of C. I. O. unions, and 500 members of unaffiliated unions. Both types of reinstatement occurred in largest numbers before the issuance of intermediate reports.

Back-pay awards were numerous during the past year. Approximately 4,800 workers received awards: 1,800 members of A. F. of L. unions, 2,700 members of C. I. O. unions, and 200 members of unaffiliated unions. In the previous year, awards were made to only 3,100 workers. The amount of pay awarded, \$650,000, was also larger than the amount awarded in 1938-39. More than half of the \$650,000 was awarded to members of C. I. O. unions; \$188,000 was awarded to members of the A. F. of L., \$37,000 to unaffiliated union members, and \$37,000 to individual workers. Unlike the reinstatements, which occurred most frequently before issuance of intermediate reports, 43 percent of the back-pay awards (56 percent in terms of amount) were made after the issuance of Board decisions or court orders.

Other forms of remedy included the posting of 1,000 notices by employers agreeing to cease interfering with labor organization, the disestablishment of 220 company-dominated unions, the agreement to bargain collectively in 880 cases, and the signing of written agreements in 600 cases.

C. REPRESENTATION CASES

Number of cases closed.—During the year there were 3,454 representation cases on docket, involving 890,000 workers. Eighty percent of these cases, involving 70 percent of workers involved, were closed during the same period. A. F. of L. cases closed numbered 1,265 and involved 168,000 workers. C. I. O. cases were fewer in number, 1,004, but they involved twice as many workers, 317,000. Three hundred and sixty-six cases of unaffiliated unions, involving 120,000 workers were closed; 56 employer petitions involving 10,000 workers were also disposed of. The ratio of number of cases closed in each group to the total number of cases on docket for the respective group was even more stable than similar ratios for unfair labor practice cases, ranging from 72 to 79 percent.

Method of disposition.—The disposition of representation cases did not differ substantially from the disposition of unfair labor practice cases. The number of Board certifications resulted in a relatively high percentage of representation cases closed after formal action. Hearings were held in 508 representation cases, compared with 255 hearings in unfair labor practice cases. Elections were directed⁵ in 512 representation cases, and decisions issued in 641 cases.

Of the total number of representation cases, 73 percent were closed before the initiation of formal proceedings. Thirty-six percent of the cases closed were disposed of through consent elections, voluntary recognition of representatives on the part of employers, or pay-roll checks to establish bargaining representation. Twenty-seven percent of the cases required formal action, and the bulk of these were closed through certification or dismissal by the Board. This relative distribution among different methods of disposition is descriptive not only of the total number of cases but also of each separate union group.

*Representation elections.*⁶—The Board conducted a total of 1,192 elections during the year, 676 of these with the consent of both unions and employers, 516 upon Board direction.⁷ The total number of elections represented an increase of 446 over the number conducted during the preceding fiscal year; the number of workers eligible to vote more than doubled over the same period.

The increasing importance of elections is further indicated by the fact that more than 90 percent of the 590,000 workers eligible to vote cast their ballots. In the preceding year the fact that 88 percent of those eligible to vote cast ballots was heralded as an indication of keen interest among workers in the choice of their bargaining representatives. Such interest has apparently continued.

A total of more than 530,000 valid votes were cast. Seventy percent of these were cast for A. F. of L. or C. I. O. affiliates; 3 percent were cast for national unaffiliated unions, 9 percent for local unaffiliated unions, 10 percent against a single union appearing on the ballot, and 8 percent against all unions (where more than one union appeared) on the ballot.

In 921 elections, representing more than 75 percent of the total number, some form of labor organization was successful. A. F. of L. unions appeared in 734 elections in which 340,000 valid votes were cast for the Federation affiliates. The A. F. of L. won 386 of the elections, polling 70,700 successful votes. Affiliates of the C. I. O. appeared in 692 elections in which they secured 447,000 votes.

The C. I. O. affiliates won a slightly larger percentage of their elections than did A. F. of L. affiliates, i. e., 407 elections representing 59 percent compared with 386 elections representing 53 percent. The number of valid votes cast in favor of C. I. O. affiliates in the elections won by them, however, was considerably larger than the number of votes won by the A. F. of L., 314,000 compared with 70,700. The difference is partially accounted for by the two very large elections, the Chrysler election involving 50,000 workers and the General

⁵ The number of elections conducted during the year is given in a subsequent paragraph.

⁶ Number of elections does not refer to cases *per se*, since more than one election may be held in a given case.

⁷ The number 516 does not refer to the number of cases in which elections were directed during the year; it refers to the number of directed elections conducted during the year.

Motors election involving 130,000, in both of which the C. I. O. was successful.

The elections won by A. F. of L. or C. I. O. affiliates represented more than 85 percent of all elections which were won by some form of labor organization. The remaining elections were won by unaffiliated unions. Unaffiliated national unions appeared in 115 elections in which they secured 37,000 votes; in 45 of the elections the unions were successful. Unaffiliated local unions appeared in 134 elections in which 93,000 valid votes were cast in their favor; this group won 83 of the elections.

D. STATISTICAL TABLES

TABLE I.—Disposition of all cases on docket during the fiscal year: by types of complainant or petitioner

Docket record and method of disposition	Cases		Total number of workers involved	A. F. of L. affiliates		C. I. O. affiliates		Unaffiliated unions		Individual persons ¹	
	Total number	Percent of cases closed		Number of cases	Number of workers involved	Number of cases	Number of workers involved	Number of cases	Number of workers involved	Number of cases	Number of workers involved
Cases pending June 30, 1939.....	4, 113		1, 420, 486	1, 531	233, 479	2, 025	980, 243	4 322	201, 014	237	5, 750
Cases received July 1, 1939-June 30, 1940.....	6, 177		1, 107, 923	2, 933	451, 875	2, 201	506, 989	486	97, 780	558	51, 279
Total cases on docket during fiscal year.....	10, 290		2, 528, 409	4, 464	685, 354	4, 226	1, 487, 232	4 808	298, 794	795	57, 029
Cases closed before formal action, total.....	6, 098	82.9	1, 090, 140	2, 827	411, 948	2, 242	536, 468	4 440	111, 203	591	30, 521
Settled.....	2, 805	38.1	325, 314	1, 487	116, 377	1, 035	184, 767	155	16, 647	129	7, 623
Dismissed.....	1, 244	16.9	353, 215	430	78, 603	437	213, 444	4 129	42, 279	249	18, 889
Withdrawn.....	2, 020	27.5	397, 007	896	210, 588	761	137, 076	154	45, 237	209	4, 106
Otherwise closed before formal action.....	29	.4	14, 604	14	6, 380	9	1, 181	2	7, 040	4	3
Cases closed after formal action, total.....	1, 256	17.1	397, 880	457	80, 331	639	269, 709	129	45, 509	32	2, 331
Before hearing:											
Settled.....	56	.8	11, 686	23	1, 971	26	9, 376	4	255	3	84
Dismissed.....	8	.1	1, 660	2	76	4	1, 468			2	122
Withdrawn.....	23	.3	4, 585	7	564	11	3, 803	4	168	1	50
After hearing:											
Settled.....	27	.4	8, 852	9	1, 336	17	6, 416	1	1, 100		
Dismissed.....	19	.3	3, 372	8	1, 171	10	2, 200	1	1		
Withdrawn.....	49	.7	8, 228	31	1, 544	13	3, 583	5	3, 101		
Compliance with intermediate report.....	26	.3	3, 042	9	827	13	1, 671	2	442	2	102
Closed because of company liquidation.....	3		95	2	81	1	14				
Otherwise closed after hearing.....	9	.1	4, 191	4	467	3	3, 634	2	90		
After Board decision:											
Dismissed.....	231	3.1	72, 815	77	10, 139	124	54, 267	23	8, 066	7	343
Withdrawn.....	32	.4	4, 984	15	1, 322	17	3, 662			7	
Certification issued.....	414	5.6	146, 732	161	31, 957	180	85, 235	66	29, 318	7	222
Compliance secured.....	118	1.6	34, 262	44	4, 866	63	27, 705	6	810	5	881
Otherwise closed after decision.....	26	.4	4, 944	6	663	18	4, 204	2	77		
After court action:											
Dismissed.....	6	.1	3, 663	2	1, 037	4	2, 626				
Compliance secured.....	206	2.9	84, 108	55	22, 105	134	59, 395	13	2, 081	5	527
Otherwise closed after court action.....	73		655	2	205	1	450				
Total cases closed during fiscal year.....	7, 354	100.0	1, 488, 020	3, 284	492, 279	2, 881	806, 177	4 569	156, 712	623	32, 852
Cases pending June 30, 1940.....	2, 936		1, 040, 389	1, 180	193, 075	1, 345	681, 055	239	142, 082	172	24, 177

¹ Includes workers filing charges and employers filing petitions.
² Includes case filed jointly by A. F. of L. affiliate and C. I. O. affiliate and 1 case filed jointly by C. I. O. and unaffiliated union.
³ Includes case filed jointly by A. F. of L. affiliate and C. I. O. affiliate.
⁴ Includes 1 case filed jointly by C. I. O. and unaffiliated union.

⁵ Includes 2 cases filed jointly by A. F. of L. affiliates and C. I. O. affiliates.
⁶ Includes 2 cases filed jointly by A. F. of L. affiliates and C. I. O. affiliates and 1 case filed jointly by C. I. O. and unaffiliated union. Discrepancies arise in the totals because the cases filed jointly are counted for each complainant and petitioner.
⁷ Companies were liquidated before compliance had been secured with Court order.

TABLE II.—Types of unfair labor practices alleged in cases pending, June 30, 1939: by regions

Region	Total number of unfair labor-practice cases pending, June 30, 1939	Number of cases alleging specific unfair labor practices (subsections of sec. 8 of the act)															Total number of cases				
		8 (1) and 8 (3)	8 (1) and 8 (5)	8 (1), 8 (3), and 8 (5)	8 (1), 8 (2), and 8 (3)	8 (1), 8 (2), 8 (3), and 8 (5)	8 (1)	8 (1) and 8 (2)	8 (1) and 8 (4)	8 (1), 8 (2), and 8 (5)	8 (1), 8 (3), and 8 (4)	8 (1), 8 (4), and 8 (5)	8 (1), 8 (2), and 8 (4)	8 (1), 8 (2), 8 (3), and 8 (4)	8 (1), 8 (2), 8 (3), and 8 (5)	8 (1), 8 (3), 8 (4), and 8 (5)	8 (1)	8 (2)	8 (3)	8 (4)	8 (5)
1. Boston.....	124	47	25	15	10	6	4	8		6	3					124	30	81	3	52	
2. New York.....	372	148	43	77	30	25	10	24	1	8	3	1		1	1	372	88	285	7	155	
3. Buffalo.....	53	16	5	9	4	6	2	7		1	2					53	19	38	3	21	
4. Philadelphia.....	114	28	26	16	10	14	5	7		5	1			1	1	114	38	71	3	62	
5. Baltimore.....	182	79	25	33	17	2	9	13			4					182	32	135	4	60	
6. Pittsburgh.....	95	51	7	8	9	6	2	9		1	2					95	25	76	2	22	
7. Detroit.....	119	57	8	10	23	10	1	6	1	2				1		119	42	101	2	30	
8. Cleveland.....	110	52	10	10	8	9	5	12		1				2	1	110	33	82	3	31	
9. Cincinnati.....	130	41	41	21	6	5	7	5			2			2		130	18	77	4	67	
10. Atlanta.....	119	56	10	17	16	5	5	1	1	1	6				1	119	23	101	8	34	
11. Indianapolis.....	96	27	10	12	18	13	1	13		2						96	46	70		37	
12. Milwaukee.....	110	20	13	34	15	7	2	12		6	1					110	40	77	1	60	
13. Chicago.....	180	65	15	20	28	12	5	18		6	8			2		180	66	136	11	54	
14. St. Louis.....	64	17	6	18	8	9	3	1		1	1					64	19	53	1	34	
15. New Orleans.....	96	29	10	36	6	2	10	1			1		1			96	10	74	2	48	
16. Fort Worth.....	79	23	8	14	9	5	1	10	1	3	2			1	1	79	29	56	6	32	
17. Kansas City.....	168	30	30	71	22	8	1	2		3	1					168	35	132	1	112	
18. Minneapolis.....	52	23	7	7	3	3		5		2	1	1				52	13	37	2	20	
19. Seattle.....	126	71	11	19	6	7	3	5		2	1				1	126	20	105	2	40	
20. San Francisco.....	222	41	15	137	14	1	4	7		2	1					222	24	194	1	165	
21. Los Angeles.....	220	52	40	25	12	10	63	11		4	2			1		220	38	102	3	70	
22. Denver.....	63	30	10	7	1	4	1	6		3				1		63	15	43	1	24	
Board ¹	8	1	2		2	2		1								8	5	5		4	
Total.....	2,902	1,004	377	616	277	171	144	184	4	50	42	2	1	13	3	2,902	708	2,131	70	1,233	

¹ Cases in which the Board assumed original jurisdiction because more than 1 region was involved or for other reasons.

TABLE III.—Types of unfair labor practices alleged in cases received during fiscal year: by regions

Region	Total number of unfair-labor-practice cases received	Number of cases alleging specific unfair labor practices (subsections of sec. 8 of the act)															Total number of cases				
		8 (1), and 8 (3)	8 (1), and 8 (5)	8 (1), 8 (3), and 8 (5)	8 (1), 8 (2), and 8 (3)	8 (1), 8 (2), 8 (3), and 8 (5)	8 (1)	8 (1), and 8 (2)	8 (1), and 8 (4)	8 (1), 8 (2), and 8 (5)	8 (1), 8 (3), and 8 (4)	8 (1), 8 (2), 8 (4), and 8 (5)	8 (1), 8 (2), and 8 (4)	8 (1), 8 (2), 8 (3), and 8 (4)	8 (1), 8 (2), 8 (3), and 8 (5)	8 (1), 8 (3), and 8 (5)	8 (1)	8 (2)	8 (3)	8 (4)	8 (5)
1. Boston.....	314	149	60	25	13	3	41	14	-----	4	4	-----	-----	1	-----	314	35	195	5	92	
2. New York.....	589	255	131	92	24	10	26	24	-----	23	2	-----	-----	2	589	81	385	4	258		
3. Buffalo.....	69	36	8	9	1	2	5	6	1	-----	1	-----	-----	-----	69	9	49	2	19		
4. Philadelphia.....	150	76	22	24	6	3	9	6	-----	4	-----	-----	-----	-----	150	19	109	-----	53		
5. Baltimore.....	242	108	64	30	4	1	24	7	-----	3	1	-----	-----	-----	242	15	144	1	98		
6. Pittsburgh.....	81	43	10	11	4	1	5	4	-----	1	2	-----	-----	-----	81	10	61	2	23		
7. Detroit.....	165	96	12	12	15	3	8	14	1	1	2	-----	1	-----	165	34	129	4	28		
8. Cleveland.....	245	141	31	11	14	2	31	13	-----	1	1	-----	-----	-----	245	30	169	1	45		
9. Cincinnati.....	174	104	24	14	5	4	15	2	-----	2	4	-----	-----	-----	174	13	131	4	44		
10. Atlanta.....	160	87	21	11	6	2	14	13	1	1	4	-----	-----	-----	160	22	110	5	35		
11. Indianapolis.....	138	77	15	10	9	2	14	10	-----	1	-----	-----	-----	-----	138	22	98	-----	28		
12. Milwaukee.....	123	39	42	19	6	2	10	3	-----	1	1	-----	-----	-----	123	12	67	1	64		
13. Chicago.....	219	114	24	29	16	4	13	16	-----	1	2	-----	-----	-----	219	37	165	2	58		
14. St. Louis.....	88	48	12	12	2	2	7	5	-----	-----	-----	-----	-----	-----	88	9	64	-----	26		
15. New Orleans.....	102	67	12	12	5	1	4	1	-----	-----	-----	-----	-----	-----	102	7	85	-----	25		
16. Fort Worth.....	139	75	24	20	2	1	8	7	-----	-----	2	-----	-----	-----	139	10	100	2	45		
17. Kansas City.....	108	52	24	11	3	2	10	3	-----	3	-----	-----	-----	-----	108	11	68	-----	40		
18. Minneapolis.....	146	63	29	21	6	1	11	8	-----	4	3	-----	-----	-----	146	19	94	3	55		
19. Seattle.....	134	63	29	14	8	-----	9	8	-----	2	-----	-----	1	-----	134	17	88	3	43		
20. San Francisco.....	204	103	40	24	6	3	19	5	1	3	-----	-----	-----	-----	204	17	136	1	70		
21. Los Angeles.....	258	123	50	27	6	3	41	2	-----	3	-----	-----	1	2	258	15	162	3	85		
22. Denver Board ¹	86	52	13	5	3	-----	6	5	-----	-----	1	-----	-----	1	86	8	62	2	19		
Total.....	3,934	1,971	697	443	164	52	330	176	4	56	32	-----	-----	4	3,934	452	2,671	45	1,253		

¹ Cases in which the Board assumed original jurisdiction because more than 1 region was involved or for other reasons.

TABLE IV.—Disposition of unfair labor practice cases on docket during the fiscal year: by types of complainant

Docket record and method of disposition	Total number of cases	Total number of workers involved	A. F. of L. affiliates		C. I. O. affiliates		Unaffiliated unions		Individual persons ¹	
			Number of cases	Number of workers involved	Number of cases	Number of workers involved	Number of cases	Number of workers involved	Number of cases	Number of workers involved
Cases pending June 30, 1939.....	2,902	926,169	1,052	148,682	1,519	692,360	96	79,377	237	5,750
Cases received July 1, 1939-June 30, 1940.....	3,934	707,439	1,800	321,541	1,443	304,689	207	41,928	484	39,281
Total cases on docket during fiscal year.....	6,836	1,633,608	2,852	470,223	2,962	997,049	303	121,305	721	45,031
Cases closed before formal action, total.....	4,132	707,182	1,854	289,142	1,558	365,190	175	32,222	546	20,628
Settled.....	1,836	179,004	972	62,769	604	105,821	83	6,085	117	4,329
Dismissed.....	930	239,634	298	41,984	363	180,523	42	3,991	228	13,136
Withdrawn.....	1,343	281,244	573	178,236	523	77,742	49	22,106	198	3,160
Otherwise before formal action closed.....	23	7,300	11	6,153	8	1,104	1	40	3	3
Closed after formal action, total.....	532	165,469	165	35,464	319	124,282	28	3,753	21	1,970
Prior to hearing:										
Settled.....	28	8,096	8	317	16	7,695	1	(²)	3	84
Dismissed.....	6	1,606	2	76	3	1,423			1	107
Withdrawn.....	5	754	3	564	2	190				
Prior to issuance of intermediate report or proposed findings:										
Settled.....	13	5,287	5	661	8	4,626				
Dismissed.....	3	901			3	901				
Withdrawn.....	2	141	2	141						
Otherwise closed.....	1				1	(²)				
After issuance of intermediate report or proposed findings:										
Dismissed.....	10	2,269	6	1,171	3	1,097	1	1		
Withdrawn.....	11	3,028	3	814	7	2,012	1	202		
Compliance secured.....	26	3,042	9	827	13	1,671	2	442	2	102
Closed because of company liquidation.....	3	95	2	81	1	14				
After Board decision:										
Dismissed.....	63	12,501	14	1,909	42	10,273	2	140	5	269
Withdrawn.....	2	27	2	27						
Compliance secured.....	118	34,262	44	4,866	63	27,705	6	810	5	881
Otherwise closed after decision.....	26	4,944	0	663	18	4,204	2	77		
After court action:										
Dismissed.....	6	3,663	2	1,037	4	2,626				
Compliance secured.....	206	84,108	55	22,105	134	59,395	13	2,081	5	527
Otherwise closed after court action.....	63	655	2	205	1	450				
Total cases closed during fiscal year.....	4,664	872,651	2,019	324,606	1,877	489,472	203	35,975	567	22,598
Cases pending June 30, 1940.....	2,172	790,957	838	145,617	1,085	507,677	100	85,330	154	22,433

¹ Workers filing charges individually.

² Includes 1 case filed jointly by A. F. of L. affiliate and C. I. O. affiliate and another case filed jointly by C. I. O. affiliate and unaffiliated union.

³ Includes 1 case filed jointly by A. F. of L. affiliate and C. I. O. affiliate.

⁴ Includes 1 case filed jointly by C. I. O. affiliate and unaffiliated union.

⁵ Number of workers involved counted in another case.

⁶ Companies were liquidated before compliance had been secured with court order.

TABLE V.—Disposition of unfair labor practice cases on docket during the fiscal year: By regions

Region	Total number of cases on docket during fiscal year	Total number of cases closed during fiscal year	Cases closed before formal action					Cases closed after formal action															Total cases pending on June 30, 1940				
			Total	Settled	Dismissed	Withdrawn	Otherwise closed	Total	Prior to hearing			Prior to issuance of intermediate report or proposed findings				After issuance of intermediate report or proposed findings				After Board decision				After court action			
									Settled	Dismissed	Withdrawn	Settled	Dismissed	Withdrawn	Otherwise closed	Dismissed	Withdrawn	Compliance secured	Co. liquidation	Dismissed	Withdrawn	Compliance secured		Otherwise closed	Dismissed	Compliance secured	Otherwise closed
1. Boston.....	438	365	332	174	70	87	1	33	1	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	73
2. New York.....	961	696	606	275	161	167	3	90	9	5	2	3	1	1	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	265
3. Buffalo.....	122	79	63	30	13	17	3	16	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	43
4. Philadelphia.....	264	171	144	63	36	45	.....	27	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	93
5. Baltimore.....	424	309	256	117	43	95	1	53	1	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	115
6. Pittsburgh.....	176	115	107	40	18	49	.....	8	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	61
7. Detroit.....	284	170	147	55	39	53	.....	23	2	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	114
8. Cleveland.....	355	246	228	81	35	111	1	18	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	109
9. Cincinnati.....	304	233	222	145	31	46	.....	11	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	71
10. Atlanta.....	279	182	142	65	43	34	.....	40	4	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	97
11. Indianapolis.....	234	159	132	40	40	50	2	27	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	75
12. Milwaukee.....	233	174	162	117	8	37	12	12	1	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	59
13. Chicago.....	399	231	206	90	35	80	1	25	1	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	168
14. St. Louis.....	152	73	65	19	9	37	.....	8	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	79
15. New Orleans.....	198	145	117	69	21	23	4	28	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	53
16. Fort Worth.....	218	150	131	61	39	31	.....	19	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	68
17. Kansas City.....	276	150	132	67	18	47	.....	18	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	126
18. Minneapolis.....	198	120	113	47	23	43	.....	7	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	78
19. Seattle.....	260	173	156	53	41	62	.....	17	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	87
20. San Francisco.....	426	275	259	85	115	59	.....	16	2	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	151
21. Los Angeles.....	478	348	322	102	88	127	5	26	1	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	130
22. Denver.....	149	99	89	40	4	43	2	10	1	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	50
Board ¹	8	1	1	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	7
Total.....	6,836	4,664	4,132	1,838	630	1,343	23	532	28	6	5	13	3	2	1	10	11	26	3	63	2	118	26	6	206	13	2,172

¹ Cases in which the Board assumed original jurisdiction because more than 1 region was involved or for other reasons.
² Companies were liquidated before compliance had been secured with Court order.

TABLE VI.—Types of formal action taken in unfair labor practice cases during the fiscal year: by regions

Region	Com-plaints issued	Hearings held	Inter-mediate reports issued	Cases trans-ferred to the Board	Decisions and orders issued		
					Total	Decisions and orders	Decisions and consent orders
1. Boston.....	5	5	4	10	28	20	8
2. New York.....	41	33	25	43	59	40	19
3. Buffalo.....	4	3	2	4	21	18	3
4. Philadelphia.....	16	14	8	18	35	27	8
5. Baltimore.....	13	10	4	26	31	27	4
6. Pittsburgh.....	7	8	6	8	9	7	2
7. Detroit.....	8	10	8	11	24	21	3
8. Cleveland.....	22	10	4	15	15	6	9
9. Cincinnati.....	7	8	4	9	9	5	4
10. Atlanta.....	28	22	15	23	44	35	9
11. Indianapolis.....	17	7	10	23	29	15	14
12. Milwaukee.....	4	9	9	9	4	4	—
13. Chicago.....	16	24	24	27	43	36	7
14. St. Louis.....	8	5	3	6	15	13	2
15. New Orleans.....	6	6	2	5	5	5	—
16. Forth Worth.....	15	13	16	17	35	33	2
17. Kansas City.....	6	7	4	5	21	18	3
18. Minneapolis.....	19	12	9	14	15	8	7
19. Seattle.....	11	6	3	4	18	17	1
20. San Francisco.....	22	14	8	14	25	5	20
21. Los Angeles.....	13	21	17	12	34	27	7
22. Denver.....	9	7	4	7	8	8	—
Board ¹	1	1	—	—	3	3	—
Total.....	298	255	189	310	530	398	132

¹ Cases in which the Board assumed original jurisdiction because more than 1 region was involved or for other reasons.

TABLE VII.—Disposition of representation cases on docket during the fiscal year: by types of petitioner

Docket record and method of disposition	Total number of cases	Total number of workers involved	A. F. of L. affiliates		C. I. O. affiliates		Unaffiliated unions		Employers	
			Number of cases	Number of workers involved	Number of cases	Number of workers involved	Number of cases	Number of workers involved	Number of cases	Number of workers involved
Cases pending June 30, 1939.....	1,211	494,317	479	84,797	506	287,883	226	121,637	.....	.....
Cases received July 1, 1939-June 30, 1940.....	1,243	400,484	1,133	130,334	1,758	202,300	279	55,852	74	11,998
Total cases on docket during fiscal year.....	1,345	894,801	1,612	215,131	1,264	490,183	505	177,489	74	11,998
Cases closed before formal action, total.....	1,966	382,958	1,973	122,806	1,684	171,278	265	78,981	45	9,893
Settled:										
Consent election.....	1,603	116,098	1,303	37,772	1,257	66,287	33	9,045	11	2,904
Recognition of representatives.....	189	13,152	120	6,550	49	5,334	19	1,068	1	200
Pay roll check.....	177	17,099	92	9,286	65	7,325	20	449	.....	.....
Dismissed.....	314	113,581	132	36,618	74	32,921	57	38,288	21	5,753
Withdrawn.....	677	115,763	323	32,352	238	59,334	105	23,131	11	946
Otherwise closed before formal action.....	6	7,304	3	227	1	77	1	7,000	1	(?)
Cases closed after formal action, total.....	724	232,411	292	44,867	320	145,427	101	41,756	11	361
Before hearing:										
Settled:										
Consent election.....	19	2,482	10	1,006	8	1,476	1	(?)	.....	.....
Recognition of representatives.....	5	443	2	238	2	205	1	(?)	.....	.....
Pay roll check.....	4	665	3	410	.....	.....	1	255	.....	.....
Dismissed.....	2	60	.....	.....	1	45	.....	.....	1	15
Withdrawn.....	18	3,831	4	(?)	9	3,613	4	168	1	50
After hearing:										
Settled:										
Consent election.....	11	2,340	3	150	7	1,090	1	1,100	.....	.....
Recognition of representatives.....	3	1,225	1	525	2	700	.....	.....	.....	.....
Pay roll check.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Dismissed.....	6	202	2	(?)	4	202	.....	.....	.....	.....
Withdrawn.....	36	5,059	26	589	6	1,571	4	2,899	.....	.....
After Board decision:										
Certification:										
Without election.....	44	11,771	9	163	12	7,173	23	4,435	.....	.....
After election.....	370	134,961	152	31,794	168	78,062	43	24,883	7	222
Dismissed:										
Without election.....	102	46,889	36	5,296	49	34,708	15	6,811	2	74
After election.....	66	13,335	27	2,934	33	9,286	6	1,115	.....	.....
Withdrawn.....	30	4,957	13	1,295	17	3,662	.....	.....	.....	.....
Otherwise closed after formal action.....	8	4,191	4	467	2	3,634	2	90	.....	.....
Total cases closed during fiscal year.....	1,2,690	615,369	1,2,655	167,673	1,1,004	316,705	366	120,737	56	10,254
Cases pending June 30, 1940.....	764	279,432	347	47,458	260	173,478	139	56,752	18	1,744

¹ Includes one petition filed jointly by A. F. of L. affiliate and C. I. O. affiliate; discrepancy in total figures arises out of double counting.

² Number of workers involved counted in another case.

TABLE VIII.—Disposition of representation cases on docket during fiscal year: by regions

Region	Total number of cases on docket during fiscal year	Total number of cases closed during fiscal year	Cases closed before formal action							Cases closed after formal action											Total cases pending June 30, 1940		
			Total	Settled			Dismissed	Withdrawn	Otherwise closed before formal action	Total	Before Board decision					After Board decision							
				Consent election	Recognition	Pay-roll check					Settled	Dismissed	Withdrawn	Withdrawn	Certification		Dismissed		Otherwise closed after formal action				
															No election	Election	No election	Election					
1. Boston.....	167	137	107	48	18	4	14	23	30	2	2	2				1	10	9	2				30
2. New York.....	552	428	328	111	34	28	53	99	100	7	1					9	34	22	2	2			124
3. Buffalo.....	63	52	36	11	2	4	11	6	16	2					1	3	2						11
4. Philadelphia.....	193	160	122	37	23	10	19	33	38	1	1					13	10	10					33
5. Baltimore.....	183	154	126	61	11	15	10	29	28	4					1	2	12	4					28
6. Pittsburgh.....	61	52	37	13	5	6	1	12	15							2	9	3					9
7. Detroit.....	171	120	96	33	11	10	19	23	24				3	1	1	17	1	1					51
8. Cleveland.....	142	114	81	31	9	7	10	24	33				1	2	1	21	3						28
9. Cincinnati.....	69	79	61	22	7	6	7	19	18	5	1				1	1	9						20
10. Atlanta.....	102	78	42	12	4	8	9	9	36			1		2	8	1	18		4	2			24
11. Indianapolis.....	113	72	38	15		4	5	14	34	2	1		1		2	1	22	3	1	1	1		41
12. Milwaukee.....	76	57	53	25	3	4	10	11	4					1	7								19
13. Chicago.....	241	165	123	54	18	7	11	33	42	1		1	1		7	2	20	4					68
14. St. Louis.....	61	45	37	15		9	2	11	8					1	1	2	2	2					13
15. New Orleans.....	131	109	90	41	3	13	14	24	13	1	1					0	1						22
16. Fort Worth.....	47	29	17	2	2	4	2	7	12	1	1			2	1	3	2	2					18
17. Kansas City.....	64	49	42	10	8	10	7	7	7				1		1	2							15
18. Minneapolis.....	50	40	27	13	4	1	1	8	13					1		7	4						10
19. Seattle.....	303	213	177	9	15	8	58	87	36				1	1		31	3						90
20. San Francisco.....	124	88	59	16		8	14	21	29	1			1		2	2	21	1			1		36
21. Los Angeles.....	470	408	230	11	11	8	33	167	178	1				9	4	23	105	22	13	1			62
22. Denver.....	47	40	30	13	1	3	3	10	10	1				1	1		5	2					7
Board.....	4	1	1				1		0														3
Total.....	3,454	2,690	1,960	603	139	177	314	677	6	724	30	8	4	8	54	30	44	370	102	66	8		764

¹ Cases in which the Board assumed original jurisdiction because more than 1 region was involved or for other reasons.

TABLE IX.—Types of formal action taken in representation cases during the fiscal year: by regions

Region	Notices of hearing issued	Hearings held	Elections directed	Decisions issued
1. Boston	29	25	17	23
2. New York	73	61	69	93
3. Buffalo	11	14	12	15
4. Philadelphia	28	17	14	26
5. Baltimore	21	19	19	23
6. Pittsburgh	14	12	11	12
7. Detroit	31	34	38	40
8. Cleveland	41	40	28	34
9. Cincinnati	17	13	13	16
10. Atlanta	15	12	17	20
11. Indianapolis	40	28	37	42
12. Milwaukee	8	7	5	5
13. Chicago	53	44	41	47
14. St. Louis	8	7	3	5
15. New Orleans	6	6	10	11
16. Fort Worth	4	5	10	12
17. Kansas City	9	8	7	7
18. Minneapolis	7	7	11	15
19. Seattle	25	22	25	29
20. San Francisco	24	22	18	20
21. Los Angeles	92	97	101	137
22. Denver	7	8	6	9
Board	1			
Total	564	508	512	641

¹ Cases in which the Board assumed original jurisdiction because more than 1 region was involved or for other reasons.

TABLE X.—Character and results of representation elections conducted during the fiscal year, by regions

Region	Number of elections			Number of employees			Valid votes cast								Result of elections							
	Total	Consent	Ordered	Eligible to vote	Voting	Total	For A. F. of L. or C. I. O. affiliates		Unaffiliated unions				Against single union on ballot		Against contesting unions ¹		Won by A. F. of L. or C. I. O. affiliate	Won by unaffiliated union		Won by no union		
							Number	Percent of total votes	National		Local		Number	Percent of total votes	Number	Percent of total votes		Number	Percent of total votes		National	Local
									Number	Percent of total votes	Number	Percent of total votes										
1. Boston.....	66	52	14	34,159	31,115	30,799	18,698	60.71	1,981	6.43	1,703	5.53	7,579	24.61	838	2.72	39	4	4	19		
2. New York.....	181	123	58	69,280	65,172	63,893	31,343	49.06	1,636	2.56	21,339	33.40	5,635	8.82	3,940	6.16	111	3	23	41		
3. Buffalo.....	19	13	6	27,088	24,616	24,086	7,177	29.80	2,683	11.14	167	.69	1,135	4.71	12,924	53.66	8	3	1	7		
4. Philadelphia.....	58	38	20	27,264	24,846	24,617	19,357	78.63	625	2.54	1,906	8.11	1,975	8.02	664	2.70	42	2	3	16		
5. Baltimore.....	86	66	20	15,361	14,213	14,049	8,496	60.47	289	2.06	768	5.47	4,325	30.79	171	1.21	66	2	3	16		
6. Pittsburgh.....	27	12	15	18,620	16,881	16,746	5,927	35.39	19	.11	6,642	39.06	4,070	24.34	82	.50	11	1	9	7		
7. Detroit.....	141	32	109	243,518	218,589	216,075	191,545	88.65	1,079	.50	745	.34	2,891	1.34	19,815	9.17	119	5	2	15		
8. Cleveland.....	62	34	28	15,706	14,450	14,223	6,080	42.75	512	3.60	4,370	30.72	2,748	19.32	513	3.61	42	4	7	9		
9. Cincinnati.....	47	28	19	20,680	18,756	18,216	10,454	57.39	428	2.35	2,971	16.31	3,315	18.20	1,048	5.75	22	2	5	20		
10. Atlanta.....	35	12	23	17,041	14,136	13,953	10,240	73.39	23	.16	81	.58	3,348	23.99	261	1.88	28	2	1	4		
11. Indianapolis.....	63	25	28	24,140	22,620	22,048	14,175	64.29	1,459	6.62	2,293	10.40	3,211	14.56	910	4.13	36	3	6	8		
12. Milwaukee.....	30	26	4	4,169	4,078	4,010	2,424	60.45	-----	-----	285	7.11	1,230	30.82	65	1.62	20	-----	-----	10		
13. Chicago.....	101	67	34	25,629	23,074	23,193	15,062	64.94	326	1.41	3,551	15.31	2,669	11.51	1,585	6.83	55	1	10	35		
14. St. Louis.....	22	17	5	4,899	4,281	4,222	2,337	55.35	327	7.75	123	2.91	1,099	26.03	336	7.96	13	-----	-----	8		
15. New Orleans.....	51	43	8	9,206	8,609	8,560	4,911	57.37	46	.54	1,541	18.00	1,862	21.75	200	2.34	36	-----	-----	12		
16. Fort Worth.....	0	4	5	1,825	1,678	1,664	944	56.73	-----	-----	88	5.29	597	35.88	35	2.10	5	-----	-----	3		
17. Kansas City.....	22	15	7	3,736	3,526	3,435	2,420	70.45	-----	-----	15	.44	945	27.51	55	1.60	16	-----	-----	6		
18. Minneapolis.....	20	13	7	3,240	2,900	2,855	1,788	62.63	-----	-----	230	8.06	806	28.23	31	1.08	14	-----	-----	4		
19. Seattle.....	38	10	28	6,987	6,205	6,131	5,558	90.65	71	1.16	-----	-----	409	6.67	93	1.52	33	2	-----	6		
20. San Francisco.....	33	20	13	3,453	3,217	3,159	2,204	69.77	212	6.71	156	4.94	203	8.33	324	10.25	24	1	3	6		
21. Los Angeles.....	75	13	62	16,432	14,488	13,954	8,910	63.85	2,289	16.40	501	3.59	1,774	12.71	480	3.45	46	10	1	18		
22. Denver.....	16	13	3	2,642	2,495	2,467	1,167	47.30	849	34.41	206	8.35	165	6.69	80	3.25	7	2	1	6		
Board ¹	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----		
Total.....	1,192	676	516	595,075	540,544	532,355	371,217	69.73	14,854	2.79	49,771	9.35	52,063	9.78	44,450	8.35	793	45	83	271		

¹ Cases in which the Board assumed original jurisdiction.

² Includes 1 run-off election.

³ Includes 2 run-off elections.

⁴ Includes election held in 1938 but not tabulated until 1939.

⁵ Reported as "For neither" in previous years.

TABLE XI.—Number of elections participated in, won, and lost during the fiscal year: by different types of labor organizations ¹

Type of union	Elections in which union participated		Elections won				Elections lost			
	Number	Valid votes cast	Elections		Valid votes cast		Elections		Valid votes cast	
			Number	Percent of total in which union participated	Number	Percent of total cast	Number	Percent of total in which union participated	Number	Percent of total cast
A. F. of L. affiliates.....	734	343, 439	386	52.59	70, 700	20.59	348	47.41	272, 739	79.41
C. I. O. affiliates.....	692	447, 236	407	58.82	313, 852	70.18	285	41.18	133, 384	29.82
Unaffiliated national unions.....	115	37, 043	45	39.13	9, 499	25.64	70	60.87	27, 544	74.36
Unaffiliated local unions.....	134	93, 170	83	61.94	63, 697	68.37	51	38.06	29, 473	31.63

¹ Includes only those elections which were won by some form of labor organization

V. PRINCIPLES ESTABLISHED

In previous annual reports we have outlined the important principles enunciated by the Board during the first 4 years of its existence.¹ No attempt will be made in this chapter to repeat that material. While referring on occasion to decisions discussed in previous annual reports, we shall devote this chapter to the discussion of new principles which were enunciated by the Board in its decisions issued from July 1, 1939, through June 30, 1940,² and the elaboration and extension during this period of the principles already laid down by the Board.

For convenience the chapter has been divided into nine sections:

A. Interference, restraint, and coercion in the exercise of the rights guaranteed in section 7 of the Act: This section deals with cases arising under section 8 (1) of the Act.

B. Encouragement or discouragement of membership in a labor organization by discrimination: This section deals with cases arising under section 8 (3) of the Act.

C. Collective bargaining: This section deals with cases arising under section 8 (5) of the Act.

D. Domination and interference with the formation or administration of a labor organization and contribution of financial or other support to it: This section deals with cases arising under section 8 (2) of the Act.

E. Investigation and certification of representatives: This section deals with proceedings arising under section 9 (c) of the Act. Such proceedings normally include the taking of secret ballots to determine representatives for the purpose of collective bargaining.

F. Adequate proof of majority representation: This section deals with proof of majority under section 8 (5) and section 9 (c) of the Act.

G. The unit appropriate for the purposes of collective bargaining: This section is devoted to a discussion of the principles developed by the Board pursuant to its power under section 9 (b) of the Act to determine the appropriate unit for collective bargaining. The question of the appropriate unit is an issue in cases arising both under section 8 (5) and section 9 (c) of the Act.

H. Remedies: This section deals with the remedies which the Board has applied, pursuant to section 10 (c) of the Act, in cases in which it has found that employers have engaged in unfair labor practices.

I. Miscellaneous: This section deals with several problems involving parties, pleading, practice, and procedure before the Board.

¹ The First Annual Report deals with all decisions issued up to June 30, 1936, reported in 1 N. L. R. B.; the Second Annual Report deals with all decisions issued up to June 30, 1937, reported in 1 and 2 N. L. R. B.; the Third Annual Report deals with all decisions issued from July 1, 1937, to June 30, 1938, and reported in 3 to 7 N. L. R. B., inclusive; the Fourth Annual Report deals with all decisions issued by the Board from July 1, 1938, through June 30, 1939, and reported in 8 through 12 N. L. R. B. and the first half of 13 N. L. R. B.

² The decisions issued by the Board during this period are reported in 13 through 24 N. L. R. B.

A. INTERFERENCE, RESTRAINT, AND COERCION IN THE EXERCISE OF THE RIGHTS GUARANTEED IN SECTION 7 OF THE ACT

Section 7 of the Act provides that—

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

Section 8 (1) of the act makes it an unfair labor practice for an employer to—

interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

As stated in the Third and Fourth Annual Reports³ the Board has consistently held that a violation by an employer of any of the four subdivisions of section 8 other than subdivision (1) is also a violation of subdivision (1). Moreover, any other employer activity which infringes the rights guaranteed in section 7, although not specifically described in the Act, is a violation of subdivision (1). The various methods by which employers have interfered with, restrained, or coerced employees in the exercise of the rights guaranteed in the Act are numerous. In our Third and Fourth Annual Reports, we described the more significant forms of such activities as we have dealt with them in our decisions.⁴

During the last fiscal period employers were found to have engaged in such diverse acts of coercion as reporting an employee to the immigration authorities in order to discourage his continued union activity;⁵ instigating a walk-out in order to terminate a contract with a union;⁶ encouraging civic hostility to unions and union members;⁷ offering a contract for life-long employment to an employee if he remained out of a union;⁸ permitting nonunion employees to manufacture and carry blackjacks in the factory and to evict union members;⁹ publicly celebrating the defeat of a union in collective bargaining elections;¹⁰ campaigning to prevent employees from participating in an election directed by the Board;¹¹ offering to employees stock purchase plans which bound them to refrain from requesting wage increases;¹² instituting a wage increase,

³ Third Annual Report at p. 52; Fourth Annual Report at p. 57.

⁴ Third Annual Report at pp. 51-65; Fourth Annual Report at pp. 57-60.

⁵ *Matter of Ford Motor Company and United Automobile Workers of America, Local 440*, 19 N. L. R. B., No. 79.

⁶ *Matter of Highland Shoe Co. Inc. and United Shoe Workers of America*, 23 N. L. R. B., No. 23.

⁷ *Matter of J. Klotz & Co. and Joint Board of Suitcase, Bag, & Portfolio Workers' Union, A. F. of L.*, 13 N. L. R. B. 746.

⁸ *Matter of Aronsson Printing Company and Detroit Printing Pressmen's & Assistants' Union No. 2, and Detroit Bindery Workers Union No. 20, and Detroit Typographical Union No. 18*, 13 N. L. R. B. 799.

⁹ *Matter of General Motors Corporation et al. and International Union, etc.*, 14 N. L. R. B. 113; cf. *Matter of Goodyear Tire & Rubber Company of Alabama and United Rubber Workers of America*, 21 N. L. R. B., No. 33; *Matter of Donnelly Garment Company and International Ladies' Garment Workers Union and Donnelly Garment Workers Union, Party to the Contract*, 21 N. L. R. B., No. 24.

¹⁰ *Matter of Federal Mining & Smelting Company, etc., and Mullan Local No. 9, etc.*, 20 N. L. R. B., No. 17; *Matter of Atlas Powder Company and District No. 50, United Mine Workers of America, etc.*, 15 N. L. R. B. 912.

¹¹ *Matter of New York Handkerchief Manufacturing Company and International Ladies' Garment Workers' Union, Local No. 76*, 16 N. L. R. B. 532, mod. on another issue and *ent'd in New York Handkerchief Manufacturing Company v. N. L. R. B.*, July 11, 1940 (C. C. A. 7).

¹² *Matter of Vincennes Steel Corporation and International Association, etc.*, 17 N. L. R. B. 825.

coupled with statements that a union was not necessary to secure it;¹³ and aiding employees to impound union funds.¹⁴

In a number of cases the employer has interfered with, restrained, or coerced his employees through organizations and individuals existing outside the employer-employee relationship. In *Matter of Bethlehem Steel Corporation, etc.* and *Steel Workers' Organizing Committee*,¹⁵ the employer supported a citizens committee, headed by the mayor of Johnstown, Pa., formed for the purpose of ending a strike against the employer in Johnstown. This committee conducted a widespread campaign intended to destroy the union by creating hostility toward it and by promoting a "back-to-work" movement among the strikers. The Board found that in surreptitiously contributing large sums of money to the citizens committee, the employer had violated section 8 (1) of the Act:

The statements made by Mayor Shields indicate that his conception of the best way to handle the strike situation was to create hostility to the strikers, encourage a back-to-work movement, and defeat the S. W. O. C. In providing the money which was turned over to the Mayor, and in directly turning over a sum of money to the Mayor, the company was following a program calculated to insure the continuance of this attitude; the company was thus in the most effective manner interfering with the organization of its striking employees. In a situation in which impartiality by the city administration was essential to a proper preservation of the rights of the company on one hand and the union on the other, the company was by the payment of money, engaging in a course of conduct which necessarily affected that impartiality. Such action by the company was in contravention of section 8 (1) of the act.¹⁶

In *Matter of Alma Mills Inc. and Textile Workers Organizing Committee*,¹⁷ the employer exploited "preachers" and religious organizations to harangue employees against the union. The employer, by promises to contribute money to build churches and by other activity, supported "preachers" who conducted active religious campaigns preaching that C. I. O. meant "Christ Is Out," and that the union was the "mark of the beast." In addition the employer instigated the formation of "prayer bands" to combat the union. Pointing out that such appeals to religious prejudice have constituted an effective means of combating unionism in southern textile mills, the Board held that the employer's action in instigating and fostering such activity was prescribed by the Act. In *Matter of Grower-Shipper Vegetable Association, etc.* and *Fruit and Vegetable Workers Union of California, etc.*,¹⁸ the employer association induced firms supplying ice and other indispensable commodities to the growers, to boycott one member of the association in order to punish him for

¹³ *Matter of Southern Colorado Power Company, etc.*, and *H. H. Stewart and I. L. Walkins, Individuals*, 13 N. L. R. B. 699, enfd in *Southern Colorado Power Company v. N. L. R. B.*, 111 F. (2d) 539 (C. C. A. 10).

¹⁴ *Matter of Lancaster Iron Works, Inc.*, and *Amalgamated Association, etc.*, 20 N. L. R. B. No. 73.

¹⁵ 14 N. L. R. B. 539.

¹⁶ Cf. *Matter of Jacob H. Klotz, etc.* and *Joint Board of Suitcase, Bag & Portfolio Makers' Union, A. F. of L.*, 13 N. L. R. B. 746. The employer moved its business from New York City to Pawling, N. Y., to avoid the union, and warned the mayor of Pawling that the union members who had worked in New York City would come to Pawling to seek employment. The employer instilled in him fears of "trouble," and played upon the suspicion of the residents toward the arrival of "outsiders" in order to create a "hostile reception" in Pawling for the union and union members and to obtain from the citizens of Pawling a sympathetic attitude toward his stand against the union. The Board found that in thus encouraging civic hostility to the union, the employer violated section 8 (1) of the act.

¹⁷ 24 N. L. R. B., No. 1.

¹⁸ 15 N. L. R. B. 322.

attempting to bargain with the union. The Board held that such action by the association contravened the act since,

It was calculated to strike at the union indirectly by preventing its enjoyment of the fruits of collective bargaining with the employer of some of its members. It was also designed to prevent further defections from the [association] ranks, which might have resulted in the conclusion of similar agreements between employers and the union.

Although these cases and many others under section 8 (1) decided adversely to the employer, during the last fiscal year, presented varied facts, they had in common an effort by the employer to frustrate self-organization or other concerted activity of employees. On the other hand, the Board has pointed to the absence of any such attempt in dismissing complaints. Thus in *Matter of the Emerson Electric Mfg. Co. and Local No. 1102, etc.*,¹⁹ the Board ruled that the company's refusal to arbitrate certain disputed issues with a union did not contravene the act whether or not such refusal breached a collective bargaining contract between these parties. The Board stated: "We * * * are satisfied that the respondent in refusing to arbitrate these issues did not intend to and did not in fact, interfere with, restrain, or coerce its employees in the exercise of the rights guaranteed in section 7 of the act."

The Board has held that where the employer in seeking to thwart labor organization engages in conduct normally resulting in interference, restraint, and coercion, such conduct constitutes a violation of the act, even in the absence of proof that specific employees were, or in the presence of proof that specific employees were not, responsive to such pressure. Thus, in *Matter of Montgomery Ward and Company and Warehouse Employees' Union No. 20, 297, etc.*,²⁰ the Board, in rejecting the employer's contention that its system of espionage upon the union activities of its employees did not violate the act because many of the operatives were not coerced and in fact joined the union, stated:

The respondent's invasion of the field of union activity which the act reserves as a matter of right to the employees is in itself an unfair labor practice. That the employees whom the respondent instructed to spy upon their fellow employees renounced their activity and joined the union does not legitimize the respondent's unlawful conduct.

In a number of cases, employers have invoked the guarantee of free speech embodied in the First Amendment to the United States Constitution as a defense to the charge that they were engaging in unfair labor practices. The Board has pointed out in this connection that although certain statements may not of themselves infringe the act, they may nevertheless throw light on the employer's conduct and that the Board by such use of statements clearly does not abridge freedom of speech. Thus in *Matter of Dow Chemical Company and United Mine Workers of America, District No. 50*,²¹ the Board stated the following:

The respondent misapprehends the nature of the guarantee. The First Amendment to the United States Constitution does not preclude a fact-finding body from making an evidentiary use of speech any more than the Fifth Amendment prohibits it from weighing "authority or power" "relation or op-

¹⁹ 13 N. L. R. B. 448.

²⁰ 17 N. L. R. B. 191.

²¹ 13 N. L. R. B. 993.

portunity,"²² inclination, motive, or nonverbal conduct. Words like other behavior may be the means through which the violation is accomplished. Whether or not an employer has engaged in interference, restraint, coercion, domination and support is a question of fact,²³ to be resolved—pursuant to Section 10 (c) and in accord with approved practice—by an evaluation of "all the testimony."

In *Matter of Ford Motor Company and International Union, etc.*, [Detroit, Mich.],²⁴ union sympathizers were beaten. The Board, placing these assaults against a background of the company's previously announced antiunion views, as well as considering other evidence of the company's responsibility for the attacks, attributed them to the company and found therefore that it had violated section 8 (1) of the Act. The Circuit Court of Appeals also adverted to this background in sustaining the Board's finding.

Moreover, it has been held that the employer's antiunion threats, such as threats of discharge or other discrimination,²⁵ or of bodily harm,²⁶ are not privileged under the act and the Constitution. As pointed out in the Third Annual Report, the threat inhering in a statement may, in some cases, appear "only when it is examined in the context of surrounding circumstances and in its relation to the entire factual background."²⁷

Matter of Ford Motor Company and International Union, etc. [St. Louis, Mo.]²⁸ illustrates the Board's approach in this connection. The company engaged in an active and open campaign to crush the union through discriminatory discharges and similar repressive measures. At the same time it distributed to the employees pamphlets attacking the motives of union leaders and warning the employees that the unions sought only to control them and make them pay for their jobs. With respect to the pamphlets, the Board stated:

Whether the words or actions of an employer constitute interference, restraint, or coercion, within the meaning of the act, must be judged, not as an abstract proposition, but in the light of the economic realities of the employer-employee relationship. It need hardly be stressed that the dominant position of an employer, who exercises the power of economic life and death over his employees, gives to an employer's statements, whether or not ostensibly couched as argument or advice, an immediate and compelling effect that they would not possess if addressed to economic equals. As the Circuit Court of Appeals for the Seventh Circuit has said, "The voice of authority may * * * provoke fear and awe quite as readily as it may bespeak fatherly advice. The position of the employer * * * carries such weight and influence that his words can be coercive when they would not be so if the relations of master

²² Citing *Texas & New Orleans Railroad Co. v. Brotherhood of Railway Clerks*, 281 U. S. 548, 568.

²³ Citing *N. L. R. B. v. Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261.

²⁴ 14 N. L. R. B. 346, mod. and enfd in *N. L. R. B. v. Ford Motor Company*, October 8, 1940 (C. C. A. 6).

²⁵ *Ibid*; cf. *N. L. R. B. v. Fruehauf Trailer Co.*, 301 U. S. 49, rev'g, *Matter of Fruehauf Trailer Co. and United Automobile Workers Federal Labor Union*, 1 N. L. R. B. 68; *N. L. R. B. v. Nebel Knitting Co.*, 103 F. (2d) 594 (C. C. A. 4), enfg as mod. *Matter of Nebel Knitting Co. and American Federation of Hosiery Workers*, 6 N. L. R. B. 284.

²⁶ *Ibid*; cf. *Republic Steel Corporation v. N. L. R. B.*, 107 F. (2d) 472 (C. C. A. 3), cert. granted on other issues, May 20, 1940, enfg *Matter of Republic Steel Corp. and Steel Workers Organizing Committee*, 9 N. L. R. B. 219.

²⁷ At 59.

²⁸ 23 N. L. R. B., No. 28; cf. *Matter of Ford Motor Company and International Union, etc.* [Detroit, Mich.], 14 N. L. R. B. 346, mod. as to this issue and enfd in *N. L. R. B. v. Ford Motor Company*, October 8, 1940 (C. C. A. 6); *Matter of Ford Motor Company and United Automobile Workers of America, etc.* [Somerville, Mass.] 19 N. L. R. B., No. 79; *Matter of Ford Motor Company and International Union, etc.* [Buffalo, N. Y.], 23 N. L. R. B., No. 46.

and servant did not exist.”²⁰ In the *Virginian Railway* case the Circuit Court of Appeals for the Fourth Circuit made the same observation:

“It must be remembered in this connection, however, that any sort of influence exerted by an employer upon an employee, dependent upon his employment for means of livelihood, may very easily become undue in that it will coerce the employee’s will in favor of what the employer desires against his better judgment as to what is really in the best interest of himself and his fellow employees.”²⁰

Here the pamphlet was distributed to the respondent’s employees on the respondent’s property by persons in the respondent’s pay. It was circulated at the peak of the union’s organizing campaign and at a time when the threatened discharge of the union committee was fresh in the minds of the employees. In the pamphlet the respondent expressed bitter opposition to labor organizations. We think that the pamphlet made it clear to the employees, not only that the respondent was uncompromisingly hostile to the union, but that the respondent might be expected to take positive measures to make its opposition effective. Thus the caption on the outside of the pamphlet—“Ford * * * Cautions Workers on Organization”—in itself reveals that the document was intended not merely as an argument but as a warning. The further declaration that Ford had “never had to bargain against our men”—that is, had never had to deal with a union—and that “we don’t expect to begin now,” likewise carries a threat that can hardly have been misunderstood. In its entirety, and in the light of its source and its background, the pamphlet could only be construed by the employees as a plain warning that the respondent had no intention of accepting or tolerating the union, and that the employees could expect to achieve self-organization only by overpowering their employer through economic action.²¹

We find that the distribution of the pamphlet by the respondent to its employees was intended to have, and did have, the effect of interfering with, restraining, and coercing the respondent’s employees in the exercise of their right to self-organization and collective bargaining.

The respondent contends in substance: (1) that in the circulation of the pamphlet it was exercising the right of free speech guaranteed by the First Amendment to the Federal Constitution, and (2) that the legislative history of section 8 (1) of the act indicates that Congress purposely left employers free to influence their employees in the exercise of the rights guaranteed in section 7 as long as employers did not interfere with, restrain, or coerce employees in the exercise of such right.

We have considered these defenses and, in the light of the facts presented, find them to be without merit. The respondent’s right to freedom of speech and of press does not sanction its use of speech or press as a means of employing its economic superiority to interfere with, restrain, or coerce its employees in the exercise of the rights guaranteed by the act.²² By its distribution of the “Viewpoint on Labor” to the plant employees, the respondent was not addressing or attempting to influence the public at large; nor was the respondent addressing an argument to the intellect of its employees which they were free to accept or reject without compulsion. The respondent was not attempting to engage in the “free trade in ideas * * * in the competition of the market.”²³ On the contrary it was issuing a stern warning that it was bitterly opposed to the union and that it would throw the weight of its economic power against the efforts of its employees to form or carry on such an organiza-

²⁰ Citing *N. L. R. B. v. Falk Corp.*, 102 F. (2d) 383 (C. C. A. 7).

²¹ Citing *Virginian Ry. Co. v. System Federation No. 40*, 84 F. (2d) 641 (C. C. A. 4), aff’d 300 U. S. 515.

²² “As a matter of fact, as we find hereinafter, within a short time after issuance of the pamphlet, the respondent did undertake an active and open campaign to crush the union, through discriminatory discharges and similar repressive measures.”

²³ “See *N. L. R. B. v. Falk Corporation*, 102 F. (2d) 383 (C. C. A. 7), aff’d in 308 U. S. 453; *N. L. R. B. v. Colton*, 105 F. (2d) 179 (C. C. A. 6); *N. L. R. B. v. Hopwood Retinning Co.*, 98 F. (2d) 97 (C. C. A. 2); *Virginia Ferry Corp. v. N. L. R. B.*, 101 F. (2d) 103 (C. C. A. 4); *N. L. R. B. v. Stackpole Carbon Co.*, 105 F. (2d) 167 (C. C. A. 3), cert. den. 60 Sup. Ct. 142; *N. L. R. B. v. Nebel Knitting Company*, 103 F. (2d) 594 (C. C. A. 4); *Republic Steel Corporation v. N. L. R. B.*, 107 F. (2d) 472 (C. C. A. 3), cert. den. April 8, 1940.”

²⁴ “See *Holmes, J.*, dissenting in *Abrams v. United States*, 250 U. S. 616, 624, 630 (1919). Compare the language of the Court in *Thornhill v. Alabama* (— U. S. —, decided April 22, 1940): “Abridgment of the liberty of such discussion can be justified only where the clear danger of substantive evils arises under circumstances affording no opportunity to test the merits of ideas by competition for acceptance in the market of public opinion.”

tion. The respondent's right so to interfere with, restrain, and coerce its employees is not sanctioned by the First Amendment.

As to the respondent's contention that the act does not prohibit an employer from influencing his employees, it is clear, for the reasons already stated, that the respondent's actions here constitute not mere influence but interference, restraint, and coercion, expressly forbidden by the act.

In the light of the foregoing considerations, and upon the entire record, which portrays the systematic employment by the respondent of unfair labor practices directed against the union, we find that the respondent, by distributing to its employees "Viewpoint on Labor," has interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed in section 7 of the act.

That the Board considers "the entire factual background" in determining whether to sustain or dismiss a complaint alleging that an employer made coercive statements is also illustrated by *Matter of Sinclair Refining Co.* and *W. B. McKay*.³⁴ There a foreman made statements to employees derogatory to the union. The Board held, however, that the effect of the statements was not coercive in the light of the entire record and the posting of notices by the employer, pursuant to agreement with the union, which gave assurances that the employer would not interfere with employees in the exercise of their rights under section 7 of the act.

B. ENCOURAGEMENT OR DISCOURAGEMENT OF MEMBERSHIP IN A LABOR ORGANIZATION BY DISCRIMINATION

Section 8 (3) makes it an unfair labor practice for an employer:

By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this act * * * or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9 (a) in the appropriate collective bargaining unit covered by such agreement when made.³⁵

As pointed out in previous annual reports³⁶ the Board in administering section 8 (3) has been careful not to interfere with the normal exercise of the right of the employer to select his employees or to discharge them. The Board has never held it to be an unfair labor practice for an employer to hire or discharge, to promote or demote, to transfer, lay-off or reinstate, or to otherwise affect the hire or tenure of employees, or the terms or conditions of employment for asserted reasons of business animosity or because of sheer caprice, so long as the employer's conduct is not wholly or in part motivated by antiunion cause. Thus, the Board in one case dismissed the complaint as to certain employees on the ground that the employer had laid them off not because of union membership or activity but "capriciously * * * when in a state of anger and in order to assert his authority."³⁷ Conversely the Board has been equally

³⁴ 20 N. L. R. B., No. 75; cf. *Matter of Adams Brothers Manifold Printing Company etc.*, and *Topeka Typographical Union, etc.*, 17 N. L. R. B. 974.

³⁵ By section 9 (a), the representative designated by the majority of the employees in the appropriate collective bargaining unit is the exclusive representative of all the employees in such unit for the purposes of collective bargaining.

³⁶ First Annual Report, p. 77; Second Annual Report, pp. 69-70; Third Annual Report, p. 65; Fourth Annual Report, p. 60.

³⁷ *Matter of E. Hubschman & Sons, Inc., etc.*, and *National Leather Workers' Association, etc.*, 14 N. L. R. B. 225.

determined not to permit in any case an unfair labor practice within the meaning of this section to go unchallenged under cover of the employer's right to determine its personnel. Thus, in *Matter of Air Associates and International Union, United Automobile Workers of America (C. I. O.)*,³⁸ the Board found that the employer had engaged in unfair labor practices within section 8 (3) because he discharged two employees in order to create resentment toward a union and to counteract the beneficial effects flowing from the previous reinstatement of two union members. The Board has held, moreover, that if the employer affects an employment relationship because of pro- or anti-union reasons he is violating section 8 (3), although he may also have lawful reasons for so doing.³⁹

A number of interesting examples of concerted activity protected against discriminatory employer action appear in cases decided during the past fiscal year.⁴⁰ Thus, the Board has found unlawful discrimination in the discharge of employees for protecting the right of fellow employees to inform nonunion members of a wage increase obtained through the efforts of the union,⁴¹ for taking up a Christmas collection for a striking employee in view of the fact that the employer allowed collections for other purposes,⁴² for reporting to the union the discovery of a memorandum indicating that the employer intended to violate the act,⁴³ for engaging in concerted activity not sanctioned by the collective bargaining representative,⁴⁴ and for engaging in activity in behalf of a union existing in the plant of a customer of the employer.⁴⁵

In *Matter of Aladdin Industries, Inc. and United Automobile Workers of America*,⁴⁶ however, the Board, following the *Fansteel*⁴⁷ case, held that the employer had not acted unlawfully in discharging employees for having engaged in a sit-down strike; and in another case, the Board dismissed the allegations of unfair labor practices within section 8 (3) upon a showing that the employer had refused to reinstate two striking employees because of a reasonable belief that they had assaulted an employee who had abandoned a strike which had not been caused or prolonged by unfair labor practices.⁴⁸ In the *Aladdin* case, the employer discharged certain persons who had not participated

³⁸ 20 N. L. R. B., No. 36.

³⁹ *Matter of the Dow Chemical Company and United Mine Workers of America, etc.*, 13 N. L. R. B. 993; *Matter of West Oregon Lumber Co.*, and *Lumber and Sawmill Workers' Local Union, etc.*, 20 N. L. R. B., No. 1; *Matter of Borden Mills, Inc.*, and *Textile Workers' Organizing Committee*, 13 N. L. R. B. 459.

⁴⁰ See also Third Annual Report, pp. 70-72; Fourth Annual Report, p. 61.

⁴¹ *Matter of Southwestern Gas & Electric Co.*, and *International Brotherhood of Electrical Workers*, 16 N. L. R. B. 112.

⁴² *Matter of Berkshire Knitting Mills and American Federation of Hosiery Workers, Branch #10*, 17 N. L. R. B. 239.

⁴³ *Matter of Viking Pump Co.*, and *Lodge 1683, etc.*, 13 N. L. R. B. 576, en'd in *N. L. R. B. v. Viking Pump Co.* July 29, 1940 (C. C. A. 8). The Board pointed out that the janitor's discovery of the memorandum was entirely fortuitous, that it did not violate a confidential relationship to the employer, and that his discharge was also in violation of section 8 (4) which was designed to protect employees from reprisal for disclosing violations of the act.

⁴⁴ *Matter of Washougal Woolen Mills and Local 127, Textile Workers' Union of America*, 23 N. L. R. B., No. 1.

⁴⁵ *Matter of Fort Wayne Corrugated Paper Company and Local 182, etc.*, 14 N. L. R. B. 1, en'd as mod. in *Fort Wayne Corrugated Paper Co. v. N. L. R. B.* 111 F. (2d) 869 (C. C. A. 7). In this case the finding rested on section 8(1) of the act.

⁴⁶ 22 N. L. R. B., No. 101.

⁴⁷ *N. L. R. B. v. Fansteel Metallurgical Co.*, 308 U. S. 240.

⁴⁸ *Matter of Decatur Newspapers Inc. and Decatur Newspaper Guild etc.*, 16 N. L. R. B. 489.

in the sit-down strike. The Board found a violation of section 8 (3) as to them and stated:

Moreover, a discharge of the employees who did not participate in the sit-down strike, based upon the mere fact that they were striking, would in itself constitute an unfair labor practice within the meaning of section 8 (3) of the act.

In its reply brief, the respondent contends that all the individuals named in the complaint, who were all members of the union, should be denied relief on the ground that the sit-down strike was an unlawful conspiracy representing the concerted action of the union; that all the union members were equally responsible for it; and that therefore its consequences cannot be limited to those who "actively carried into effect [the union's] purposes and aims" but must fall alike "on all union members in whatever capacity, or to whatever extent they participated, whether actively as sit-down trespassers, actively as aiders and abettors or even passively as union members." We cannot concur in this contention. The fact that an employee voted in favor of a sit-down strike or did not openly disclaim responsibility therefor does not in our opinion serve as a justification for discharging such an employee or for refusing him reinstatement.⁴⁹

The Board has reaffirmed its position that the act protects workers against the notorious antiunion blacklist. In *Matter of Waumbee Mills, Inc.*, and *Textile Workers Union of America*,⁵⁰ the Board found that the employer would have employed two applicants for employment but for their membership in a labor organization. The Board, finding that this refusal to hire constituted an unfair labor practice within section 8 (1) and (3), stated:

It is well established that the act is not intended to interfere with the normal exercise of the right of the employer to select its employees or to discharge them. The respondent's contention, however, that the act has no application whatever prior to the formation of the employer-employee relationship is clearly and specifically contradicted by the terms of section 8 (3) of the act which provides "It shall be an unfair practice for an employer—by discrimination in regard to hire or tenure of employment to encourage or discourage membership in any labor organization * * *." A reference to the legislative history of the act indicates that the provision means exactly what it says. In addition the broad purposes of the act to further industrial peace "by encouraging the practice and procedure of collective bargaining" is irreconcilable with the proposition that employers may debar union applicants with impunity.

Section 8 (1) of the act likewise covers a discriminatory refusal to hire as well as a discriminatory discharge. Simply stated, section 8 (1) makes it an unfair labor practice for an employer to interfere with, restrain, or coerce employees in the exercise of their rights of self-organization and collective bargaining. One form of interference, restraint, and coercion is the discharge for union membership or activities of an individual already employed. Another such form is the refusal to hire an individual seeking employment for the same reasons. Each is an open warning to all persons already employed, and it is the interfering, restraining, and coercive effect upon these employees that constitutes the violation of section 8 (1) in both cases. Hence it is immaterial whether the individual discriminated against is already an employee or merely an applicant for employment.

Since discrimination in hiring is as telling a form of interference with self-organization as any other and as much an incitement to disputes burdening and obstructing commerce, such discrimination is plainly in conflict with both the policy and purposes of the act.

⁴⁹ "Cf. *National Labor Relations Board v. Fansteel Metallurgical Corporation*, 306 U. S. 240, where the Supreme Court held by implication that the employees who did not engage in or aid and abet in the sit-down strike were subject to reinstatement on a nondiscriminatory basis and that responsibility for the sit-down strike could not be imputed to such employees."

⁵⁰ 15 N. L. R. B. 37, med., in another respect and en'd in *N. L. R. B. v. Waumbee Mills, Inc.*, August 20, 1940 (C. C. A. 1); also *Matter of Milan Shirt Manufacturing Co.*, and *Milan Improvement Company and Amalgamated Clothing Workers of America*, 22 N. L. R. B., No. 99.

The Board has had occasion to apply the principle of the *Mackay* case⁵¹ that:

* * * although Section 13 provides "Nothing in the act shall be construed so as to interfere with or impede or diminish in any way the right to strike," it does not follow that an employer, guilty of no act denounced by the statute, has lost the right to protect and to continue his business by supplying places left vacant by strikers. And he is not bound to discharge those hired to fill the places of strikers, upon the election of the latter to resume their employment, in order to create places for them.⁵²

In *Matter of Calmar Steamship Corporation and National Maritime Union of America*,⁵³ a union declared a sit-down strike against the company's vessels. The union crews of some of the ships thereupon sat down. The Board found that the company had substantial reason to believe that if it hired union members for its vessels, about to sail, as it had been accustomed to do, they would also comply with the sit-down order. Accordingly, the company replaced the union members on its ships with persons unaffiliated with the striking union and did not hire union members for the crews then being engaged. The Board held that the employer did not engage in unfair labor practices by such activity or by failing to displace the newly hired persons and reinstate the strikers, since the strike was not caused or prolonged by unfair labor practices and the replacement of the strikers was necessary if business was to continue.

The proviso to section 8 (3) permits an employer to require membership in a labor organization as a condition of employment provided this condition is embodied in an agreement with a labor organization which is unassisted by the employer and which is the statutory representative within section 9 (a) of the act. A number of problems involving the application of the proviso to section 8 (3) have confronted the Board during the past fiscal period.

Because of the express wording of the proviso, the Board has held that it does not permit an employer to impose discriminatory conditions of employment other than membership in a labor organization. Thus, in *Matter of American-West African Lines, Inc. and Marine Engineers' Beneficial Association*,⁵⁴ the Board held that the proviso—

neither provides nor allows the rendering of assistance or support to [the statutory representative] beyond that existent in conditioning employment on union membership. Were the rule otherwise, what was intended by the Congress merely as an exclusionary clause, removing from the operation of the act agreements of the character set forth in the proviso, could be converted into a license to destroy the basic rights which the act confers.

In another case the Board held that a contract requiring membership in a labor organization as a condition of employment did not privilege the dismissal of members of such labor organization merely for "talk and advocacy of a change in affiliation" to another labor organization and stated: "A contract to require union membership as a condition of employment should not be freely interpreted to

⁵¹ *N. L. R. B. v. Mackay Radio & Telegraph Co.*, 304 U. S. 333, rev'g *N. L. R. B. v. Mackay Radio & Telegraph Co.*, 97 F. (2d) 761, 87 F. (2d) 611 (C. C. A.9) and enfg. *Matter of Mackay Radio & Telegraph Co.*, and *American Radio Telegraphists' Ass'n*, 1 N. L. R. B. 201.

⁵² The Supreme Court held in this case that the strikers were protected against the unfair labor practices of the employer.

⁵³ 22 N. L. R. B., No. 33, cf. *Matter of Isthmian Steamship Corp. and National Maritime Union of America*, 18 N. L. R. B., No. 1.

⁵⁴ 21 N. L. R. B., No. 71.

condition livelihood on any other fact or circumstance.”⁵⁵ In *Matter of Electric Vacuum Cleaner Company, Inc. and United Electrical & Radio Workers of America, Local 720*,⁵⁶ an agreement between the employer and a labor organization made membership in the contracting labor organization a condition of employment for newly hired workers but not for persons already employed at the time the agreement was entered into. The Board construed the agreement not to inhibit old employees from urging a change of affiliation from the contracting labor organization upon new employees—although new employees who forsook or refused to join the contracting labor organization after being advised of the agreement could be discharged pursuant thereto—or to entitle the employer “to interfere with the efforts of old employees to induce new employees to join the United or to change their affiliation from the [contracting union].” In view of its construction of the agreement, the Board found it unnecessary to decide whether an agreement purporting to give the employer such a right would be invalid under the act.

In *Matter of Ansley Radio Corporation and Local 1221, etc.*,⁵⁷ the Board also dealt with the problem of what kinds of employer assistance to a labor organization vitiate a closed-shop provision of their contract. There the Board held that the unlawful discharge of two employees did not invalidate the closed-shop contract, stating:

Where an unfair labor practice constituting assistance to the contracting labor organization is engaged in after the making of a valid closed-shop agreement, the act does not require that the contract be voided if such assistance did not materially affect employees in self-organization or collective bargaining beyond the restraint necessarily inherent in the operation of the contract itself.

In the *Electric Vacuum* case, the employer and a labor organization had a closed-shop agreement limited to new employees. The Board found that the employer under the guise of this limited agreement unlawfully interfered with the exercise by old employees of the rights guaranteed in section 7. Thereafter, the employer entered into an unrestricted closed-shop agreement with the labor organization. The Board held that because of the anterior unfair labor practices this unrestricted closed-shop agreement was invalid. The Board stated the following in this connection:

In fact, the arrangement of April 3, 1937 [the unrestricted closed-shop agreement], was merely another act of the same character as the previous interference, restraint, and coercion and differed only in the irrelevant element of formality. The act does not, however, permit illegality to become transmuted into legality by the embodiment of unfair labor practices in an agreement.

Although the proviso expressly covers only the *making* of an agreement conditioning employment upon membership in a labor organization, the Board has consistently held that the employer's *performance* of such a valid agreement, as, for example, by discharging an employee who refuses to join the labor organization having the contract, is also privileged because of the proviso.⁵⁸ If, however, the discharge or other discrimination is to be privileged under the pro-

⁵⁵ *Matter of Ansley Radio Corporation and Local 1221, etc.*, 18 N. L. R. B., No. 108.

⁵⁶ 18 N. L. R. B., No. 75.

⁵⁷ 18 N. L. R. B., No. 108.

⁵⁸ *Ibid.*; see Fourth Annual Report, p. 64.

viso, it must occur pursuant to the valid agreement. Thus, as pointed out in the Third Annual Report,⁵⁹ if the contract provides only for preferential *hiring*, a discriminatory *discharge* will constitute an unfair labor practice.⁶⁰ If the parties in fact agreed to make membership in the contracting labor organization a condition of employment and such a valid agreement is known to the workers but "through mutual mistake or inadvertence" the written instrument fails to contain such agreement, a discharge pursuant thereto will not be held to be an unfair labor practice.⁶¹ The Board pointed out in this case that the closed-shop agreement and the mutual mistake by which such agreement was not embodied in the written instrument was established by "clear and convincing proof."⁶² In the *Electric Vacuum* case, the Board considered valid an oral agreement, making membership in a labor organization a condition of employment for newly hired employees, where the oral agreement accompanied but was not made a part of the written agreement.

The Board has held that the proviso to section 8 (3) does not permit an employer to discharge an employee or to engage in other discrimination pursuant to a valid closed-shop agreement unless the workers have been given notice of the existence of the agreement:

The proviso in permitting the employer "to require membership" in a labor organization manifestly implies that the employee shall be advised that the employer's action is taken pursuant to an agreement. Otherwise, employees would have no means of knowing whether the employer was simply enforcing a valid obligation. The proviso was hardly intended to permit equivocal employer conduct, so likely to precipitate industrial conflict over what employees, in view of the employer's silence, quite reasonably would conclude was an interference with the rights guaranteed to them by section 7 of the act.⁶³

Of course, an employer cannot rely on a closed-shop contract which has terminated prior to the discharge or other discrimination complained of. In the *Electric Vacuum* case, the Board found from a course of conduct between the employer and the contracting labor organization, including the execution of a new and unlawful agreement, that the parties had abandoned an old agreement which permitted the employer to refuse employment to new employees who did not join the contracting union, and that a discriminatory refusal to reinstate new employees, occurring after the abandonment of the old agreement, was unlawful.

In a number of cases the Board has had to decide the effect upon a closed-shop provision of a contract of a defection from the contracting labor organization to another labor organization of a majority of the employees in the appropriate unit. Three possibilities suggest themselves: the closed-shop provision terminates; the closed-shop provision continues for the benefit of the contracting labor organization; the closed-shop provision inures to the benefit of the new

⁵⁹ At p. 89.

⁶⁰ *N. L. R. B. v. Waterman Steamship Corporation*, 309 U. S. 206; *Matter of Isthmian Steamship Corp. and National Maritime Union of America*, 22 N. L. R. B., No. 33; *Matter of Electric Vacuum Cleaner Co., Inc., and United Electrical & Radio Workers of America, Local 720*, 18 N. L. R. B., No. 75.

⁶¹ *Matter of Ansley Radio Corporation and Local 1221, etc.*, 18 N. L. R. B., No. 108.

⁶² *Cf. Matter of Electric Vacuum Cleaner Co., Inc., and United Electrical & Radio Workers of America, Local 720*, 18 N. L. R. B., No. 75.

⁶³ *Ibid.*; see also *Matter of Ansley Radio Corporation and Local 1221, etc.*, 18 N. L. R. B., No. 108.

majority representative. The Board has treated this problem and these possibilities in a number of cases cited in the margin.⁶⁴

C. COLLECTIVE BARGAINING

Section 8 (5) makes it an unfair labor practice for an employer—to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a).

By section 9 (a) the representative designated by the majority of the employees in an appropriate collective bargaining unit is the exclusive representative of all the employees in such unit "for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment." Accordingly, the Board has held it to be an unfair labor practice within section 8 (5) for an employer to refuse to negotiate with the statutory representative concerning conditions of employment. Thus, in *Matter of Singer Manufacturing Co. and Electrical, Radio & Machine Workers of America, etc.*,⁶⁵ the Board held that the employer's refusal to negotiate concerning paid holidays, vacations, and bonuses, constituted an infraction of section 8 (5). And in *Matter of Washougal Woolen Mills and Local 127, etc.*,⁶⁶ the Board held that the employer was obligated to negotiate with the statutory representative concerning the reinstatement and demands of certain strikers:

The respondent took the position * * * that it was not obligated to bargain with respect to the employees who had walked out since they were no longer in its employment * * * These employees * * * were engaged in a current labor dispute and were, accordingly, employees within section 2 (3) of the act. The respondent was, therefore, obligated to bargain with respect to them upon request of the union. Moreover, without regard to the status of these persons within section 2 (3) of the act the union demands of November 18 and December 12 that the respondent reinstate the employees who had left work and submit the matter in dispute to arbitration were legitimate subjects of bargaining within section 9 (a) of the act, and therefore the respondent was obligated to negotiate with the union with respect to those demands.

In *Matter of Aladdin Industries, Inc., and United Automobile Workers of America, etc.*,⁶⁷ the Board held that a union demand upon an employer to discharge a supervisor was a demand with respect to conditions of employment and stated:

The type of supervisor under whom an employee works is of direct concern to the employee and may be of vital importance to him. The conduct of a supervisor may affect an employee's well-being as much as low pay, long hours, or other unsatisfactory conditions of work. A dispute involving the discharge or demotion of a supervisor objectionable to the employees is, we think, a dispute concerning a condition of employment * * *

Various forms through which the employer's unlawful refusal to

⁶⁴ *Matter of Ansley Radio Corporation and Local 1221, etc.*, 18 N. L. R. B. No. 108; *Matter of J. E. Pearce Contracting and Stevedoring Co., Inc. and International Longshoremen's and Warehousemen's Union, etc.*, 20 N. L. R. B. No. 102; *Matter of Pacific Greyhound Lines and Brotherhood of Railroad Trainmen*, 22 N. L. R. B. No. 12, reopened July 27, 1940. Cf. *Matter of M and M Woodworking Co. and Plywood & Veneer Workers' Union, etc.*, 6 N. L. R. B. 372, set aside in *M and M Woodworking Company v. N. L. R. B.*, 101 F. (2d) 938 (C. C. A. 9); *Matter of Smith Wood Products, Inc. and Plywood and Veneer Workers' Union, etc.*, 7 N. L. R. B. 950.

⁶⁵ 24 N. L. R. B., No. 41.

⁶⁶ 23 N. L. R. B., No. 1.

⁶⁷ 22 N. L. R. B., No. 101.

negotiate may be manifested are set forth in previous annual reports.⁶⁸

The Board has held to be inadequate a number of excuses offered by the employer in an effort to prove that he has been relieved of his duty to bargain collectively.⁶⁹ Thus, during the past fiscal period the Board rejected the following defenses offered in attempted justification of a refusal to negotiate with the exclusive representative: The employer refused to enter into any contract or make any counterproposal while the Wages and Hours Bill was pending; ⁷⁰ the employer relied upon a prior sit-down strike as a reason for refusing to bargain; ⁷¹ the employer relied on the exclusive representative's refusal to accept as a condition precedent to bargaining that it secure agreements from the employer's competitors; ⁷² the employer relied on possible reprisals from a labor organization competing with the statutory representative if it bargained with such representative; ⁷³ the employer refused to negotiate with the statutory representative because it had signed a closed-shop contract with a competing union under conditions which the Board found not to bar an investigation of representatives; ⁷⁴ the employer relied on the exclusive representative's refusal to withdraw charges pending before the Board; ⁷⁵ the employer refused to negotiate on the ground that its labor relations were

⁶⁸ See for example, Third Annual Report, pp. 90-92; Fourth Annual Report, p. 65.

⁶⁹ See for example, Third Annual Report, pp. 92-96; Fourth Annual Report, pp. 65-66.

⁷⁰ *Matter of P. Lorillard Company, Louisville, Ky. and Local Union No. 201, etc.*, 16 N. L. R. B. 703. The Board said:

"Clearly, any contract would have been governed by legislation which was passed and any counterproposal could have been made subject to any changes later required by such legislation."

⁷¹ *Matter of Universal Film Exchange, Inc. and United Office & Professional Workers of America, Local No. 2*, 13 N. L. R. B. 484. The Board said:

"The respondent, relying on the Supreme Court's decision in the *Fansteel* case [306 U. S. 240], contended that the respondent had the right to discharge the striking employees, and was therefore under no obligation to bargain with them under section 8 (5) of the act. While the respondent may have stood absolved by the conduct of those engaged in the 'sit down' from any duty to reemploy them, the respondent was nevertheless free to offer them reemployment if it chose. By reinstating these workers to their former positions, the respondent accepted them as employees with all the rights of employees under the act. To sustain the contentions of the respondent would involve recognition of its right forever in the future to disregard with impunity wage and hour, safety, and sanitation legislation as to these employees merely because they had on a previous occasion engaged in a 'sit down' strike. The argument of the respondent is obviously without merit."

⁷² *Matter of Samuel Youlin, et al. and International Ladies Garment Workers Union, C. I. O.*, 22 N. L. R. B., No. 65; cf. *Matter of McQuay-Norris Manufacturing Co. and United Automobile Workers Union of America, Local No. 226*, 21 N. L. R. B., No. 72, where the Board stated:

"The respondent relies also on the fact that U. A. W. A., the parent organization of Local 226, has entered into contracts with competitors of the respondent which do not include an exclusive recognition clause. The record does not reveal, however, that the locals of U. A. W. A. were entitled to exclusive recognition under the Act at these plants, or, if they were so entitled, that they did not strive to gain exclusive recognition from these other companies. The mere fact that a labor organization has not obtained exclusive recognition from other employers does not justify the instant employer in withholding that to which the labor organization is entitled under the act. If any competitive disadvantage would accrue to the respondent by accepting the exclusive recognition clause, such disadvantage would not excuse its failure to grant Local 226 the recognition to which it is entitled since the act 'permits no immunity because the employer may think that the exigencies of the moment require infraction of the statute' [citing *N. L. R. B. v. Star Publishing Co.*, 97 F. (2d) 465 (C. C. A. 9)]."

⁷³ *Matter of McQuay-Norris* cited in the previous note: "This argument is not different in kind from the one overruled by the Circuit Court of Appeals in *National Labor Relations Board v. Star Publishing Co.* [cited in previous note]." Cf. *Matter of Westinghouse Electric & Manufacturing Co. and United Electrical, Radio & Machine Workers of America, et al.*, 22 N. L. R. B., No. 18.

⁷⁴ *Matter of Pacific Greyhound Lines and Brotherhood of Railroad Trainmen*, 22 N. L. R. B., No. 12., reopened July 27, 1940.

⁷⁵ *Matter of Hartsell Mills Co. and Textile Workers Organizing Committee*, 18 N. L. R. B., No. 43, mod. & en'd *Hartsell Mills Co. v. N. L. R. B.*, 111 F. (2d) 291 (C. C. A. 4). The court in sustaining the Board's position said:

"* * * it is clear that petitioner could not thus make its compliance with the act dependent upon dismissal of charges that it had been guilty of violating it."

"highly involved."⁷⁶ The Board has held, however, that an employer, who has bargained to an impasse on the issue of whether or not a prior collective bargaining agreement is still in existence, need not negotiate with respect to the substantive terms of a new contract or modifications of the old one so long as the fundamental issue with respect to the status of the old contract remains undecided.⁷⁷

Employers not uncommonly contend that they entertained an honest doubt that a labor organization represented a majority of the employees in an appropriate unit and that therefore they were excused from bargaining with such labor organization even though the Board later found that this labor organization was the exclusive representative.⁷⁸ Clearly an employer who undermines by means of unfair labor practices the designation of the union seeking to bargain collectively cannot excuse its failure to bargain on the ground that the union no longer is the statutory representative.⁷⁹ Thus, in one case, the Board, rejecting the contention of the employer that it was not obligated to negotiate with the statutory representative because a rival union was claiming to represent a majority of the employees in the appropriate unit, stated:

Local No. 3 was the exclusive representative at all times after October 21, 1937. Yet its rival claim did not dissuade the respondent from executing the closed-shop contract with the company-assisted Local No. 2532. Besides the respondent must have been aware of the fact that the ostensible defections from Local No. 3 were in reality responses to the respondent's unfair labor practices and not genuine withdrawals of authority from Local No. 3. Company-coerced revocations obviously cannot create an honest doubt that such revocations are genuine. Further, the record is clear that even if the respondent had any doubt that Local No. 3 remained the selection of a majority within section 9 (a), such doubts were not the true basis for the respondent's refusal to negotiate with Local No. 3. The respondent refused to negotiate with Local No. 3 on and after May 13 because the respondent was intent on completing its program of assistance to Local No. 2532 and on taking the logical step of recognizing Local No. 2532. Finally, the respondent's actions were inconsistent with any asserted willingness to resolve any asserted honest doubt. By recognizing Local No. 2532, on or about May 11, and by executing the exclusive representation, closed-shop contract on July 6, the respondent announced its firm intention to have nothing to do with Local No. 3 and precluded all further attempts on the part of that union to secure the recognition to which it was entitled. We conclude that no question with respect to majority status excused the respondent's refusal to negotiate with Local No. 3 on and after May 13.⁸⁰

If the employer does not question the status of a labor organization as statutory representative at the time of its refusal to bargain, it cannot be said that such refusal to bargain was motivated by a bona fide doubt of the union's majority status.⁸¹ The Board has held, moreover, that a refusal to bargain was not based upon an honest doubt as to the appropriateness of the unit contended for by the

⁷⁶ *Matter of West Oregon Lumber Co. and Lumber & Sawmill Workers Local Union No. 3*, 20 N. L. R. B., No. 1. The Board said:

"Complex labor relations do not excuse the obligation under section 8 (5). Rather, they render collective bargaining with the true representative even more imperative."

⁷⁷ *Matter of Essex Wire Corporation and United Electrical, Radio & Machine Workers of America, Local No. 737*, 19 N. L. R. B., No. 12. Mr. Smith dissented holding that the employer was required by the act to bargain on substantive terms of employment whether or not the contract was still in existence.

⁷⁸ *Cf. N. L. R. B. v. Remington Rand, Inc.*, 94 F. (2d) 862 (C. C. A. 2), cert. den. 304 U. S. 576, 585.

⁷⁹ *N. L. R. B. v. Bradford Dyeing Assn.*, 60 S. Ct. 918; see Third Annual Report, p. 95.

⁸⁰ *Matter of West Oregon Lumber Company and Lumber & Sawmill Workers Local Union No. 3, etc.*, 20 N. L. R. B., No. 1.

⁸¹ *Matter of Whittier Mills Co., etc., and Textile Workers Organizing Committee*, 15 N. L. R. B. 457, enfd in *N. L. R. B. v. Whittier Mills Co.*, 111 F. (2d) 474 (C. C. A. 5); *Matter of Lenoir Furnace Co., Inc. and Syracuse Federation of Labor*, 20 N. L. R. B., No. 93.

union where the employer's alleged doubts were found to be irrational.⁸² Furthermore, the Board has refused to hold that the employer in good faith predicated a refusal to bargain with a labor organization on an honest doubt of its majority standing where the employer refuses to cooperate in the resolution of such doubts.⁸³ Thus, the Board in holding that the employer had unlawfully refused to bargain with the statutory representative, stated: "The respondent's withdrawal of its consent to an election to be conducted by the Regional Director of the Board allegedly because the association won in an election sponsored by the association, demonstrates the respondent's unwillingness to cooperate in a bona fide resolution of any doubts of the union's majority."⁸⁴ Finally, the Board has held that an employer's doubts concerning the representation by a labor organization of a majority in an appropriate unit cannot excuse a failure to bargain with that union as exclusive representative after the Board has validly certified the union as such representative.⁸⁵

The Board has recently reaffirmed the principle that—

the employer's obligation under section 8 (5) is the obligation to accept in good faith the procedure of collective bargaining as historically practiced.⁸⁶

It is now well established that this obligation requires the employer in good faith to seek to reach an understanding on terms of employment with the statutory representative. A recent illustration of the employer's failure to comply with this rule may be found in *Matter of Dallas Cartage Company and International Brotherhood of Teamsters, Chauffeurs, Stablemen, and Helpers of America*.⁸⁷ The Board summarized the employers' conduct during the conferences with the union in the following terms:

They met each and every consequential demand of the union with captious criticisms or blunt refusal. The full correspondence written by their attorneys is richly interlarded with legalistic and sometimes specious arguments. No concession or modification offered by the union to meet the respondent's objections served to provide a common basis of understanding, for new grounds of criticism were offered on each occasion. On the other hand, every apparent concession made by the respondents was retracted and dissipated on being taken seriously * * *

⁸² *Matter of The Federbush Co., Inc. and United Paper Workers, etc.*, 24 N. L. R. B., No. 88. In deciding that the employer's claims concerning the appropriate unit were irrational, the Board took into consideration that the distinctions the employer was drawing between the various departments of its plant were unreasonable and immaterial on the issue of appropriate unit; that its position was not supported by precedent; that it was attempting to supplant its judgment for that of its employees as to the form of their organization; that it did not propose the establishment of more than one bargaining unit but suggested simply that certain employees be excluded from the unit and therefore from collective bargaining representation; that it had rejected a proposal contemplating commencement of negotiations on the basis of the unit suggested by it and the submission of the question of what constituted the appropriate unit to arbitration; and it raised the question of the appropriateness of the unit in order to delay and perhaps thereby to avoid altogether collective bargaining with the union.

⁸³ See Fourth Annual Report, pp. 65-66.

⁸⁴ *Matter of Lenox Furnace Co., Inc. and Syracuse Federation of Labor*, 20 N. L. R. B., No. 93.

⁸⁵ *Matter of Whittier Mills Co., etc. and Textile Workers Organizing Committee*, 15 N. L. R. B. 457, enfd N. L. R. B. v. *Whittier Mills Co.*, 111 F. (2d) 474 (C. C. A. 5); *Matter of Woodside Cotton Mills and Textile Workers Organizing Committee*, 21 N. L. R. B., No. 7; *Matter of Pacific Greyhound Lines and Brotherhood of Railroad Trainmen*, 22 N. L. R. B., No. 12, reopened July 27, 1940; *Matter of Calumet Steel, etc. and Amalgamated Association of Iron, Steel & Tin Workers of N. America, etc.*, 23 N. L. R. B., No. 12; *Matter of Pittsburgh Plate Glass Co. and Flat Glass Workers of America, etc.*, 15 N. L. R. B. 515, enfd in *Pittsburgh Plate Glass Co. v. N. L. R. B.*, 6 L. R. R. 756 (C. C. A. 8). The period for which the certification remains operative is discussed below, at p. 61 *et. seq.*

⁸⁶ *Matter of P. Lorillard Company, etc. and Pioneer Tobacco Workers Local Industrial Union No. 55*, 16 N. L. R. B. 684.

⁸⁷ 14 N. L. R. B. 411.

As we regard the entire record the conclusion is inescapable that the respondents neither bargained nor intended to bargain collectively with the union. They shrewdly recognized the union for what it claimed to be and accorded it the courtesy of interviews. They listened with respectful attention to the union's demands and pretended to weigh and trade advantage against disadvantage as might be expected of persons genuinely engaged in a bargaining effort. They affected some semblance of an endeavor to reach a mutual understanding but on scrutinizing the verbiage to which they resorted we find that this effort was palpably insincere.

It is also well established that the employer is not complying with the terms of section 8 (5) unless he accords to the statutory representative exclusive recognition.⁸⁸ The Board has held that there is included in the employer's obligation under section 8 (5) as a reasonably appropriate method of precluding an employer from making it nugatory a duty, upon request of the union, to incorporate into a written contract which the parties are negotiating full recognition of the union in express terms as exclusive bargaining agent.⁸⁹ Similarly, the Board held it to be an unfair labor practice within section 8 (5) for the employer to insist that the collective bargaining contract recognize the statutory representative as exclusive representative only so long as it continued to represent a majority of the employees and empower the employer to call an election whenever the employer desired to determine whether the union still represented a majority.⁹⁰

The employer's duty to accept the procedure of collective bargaining as historically practiced also requires a willingness to meet the exclusive representative in personal conferences and negotiations. The Board so held in the *Lorillard* cases:⁹¹

Bargaining in the field of labor relations is customarily carried on over the conference table at which the representatives of both parties confront each other and exercise that personal and oral persuasion of which they are capable. While it may be that negotiations through the mails or by other indirect methods fulfill the statutory requirement when both parties accept that procedure, we think it clear that the act contemplates that under ordinary circumstances personal conferences should be held if requested by either party.

In these cases, the Board also held "that the procedure of collective bargaining requires that the employer make his representatives available for conferences at reasonable times and places and in such a manner that personal negotiations are practicable" and that "the question of whether the employer has furnished reasonable facilities for collective bargaining is a question of fact in each case." The Board found on the facts of those cases that the employer by its refusal to engage in face-to-face conferences with the statutory representative in the cities where the plants were located, and by its insistence that conferences be held only in New York City which was distant from the location of the plants in question, had not furnished reasonable facilities for collective bargaining and consequently had not fulfilled its obligation to bargain collectively under section 8 (5) of the act.

⁸⁸ Third Annual Report, pp. 100-102.

⁸⁹ *Matter of McQuay-Norris Manufacturing Co. and United Automobile Workers of America, Local 226*, 21 N. L. R. B., No. 72, citing, *inter alia*, *Art Metals Construction Co. v. N. L. R. B.*, 110 F. (2d) 148 (C. C. A. 2).

⁹⁰ *Matter of Woodside Cotton Mills and Textile Workers Organizing Committee*, 21 N. L. R. B., No. 7.

⁹¹ *Matter of P. Lorillard Company, Middletown, Ohio, and Pioneer Tobacco Workers Local etc.*, 16 N. L. R. B. 483; *Matter of P. Lorillard Company, Louisville, Kentucky, and Local Union No. 201, etc.*, 16 N. L. R. B. 703.

The Board has also taken the position in a number of cases that an employer's unilateral determination of a term of employment with respect to which a statutory representative is attempting to bargain constitutes a refusal to bargain collectively within the meaning of section 8 (5).⁹²

In a long line of cases, starting with *Matter of St. Joseph Stockyards Company*,⁹³ the Board has explained the employer's duties, inhering in its obligation to accept the procedure of collective bargaining as historically practiced, to embody understandings reached with the statutory representative in a binding agreement and normally to place such contract in writing, upon request of the union.⁹⁴ *Matter of Westinghouse Electric and Manufacturing Co., etc.*, and *United Electrical Radio & Machine Workers of America, etc.*,⁹⁵ decided during the last fiscal year, is a leading case in this series. There, the companies conferred with the statutory representatives, stated that they recognized the statutory representatives as exclusive bargaining representatives, negotiated with them concerning terms of employment, and posted written statements of policy signed by the companies, summarizing the position of the companies on the matters discussed. These statements of policy stated that the companies recognized the statutory representatives as exclusive bargaining representatives, that the position of the companies therein set forth had been reached after negotiations and discussions with the statutory representatives, and would be in effect until further notice. The companies reserved to themselves the right to decide what constituted reasonable notice of changes, refused to permit the statutory rep-

⁹² *Matter of Whittier Mills Co., etc. and Textile Workers Organizing Committee*, 15 N. L. R. B. 457, *enfd N. L. R. B. v. Whittier Mills Co.*, 111 F. (2d) 474 (C. C. A. 5); *Matter of Brown Shoe Co., etc. and National Leather Workers Association, etc.*, 22 N. L. R. B., No. 93; *Matter of John J. Oughton, etc. and Textile Workers Organizing Committee, etc.*, 20 N. L. R. B., No. 31; *Matter of Wilson and Co., Inc. and United Packinghouse Workers, etc.*, 19 N. L. R. B., No. 99; *Matter of Dallas Cartage Co. and Int'l Brotherhood of Teamsters, Chauffeurs, Stablenen, and Helpers of America, etc.*, 14 N. L. R. B., No. 411. In the last cited case the Board said:

"That the respondents themselves recognized no sense of their responsibility to bargain collectively is betrayed by the wage-cut action of the respondent *Dallas*. While the alleged process of bargaining was going forward and the union awaited financial statements by which to guide the fixing of scales, the respondent took drastic unilateral action without consultation with or previous notice to the very party with which it was presumably dealing on that topic in good faith * * * It seemed not to occur to the respondents or their attorneys that it was of the essence of collective bargaining that no rupture be created in their dealings by forcing upon the union a *fait accompli* in a matter then under negotiation." Cf. *Matter of The Emerson Electric Manufacturing Co., etc. and Local No. 1102, etc.*, 13 N. L. R. B. 448. There the employer had a collective bargaining contract covering "all the terms and conditions of employment" for the contract period and forbidding during that period "change or additions by either of the parties." The company for a long number of years had been issuing a booklet of rules and information. During the period of the contract, the company issued a revised edition of the booklet which was more full and complete than any previous issue. The booklet provided for the signature of the employee following a clause which read, "I * * * agree to abide by the rules and information contained therein." The union denounced the booklet as unlawful and demanded that the employer withdraw it and consult the union on all rules or regulations concerning working conditions prior to the issuance of any booklet on any subject. The union also claimed that an employee, by signing the booklet, in effect executed an individual contract. The employer agreed not to require signatures to copies of the booklet but refused to withdraw it from circulation. The Board in holding that the issuance of the booklet did not infringe section 8 (1), stated: "We are convinced, however, that it was not the intention of the respondent in issuing the booklet to modify or in any way affect the operation of the contract * * * We are satisfied that any question which might arise concerning any specific objectionable rule or statement in the booklet can be settled through the grievance procedure set forth in the contract. The respondent has demonstrated its good faith in that respect by notifying the union, after the latter voiced its objection to the flyleaf, that no employee would be asked to sign the flyleaf."

⁹³ *Matter of St. Joseph Stockyards Company and Amal. Meat Cutters & Butcher Workers of N. Amer., etc.*, 2 N. L. R. B. 39.

⁹⁴ See Second Annual Report, p. 81; Third Annual Report, pp. 102-104; Fourth Annual Report, pp. 66-68.

⁹⁵ 22 N. L. R. B., No. 13.

representatives to sign the statements of policy, and would not enter into a binding contract, written or oral, with the statutory representatives although the parties had reached an accord on the terms to be embodied in such contract. The Board, after reviewing in detail the Board and court precedents, the contentions advanced by employers for refusing to embody understandings reached in signed binding contracts, the circumstances under which the act requires such contracts, and the reasons for the requirement under the circumstances where it is required, held that the companies, by refusing to enter into signed binding agreements embodying understandings reached with the statutory representatives, refused to bargain collectively, or in good faith, as required by section 8 (5) of the Act. The Board summarized its conclusions with respect to the company statements of policy as follows:

The fact that the contractual nature of the statement of policy is doubtful and ambiguous; the fact that its obligations may be changed or terminated at the pleasure of the employer alone, irrespective of the desires of the employees or of their representatives and without prior negotiation with them; the fact that it recognizes the union as the representative of employees for the purposes of negotiation only and not for the purposes of contracting, thereby denying the union recognition at the most vital points of the bargaining process; the fact that it precludes the employees' representative accepting responsibility for, and agreeing to prevent, strikes by the peaceful adjustment of disputes; the fact that it denies the employees' representative equal status and dignity with the employer as a contracting and contractually bound party; all lead us to find that such a statement will defeat the policies and purposes of the act by discouraging the practice and procedure of collective bargaining and thereby increasing costly and destructive industrial strife and instability. We find that the signed statements of policy of the respondents do not satisfy the requirements for collective bargaining of section 8 (5) of the act.

D. DOMINATION AND INTERFERENCE WITH THE FORMATION OR ADMINISTRATION OF A LABOR ORGANIZATION AND CONTRIBUTING FINANCIAL OR OTHER SUPPORT TO IT

Section 8 (2) of the Act makes it an unfair labor practice for an employer—

to dominate or interfere with the formation or administration of any labor organization⁹⁸ or contribute financial or other support to it.⁹⁷

Pursuant to the clear intent and wording of section 8 (2), the Board has proscribed any form of employer participation in the formation or administration of a labor organization.⁹⁸ In determining what constitutes such employer participation, the Board has taken into consideration the fact that employers necessarily act through numerous individuals with varying degrees of authority. Whether or not a particular individual represents the employer must rest upon the circumstances of each case. Thus, in *Matter of West Oregon Lumber Co.* and *Lumber & Sawmill Workers Local Union No. 3*,

⁹⁸ By section 2 (5) of the act a "labor organization" is defined as "any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work."

⁹⁷ A proviso to the section reads as follows: "Provided, That subject to rules and regulations made and published by the Board pursuant to section 6 (a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay." The Board has not found it necessary to issue any rules or regulations on this point.

⁹⁸ Third Annual Report, p. 109; Fourth Annual Report, p. 69.

etc.,⁹⁹ the Board attributed the organizational activity of certain straw bosses and foremen to the employer although they were eligible for membership in the complaining union and the assisted union¹ and were included in the appropriate unit.² The Board so held because their statements and acts on behalf of one union, and in opposition to the other, "were inspired by the policy of assistance and discrimination established by the McIntoshes [company executives] and by [Superintendent] Wilkinson." On the other hand, the fact that "the ranks of supervisory employees" are "divided between the two unions" in connection with the fact that the "higher officials refrained from interfering in the representation dispute" tends to show that the supervisory employees are not acting for the employer.³

In *Matter of Ford Motor Co. and International Union, etc.*,⁴ the Board under the circumstances of the case, held the employer responsible for antiunion assaults committed by its "service" employees. In *Matter of Baldwin Locomotive Works and Steel Workers Organizing Committee*⁵ the union found to be company-dominated was formed largely by employee representatives in charge of two prior company-dominated organizations. The Board pointed out that, as such, they had been representatives of the employer; that "men accustomed to such submission seldom regain independence overnight;"⁶ and that since the employer made no attempt to inform its employees that it had forsaken its policy of dominating and supporting labor organizations, the employees, when solicited to join a new organization "by men who had been elected as employee representatives on general committees which the employees knew to be favored by the respondent, could not feel free to join or not join as they desired."

As pointed out in the Fourth Annual Report,⁷ the "financial or other support" proscribed by the act may be direct or indirect. The Board has thus held that "support is not limited to acts of favor to the labor organization in question, but may equally well take the form of acts which discourage membership in rivals."⁸ Consequently, where an employer's campaign of unfair labor practices against the union has resulted in the direction of the employees' organizational efforts toward the formation of an organization more acceptable to him⁹ or has provided the impetus for the formation of a different

⁹⁹ 20 N. L. R. B., No. 1.

¹ The Board pointed out that "union rules cannot sanction management interference, restraint, and coercion."

² The Board said in this connection: The finding that these persons belong in the appropriate unit "does not constitute a determination that foremen do not speak and act for management or that representatives of management can engage in activity not permitted to management under Sections 7 and 8 of the Act * * * our finding with respect to the appropriate unit for the respondent's employees is based upon our usual practice of adopting the apparent desires of the parties."

³ *Matter of Crown Central Petroleum Corp. and Oil Workers' Int'l Union, etc.*, 24 N. L. R. B., No. 10.

⁴ 14 N. L. R. B. 346, mod. and enfd. *N. L. R. B. v. Ford Motor Co.* (C. C. A. 6), October 8, 1940; see also *Matter of Goodyear Tire and Rubber Company of Alabama and United Rubber Workers of America*, 21 N. L. R. B., No. 33 (members of "flying squadron").

⁵ 20 N. L. R. B., No. 104.

⁶ Citing and quoting from *International Association of Machinists, etc. v. N. L. R. B.*, 110 F. (2d) 29 (App. D. C.), cert. granted 309 U. S. 649, enfg *Matter of the Serrick Corporation and International Union, United Automobile Workers of America, Local No. 459*, 8 N. L. R. B. 621.

⁷ At p. 71.

⁸ *Matter of Sparks-Withington Company and International Union, United Automobile Workers of America, Local No. 62*, 21 N. L. R. B., No. 1.

⁹ *Matter of Texas Mining & Smelting Company and International Union of Mine, Mill & Smelter Workers, Local No. 412*, 13 N. L. R. B. 1163.

organization,¹⁰ the Board has found such activities of the employer to contravene section 8 (2) as well as section 8 (1) of the Act. Conversely, the Board has given weight to an employer's willingness to bargain with the complaining union and to his refusal to recognize an "inside" union in dismissing charges that the employer dominated the latter organization.¹¹ The Board has held, however, that refusal to recognize the "inside" organization does not demonstrate its independence where other elements of domination and support exist, and where the employer is engaging in unfair labor practices against the complaining union.¹²

A common device for disguising unlawful interference, and continued domination and support, as pointed out in the Fourth Annual Report,¹³ has been the revision of prior company-dominated organizations, or the substitution for them of new organizations. A prominent index of the domination of the successor organization is found in the employer's failure, prior to its formation, to disestablish the predecessor organization and to notify the employees thereof.¹⁴ Also among the indicia of continued domination and support upon which the Board has relied in finding the new or revised organization to be company-dominated are the following: Identity of officers and leaders in both organizations,¹⁵ similarity in structure, bylaws, or constitution;¹⁶ transfer of assets from the old organization to the new or revised one;¹⁷ preferences in membership to members of the old organization;¹⁸ employer participation in the reorganization;¹⁹ hasty recognition by the employer of the new or revised organization;²⁰ and the refusal of the employer to state, upon request, its neutrality between the new or revised organization and the complaining union.²¹

In *Matter of Phelps Dodge Corp. etc.*, and *American Federation of Labor et al.*,²² the employer formed and dominated two representation plans and later participated in the revision of one of them. The Board found that the revisions were not substantial, that they were made at the suggestion of the employer, and that the employer "to induce the employees to accept the superficial changes * * *

¹⁰ *Matter of Jac Feinberg Hosiery Mills, Inc. and American Federation of Hosiery Workers*, Dist. 19, 19 N. L. R. B., No. 72.

¹¹ *Matter of Federal Screw Works and Local 17, United Automobile Workers of America*, 21 N. L. R. B., No. 15.

¹² *Matter of E. I. DuPont De Nemours Company, Belle, W. Va., and District 20, etc.*, 24 N. L. R. B., No. 98.

¹³ At p. 71.

¹⁴ *Matter of Westinghouse Electric & Manufacturing Co., and United Electrical Radio & Machine Workers of America, etc.*, 18 N. L. R. B. No. 46 aff'd as mod., *Westinghouse Electric & Manufacturing Co. v. N. L. R. B.*, 112 F. (2d) 657 (C. C. A. 2); *Matter of Kansas City Power & Light Co. etc.*, and *International Brotherhood of Electrical Workers, etc.*, 12 N. L. R. B. 1414, aff'd as mod., *Kansas City Power & Light Co. v. N. L. R. B.*, 111 F. (2d) 340 (C. C. A. 8).

¹⁵ *Matter of Southwestern Greyhound Lines, Inc. and Brotherhood of Railroad Trainmen*, 22 N. L. R. B., No. 1.

¹⁶ *Matter of A. E. Staley Manufacturing Co., etc.*, and *United Grain Processors Local #21490, etc.*, 22 N. L. R. B., No. 31.

¹⁷ *Matter of McGoldrick Lumber Company, a corporation, et al. and Lumber and Sawmill Workers' Union, Local No. 2552*, 19 N. L. R. B., No. 93; see *Matter of Donnelly Garment Company and International Ladies Garment Workers Union and Donnelly Garment Workers' Union, etc.*, 21 N. L. R. B., No. 24, where the first company dominated organization financed the organization of its successor.

¹⁸ *Matter of McGoldrick Lumber Company, a corporation, et al. and Lumber and Sawmill Workers' Union, Local No. 2552*, 19 N. L. R. B., No. 93.

¹⁹ *Matter of Phelps Dodge Corporation, United Verde Branch and American Federation of Labor et al.*, 15 N. L. R. B. 749.

²⁰ *Matter of The Cudahy Packing Company and United Packing House Workers, etc.*, 15 N. L. R. B. 676.

²¹ *Matter of A. E. Staley Manufacturing Company, etc.*, and *United Grain Processors Local #21490, etc.*, 22 N. L. R. B., No. 31.

²² N. L. R. B. 749.

after having announced a 10-percent wage cut only a month before, granted a 10-percent wage increase shortly before the revision was first submitted to the employees, and [gave] the employee representatives * * * credit for obtaining the increase in the minutes of the Industrial Union meeting, copies of which were posted on the respondent's bulletin boards * * *” The Board found the revised organization to be company-dominated, and, in rejecting the respondent's contention that this finding would necessarily disqualify all employee representatives under a company-dominated plan from taking part in a revision to purge the plan of domination, said:

We are of the opinion that such a deduction is entirely unwarranted and erroneous, because of additional material facts in this case. Here the employee representatives produced a revision in effect dictated by the employer, which did not materially change the substance of the original plan or remove the employer's control. Moreover, we have heretofore held, and we now hold, that after an employer has dominated a labor organization for a considerable period of time and has thereby fostered among his employees the idea that the organization is the “official” representative favored by him, an effective revision of the dominated organization requires that this impression be removed, and that the employees be freed of the effects of the employer's past interference, restraint, and coercion in the exercise of rights guaranteed in section 7 of the act. In the instant case the respondent did nothing * * * to remove the employee's impression * * * but, on the contrary, as we have found, affirmatively acted to strengthen that impression.

The Board has held that where “the entire record discloses a genuine desire on the part of a group of employees for an independent organization,” and “where the potency of this desire transcended its possible conditioning by the history of company-dominated unions in the respondent's plant,” the fact that the organization followed upon two prior company-dominated organizations was not controlling.²³ In *Matter of E. T. Fraim Lock Co., et al.* and *Steel Workers of North America Lodge 1732*²⁴ the members of a company-formed “inside” union obtained a charter from the American Federation of Labor. The Board held that the—

identity of membership and officers between a labor organization affiliated with one of the national unions and an unaffiliated labor organization previously formed by the employer does not establish *per se* illegality under the act with respect to the affiliated labor organization * * *. In a situation such as that presented here, where it is alleged that the employer has supported or encouraged membership in a labor organization affiliated with a national union, for the employer to be found to have engaged in unfair labor practices in respect to such labor organization and for an order affecting the employer's relations with that organization to issue, it should appear either by way of affirmative proof or as a matter of persuasive inference, that membership in that organization resulted from or was attributable to employer action illegal under the act.

Such affirmative proof appeared in *Matter of Eagle-Picher Mining & Smelting Company, etc.*, and *International Union of Mine, Mill, & Smelter Workers, etc.*,²⁵ where the successor union was affiliated with a national organization. The employers formed, dominated, supported, and interfered with a labor organization known as

²³ *Matter of Sprague Specialties Company and United Electrical, Radio & Machine Workers of America, Local No. 29*, 20 N. L. R. B., No. 60.

²⁴ 24 N. L. R. B., No. 130.

²⁵ 16 N. L. R. B. 727. The complaint did not allege a violation of section 8 (2). The Board found that the employer's domination and support of, and interference with, the successor organization infringed section 8 (1).

the Tri-State Union. Immediately after the Supreme Court sustained the constitutionality of the act, the Tri-State Union affiliated with a national organization, and became known as the "Blue Card Union." The Board found that the change in affiliation had been engineered and completed not by the members themselves but by the employers, and concluded as follows:

Under such circumstances, we are compelled to conclude that mere observance of certain formalities, and affiliation with a national labor organization, without more, are insufficient to change the character of a company-dominated union or to invest such a union or the respondents with immunity. At no time did the respondents withdraw from its relations with its creature; at no time was it announced that the Tri-State Union was ended. Had the Tri-State Union "reorganized," as described above, omitting only the process of affiliation, it would be clear that it had not purged itself of its company-dominated characteristics. We cannot adopt a different rule because of the mere fact of affiliation.

E. INVESTIGATION AND CERTIFICATION OF REPRESENTATIVES

Section 9 (c) of the Act provides that—

Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing upon due notice, either in conjunction with a proceeding under section 10 or otherwise, and may take a secret ballot of employees or utilize any other suitable method to ascertain such representatives.

By virtue of section 9 (a) of the Act, representatives designated or selected for the purposes of collective bargaining by a majority of the employees in an appropriate unit are the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment. For an employer to refuse to bargain collectively with such representatives is, by virtue of section 8 (5), an unfair labor practice which the Board is empowered to prevent.

Where a union's majority in an appropriate unit is undisputed, the employer's obligation to bargain collectively is clear. Frequently, however, there is doubt and disagreement concerning who has been designated by the employees as their representatives. Until it is resolved, this uncertainty constitutes a formidable obstacle to the practice and procedure of collective bargaining. Section 9 (c) is designed to remove this obstacle by creating machinery for the determination of such representatives. It gives the Board the necessary investigatory power to determine whether or not a majority of the employees in an appropriate unit desire a particular representative to bargain collectively for them.²⁶ As stated in section 9 (c), this investigatory power may be exercised in conjunction with a proceeding under section 10 to determine whether an employer has committed an unfair labor practice, but the proceeding under sec-

²⁶ An investigation under section 9 (c) involves the determination of many questions which also arise in proceedings involving unfair labor practices. The question of what constitutes an appropriate unit and the question of whether a majority of the employees in such unit have designated and selected a representative for the purposes of collective bargaining must be determined both in a proceeding under section 8 (5) and in a proceeding under section 9 (c). These problems are therefore treated separately. See sec. F and sec. G, *infra*, this chapter. The problem of whether the question concerning representation affects commerce is identical with the problem of whether an unfair labor practice affects commerce, and is likewise treated elsewhere. See Ch. VI, *infra*.

tion 9 (c) is separate and apart from proceedings involving unfair labor practices. Thus, a proceeding under section 9 (c) results merely in a certification that a particular representative has been chosen by a majority of the employees in an appropriate unit, if such in fact is the case, and does not result in an order requiring the employer to cease and desist from an unfair labor practice or to take any affirmative action.

1. ISSUANCE OF DIRECTION OF ELECTION OR CERTIFICATION

Section 9 (c) empowers the Board to certify representatives only when a question concerning the representation of employees has arisen. The Board finds that there is a question concerning representation whenever the machinery of section 9 (c) can be used to remove obstacles to collective bargaining arising from doubt or disagreement concerning the representatives designated by the employees. Whether such obstacles exist is a question of fact to be determined upon the circumstances of each case. Various circumstances under which the Board will find that a question concerning representation has arisen are set forth in the Third²⁷ and Fourth²⁸ Annual Reports.

As noted in the Fourth Annual Report,²⁹ there is no removable obstacle to collective bargaining when it is clear that the petitioning union will not receive a majority of the votes to be cast in an election. Under such circumstances, the Board will refuse to find a question concerning representation.³⁰ The petitioning union need not establish, however, that it has already been designated by a majority of the employees in the appropriate unit to obtain an election, if it can show sufficient adherence to raise the probability that it may be selected by a majority.³¹ What constitutes sufficient or substantial adherence, varies with the facts and circumstances of each case. Thus, in *Matter of The Nevada-California Corporation*,³² the Board considered the company's "avowed opposition" to outside unions, which might have induced employees, through "job fear," to be "backward about declaring themselves," in concluding that the union had established substantial adherence. In *Matter of Ward*

²⁷ At p. 74.

²⁸ At p. 127, *et seq.*

²⁹ At p. 74.

³⁰ The Board has dismissed petitions in the following cases because of an insubstantial showing: *Matter of General Electric Company and The G. E. Industrial Union of The Bridgeport Works, Incorporated*, 15 N. L. R. B. 1018 (although 1018 membership cards out of 4046 in the unit were introduced, 517 were 2 years old, 92 were 1 year old, 109 were duplicated by another labor organization, and 300 were not on the pay roll in the appropriate unit; moreover, this showing indicated a loss in membership after a year old election in which a rival union, under contract with the company, had secured a majority); *Matter of North American Aviation, Inc. and United Automobile Workers of America, Local No. 228, C. I. O.*, 19 N. L. R. B., No. 26 (following a shift in allegiance, only 20 or 25 of the 2,500 employees in the appropriate unit appeared active in the union); *Matter of Westgate Sea Products Company and United Fish Cannery Workers Union, Local #64, C. I. O.*, 23 N. L. R. B., No. 3 (the petitioner refused to produce proof of membership, claiming to represent 194 out of 331 in the unit; but this claim conflicted with the claim of a rival organization which introduced its proof of membership. Moreover, the petitioner admitted that it had begun obtaining signatures more than a year prior to the hearing); *Matter of Whiz Fish Products Company and Cannery Workers Union Local #20479, A. F. of L.*, 24 N. L. R. B., No. 57 (although the petitioner introduced 23 cards out of 75 in the appropriate unit, 4 were not on the pay roll, 9 had not paid current dues, 15 conflicted with the claims of another union).

³¹ *Matter of New York Handkerchief Manufacturing Co. and International Ladies Garment Workers Union Local No. 76*, 16 N. L. R. B. 532. See, also, *Matter of Ingram-Richardson Mfg. Company of Indiana, Inc. and Federal Local Union #2174, affiliated with the A. F. of L.*, 23 N. L. R. B., No. 9, wherein the Board held substantial 71 cards out of 291 in the unit plus a claim, corroborated by testimony, of 200 additional cards not then available.

³² *Matter of The Nevada-California Electric Corporation and International Brotherhood of Electrical Workers, Local Union B-959, A. F. of L.*, 20 N. L. R. B., No. 2.

Baking Company,³³ the Board took into account the existence of a closed-shop contract between the company and a rival labor organization.

The Board has attempted to give all the effect possible to prior elections and certifications without thereby restricting the employees in the exercise of their right to select bargaining representatives of their own choosing. If the prior election, because of the circumstances under which it was conducted, does not accurately reflect the wishes of the employees, no effect can be given to it. Thus, a prior election will not preclude an additional investigation, the Board has held, where the petitioning union filed charges that the company interfered with the conduct of the election and the company failed to except to an intermediate report of a Trial Examiner sustaining these charges.³⁴ Similarly, where a labor organization, which did not claim a majority, was placed on the ballot in a consent election obtained by a rival organization, the Board directed an election upon the petition of the former union.³⁵ In *Matter of Rock River Woolen Mills*,³⁶ the Board ruled that an election conducted by the Wisconsin Labor Relations Board, under the mistaken belief that proceedings before the National Labor Relations Board had been terminated, did not preclude an additional investigation of representatives by the Board.

The Board has generally refused to proceed with an investigation less than a year after a prior determination and certification of representatives.³⁷

In *Matter of Willys Overland Motors, Inc.*,³⁸ however, where a labor organization mistakenly understood that it was unnecessary for it to intervene in a proceeding for an investigation and certification of representatives, as a result of assurances extended by the Regional Director, the Board ruled that the prior certification did not preclude a subsequent determination although less than a year had elapsed.

Whether or not a contract with one union may ever bar the existence of a question concerning representation on the petition of a rival organization,³⁹ the Board has been confronted with the necessity of deciding, in particular cases, if it should proceed to an immediate election in the face of such a contract. Circumstances under which the Board will, despite the existence of a contract, direct an election, if the other requirements for an election are satisfied, can be found in the Third⁴⁰ and Fourth⁴¹ Annual Reports. In addition, during the past fiscal year, the Board ruled, in *Matter of Utica*

³³ *Matter of Ward Baking Company and United Retail & Wholesale Employees of America, affiliated with the C. I. O.*, 21 N. L. R. B. No. 44.

³⁴ *Matter of The Wilson H. Lee Company and International Printing Pressmen and Assistants' Union of North America, A. F. of L.*, 19 N. L. R. B., No. 80.

³⁵ *Matter of S. & W. Cafeteria of Washington, Incorporated, and United Cafeteria Employees Local Industrial Union #471*, 20 N. L. R. B. No. 22.

³⁶ In *Matter of Rock River Woolen Mills and Textile Workers Union of America, affiliated with Congress of Industrial Organizations*, 18 N. L. R. B. No. 96.

³⁷ *Matter of Minneapolis-Moline Power Implement Company and International Association of Machinists, Local #1687, by District Lodge 77 (A. F. of L.)*, 14 N. L. R. B. 920.

³⁸ *Matter of Willys Overland Motors, Inc., and The Pattern Makers League of North America*, 15 N. L. R. B. 864.

³⁹ Cf. *Matter of American Hair & Felt Company and Jute, Hair & Felt Company, Local #163 (United Furniture Workers of America, C. I. O.)*, 15 N. L. R. B. 572.

⁴⁰ At p. 134, et seq.

⁴¹ At p. 74, et. seq.

Knitting Company,⁴² that it would proceed with an election despite the existence of a contract which had been renewed after the petitioning union orally informed the company that it claimed to represent a majority, although the petitioning union merely proved during the hearing that it had been designated by 105 of the 450 employees in the appropriate unit and that 125 employees had signed "negative" cards, protesting against representation by the contracting union. So, also, where a contract ran to the petitioning union, the Board refused to allow this union to withdraw its petition at the hearing and rely upon the contract as a ground for postponing an investigation and certification of representatives.⁴³ Having initiated the proceeding, the Board held, the union could not subsequently urge that the contract precluded an investigation of representatives. In *Matter of Brewster Aeronautical Corporation*,⁴⁴ the company had executed two successive exclusive recognition contracts with the United Automobile Workers of America, but thereafter this union split into an A. F. of L. and a C. I. O. faction and both factions claimed to represent a majority of the company's employees in the appropriate unit. Under the circumstances, the company refused to bargain with either faction. In directing an election, the Board noted that "The split * * * and the company's consequent refusal to bargain with either competing labor organization may indefinitely delay all collective bargaining between the company and its employees."⁴⁵

Where, in view of an existing contract, the Board does not immediately direct an election, it may, depending on the circumstances of the case, dismiss the petition without prejudice to its renewal at a reasonable time before it is appropriate to hold an election⁴⁶ or rule that the petition should be held in abeyance until the contract is about to expire.⁴⁷ In the latter event, the Board will direct the Regional Director to continue his investigation before the contract has expired and to provide for a further hearing, if so requested by the petitioning union.

When the only labor organizations involved are subject to discipline by the same parent body, the Board will dismiss the petition, even though there is a question concerning representation, if these unions

⁴² *Matter of Utica Knitting Company and Textile Workers Federal Labor Union #21500, A. F. of L.*, 23 N. L. R. B., No. 4. In a separate concurring opinion, Board Member Edwin S. Smith stated that the renewal contract should not bar a determination of representatives even though the contracting union may have represented a majority when the contract was renewed: "The T. W. U. A. [contracting union] has functioned as exclusive bargaining representative for more than a year and I believe the purposes of the act will best be effectuated by now giving the employees a chance to change representatives if they so desire." Board Member William M. Leiserson stated, in his concurring opinion, that when there is "a real dispute as to representation" "it is the duty of the Board to direct an election so that the dispute may be settled in accordance with the provisions of the act." Chairman Madden dissented on the grounds that the petitioning union had merely made an oral claim to represent a majority before the contract was renewed and had failed to establish, to Chairman Madden's satisfaction, that the contracting union did not represent a majority when the contract was renewed. Cf. *Matter of American Hair and Felt Company and Jute, Hair & Felt Workers, etc.*, 15 N. L. R. B. 572.

⁴³ *Matter of Borg-Warner Corp. (Muncie Foundry Division) and United Automobile Workers of America Local No. 287, affiliated with the C. I. O., et al.*, 19 N. L. R. B., No. 59.

⁴⁴ *Matter of Brewster Aeronautical Corporation and International Union, United Automobile Workers of America, Local 365, affiliated with the Congress of Industrial Organizations*, 14 N. L. R. B. 1024.

⁴⁵ See also *Matter of Kelsey Hayes Wheel Company, a corporation and Local #4 International Union, United Automobile Workers of America, affiliated with the C. I. O.*, 16 N. L. R. B. 580.

⁴⁶ *Matter of American Hair & Felt Company and Jute, Hair & Felt Workers Local #163 (United Furniture Workers of America, C. I. O.)*, 15 N. L. R. B. 572.

⁴⁷ *Matter of Oppenheimer Casing Company, a Corporation and United Packinghouse Workers of America, Local No. 75 et al.*, 13 N. L. R. B. 300.

seek to represent the same employees.⁴⁸ The Board will proceed with its determination of representatives, however, where the employees in dispute are also claimed by a labor organization unaffiliated with the same parent body. Thus, in *Matter of Long-Bell Lumber Company*,⁴⁹ the Board stated:

It is to be noted that the I. A. M. and the Sawmill Union, both of which are chartered by international unions affiliated with and subject to discipline by the same parent body, are both herein seeking to represent the employees in the machine shop. We have consistently dismissed proceedings wherein two unions subject to discipline by the same parent body have disagreed over the extent of their jurisdiction. However, since the I. W. A., which is not a party to the jurisdictional dispute, is seeking to represent employees of the Company in a unit which includes the machine shop, we must determine the question concerning representation raised in this proceeding, irrespective of the incidental or collateral dispute over jurisdiction between the I. A. M. and the Sawmill Union.

2. THE DIRECTION OF ELECTION

(A) DATE OF ELECTION

In the past, the Board usually scheduled an election to be held within 15 days of its direction. To avoid the necessity of applying to the Board for additional time when an election cannot be conducted within the specified period, the Board now provides that the election "shall be conducted as early as possible, but not later than 30 days" from the date of the Direction of Election. But where the company's employment was seasonal, the Board postponed the election until 60 days after the company had resumed work.⁵⁰

As stated in the last annual report, the Board will delay the conduct of an election, where unfair labor practices have been committed, until the effects of the unfair labor practices have been dissipated.⁵¹ The Board now specifically provides in its Direction of Election that it will await advice from the Regional Director as to the appropriate time to conduct the election. The Board will proceed at once, however, if all the parties agree to an immediate election.⁵² Where no unfair labor practices have been committed and no other reason for delay appears, the Board will not, despite the request of a union, postpone the conduct of an election.⁵³

(B) ELIGIBILITY TO VOTE

As a general rule, the Board determines eligibility to vote on the basis of the pay roll immediately preceding the Direction of Election.⁵⁴ In the absence of evidence establishing the propriety of some other date, the Board has adopted a current pay-roll date even where

⁴⁸ See Third Annual Report, pp. 132-133. *Matter of Weyerhaeuser Timber Company and International Woodworkers of America, Local No. 107, Boommen and Rafter, et al.*, 16 N. L. R. B. 902.

⁴⁹ *Matter of Long-Bell Lumber Company and International Association of Machinists, Local No. 1350, affiliated with the American Federation of Labor et al.*, 16 N. L. R. B. 892.

⁵⁰ *Matter of Wulfs Overland Motors, Inc. and The Pattern Makers League of North America.* 15 N. L. R. B. 864.

⁵¹ *Fourth Annual Report*, p. 77.

⁵² *Matter of Western Union Telegraph Company and American Communications Association Local 54-B, affiliated with the Congress of Industrial Organizations*, 23 N. L. R. B., No. 87.

⁵³ *Matter of Rock River Woolen Mills and Textile Workers Union of America, affiliated with the Congress of Industrial Organizations*, 18 N. L. R. B., No. 96.

⁵⁴ *Matter of Alabama Mills, Inc. and Textile Workers Organizing Committee*, 14 N. L. R. B. 257.

the parties have stipulated to an earlier pay-roll period.⁵⁵ The Board also provides in its Direction of Election that all employees who did not work during the current pay-roll period because they were ill or on vacation or temporarily laid off, should be entitled to vote.⁵⁶ However, the Board will not include laid-off employees when there is little likelihood that they will return to work. Thus, in *Matter of Rock River Woolen Mills*,⁵⁷ 65 to 75 employees were displaced upon the introduction of automatic looms in the weaving department. Although nine of these employees were on the company's seniority list and would have been recalled if work became available, the Board found their chances of reemployment "quite remote" and excluded them from the election. But where a company was "conscientiously" seeking to rehire employees who had been laid off as a result of the neutrality laws, passed shortly after the outbreak of the war, the Board included them in its Direction of Election.⁵⁸ So, also, where seven employees were assigned as watchmen for another company, which had assumed part of the premises of the company involved in the representation proceeding, for the purposes of securing a loan, the Board included these employees as they were expected to return to the company's pay roll upon the termination of the security arrangement.⁵⁹

The Board has adhered to the rule, announced in *Matter of A. Sartorius & Co., Inc.*,⁶⁰ that persons hired during a strike to replace striking employees should be excluded from an appropriate bargaining unit desired by the striking, petitioning union and should not be permitted to participate in the selection of bargaining representatives for employees in that unit.⁶¹ The strikers remain employees within the meaning of the act, however, only so long as their work has ceased as a result of a current labor dispute.⁶² Thus, in *Matter of Standard Lime & Stone Co.*⁶³ the Board ruled that strikers were

⁵⁵ *Matter of Federal Screw Works and Local 174, United Automobile Workers of America*, 21 N. L. R. B. No. 15.

⁵⁶ See Fourth Annual Report, p. 77.

⁵⁷ *Matter of Rock River Woolen Mills and Textile Workers Union of America, Affiliated with Congress of Industrial Organizations*, 18 N. L. R. B. No. 96.

⁵⁸ *Matter of Standard Oil Company of New Jersey and Esso Tanker Men's Association*, 23 N. L. R. B. No. 91.

⁵⁹ *Matter of Walton Lumber Company, a Corporation and Everett District Council, Lumber and Sawmill Workers, on behalf of Local No. 2648, chartered by the United Brotherhood of Carpenters and Joiners of America, Affiliated with the American Federation of Labor*, 20 N. L. R. B. No. 58; see also *Matter of American Steel Scraper Company and Local 1408 International Association of Machinists, A. F. of L.*, 21 N. L. R. B. No. 26 (where an employee who had been laid off and secured another, but inferior, position, expressed preference for a job with the company, he was permitted to vote in the election); *Matter of Great Lakes Steel Corporation and Brotherhood of Railroad Trainmen, et al.*, 15 N. L. R. B. 510 (an employee temporarily transferred to another division but expected to return was permitted to vote with his former fellow employees.)

⁶⁰ *Matter of A. Sartorius & Co., Inc. and United Mine Workers of America, District 50, Local 12090*, 10 N. L. R. B. 493.

⁶¹ *Matter of Aronsson Printing Company and Detroit Printing Pressmen's and Assistants' Union No. 2 and Detroit Bindery Workers' Union No. 20 and Detroit Typographical Union No. 18*, 13 N. L. R. B. 799; *Matter of La Plant-Choate Manufacturing Co., Inc. and United Farm Equipment Workers Organizing Committee, Local 116, affiliated with the C. I. O.*, 13 N. L. R. B. 1228; *Matter of American Newspapers, Inc., Illinois Publishing and Printing Company, Evening American Publishing Company and Chicago Newspaper Guild, Local 71 of the American Newspaper Guild, et al.*, 22 N. L. R. B. No. 66; *Matter of Boston Publishing Co. and Easton Typographical Union No. 253, affiliated with International Typographical Union*, 19 N. L. R. B. No. 43. Board Member William M. Leiserson is of the opinion that if the strike was not occasioned by the commission of unfair labor practices, both the strikers and the employees who replaced them should be entitled to vote in the same election.

⁶² Section 2 (3) of the act provides that:

"The term 'employee' * * * shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute * * *"

⁶³ *Matter of Standard Lime & Stone Co. and Local #115, Quarry Workers Union*, 17 N. L. R. B. 147.

ineligible to vote in an election held 4 years after the strike had been declared when, except for sporadic picketing several months after the strike, there was no evidence of any strike activity during the intervening 4 years. In holding that a labor dispute was no longer current in *Matter of Standard Insulation Company*,⁶⁴ the Board noted that the strikers had voluntarily terminated the strike and abandoned their concerted activities. "The labor dispute, having assumed the form of a strike," the Board observed, "ceased to be 'current' with the termination of the strike. The strikers who did not return to employment with the company consequently lost their status as 'employees' within the meaning of section 2 (3) of the act."

The Board has permitted otherwise eligible employees to vote despite the assertion that the company had hired them in violation of an oral agreement to prefer employees on a seniority list over "outside men."⁶⁵ So, also, where a union claimed that the company had hired 200 employees "with a view to their antagonism to the union" and that these employees had been coerced by or on behalf of the company against the union, but failed to appeal to the Board after the Regional Director dismissed charges alleging that the company had, by such acts, engaged in unfair labor practices, the Board permitted these 200 employees to vote in the election.⁶⁶

(C) THE BALLOT

Since an election is intended to permit employees a free choice of representatives, the Board has, as previously reported,⁶⁷ denied a place on the ballot to a labor organization found to have been company dominated.⁶⁸ Despite the protestations of a labor organization that it had purged itself of domination and had been redesignated by the employees, the Board excluded this union from the ballot in view of the company's admission that it had not in any way complied with the Board's order of disestablishment.⁶⁹ The Board has refused to exclude an undominated labor organization from the ballot although its constitution prohibited all strikes and its declared purposes included "repeal of the exemptions for labor unions in the Sherman Anti-Trust and the Clayton Acts" and legislative regulations [sic] of all labor unions."⁷⁰

3. THE DIRECTION OF A RUN-OFF ELECTION

During the past fiscal period, the Board continued its practice of directing run-off elections under appropriate circumstances.

⁶⁴ *Matter of Standard Insulation Company, Inc. and Local #2111, chartered by A. F. of L.*, 22 N. L. R. B., No. 46.

⁶⁵ *Matter of Rock River Woolen Mills and Textile Workers Union of America, affiliated with Congress of Industrial Organizations*, 18 N. L. R. B., No. 96.

⁶⁶ *Matter of The Harrison Steel Castings Company and Federal Labor Union No. 21931, affiliated with the A. F. of L.*, 19 N. L. R. B., No. 36.

⁶⁷ See Fourth Annual Report, p. 79.

⁶⁸ *Matter of Western Union Telegraph Company and American Communications Association Local 5-B, affiliated with the Congress of Industrial Organizations*, 23 N. L. R. B., No. 87. Board Member William M. Leiserson dissented, holding that he would dismiss the petition without prejudice, pending determination of the validity of the Board's order of disestablishment in the Circuit Court of Appeals.

⁶⁹ *Matter of Kansas City Structural Steel Company and The International Association of Bridge Structural & Ornamental Iron Workers, Shopmen Workers, Local 520, affiliated with the American Federation of Labor*, 18 N. L. R. B., No. 45.

⁷⁰ *Matter of Larson Manufacturing Company and Defenders of America, Pittsburgh Chapter No. 2*, 19 N. L. R. B., No. 18.

Thus, in *Matter of Coos Bay Lumber Company*⁷¹ where, of 419 valid ballots cast in the first election, one union secured 195 votes to 188 for the opposing union and 36 employees cast their votes for "neither," the Board directed a run-off election.⁷²

In *Matter of R. K. LeBlond Machine Tool Co.*,⁷³ the Board ruled that henceforth it would, in run-off elections, under the circumstances there presented, drop the "neither" from the ballot and permit employees to choose between the two competing organizations.⁷⁴

4. OBJECTIONS PERTAINING TO ELECTIONS AND RUN-OFF ELECTIONS

There were no significant additions to the material covered in the previous annual reports on objections to elections or, since the same principles apply, to run-off elections.⁷⁵

5. CERTIFICATION FOLLOWING AN ELECTION

The circumstances under which the Board will issue its certification following an election are substantially the same as discussed in previous annual reports.⁷⁶ There have been no material developments during the past fiscal year.

F. ADEQUATE PROOF OF MAJORITY REPRESENTATION

Section 9 (c) of the Act empowers the Board to certify representatives with or without an election. The Board's usual practice, initiated in *Matter of The Cudahy Packing Co. and United Packinghouse Workers of America, etc.*,⁷⁷ is to direct an election in a representation proceeding if the parties are in doubt or disagreement regarding the wishes of the employees even if there is only one labor organization claiming the status of majority representative.⁷⁸ The Board pointed out that its certification looks to the initiation of collective bargaining and that bargaining relations would be "more satisfactory from the beginning if the doubt and disagreement of the parties

⁷¹ *Matter of Coos Bay Lumber Company and Lumber and Sawmill Workers Union Local No. 2573*, 16 N. L. R. B. 476.

⁷² Board Member William M. Lelserson expressed the view that the direction of a run-off election was beyond the authority conferred upon the Board by the act. Cf. the following related cases on run-off elections decided after the fiscal period covered by this report: *Matter of Dreamland Bedding & Upholstery Co., et al. and United Furniture Workers of America, C. I. O., #282, Furniture Workers Union #1541, A. F. of L.*, 25 N. L. R. B., No. 9; *Matter of General Motors Corporation (Delco-Remy Division) and International Union, U. A. W. A., et al.*, 25 N. L. R. B., No. 30; *Matter of Olin Corporation, Liberty Powder Company Division and United Explosive Workers of America, Local No. 1, Independent Labor Organization*, 25 N. L. R. B., No. 35; *Matter of Emil J. Paidar Company, a Corporation and United Furniture Workers of America, Local 18-B, affiliated with the Congress of Industrial Organizations, et al.*, 26 N. L. R. B., No. 132; *Matter of Delco Radio Division of General Motors Corporation and International Brotherhood of Electrical Workers, et al.*, 27 N. L. R. B., No. 116.

⁷³ *Matter of R. K. LeBlond Machine Tool Co., Cincinnati Electrical Tool Co., and Independent Employees Organization*, 22 N. L. R. B., No. 17.

⁷⁴ Chairman Madden dissented, stating that he was of the opinion that in run-off elections the Board should adhere to the practice of dropping from the ballot the union which received the fewer numbers of votes and permit employees to determine whether or not they desire to be represented by the union which received the greater number of votes.

⁷⁵ Third Annual Report, p. 147; Fourth Annual Report, p. 79.

⁷⁶ Third Annual Report, p. 149; Fourth Annual Report, p. 81.

⁷⁷ 13 N. L. R. B. 526.

⁷⁸ *Matter of Armour and Company and United Packinghouse Workers, etc.*, 13 N. L. R. B. 567. Board Member Edwin S. Smith dissented from the Directions of Election in the *Armour and Cudahy* cases on the ground that the proof of majority in each case was sufficient to warrant certification without an election.

regarding the wishes of the employees is, as far as possible, eliminated." The Board stated further in this connection:

Although in the past we have certified representatives without an election upon a showing of the sort here made, we are persuaded by our experience that the policies of the act will best be effectuated if the question of representation which has arisen is resolved in an election by secret ballot.

The Board followed this practice and directed an election in a case where the petitioning union introduced evidence at the hearing tending to prove that it represented a majority, and where the company did not question its majority representation but where all the employees had been members, pursuant to a recently expired closed-shop contract, of another labor organization which had protested the Board's order directing an investigation.⁷⁹ If the interested parties agree upon the basis of a claim and showing made by a labor organization in a representation proceeding that it represents a majority of the employees within the appropriate unit, the Board will certify without an election.⁸⁰

As pointed out in the *Cudahy* case, the question in a representation proceeding is whether a labor organization represents a majority for the purpose of collective-bargaining negotiations to be initiated in the future and an election may answer this question. In a complaint proceeding in which it is alleged that a company has unlawfully refused to bargain collectively with a union, however, the question presented is whether this union had a majority at some time prior to a Board determination of the issues raised. Obviously, this question cannot be answered by an election held after the alleged refusal. The proof which the Board requires as to majority representation for a finding of an unfair labor practice under sections 8 (5) and 9 (a) of the act has been described in detail in previous annual reports.⁸¹

In cases involving an alleged unlawful refusal to bargain within section 8 (5) of the Act, a typical method of proving majority representation is the production of a Board certification. In a number of cases decided during the fiscal period covered by this report, employers have attempted to show that a labor organization was not the statutory representative despite the fact that it had been certified by the Board. The Board has held that a valid certification constitutes adequate proof of majority for a reasonable period after its issuance. As the Board said in one case: "The Act does not contemplate that the Board's certification may be challenged at any time after issuance upon the whim of the employer."⁸²

⁷⁹ *Matter of Park Drug Co. and Local No. 12,084, etc.*, 15 N. L. R. B. 8.

⁸⁰ *Matter of Vanadium Corporation of America and Local #953, United Vanadium Workers (Affiliated with the C. I. O.)*, 13 N. L. R. B. 836; *Matter of North American Aviation Inc. and United Automobile Workers of America, Local No. 228, C. I. O., et al.*, 13 N. L. R. B. 1134; *Matter of Stokely Brothers & Company, Inc., and Van Camp's, Inc. and Federal Labor Union No. 2752, affiliated with A. F. of L.*, 15 N. L. R. B., No. 872; *Matter of Capitol Automatic Music Company, Inc. and United Coin Machine Employees Union, etc.*, 18 N. L. R. B., No. 2; *Matter of Federal Ice & Cold Storage Company and Produce Drivers and Employees Union, Local No. 630*, 13 N. L. R. B., No. 26; *Matter of Scripps-Howard Radio, Inc., Station WCOP and American Federation of Radio Artists, Cincinnati Local, affiliated with A. F. of L., et al.*, 21 N. L. R. B., No. 31; *Matter of American Cyanamid & Chemical Corporation (American Powder Division) and United Mine Workers of America, Gas, By-Product Coke & Chemical Workers, District No. 50, Local Union No. 12152 (C. I. O.)*, 21 N. L. R. B., No. 86; *Matter of Reeves Pulley Company and Columbus Local Lodge No. 1466, International Association of Machinists of the A. F. of L., et al.*, 22 N. L. R. B., No. 47.

⁸¹ See Second Annual Report, pp. 91-93, 108-110; Third Annual Report, pp. 150-156.

⁸² *Matter of Woodside Cotton Mills Co. and Textile Workers Organizing Committee*, 21 N. L. R. B., No. 7.

In *Matter of Whittier Mills Co., etc.* and *Textile Workers Organizing Committee*,⁸³ the employer claimed that a Board certification of a labor organization did not establish its majority representation 7 months after issuance thereof because employment had diminished during this 7-month period. The Board rejected the employer's contention, stating:

To hold that, 7 months following certification by the Board of a collective-bargaining representative, the employer can question with impunity the status of the certified representative as a representative of a majority of the employees in the appropriate unit, in the manner respondents here attempt to do, would be to render such a certification nugatory. The Congress cannot have intended by section 9 (c) of the act to authorize the Board to do a futile and meaningless thing. A certification would be futile and meaningless, could an employer, shortly thereafter, prior to carrying on any bargaining with the certified representative, by the simple expedient of raising some question as to the continuing validity of the certification, require the certified representative to prove anew its status as a majority representative. Collective bargaining under such circumstances could be indefinitely delayed by employers and the right of employees to bargain collectively would be rendered illusory and the policies of the act thwarted. To prevent employers from thus flouting the act, to give meaning to the Board's authority to certify representatives designated by employees in appropriate units, to effectuate the policies of the act, the presumption of the continuing effectiveness of such a certification by the Board must be held not to be rebuttable, under the circumstances here presented, by evidence such as that here introduced by the respondents.

In *Matter of Pacific Greyhound Lines and Brotherhood of Railroad Trainmen*,⁸⁴ the employer argued that it was not obligated to bargain with the certified union, since subsequent to the certification, as well as at the time of the hearing in the complaint case, a majority of the employees in the appropriate unit were dues-paying members of, and had designated as collective-bargaining representative, a labor organization other than the one certified by the Board. The employer attempted to introduce documentary proof at the hearing in support of this contention. The Trial Examiner rejected the offer. The Board sustained the ruling of the Trial Examiner and held that the Board's certification was "not subject to nullification or challenge by the parties so long as the certified representative is ready and willing to bargain collectively and to establish contractual relations with the employer in behalf of those represented, and a reasonable period for it to do so has not elapsed. Stability of industrial relations and effectuation of the purposes and policy of the act impel a construction of section 9 (c) which would secure the authority of the certified representative to act for a reasonable period. Here only 3 months intervened between the issuance of the certification and the filing of the complaint and, as found below, at no time did the respondent recognize or bargain collectively with the Brotherhood although repeatedly requested to do so. * * * In the instant case any other rule would result in employees being required to turn from representative to representative until some

⁸³ 15 N. L. R. B. 457, enf'd N. L. R. B. v. *Whittier Mills Co.*, 111 F. (2d) 474 (C. C. A. 5).

⁸⁴ 22 N. L. R. B., No. 12, reopened on July 27, 1940.

bargaining agency satisfactory to the employer was found.”⁸⁵ In the *Calumet Steel* case the Board also held that a Board certification, even during the pendency of the employer’s motion challenging its validity, was adequate proof of majority representation. In *Matter of Charles Cushman Company*,⁸⁶ the Board ruled that its certification was adequate proof of majority representation in a complaint proceeding although the company, a successor corporation, had not been a party to the representation proceeding and its predecessor, who had been a party thereto, had committed the refusal to bargain.

G. THE UNIT APPROPRIATE FOR THE PURPOSES OF COLLECTIVE BARGAINING

1. IN GENERAL

Section 9 (b) of the Act provides that—

The Board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.

Such a determination is required in two types of cases: (1) cases involving petitions for certification of representatives, pursuant to section 9 (c) of the Act, and (2) cases involving charges that an employer has refused to bargain collectively with the representatives of his employees, in violation of section 8 (5) of the Act. In each instance, a finding as to the appropriate unit is indispensable to the ultimate decision. A certification of representatives would be meaningless in the absence of a finding defining the unit to be represented. Similarly, a complaint alleging that an employer has refused to bargain collectively with the representatives of his employees may be sustained only if such representatives were designated by employees in a unit appropriate for the purposes of collective bargaining.

As pointed out in previous annual reports,⁸⁷ the complexity of modern industry, transportation, and communication, and the numerous and diverse forms which self-organization among employees can take and has taken, preclude the application of rigid rules to the determination of the unit appropriate for the purposes of collective bargaining. In attempting to ascertain the groups among which there is that mutual interest in the objects of collective bargaining which must exist in an appropriate unit, the Board takes into con-

⁸⁵ Also, *Matter of Calumet Steel Division, etc. and Amalgamated Association of Iron, Steel, and Tin Workers of North America, etc.*, 23 N. L. R. B. No. 12; *Matter of Clark Shoe Co. and United Shoe Workers of America*, 17 N. L. R. B. No. 1079. See in this connection *N. L. R. B. v. Piqua Munising Wood Products Co.*, 109 F. (2d) 552 (C. C. A. 6), en’g *Matter of Piqua Munising Wood Products Co. and Federal Labor Union Local 18787*, 7 N. L. R. B. 782, wherein the Circuit Court of Appeals stated:

“It is a well-established rule of evidence that when the existence of a personal relationship or state of things is once established by proof, the law presumes its continuance until the contrary is shown or until a different presumption arises from the nature of the subject matter. *N. L. R. B. v. National Motor Bearing Company*, 105 F. (2d) 652 (C. C. A. 9). The question as to the presumption of the continuation of membership in the Union was one of fact and rested within the sound discretion of the Board to be decided in the light of the facts and circumstances before it.” Cf. *Matter of Westinghouse Electric & Manufacturing Company et al.*, and *United Electrical, Radio and Machine Workers of America et al.*, 22 N. L. R. B., No. 13.

⁸⁶ *Matter of Charles Cushman Company et al. and United Shoe Workers of America*, 15 N. L. R. B. 90. The successor corporation, the Board noted, was owned by the same stockholders as the predecessor and had substantially the same directors and officers, thus insuring a continuity of management.

⁸⁷ Third Annual Report, p. 160; Fourth Annual Report, p. 82.

sideration the facts and circumstances existing in each case.⁸⁸

2. SCOPE OF THE UNIT; INDUSTRIAL, CRAFT, OR DEPARTMENTAL

The Board must determine frequently whether the unit or units shall be industrial, including practically all the employees in the plant; semi-industrial, including a majority of the employees; multi-craft, including several groups of skilled workers; craft, including one group of skilled workers; or some other unit, including only part of the employees. The cases requiring such determinations fall into two main categories: Those where there is only one bona fide union or where all the bona fide unions involved in the proceeding agree upon the appropriate unit; and those where two or more bona fide unions do not agree upon the scope of the unit. The subcategories and the principles which the Board applies to them have been described in detail in the Fourth Annual Report.⁸⁹ No significant additions with respect to the first main category have been made during the last fiscal year.⁹⁰

⁸⁸ See Fourth Annual Report, pp. 82-3; cf. *Matter of Pacific Greyhound Lines and Brotherhood of Railroad Trainmen*, 22 N. L. R. B., No. 12, reopened July 27, 1940; *Matter of Bendix Products Corporation and Bendix Industrial Police Association*, 15 N. L. R. B. 965; *Matter of Shell Oil Company, Incorporated*, and *International Brotherhood of Boiler Makers, Iron Shipbuilders, Welders and Helpers of America, A. F. of L.*, 20 N. L. R. B., No. 95; *Matter of Baltimore Mail Steamship Company, an affiliate of United States Lines Company and Marine Engineers Beneficial Association et al.*, 21 N. L. R. B., No. 52, where the petition was dismissed since the petitioning employer refused to produce evidence the Board considered necessary for its investigation.

⁸⁹ For the first main category see pp. 83-86; for the second, see pp. 86-89.

⁹⁰ The following cases decided during this period illustrate the Board's practice, as set forth in the Fourth Annual Report, when there is no disagreement among bona fide unions concerning the appropriate unit: (A) unit proposed by union or unions found appropriate because in accord with all or several, or not in sharp conflict with one or more, of the factors enumerated in Fourth Annual Report, at p. 83: (1) craft or other coherent group within plant (cf. Fourth Annual Report, pp. 83-84): *Matter of Great Lakes Steel Corporation and Brotherhood of Railroad Trainmen et al.*, 14 N. L. R. B. 197 (railroad employees engaged in operating an interplant railroad granted a separate unit); *Matter of Ryan Aeronautical Co. and United Aircraft Welders of America, Inc.*, 15 N. L. R. B. 812 (welders held sufficiently distinct to constitute a separate unit); (2) plant-wide unit excluding coherent group (cf. Fourth Annual Report, p. 84): *Matter of Westchester Apartments, Inc.*, and *United Building Service Employees, Local 675*, 17 N. L. R. B. 433 (engineers, firemen, carpenters, painters, paperhangers, and plasterers, constituting well-defined groups and eligible for membership in other available labor organizations, were excluded from the plant-wide unit); cf. *Matter of Miller Cereal Mills and Federal Labor Union No. 2576, Cereal, Flour, Feed and Grain Elevator Workers, A. F. of L.*, 22 N. L. R. B., No. 73; (3) coherent group which is part of plant and which comprises subgroups (cf. Fourth Annual Report, pp. 84-85): *Matter of Globe Newspaper Company and Newspaper Guild of Boston*, 15 N. L. R. B. 953 (unit of both editorial and commercial employees held appropriate in absence of any competing organization, despite fact that the union had previously bargained only for the editorial employees); (4) group's inclusion in, or exclusion from, wider unit not normal and therefore determined by this group's wishes (cf. Fourth Annual Report, p. 85): *Matter of Cleveland Company, Publisher of the Cleveland News, and Cleveland Newspaper Guild*, 19 N. L. R. B., No. 51 (commercial employees who had signed a petition affirmatively stating that they did not desire to be represented by the union seeking to combine them with the editorial employees granted a separate election) (cf. *Matter of Globe Newspaper Company, supra*); (B) unit proposed by union or unions found inappropriate because varied widely from unit ordinarily sought by such union or unions and had no relationship to the skill and work of the employees, or the history of collective bargaining (cf. Fourth Annual Report, pp. 85-86): *Matter of R. C. A. Manufacturing Co., Inc.*, and *Pattern Makers' Association of Philadelphia and Vicinity*, 13 N. L. R. B. 667 (unit of pattern makers intimately connected with production work held inappropriate); *Matter of Rembrandt Lamp Corporation and Metal Polishers, Buffers, Platers, and Helpers International Union, Local No. 6, Chicago, Illinois, affiliated with the American Federation of Labor*, 13 N. L. R. B. 945 (unit of polishers and buffers alone, excluding platers and helpers, denied to a union which traditionally organized polishers, buffers, platers, and helpers); *Matter of Citinax Machinery Company and Metal Polishers, Buffers, Platers, and Helpers, Local Union No. 171, affiliated with A. F. of L.*, 14 N. L. R. B. 252 (same as *Rembrandt Lamp, supra*; unit of polishers and buffers, excluding platers and helpers, held inappropriate); *Matter of S. Karpen & Bros. and United Furniture Workers of America, Local No. 576, C. I. O.*, 14 N. L. R. B. 465 (the Board refused to permit a union seeking to represent both the shipping and trucking employees to obtain a unit composed only of the trucking employees); *Matter of Philadelphia Inquirer Company and Philadelphia Inserters and Inside Delivery Workers Association (unaffiliated), et al.*, 14 N. L. R. B. 795 (unit of inserters, excluding mailers, found inappropriate in view of the functional interdependence, etc., of the inserters and the mailers); *Matter of Koppers Company—Minnesota Division and International Union of Operating Engineers, Local No. 36 (A. F. L.)*, 14 N. L. R. B. 1148 (unit of 17 operating engineers held inappropriate in view of the fact that the company employed 34 additional operating engineers who performed substantially the same work).

As noted in the Fourth Annual Report,⁹¹ where two or more bona fide labor organizations do not agree on the scope of the unit, one claiming an industrial unit and another a craft or similar unit, the Board normally permits the employees whose inclusion in the craft or similar unit is desired to determine for themselves whether or not they shall constitute a separate unit; and, if necessary, the Board will direct elections to determine such desires, on the basis of which the Board subsequently issues its findings as to an appropriate bargaining unit for them.⁹²

The Fourth Annual report listed certain exceptions to this practice.⁹³ Two further exceptions have developed during the fiscal period covered by the present report. In *Matter of Bendix Products Corp.*, where a labor organization had been certified by the Board for an industrial unit and thereafter bargained with the company on behalf of all the employees in this unit, the Board found inappropriate a craft unit of employees, who were included in the industrial unit.⁹⁴ So, also, when an industrial union has secured a valid, ex-

⁹¹ At pp. 86-7.

⁹² In the following cases, decided during the past fiscal year, the Board ordered an election to be held to ascertain the desires of the craft employees concerning their forming a separate unit: *Matter of Sloss Sheffield Steel & Iron Company* and *Brotherhood of Locomotive Firemen and Enginemen, et al.*, 14 N. L. R. B. 283 (railroad employees operating an intra-plant railroad granted a separate election); *Matter of S. Karpén & Bros. and United Furniture Workers of America, Local No. 576, C. I. O.*, 14 N. L. R. B. 594 (woodworking and finishing departments, spring mattresses and upholstering departments, and truck drivers and shipping employees each granted separate elections); *Matter of Western Pipe and Steel Company of California and Steel Workers Organizing Committee, et al.*, 14 N. L. R. B. 473 (patternmakers, machinists, and electrical employees); *Matter of United States Pipe & Foundry Company and Steel Workers Organizing Committee*, 19 N. L. R. B., No. 102 (machinists, electricians, boilermakers, and patternmakers).

In the following case where the evidence introduced during the hearing enabled the Board to ascertain the desires of the craft employees, the Board did not order an election but immediately found a craft unit, in accordance with the desires of the employees, to be an appropriate one: *Matter of Chicago Malleable Castings Company and International Union of Operating Engineers, Local No. 399, et al.*, 16 N. L. R. B. 15 (unit of engineers and another of firemen held appropriate).

⁹³ At pp. 87-88. The following cases, decided during the past fiscal year, illustrate these exceptions: *Matter of Westinghouse Electric & Manufacturing Company and Westinghouse Employees Association, Inc. (Independent)*, 18 N. L. R. B., No. 15 (no proof of membership by machinists); *Matter of Federal Shipbuilding and Dry Dock Company and Industrial Union of Marine & Shipbuilding Workers of America, Local No. 16*, 19 N. L. R. B., No. 35 (no credible showing of membership by either machinists or electricians); *Matter of OHmax Machinery Company and Metal Polishers, Buffers, Platers and Helpers Local Union No. 171, affiliated with the A. F. of L.*, 14 N. L. R. B. 252 (unit of polishers and buffers held inappropriate in view of fact that the union traditionally organized polishers, buffers, platers, and helpers); *Matter of R. C. A. Manufacturing Co., Inc. and Pattern Makers' Association of Philadelphia and Vicinity*, 13 N. L. R. B. 667 (unit of patternmakers held inappropriate where they spent the greater portion of their time in production.)

⁹⁴ *Matter of Bendix Products Corp. and Pattern Makers Association of South Bend, et al.*, 15 N. L. R. B. 965. Chairman Madden dissented, holding that the craft employees should be entitled to separate representation if they so desire.

clusive bargaining contract, the Board has refused to permit craft employees covered by such contract to obtain separate representation.⁹⁵

Where two industrial unions disagreed over the extent of the appropriate unit, one seeking to exclude warehousemen as eligible for membership in a third labor organization, the Board included the warehousemen since both industrial unions had admitted warehousemen to membership and it did not appear that the third union had attempted to organize or represent any of these employees.⁹⁶

3. MULTIPLE-PLANT AND SYSTEM UNITS

The Board, not uncommonly, must determine whether the employees of one, several, or all plants of an employer, or the employees in all or only a part of a system of communications, transportation, or public utilities, constitute an appropriate unit for the purposes of collective bargaining. These cases also fall into the two main categories set forth in the previous section, and the principles applicable to them have been described in detail in the Fourth Annual Report.⁹⁷ Cases decided during the fiscal year, covered by the pres-

⁹⁵ *Matter of American Co. and Engineers Local No. 30, Firemen & Oilers Local No. 56*, 13 N. L. R. B. 1252 (electrical workers and engineers and firemen each denied separate units); *Matter of West Coast Wood Preserving Company and Boommens and Rafter's Union, Local 130, I. W. A.*, 15 N. L. R. B. 1 (boommens and rafters denied separate unit); *Matter of Milton Bradley Company and International Printing Pressmen and Assistants' Union of North America (A. F. L.)*, 938 (petition of pressmen for a separate unit dismissed); *Matter of Roberts & Manders Stove Co., Harbor Foundry Co. and International Molders' Union of North America*, 16 N. L. R. B. 943 (unit of 90 foundry employees, separate from approximately 635 production and maintenance employees, held inappropriate); *Matter of Celanese Corporation of America and International Brotherhood of Electrical Workers, et al.*, 18 N. L. R. B., No. 104 (engineering employees denied a separate unit); *Matter of Todd-Johnson Dry Dock Inc. and Industrial Union of Marine and Shipbuilding Workers of America, Local No. 29*, 18 N. L. R. B., No. 105 (nine craft groups denied separate units); *Matter of Pacific Telephone & Telegraph Company, et al.*, and *Order of Repeatermen and Toll Testboardmen, et al.*, 23 N. L. R. B., No. 25 (toll maintenance employees denied separate unit; Chairman Madden concurred in view of insubstantial showing of membership among the toll maintenance employees; cf. note 30 *supra*); *Matter of The White Motor Company and Pattern Makers League of North America (A. F. of L.)*, 23 N. L. R. B., No. 98 (woodworkers denied a separate unit). Chairman Madden has dissented from these cases denying separate representation to craft employees. This exception to the Board's general practice of allowing craft employees to determine for themselves whether they desire separate representation or inclusion in the industrial unit is inapplicable when the contract is not exclusive but covers "members only." *Matter of National Can Co. and Steel Workers Organizing Committee, Lodge No. 1670*, 13 N. L. R. B. 1242; or where the recognition granted by the contract is not clear, *Matter of L. B. Lockwood Company and International Brotherhood of Firemen and Oilers Local Union #52 (A. F. of L.)*, 16 N. L. R. B. 65; or where it is thought that the contract is invalid, *Matter of Wilson-Jones Company and Employees Benevolent Association of Elizabeth, N. J., Inc., etc.*, 21 N. L. R. B., No. 92; *Matter of Reeves Pulley Company and Columbus Local Lodge No. 1466, International Association of Machinists of A. F. of L.*, 22 N. L. R. B., No. 47 (the exclusive contract ran to a company-dominated union which the Board had ordered disestablished in another proceeding). In the following cases there were peculiar circumstances as a result of which the exclusive contract did not freeze the industrial unit: *Matter of The B. F. Goodrich Company and Pattern Makers League of North America (A. F. of L.)*, 16 N. L. R. B. 165 (a "tacit understanding" between the craft and industrial union that the craft employees should be given separate representation); *Matter of Chicago Malleable Castings Company and International Union of Operating Engineers, Local No. 399, et al.*, 16 N. L. R. B. 15 (the craft employees informed the company of their desires before the exclusive contract was executed and none of these employees designated the industrial union as their representative); *Matter of Walworth Company and Pattern Makers League of North America (A. F. of L.)*, 20 N. L. R. B., No. 80. (the contract stated that it was subject to the Board's determination of the appropriate unit); *Matter of Great Lakes Terminal Warehouse Company and International Union of Operating Engineers, A. F. of L.*, 21 N. L. R. B., No. 55 (the contract, it appeared, did not cover the engineers whom the Board allowed a separate unit); *Matter of The Riverside and Fort Lee Ferry Company and United Marine Division, Local 333, I. L. A., A. F. of L.*, 23 N. L. R. B., No. 37 (the craft and industrial unions had agreed prior to a consent election, which preceded the execution of an exclusive contract, that if the winning union should make a contract with the company "the other party was to hold on to their membership and not to have any trouble as far as the company was concerned"); *Matter of Maryland Dry Docks Company and Baltimore Assn. Pattern Makers' League of North America*, 23 N. L. R. B., No. 95 (the four pattern makers had refused to join the industrial union, voted against it in a consent election, and would not allow this union to bargain in their behalf).

⁹⁶ *Matter of The Barre Wool Combing Company, Limited and Federal Labor Union No. 21928, Textile Workers, affiliated with the American Federation of Labor*, 19 N. L. R. B., No. 101. Cf. *Matter of Selby Shoe Company, Portsmouth, Ohio, and Portsmouth Printing Pressmen & Assistants' Union No. 296 of the I. P. P. & A. U. of N. A. et al.*, 15 N. L. R. B. 489.

⁹⁷ At pp. 89-91.

ent report, which illustrate the Board's practice when there is only one bona fide union or when all the bona fide unions involved agree on the appropriate unit, are noted in the margin.⁹⁸

Where two bona fide labor organizations disagree as to whether or not the unit should be employer-wide or system-wide, the Board examines the claims of the rival unions in the light of the factors enumerated in the Fourth Annual Report.⁹⁹ If employees in a system of communications, transportation, or public utilities are involved, the employer's organization, management, and operation of his business as a single closely integrated enterprise result in an intimate interrelationship and interdependence in the work and interests of the employees. Thus, in *Matter of Iowa Southern Utilities Company*¹ the Board emphasized, in finding a system-wide unit to be appropriate at the request of two labor organizations, though opposed by a third union, that the company "operates as a unit, both regarding general policy, and the technical conduct of its power and

⁹⁸ (A) Unit of one or several but not all of the plants of employer, corresponding with present extent of organization and desires of union or unions involved, found appropriate: *Matter of Burroughs Adding Machine Company and Boston Lodge No. 264, International Association of Machinists, American Federation of Labor*, 14 N. L. R. B. 829 (one of many services and regional offices throughout country); *Matter of the Western Union Telegraph Company and Commercial Telegraphers Union, Indpls. Local #7, Western Union Div. #2, Aff. with A. F. of L.*, 17 N. L. R. B. 683 (one of many offices found appropriate; claim of company-dominated union disregarded); *Matter of Home Beneficial Association of Richmond, Va. and Industrial and Ordinary Insurance Agents' Council*, 17 N. L. R. B. 1027 (one of many offices); *Matter of Frigidaire Division of General Motors Corp. and Metal Finishers Local Lodge #336, International Association of Machinists (A. F. L.)*, 19 N. L. R. B., No. 95 (one of two plants of company); *Matter of West Texas Utilities Company and International Brotherhood of Electrical Workers*, 22 N. L. R. B., No. 24 (employees in two of many districts); *Matter of Southern Aggregates Corporation and Quarry Workers International Union of North America, Locals No. 293, 294, 295*, 23 N. L. R. B., No. 73 (one of the company's three quarries); *Matter of Western Union Telegraph Company and American Communications Association Local 54-B, Affiliated with the Congress of Industrial Organizations*, 23 N. L. R. B., No. 87 (one of many offices); *Matter of Nebel Knitting Company, Inc. and American Federation of Hosiery Workers*, 23 N. L. R. B., No. 120 (one of three mills). Cf. *Matter of Colorado Builders' Supply Company and International Association of Bridge, Structural and Ornamental Iron Workers, Shoyemen's Local Union No. 507*, 18 N. L. R. B., No. 3 (although the only union involved requested a unit of two plants, the Board restricted it to one plant since the union's membership did not extend beyond this plant); *Matter of Consolidated Paper Company and Local Industrial Union, Locals 1001 and 1006 (C. I. O.)*, 21 N. L. R. B., No. 19 (union's request for two of the company's five plants denied. The Board observed: "We are * * * of the opinion that, under the circumstances of this case, the employees at Plant No. 1 in Monroe and Plant No. 10 in River Rouge should not at this time be grouped together in one bargaining unit. Although the two plants have been organized by the Union and are similar in many respects, not only are they geographically separate, but Plant No. 1 in Monroe is one of a cluster of three plants in Monroe. Under these circumstances, and in the absence of any history of collective bargaining at the Company's plants, we think that at the present time the employees at each of the two small plants in Michigan constitute a separate bargaining unit").

(B) Multiplant employer-wide unit, corresponding with extent of organization and desires of union or unions involved, found appropriate: *Matter of Alpena Garment Company, Inc. and International Ladies Garment Workers Union*, 13 N. L. R. B. 720 (four separate plants in one unit); *Matter of Pittsburgh Plate Glass Company and Federation of Flat Glass Workers of America, affiliated with C. I. O.*, 15 N. L. R. B. 515 (the company's six plants, including one where union did not have a majority. The Board's order was sustained in *Pittsburgh Plate Glass Co. v. N. L. R. B.*, 113 F. (2d) 698 (C. C. A. 8)); *Matter of Chain Belt Company and Steel Workers Organizing Committee, on behalf of the Amalgamated Association of Iron, Steel & Tin Workers of North America, Lodge #1527*, 17 N. L. R. B., No. 8 (five plants included though company wanted unit restricted to four); *Matter of California Walnut Growers Association and Walnut Workers Union, Local 92 of United Cannery, Agricultural, Packing and Allied Workers of America*, 18 N. L. R. B., No. 69 (company's two plants included in one unit); *Matter of Equitable Life Insurance Company, Washington, D. C., 1003 K St. NW. and 1712 L St. NW.*, Washington, D. C., and *Industrial and Ordinary Insurance Agents Union #2154 and Industrial and Ordinary Insurance Agents Council*, 21 N. L. R. B., No. 6 (company's two offices in one city); *Matter of American Cyanamid Co. and United Phosphate Workers' Union No. 22036, A. F. L.*, 19 N. L. R. B., No. 103 (one unit of mines, plant, and related service departments of a company where the employees all lived and worked in a company town owned and operated by the company); *Matter of National Distillers Products Corporation, Bernheim Lane, Louisville, Ky., and Int'l Brotherhood of Firemen & Oilers, # 320, 401 Macon Ave., Louisville, Ky.*, 20 N. L. R. B., No. 49 (in a prior proceeding the Board found one plant appropriate in view of the extent of organization; in this proceeding, since organization had extended to all three plants, the Board found the company's three plants to be an appropriate unit).

⁹⁹ At pp. 89-90.

¹ *Matter of Iowa Southern Utilities Company and Utility Workers Organizing Committee Local 109 (C. I. O.)*, et al., 15 N. L. R. B. 580.

allied business." In *Matter of Gulf Oil Corporation*² the Board adopted a division-wide unit, at the request of one union, though another sought to split the division into separate units, and in so ruling observed:

Since it appears that the Boston division is a functionally coherent system consisting of some large and some very small plants, that the Association has organized among the employees at all the larger plants and in some of the smaller plants as well, and that a unit covering employees throughout the entire division would afford an opportunity for employees in the smaller plants and service stations to be represented, we conclude that a division-wide unit is appropriate.

While holding that a division-wide unit was appropriate, the Board provided, nonetheless, that "if the election shows that the employees do not desire at this time to be represented exclusively in the division unit we shall then consider further the appropriateness of the plant unit on the basis of the petitions filed by the International."³

The intimate relationship and interdependence characterizing the employees of utilities often exist but to a lesser extent in manufacturing enterprises. In view of such circumstances, the Board may permit the employees of each plant to elect between plant-wide or employer-wide representation. Thus, in *Matter of Allied Laboratories, Inc.*,⁴ where one labor organization petitioned for a unit of the company's two plants while a rival union claimed that one of the two plants constituted an appropriate unit, the Board directed separate elections for each plant, noting that if the advocate of a two-plant unit was successful in both elections, both plants would be combined into one unit; if the proponent of a one-plant unit was designated by a majority therein, the Board added, it would find that plant alone to constitute an appropriate unit.

An analogous result has been reached in the case of other manufacturing enterprises involving disagreement by bona fide unions on whether or not the unit should be multiplant. Thus, in *Matter of Chrysler Corporation*,⁵ following a split in a labor organization, one faction petitioned for separate units while the other sought a unit of the company's 14 plants. In finding separate units to be appropriate, the Board observed that "for all that appears, the A. F. L.-U. A. W. may have an overwhelming majority in several of the plants and the C. I. O.-U. A. W. a similarly large majority in several others. Under the circumstances, we conclude that * * * each of the plants involved in this proceeding constitutes a separate

² *Matter of Gulf Oil Corporation and Gulf Employees Association of New England et al.*, 19 N. L. R. B. No. 38

³ Cf. *Matter of Iowa Southern Utilities Company*, above, note.

⁴ *Matter of Allied Laboratories, Inc. (Pitman Moore Division) and Indianapolis Specialty Union #465, affiliated with the International Printing Pressmen and Assistants' Union affiliated with A. F. L.*, 23 N. L. R. B. No. 14. Board Member Edwin S. Smith dissented.

⁵ *Matter of Chrysler Corporation and United Automobile Workers of America, Local 371, affiliated with C. I. O. et al.*, 13 N. L. R. B. 1303.

appropriate bargaining unit.”⁶ Following the election in this proceeding, the Board permitted the advocate of a multiplant unit, on motion, to combine in one unit all the plants in which it had been selected as statutory representative.⁷

4. MULTIPLE EMPLOYER UNITS

The rules which the Board applies in determining whether or not to group the employees of several employers into one bargaining unit have been described in detail in the Fourth Annual Report.⁸ Cases decided during the fiscal year, covered by the present report, which illustrate these rules, are set forth in the margin.⁹

⁶ Mr. Smith dissented in this and in a number of the following cases in which the Board reached a similar result: *Matter of Briggs Manufacturing Company and Briggs Indiana Corporation and International Union, United Automobile Workers of America, affiliated with the C. I. O. et al.*, 13 N. L. R. B. 1326. *Matter of Naunkeag Steam Cotton Company and Textile Workers Organizing Committee, Local No. 74 of the Committee for Industrial Organization et al.*, 13 N. L. R. B. 513 (unit confined to bleachery, with mill excluded); *Matter of Minneapolis-Moline Plover Implement Company and International Association of Machinists, Local No. 1037, by District Lodge 77 (A. F. of L.)*, 14 N. L. R. B. 920 (one of two plants, 12 miles apart, held appropriate); *Matter of Utah Poultry Producers Cooperative Association and Independent Union of Poultry Employees*, 15 N. L. R. B. 534 (two plants, each held to be a separate unit); *Matter of Buckley Hemlock Mills, Inc., Buckley Logging Company and International Woodworkers of America, Local No. 52*, 15 N. L. R. B. 498 (mill and logging divisions each held to be a separate unit); *Matter of United States Rubber Company (Providence Plant) and Rubber Workers Federal Labor Union, Local No. 22014, affiliated with the American Federation of Labor*, 20 N. L. R. B., No. 50 (each of ten plants held to be a separate unit); *Matter of Hood Rubber Company, Inc., and Rubber Workers Federal Labor Union No. 21914 (A. F. L.)*, 20 N. L. R. B., No. 51 (each of five plants held to be a separate unit).

⁷ *Matter of Chrysler Corporation and United Automobile Workers of America, Local 371, affiliated with C. I. O. et al.*, 17 N. L. R. B. 746; also *Matter of Briggs Manufacturing Company and Briggs Indiana Corporation and International Union, United Automobile Workers of America, affiliated with the C. I. O. et al.*, 17 N. L. R. B. 749.

⁸ At pp. 92-93.

⁹ (A) Companies which are interrelated through stock ownership and are commonly controlled and operated, treated as a single employer: *Matter of New York Post, Inc., and Publishers Service, Inc. and Newspaper Guild of New York*, 14 N. L. R. B. 1008 (a wholly owned subsidiary, operated on the same premises as the parent corporation by one so-called promotion director, whose salary was paid by both companies); *Matter of Shenango Penn Mold Company, Shenango Furnace Company, and Steel Workers Organizing Committee, on Behalf of the Amalgamated Association of Iron, Steel & Tin Workers of North America, Lodge 1632*, 19 N. L. R. B., No. 37 (a mold and furnace company, functionally interrelated having an identical wage policy and owned and operated by the same persons); *Matter of American Bemberg Corporation, North American Rayon Corporation and Textile Workers Union No. 21999, affiliated with the A. F. of L.*, 23 N. L. R. B., No. 51 (two adjoining companies, closely related physically, in management and ownership).

(B) Unit comprising employees of two or more separate and competing companies—(1) found inappropriate in absence of an association of employers or other employers' agent, exercising employer functions, with authority from the employers to bargain collectively and enter into binding agreements with labor organizations: *Matter of Sebastian Stuart Fish Co., a corpn., et al., and Cannery Workers Union, Local 21173, A. F. of L.*, 17 N. L. R. B. 362 (the Board found that each of the companies retained direct control over the essential employer functions); *Matter of Bulk Sales Department Gulf Refining Co. and The American Federation of Labor*, 21 N. L. R. B., No. 99 (the Board found that each of five companies retained the power to withdraw from negotiations at will or to reject a proposed final agreement as unsuited to its peculiar needs and that the committee which bargained for the companies had no authority to bind any of them); (2) found appropriate in presence of such an association or agent and where history of collective bargaining has been upon a multiple-employer basis: *Matter of Alston Coal Company and Progressive Mine Workers of America, International Union, affiliated with American Federation of Labor*, 13 N. L. R. B. 683 (petition for separate employer unit dismissed); *Matter of Federated Fishing Boats of New England and New York, Inc. and American Communications Association, Marine Division, affiliated with the C. I. O.*, 15 N. L. R. B. 1079; *Matter of Stevens Coal Company and Progressive Mine Workers of America, International Union*, 19 N. L. R. B., No. 14 (petition for separate employer unit dismissed); *Matter of Associated Banning Company and Waterfront Employers Association of Southern California et al. and International Longshoremen's and Warehousemen's Union, Local 1-13*, 19 N. L. R. B., No. 20.

5. EXCLUSION OR INCLUSION OF SUPERVISORY AND FRINGE GROUP EMPLOYEES

The Fourth Annual Report has detailed the Board's practice with respect to the inclusion or exclusion of supervisory employees.¹⁰ Although requested by the only bona fide labor organization involved, however, the Board has refused to allow a supervisory employee in complete charge of an autonomous department in the same unit with employees working under him.¹¹ In that case, the Board said:

The Board has in the past adopted the general policy of including in the appropriate unit minor supervisory employees where they are members of or eligible for membership in the claiming union, and the union, without opposition of a rival union, wishes them included. While this rule is in general applicable in the present case, special problems arise from the nature of a newspaper plant, where there are many subdepartments which are partially autonomous. Thus, certain supervisory employees on a newspaper differ from strawbosses or assistant foremen in industrial plants. While the latter act as management representatives in relation to employees working under them, they do not customarily have charge of separate and distinct departments. Some of the individuals in controversy here, however, have more or less complete charge in the management or arrangement of their partially autonomous departments. We, therefore, think that they should be excluded from a unit in which their subordinates are found, even though the Guild wants them included.¹²

And where assistant foremen had engaged in extensive antiunion practices, the Board denied a bona fide labor organization's petition to include them in the appropriate unit.¹³

The principles which the Board applies in determining whether the work of certain employees places them on the fringe with respect to the functions of employees admittedly in the unit and in determining whether such fringe groups should be included or excluded have

¹⁰ At pp. 93-94. The following cases decided during the last fiscal period illustrate the rules therein set forth: (A) supervisory employees excluded upon request of union or unions: *Matter of Alabama Mills, Inc. and Textile Workers Organizing Committee*, 14 N. L. R. B. 257 (assistant overseer and assistant foreman); *Matter of Kansas Milling Company and Flour, Feed, Seed, Cereal & Elevator Workers Union, No. 20991, A. F. of L.*, 15 N. L. R. B. 71 (millers in charge of shifts of six men; assistant mill superintendent); *Matter of Selby Shoe Company, Portsmouth, Ohio, and Portsmouth Printing Pressmen & Assistants' Union No. 296 of the I. P. P. & A. U. of N. A.*, 15 N. L. R. B. 489 (two unions requested exclusion of supervisory); cf. *Matter of Johnson-Carper Furniture Company, Inc. and Local 283, United Furniture Workers of America*, 14 N. L. R. B. 1030 (an employee who merely replaced a foreman during his infrequent absences included over protest of only labor organization involved); (B) minor supervisory employees normally included upon request of union or unions: *Matter of New York Post, Inc., and Publishers Service, Inc. and Newspaper Guild of New York*, 14 N. L. R. B. 1008 (eight so-called executives included); *Matter of Kawooneer Company and Local 92, United Automobile Workers of America*, 22 N. L. R. B. 274 (assistant foremen included); (C) supervisory employees excluded where unions disagreed: *Matter of Armour & Company and Local 261, Meat Cutters Union et al.*, 15 N. L. R. B. 268 (keymen, straw bosses, working supervisors excluded); *Matter of Iowa Southern Utilities Company and Utility Workers Organizing Committee, Local 109 (C. I. O.), et al.*, 15 N. L. R. B. 580 (local managers excluded); *Matter of Armour and Company (St. Louis Branch House) and Amalgamated Meat Cutters & Butcher Workmen of North America, Local 545, A. F. of L.*, 20 N. L. R. B. No. 70 (inside salesmen excluded as supervisory).

¹¹ *Matter of Brooklyn Daily Eagle and Newspaper Guild of New York*, 13 N. L. R. B. 974.

¹² See also *Matter of Kansas Milling Company and Flour, Feed, Seed, Cereal & Elevator Workers Union, No. 20991, A. F. of L.*, 15 N. L. R. B. 71.

¹³ *Matter of Ford Motor Company and United Automobile Workers of America, Local No. 325, 23 N. L. R. B. No. 28.*

also been set forth in the fourth annual report.¹⁴ When employees are not properly a fringe group, however, but form with employees admittedly in the unit a coherent group the Board will not exclude them even if so requested by the only labor organization involved. Thus in *Matter of Coldwell Lawnmower Company*,¹⁵ the only bona fide labor organization sought to exclude painters from an industrial unit. The Board refused this request since it found that the painters in this plant formed an integral part of the production process. So, also, where an employee's clerical duties were only a small part of his work, the Board included him within the unit although the only labor organization involved petitioned for his exclusion.¹⁶ If the group sought to be excluded may or may not constitute a fringe group, the Board may order separate elections. Thus in *Matter of Westinghouse Electric & Manufacturing Company*,¹⁷ where two labor organizations disagreed over the inclusion of clerical employees, and where these employees had been represented in the past together with the production and maintenance employees in collective bargaining with the company, the Board permitted the clerical employees to decide for themselves whether they should be included with the production and maintenance employees or represented in a separate unit. If the employees cannot properly be considered a fringe group and do not form with employees admittedly in the unit a coherent group,

¹⁴ At pp. 94-97. Illustrative cases, decided during the last fiscal period, follow: (A) fringe groups excluded upon request of union or unions: *Matter of Cudahy Packing Company* and *United Packing House Workers, Local Industrial Union*, 756, 14 N. L. R. B. 244 (cafeteria workers); *Matter of Armour & Company and Local No. 54, United Packinghouse Workers of America*; *of Packinghouse Workers Organizing Committee, affiliated with C. I. O.*, 14 N. L. R. B. 865 (matrons, fire department employees); *Matter of Wilson & Co., Inc.*, and *Local No. 37, United Packinghouse Workers of America, of P. W. O. C., affiliated with C. I. O.*, 15 N. L. R. B. 195 (employees who worked only 4 to 6 weeks each summer); (B) fringe groups normally included upon request of union or unions: *Matter of Dallas Cartage Company and Int'l Brotherhood of Teamsters, Chauffeurs, Stablenen & Helpers of America, Local 745 et al.*, 14 N. L. R. B. 411 (extra dockmen; employed 1½ to 8 hours a day, included); *Matter of Hyatt Bearings Division, General Motors Corporation and Hyatt Employees Association, Inc.*, 14 N. L. R. B. 441 (student employees; in a subsequent proceeding involving the same company—General Motors Corporation—it was established that the union had negotiated a stipulation with the General Motors Corporation for 68 other plants, excluding student employees from the appropriate unit; in view of this stipulation, the Board ruled that student employees should also be excluded from the appropriate unit in this plant, *Matter of Hyatt Bearings Division, General Motors Corporation and International Union, United Automobile Workers of America, C. I. O.*, 23 N. L. R. B., No. 10); *Matter of The Kentucky Fire Brick Company and Local No. 510, United Brick & Clay Workers of America*, 19 N. L. R. B., No. 58 (storekeepers); *Matter of Westinghouse Electric & Manufacturing Company, Lighting Division and Metal Polishers, Buffers, Platers, Spinners & Helpers International Union, Local No. 3, A. F. of L.*, 21 N. L. R. B., No. 118 (pollicemen); *Matter of Kawneer Company and Local 92, United Automobile Workers of America, A. F. of L.*, 22 N. L. R. B., No. 74 (foremen, truck driver, and shipping and receiving clerks included; Board Member William M. Lelerson dissented on the ground that firemen, shipping and receiving clerks, and a truck driver should be given an opportunity to determine for themselves whether they wished to be included in the appropriate unit); *Matter of Western Union Telegraph Company and American Communications Association, Local 54-B, affiliated with the Congress of Industrial Organizations*, 23 N. L. R. B., No. 87 (furloughed employees included); (C) fringe groups excluded where unions disagreed: *Matter of American Machine and Foundry Company and Local 1233 of United Electrical Radio & Machine Workers of America, C. I. O.*, 14 N. L. R. B. 497 (rest room matrons); *Matter of Iowa Southern Utilities Company and Utility Workers Organizing Committee Local 109 (C. I. O.) et al.*, 15 N. L. R. B. 580 (district accountants); *Matter of Western Rubber Company and Federal Labor Union No. 21862 of the American Federation of Labor et al.*, 17 N. L. R. B. 426 (Bedeaux efficiency experts).

¹⁵ *Matter of Coldwell Lawnmower Company and International Association of Machinists, Lodge No. 757, affiliated with the American Federation of Labor*, 14 N. L. R. B. 38.

¹⁶ *Matter of Tucker Oil Company and Oil Workers International Union, Local No. 258*, 19 N. L. R. B., No. 109. See also *Matter of Armour and Company and United Packinghouse Workers of America, Local Industrial Union No. 347, of Packinghouse Workers Organizing Committee, affiliated with C. I. O.*, 23 N. L. R. B., No. 97 (fire marshal whose rate of pay and work was approximately equal to those of the other employees in the unit).

¹⁷ *Matter of Westinghouse Electric & Manufacturing Company, Lighting Division and Metal Polishers, Buffers, Platers, Spinners & Helpers International Union, Local No. 3, A. F. of L.*, 21 N. L. R. B., No. 118.

the Board will exclude them even if the only labor organization involved desires their inclusion. Thus where the only union involved sought to include messengers who had not been covered by previous contracts between the company and the union and whose interests and duties were distinct from those of other employees in the unit, the Board denied this request and excluded the messengers from the appropriate unit.¹⁸

H. REMEDIES

Section 10 (c) of the Act reads, in part, as follows:

* * * If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order.

Pursuant to section 10 (c) the Board adapts its orders to the situation which calls for redress. In the course of the Board's decisions there have been developed typical orders for the correction of typical unfair labor practices engaged in by employers.¹⁹ Such orders have been issued in appropriate cases during the last fiscal year. In addition, new situations have called for further adaptations of typical Board orders. The Fourth Annual Report considered developments in this field under the following categories:

1. Orders in cases in which the Board has found that an employer has engaged in unfair labor practices within the meaning of section 8 (2) of the Act.
2. Orders in cases in which the Board has found that an employer has engaged in unfair labor practices within the meaning of section 8 (3) of the Act.
3. Orders in cases in which the Board has found that an employer has engaged in unfair labor practices within the meaning of section 8 (5) of the Act.
4. Orders in cases in which the Board has found that an employer has engaged in unfair labor practices within the meaning of section 8 (1) of the Act.
5. Orders in cases in which the Board has found that a strike was caused or prolonged by an employer's unfair labor practices.
6. Effect on Board orders of violent or unlawful conduct on the part of employees who were discriminatorily discharged or who went on strike in protest against an employer's unfair labor practices.
7. Orders requiring an employer not to give effect to agreements.
8. Effect on Board orders of agreements not to proceed against an employer.

¹⁸ *Matter of Pacific Telephone & Telegraph Company et al. and Order of Repeatermen and Toll Testboardmen*, 23 N. L. R. B., No. 25 (the Board included 23 plant clerks, although these employees had not been covered by previous contracts either, since they performed the same duties and received the same wages as other plant clerks included in the unit established by agreements then in effect).

¹⁹ Third Annual Report, pp. 197-215; Fourth Annual Report, pp. 97-109.

9. Precautionary orders.

10. Requirements that an employer publicize the terms of Board orders among employees.

During the last fiscal period there have been no additional noteworthy orders within the first, third, fifth, sixth, seventh, and ninth of these categories. We shall therefore confine this discussion to new or otherwise interesting orders falling within the remaining categories.

ORDERS IN CASES IN WHICH THE BOARD HAS FOUND THAT AN EMPLOYER HAS ENGAGED IN UNFAIR LABOR PRACTICES WITHIN THE MEANING OF SECTION 8 (3) OF THE ACT.

In cases in which the Board has found that an employer has encouraged or discouraged membership in a labor organization by discrimination in regard to hire or tenure or any term or condition of employment, it has ordered the reinstatement of the persons who have lost their employment because of the employer's discrimination.²⁰ Ordinarily the Board will not order the reinstatement of an employee who has already refused a bona fide and unconditional offer of reinstatement to a substantially equivalent position.²¹ The Board has held that an offer of reinstatement sent by the employer to individual laid off, and striking employees without notice to the statutory representative conducting the strike, was not such a bona fide and unconditional offer, since it was impossible for the employees to determine whether the employer intended to reinstate all the strikers or whether the employer intended, by reinstating only a few individuals, to break the strike and subject the returning employees to continuing unfair labor practices.²² Similarly, the Board has ordered reinstatement of employees who did not accept an offer of reinstatement which was made only to confuse the employees and thereby to provide the employer with a technical defense.²³

The board has adhered to its position that under some circumstances it may and should order an employer to offer reinstatement to an employee who, subsequent to a discriminatory discharge by his employer, has obtained substantially equivalent employment elsewhere.²⁴ The Board has nevertheless had occasion to discuss what constitutes substantially equivalent employment, as, for instance, in a case remanded by a Circuit Court of Appeals to the Board for its finding with respect to this question of fact.²⁵ In *Matter of Mooresville Cotton Mills* and *Local No. 1221, etc.*,²⁶ the Board considered as relevant to the question the following factors: (1) the employment itself: The occupation, desirability of the work, the skill required, the hourly earnings, the number of hours worked, the work available per week, the weekly earnings, lay-offs, seniority policy, the effort required in the work, the physical condition of employment, the occur-

²⁰ Third Annual Report, pp 199-200.

²¹ Fourth Annual Report, p. 98.

²² *Matter of National Motor Rebuilding Corp. and International Association of Machinists*, 19 N. L. R. B., No. 56.

²³ *Matter of Ford Motor Company and International Union, United Automobile Workers of America, Local 425*, 23 N. L. R. B., No. 46.

²⁴ *Matter of Eagle-Picher Mining and Smelting Co., etc.*, and *International Union, etc.*, 16 N. L. R. B. 727.

²⁵ See *Mooreville Cotton Mills v. N. L. R. B.*, 97 F. (2d) 959 (C. C. A. 4).

²⁶ 15 N. L. R. B. 416, modified and enforced in *Mooreville Cotton Mills v. N. L. R. B.*, 110 F. (2d) 179 (C. C. A. 4).

rence of work at night and on Saturdays; (2) location of the work: The cost of commuting, the time consumed in commuting, the cost of living, the distance from wife and children, the distance from parents, brothers, and sisters, and the distance from accustomed community of residence.

In addition to requiring the reinstatement of an employee discriminated against, the Board usually orders an employer to make such employee whole for loss of pay which he normally would have earned had the unfair labor practices not occurred. In *Matter of McKesson & Robbins, Inc., et al.*, and *International Longshoremen and Warehousemen's Union, etc.*,²⁷ however, the Board ruled that, although the employer had unlawfully discriminated against a number of employees by discharging them pursuant to an invalid closed-shop contract, no back pay would be awarded for any period prior to five days after the Decision and Order because the legal rights and obligations of the parties under the agreement were involved in doubt and the employer acted in honest reliance upon what it thought to be a proper interpretation thereof.

The Board in each case patterns the back-pay order to the circumstances of the case. Thus, in a case where the employer went out of business after he had discriminatorily discharged several employees and before he had reinstated them, the Board ordered back pay awarded to the employees from the date of the discrimination to the date the employer went out of business and, in the event the employer reentered business, from the date of such reentry to the date he offered employment to the discriminatorily discharged employees.²⁸

In a number of cases, in order to make equitable back-pay awards, the Board has had to develop a formula for the payment of a lump-sum to be distributed among the employees against whom the discrimination was practiced. *Matter of Eagle-Picher Mining and Smelting Co.*²⁹ sets forth the circumstances under which the Board may use, and the method by which it prepares, such a formula:

In cases where we have found that certain employees were discriminatorily discharged or refused reinstatement, we have ordinarily ordered the offending employer to make them whole with back pay, this being an amount equal to what they would have earned with the employer from the date of the discrimination to the date of reinstatement pursuant to our order, less net earnings elsewhere during the same period. The objective is, of course, to restore the situation, as nearly as possible, to that which would have obtained but for the illegal discrimination. Our order in the present case is designed to achieve the same objective, but the peculiar factual situation here presents unusual difficulties in fashioning our remedy so as to restore the status quo. Thus, there were approximately 1,100 employees working for the respondents on May 8, and by July 5, 1935, only approximately 600. Of the 500 not working then, some 350 are claimants in this case, and we have found discrimination as to about 200. We have found above that after July 5, 1935, a substantial number of additional men were put to work, but it is apparent from the record that the total pay roll fell a good deal short of the 1,100 figure obtaining before the strike. Thus we have the following situation: Had the respondents acted lawfully in restaffing their force, there is no certainty that all the claimants found to have been discriminated against would have returned to

²⁷ 19 N. L. R. B., No. 85.

²⁸ *Matter of Ray Nichols, Inc. and Local No. 45-B, United Furniture, Carpenters, Linoleum, and Awning Workers Union*, 15 N. L. R. B. 846.

²⁹ 16 N. L. R. B. 727; see also *Matter of Theurer Wagon Works, Inc.*, and *International Union, etc.*, 18 N. L. R. B., No. 97.

work, since there were presumably at all times less jobs open than old employees available. It is certainly fair to assume, on the other hand, that a large number of the claimants discriminated against would have returned, but here again, we cannot tell which ones. It does not appear from the record that the respondents followed any set standards, such as seniority, in taking men back. It does appear that as to most positions, one applicant would be as well qualified as another, since no special skills or abilities are ordinarily necessary. The only discernible standards used seemed to be two: a requirement of a blue card, and "first come, first served." On this state of the facts, we have no way of knowing which men would have been reinstated had the respondents acted legally—how many nonclaimants, how many claimants whose cases we are dismissing, how many claimants whose cases we are sustaining.

We might with some logic order the respondents to reconsider their course of reinstatements, putting aside the discriminatory factors which they have employed, and to determine now which employees they would have taken back after July 5, 1935, had they been acting legally; back pay would then be due to those of the claimants who would have been called, and nothing would be due to those whom the respondents now decide they would not have reinstated 4 years ago. Among other cogent objections to this procedure is the fact that this determination would be substantially impossible, and the question of back pay would entail endless negotiation and speculation, with attendant delays when a solution of the problems has already been too long delayed. Further, in the light of the whole record, we do not believe that it would effectuate the purposes of the Act thus to permit the determination of the back pay due to rest almost wholly within the discretion of the respondents, with no objective standards available by which a third party could test their determination. We reject this method, and turn to the only solution that seems fair, workable, and calculated to serve the purposes for which it is intended.

A lump sum shall be computed, consisting of all wages, salaries, and other earnings paid out by the respondents to all persons hired or reinstated from and after July 5, 1935, up to the date on which the respondents comply with our order reinstating or placing on a preferential list the claimants discriminated against. The lump sum shall consist of all such monies so paid to such persons during the period set forth in the preceding sentence. For the reasons indicated above, we shall not credit the entire lump sum to the claimants discriminated against, since we cannot assume that they and only they would have been given these jobs had the respondents acted lawfully. But we can and do assume for this purpose that a proportionate amount of such claimants would have been given the jobs. In establishing the governing proportion, we shall divide the number of claimants discriminated against by that same number plus the number of other employees on the respondents' pay rolls of May 8, 1935, who applied for work with the respondents, whether successfully or not, after July 5, 1935. Let us assume for purposes of illustration that the lump sum amounts to \$360,000, that there are 200 claimants discriminated against, and that there are 100 other employees on the May 8, 1935, pay roll who applied after July 5, 1935. Thus, we assume that two-thirds of the number of jobs would have gone to claimants discriminated against, had the respondents acted lawfully, as jobs were filled. This, we think, is as close as it is possible to come to reconstructing the probable situation, absent the respondents' discrimination. Still using the illustrative figures, two-thirds of the lump sum, or \$240,000, would be the basic sum to be divided among the claimants discriminated against. This sum is then to be apportioned among the claimants discriminated against. The portion to be credited to each such claimant will not be the same, since some of the claimants had higher paying jobs with the respondents, and they should receive a proportionately larger share of the lump sum. This proportion is to be computed by dividing the average annual earnings of the particular claimant, when employed by the respondents, by the average annual earnings of all such claimants when so employed. Thus, assuming that the average annual earnings of all the 200 such claimants (still using illustrative figures only) were \$100,000, a particular claimant with average annual earnings of \$500 would be credited with one two-hundredth of the net lump sum, or \$1,200; one with a \$250 average would be credited with but \$600; one with a \$1,000 average would be credited with \$2,400.

After such individual apportionment is made, individual deductions are to be made from the sum credited to each claimant. A deduction applicable to

each is the amount of net earnings of the particular individual during the period from July 5, 1935, to the date of his reinstatement or placement on a preferential list, except for earnings during periods excluded in computing his back pay, as discussed below. These deductions of net earnings are to be made individually from the sums credited to the particular claimant; the net earnings of all the claimants are *not* to be totaled and deducted in lump from the net lump sum referred to above. The amounts credited to certain claimants are to be subject to further deductions.

ORDERS IN CASES IN WHICH THE BOARD HAS FOUND THAT AN EMPLOYER HAS ENGAGED IN UNFAIR LABOR PRACTICES WITHIN THE MEANING OF SECTION 8 (1) OF THE ACT

In *Matter of Jacob H. Klotz et al. and Joint Board of Suitcase, Bag & Portfolio Makers' Union, A. F. of L.*,³⁰ the Board, upon finding that the employer had moved his plant from New York City to Pawling, New York, in order to rid himself of the union, ordered the employer to:

offer to those employees, whose homes were formerly or still are in New York City and who are employed at the respondents' plant in Pawling, New York, either (1) payment for the reasonable expenses entailed in the transportation and moving of such employees and their families from New York City to Pawling; or (2) payment for transportation biweekly from Pawling to New York City and return; each of said employees to have the option of payment either (1) or (2).

In another case, upon finding that the employer had discriminated against certain employees and thereby violated section 8 (1), the Board ordered the reinstatement of the employees with back pay.³¹

In *Matter of Goodyear Tire & Rubber Company of Alabama and United Rubber Workers of America*,³² the Board found that the employer had condoned violence in its plants against employees who were union members and was responsible for the activities of its "flying squadron" which participated in antiunion activities. The Board ordered the employer to instruct all its employees that physical assaults or threats of violence directed at discouraging membership in, or activities on behalf of, the union would not be permitted in the plant, and specifically to—

Prohibit any member of the flying squadron (1) from interfering with, restraining, or coercing its production employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid and protection, and (2) participating in the formation, administration, or activities of any labor organization of its production employees; and to take effective action to enforce this prohibition.

In the *Eagle-Picher case*,³³ the Board found that the employer by fostering an affiliated labor organization had violated section 8 (1). The Board accordingly ordered the employer to withhold recognition from the company-assisted organization as exclusive representative until it had been certified by the Board, and to withhold from it recognition as representative of any employees until the same or similar recognition was granted to its rival.³⁴

³⁰ 13 N. L. R. B. 746.

³¹ *Matter of McGoldrick Lumber Company et al. and Lumber and Sawmill Workers' Union, Local No. 2552*, 19 N. L. R. B., No. 93.

³² 21 N. L. R. B., No. 33.

³³ *Matter of Eagle-Picher Mining & Smelting Company and International Union, etc.*, 16 N. L. R. B. 727.

³⁴ See also *Matter of Pilot Radio Corporation and United Electrical & Radio Workers of America*, 14 N. L. R. B. 1084.

EFFECT ON BOARD ORDERS OF AGREEMENTS NOT TO PROCEED AGAINST AN EMPLOYER

Section 10 (a) of the Act provides that the power of the Board— to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce * * * shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.

The Board, in exercising this exclusive power, gives effect to compromise agreements which effectuate the policies of the act, and therefore normally gives effect to agreements, purporting to settle charges of unfair labor practices, when Board agents participate in such agreements.³⁵ The fact that an interested party has not entered into, or protests giving effect to, the compromise agreement is not determinative of a contrary result.³⁶

In *Matter of Hope Webbing Co.*, and *Textile Workers' Organizing Committee*³⁷ the Board refused to predicate an order against an employer upon acts of sponsorship of a labor organization all of which acts occurred before a consent election agreement in which Board and other Government agents, the allegedly dominated organization, and the complaining union participated; before the election pursuant thereto, in which both unions appeared on the ballots; and before the consequent "certification" of the allegedly dominated union by Board and other government agents. The Board stated:

Although the election agreement did not explicitly provide against instituting charges against the respondent for domination of and interference with the L. F. W. U., and no such representations were made by the Board's agents, the provision to designate the L. F. W. U. as the exclusive bargaining agency for the respondent's employees must, by implication, be deemed an acknowledgment by the Board's agents of the L. F. W. U.'s capacity to operate as a representative of the respondent's employees.³⁸

The Board has thus given effect not only to the explicit provisions of such agreements but also to their fair implications. The Board has refused, however, to extend the effect of these agreements beyond their fair implications. In the *Hope Webbing* case, the Board held that the consent election agreement did "not in any way purport to condone, nor does it constitute a compromise of, the respondent's interference, restraint, or coercion." Accordingly, the Board entered appropriate orders not affecting the status of the allegedly dominated union. Similarly, where the consent election agreement applied to 2 of 36 districts, the Board gave effect to it only insofar as charges of unfair labor practices applied to the 2 districts.³⁹

Moreover, the Board will disregard the settlement agreement as not effectuating the policies of the act, even when participated in by its agents, if after making the agreement the employer engages in a continuation of its unfair labor practices.⁴⁰ The Board has reached

³⁵ Third Annual Report, p. 213; Fourth Annual Report, pp. 107-108.

³⁶ *Matter of Corinth Hosiery Mills, Inc. and American Federation of Hosiery Workers*, 16 N. L. R. B. 414; *Matter of Harry A. Hall, etc.*, and *I. L. G. W. U.*, 16 N. L. R. B. 667.

³⁷ 14 N. L. R. B. 55.

³⁸ See also *Matter of J. Dunitz, etc. and Joint Council of Knit Goods Workers Union, etc.*, 19 N. L. R. B., No. 77; *Matter of Wickwire Bros. and Amalgamated Assn. of Iron, Steel and Tin Workers of North America, etc.*, 16 N. L. R. B. 316.

³⁹ *Matter of Magnolia Petroleum Co. and Oil Workers Int'l Union, etc.*, 19 N. L. R. B., No. 24.

⁴⁰ *Matter of Chas. H. Bacon Company and American Federation of Hosiery Workers*, 13 N. L. R. B. 173; *Matter of Decatur Iron & Steel Company and Steel Workers' Organizing Committee, etc.*, 17 N. L. R. B., No. 107.

a similar result where a Board field agent approved an employer plan which contemplated the commission of unfair labor practices in the future.⁴¹ The Board stated:

Counsel for the respondent refers to cases in which we have refused, for reasons of policy, to disturb agreements purporting to settle past unfair labor practices when our agents have participated in or lent approval to such agreements. This rule, however, does not apply in the instant case where the unfair labor practices consist of the establishment and continued maintenance of a labor organization which by its very nature defeats the rights guaranteed by the Act. The action of one of our agents cannot constrain us from considering conduct in violation of the Act which endured for 3 years thereafter and may, under the Plan's renewal clause, continue indefinitely.

REQUIREMENTS THAT AN EMPLOYER PUBLICIZE TERMS OF BOARD ORDERS AMONG EMPLOYEES

The Board requires an employer who has engaged in unfair labor practices to publicize the terms of the Board order against him among his employees.⁴² The exact wording of the notice necessarily varies somewhat in different cases. Although the Board formerly generally required notices stating that "the respondent will cease and desist in the manner aforesaid," the order now requires notices which state "that the respondent will not engage in the conduct from which it is ordered to cease and desist * * *." ⁴³ In *Matter of American Newspapers Inc., et al.* and *Chicago Newspaper Guild, etc.,*⁴⁴ the employer posted in its plant the cease and desist notices recommended in the Intermediate Report of the Trial Examiner. Since the employees were on strike, however, such notices did not come to their attention. Consequently, the Board ordered the employer to provide the union with four copies of the posted notice so that the union could post them in places accessible to the strikers.

I. MISCELLANEOUS

This section deals with various problems of parties, pleadings, practice, and procedure which have been raised and discussed in the Board's decisions.

The act and the rules and regulations of the Board ⁴⁵ provide that in cases where an employer is alleged to have committed unfair labor practices, the charge may be made by any person or labor organization. The Board has rejected an employer's contention that Board proceedings were invalid because the charging union was not a labor organization ⁴⁶ or because the charges were not filed by the union

⁴¹ *Matter of The Duffy Silk Co. and Silk Throwsters Union, etc.*, 19 N. L. R. B., No. 11.

⁴² Third Annual Report, p. 214; Fourth Annual Report, p. 109.

⁴³ *Matter of Broken Shoe Company, Inc., etc.*, and *National Leather Workers Association Local #4, affiliated with the Committee for Industrial Organization*, 22 N. L. R. B., No. 93, and subsequent cases.

⁴⁴ 22 N. L. R. B., No. 66.

⁴⁵ Section 10 (b) of the act reads, "Whenever it is charged * * * the Board * * * shall have power to issue * * * a complaint * * * ." Section 1 of the Rules and Regulations, Series 2, as amended, provides that "A charge * * * may be made by any person or labor organization."

⁴⁶ *Matter of Universal Match Corporation and United Match Workers' Local Industrial Union #180*, 23 N. L. R. B., No. 19. The Board pointed out that although the union had no constitution and only two dues-paying members, it was still a labor organization "participated in by employees and available for employee participation for the purposes defined in section 2 (5) of the act." The Board also indicated that a charge filed by an individual, even though purportedly on behalf of a nonexistent labor organization, constitutes substantial compliance with the act and rules and regulations. In *Matter of Pueblo Gas & Fuel Company and International Brotherhood of Electrical Workers, Local Union No. 667-B*, 23 N. L. R. B., No. 111, the Board rejected the contention that the charging union was not a labor organization because it acted *ultra vires* its constitution in admitting employees of the employer to membership.

against which the alleged unfair labor practices were directed⁴⁷ or because the charging union, by virtue of agreements between the international union with which it was affiliated and the employer, lacked authority under its charter to file charges.⁴⁸

Similarly with respect to the filing of petitions for investigation of representatives, the Board has held that it is immaterial whether a union representative who filed a petition had authority to do so,⁴⁹ or whether the declared purposes and objectives of a petitioning labor organization were different from, or opposed to, the objectives usually associated with labor organizations so long as it sought to act as exclusive representative for the purposes of collective bargaining.⁵⁰

Although the rules and regulations require a labor organization seeking to intervene in a proceeding to file its petition for intervention with the Regional Director the Board has accepted without prejudice a petition filed with a Trial Examiner at a hearing.⁵¹

During the past fiscal year, the Board has amended its rules and regulations, which formerly provided that petitions for investigation of representatives could be filed by any employee or any person or labor organization acting on behalf of employees, to allow employers, under certain circumstances, to file such petitions.⁵²

The Board has held that a debtor in possession in reorganization proceedings under section 77B of the Bankruptcy Act,⁵³ and a receiver of a corporation, appointed by a court,⁵⁴ are responsible for unfair labor practices they commit while acting as employers. The Board has also held that a successor corporation "stands in the place of its predecessor" with respect to unfair labor practices committed by the predecessor, where the corporate change is only nominal and where the successor corporation was served with a copy of the complaint and notice of hearing and appeared and defended at the hearing.⁵⁵ The Board, in one case,⁵⁶ dismissed a complaint insofar as it alleged that a labor organization within the meaning of section 2 (5) of the Act,⁵⁷ was an "employer" within the meaning of

⁴⁷ *Matter of Washougal Woolen Mills and Local 127, Textile Workers Union of America*, 23 N. L. R. B. No. 1.

⁴⁸ *Matter of General Motors Corporation et al., and International Union, etc.*, 14 N. L. R. B. 113.

⁴⁹ *Matter of North American Aviation, Inc. and United Automobile Workers, etc.*, 13 N. L. R. B. 1134.

⁵⁰ *Matter of Lawson Manufacturing Co. and Defenders of America, etc.*, 19 N. L. R. B., No. 81. Among the objectives of the organization were the prohibition of strikes by legislation, legislative regulation of all labor unions, and repeal of the exemptions granted labor unions in the Sherman and Clayton Anti-Trust Acts.

⁵¹ *Matter of Reeves Pulley Co. and Columbus Local Lodge, etc.*, 22 N. L. R. B., No. 47.

⁵² Article III, Section 1, Rules and Regulation—Series 2, as amended. The amendment became effective as of July 14, 1939. On January 30, 1940, in *Matter of Iowa Poultry Producers Marketing Association and United Packing, House Workers of America, etc.*, 19 N. L. R. B., No. 110, the Board issued its first Decision and Direction of Election predicated on a petition filed by an employer.

⁵³ *Matter of Baldwin Locomotive Works and Steel Workers Organizing Committee*, 20 N. L. R. B., No. 104.

⁵⁴ *Matter of Hoosier Veneer Company, et al., and United Veneer & Lumber Workers Local Industrial Union, etc.*, 21 N. L. R. B., No. 91. In this case the Board dismissed the allegations against the company which was in receivership, but provided in the order that if the receivership terminated, the company should become subject to the terms of the order.

⁵⁵ *Matter of Charles Cushman Company, et al., and United Shoe Workers of America*, 15 N. L. R. B. 90.

⁵⁶ *Matter of McGoldrick Lumber Co, et al., and Lumber and Sawmill Workers Union, Local No. 2552*, 19 N. L. R. B., No. 93.

⁵⁷ Section 2 (5) provides, "The term labor organization means any organization of any kind, or any agency or employee representation committee or plan in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work."

section 2 (2) of the act, merely on the ground that it was company-dominated and therefore acting in the interests of an employer.⁵⁸

In representation proceedings under section 9 (c) of the Act, the number of employees designating a union may become relevant⁵⁹ to such issues as whether there is a question concerning representation or whether a union shall be placed upon the ballot. In order to expedite the hearing in such cases, the Board has adopted the practice of having proof on this matter submitted to an authorized agent of the Board, commonly the regional director, and having such agent's statement introduced into the record in lieu of the union documents.⁶⁰

In *Matter of Universal Match Corporation and United Match Workers' Local Industrial Union #180, affiliated with the Committee for Industrial Organization*,⁶¹ the Board followed the prevailing judicial rule with respect to attempts to discredit a witness by evidence of past criminal activity:

We think it a sound rule of practice to be followed in Board hearings that a witness cannot be discredited by proof of alleged past criminal acts of the witness for which no conviction has been had. Any other rule would involve the Board in an exploration of matters entirely collateral to the issues heard, and for which its procedures are unsuited. Moreover, an attempt to prove such past acts by indictments or arrest, as here offered by the respondent, is highly improper for "it carries the injustice of subjecting the witness to suspicion without giving him an opportunity to clear it away." Wigmore on Evidence, 2d ed., Vol. 11, sec. 982, p. 366.

The Board is, of course, not bound by the findings of a State court⁶² or of an impartial arbitrator⁶³ in cases to which the Board was not a party, concerning matters in dispute which later came before the Board and which by the terms of the act are subject to the exclusive power of the Board to prevent unfair labor practices affecting commerce.⁶⁴

In *Matter of Pacific Greyhound Lines and Brotherhood of Railroad Trainmen*⁶⁵ the Board considered the effect of its own previous certification upon a subsequent proceeding in which the employer sought to excuse its refusal to bargain with the certified union by attacking the Board's certification. The Board sustained the Trial Examiner's ruling excluding from the record in the complaint proceeding the entire record in the representation proceeding and stated:

While the determinations, findings, conclusions, and certification of the Board in a representation proceeding are not *res judicata* in a subsequent complaint proceeding before the Board under section 10 (b) and (c), we think it both the intent of the statute and a sound administrative practice that parties in interest to such representation proceeding cannot try and have heard *de novo* in the subsequent complaint proceeding questions or matters adjudicated in the previous proceeding in the absence of cogent showing of possible error in such prior proceeding. Although the Board in the exercise of its discretion

⁵⁸ Section 2 (2) defines "employer" to include any person acting in the interest of an employer, but excepts labor organizations unless they are acting as employers.

⁵⁹ See, e. g., *supra*, pp. 54-55, Fourth Annual Report, pp. 79-81.

⁶⁰ Cf. *Matter of Brillo Manufacturing Company and Local No. 12084, etc.*, 24 N. L. R. B., No. 52, which illustrates the approved practice of submitting proof to the Regional Director prior to the hearing.

⁶¹ 23 N. L. R. B., No. 19.

⁶² *Matter of Mason Manufacturing Company and United Furniture Workers of America, Local Union No. 576*, 15 N. L. R. B. 876.

⁶³ *Matter of Jacob H. Klotz, and Ruth Klotz, etc.*, and *Joint Board of Suitcase, Bag & Portfolio Makers Union, etc.*, 13 N. L. R. B. 746.

⁶⁴ Section 10 (a).

⁶⁵ 22 N. L. R. B., No. 12, reopened July 27, 1940.

and upon sufficient ground may reexamine such questions or matters, nevertheless it is entitled to treat as administratively decided all such determinations, findings, conclusions, and certification. This does not mean that parties in the complaint proceeding are deprived of a fair hearing before the Board on material issues. That already has been afforded them in the representation proceeding. Moreover, they are privileged to appeal to the discretion of the Board as above indicated. Nor are they thereby deprived of a judicial review of matters found and determined in the representation proceeding. Upon proceedings in the United States Circuit Court of Appeals on petition to review the order of the Board made in the complaint proceeding, they may bring before that court as part of the record on review the entire record and certification in the representation proceeding, and where, as in the representation proceedings here, determinations and findings of the Board rest in part upon findings previously made in another representation proceeding involving such parties, the record in the previous representation case to the extent relevant likewise becomes available for judicial review as part of the record on review. It is unimportant that proceedings under section 9 (c) do not result in a command to anyone. Administrative determinations may and often do have legal consequences even though they do not command. Here, the respondent and the intervenor by their attempt to introduce into the instant case the record of the representation proceedings sought to have the Board reexamine the entire proceedings there had. No persuasive showing is made for such a general reexamination. We sustain the Trial Examiner's ruling in this respect.

In the above case, the Board also held that the parties have no right to be heard in the subsequent complaint proceeding on matters which, without apparent reasonable cause, they failed to introduce in the prior representation proceeding. Similarly, following established judicial procedure, the Board has refused to reopen a record to admit new testimony in the absence of an adequate showing that such testimony was material and could not have been presented at the original hearing,⁶⁶ or to attach any weight to the affidavits of supervisory employees filed with the employer's answer where there is no showing or claim that the affiants were unavailable to testify in person.⁶⁷

⁶⁶ *Matter of Oudahy Packing Company and United Packing House Workers, Local Industrial Union*, No. 389, 15 N. L. R. B. 676.

⁶⁷ *Matter of Oil Well Manufacturing Corporation and Employees Mutual Benefit Association*, 14 N. L. R. B. 1114. In this case the Board also refused to reopen the record to admit proof of the present disability of an employee whose reinstatement the Trial Examiner had recommended on the ground that the offer might be considered in connection with the respondent's compliance with the Board's reinstatement order.

VI. JURISDICTION

The decisions of the Supreme Court and of the circuit courts of appeals during the past year in cases involving questions of the Board's jurisdiction have established no new doctrines; in their application of the principles initially declared by the Supreme Court in the 1937 test cases¹ they have, however, further clarified the bases and scope of the Board's jurisdiction. The following developments during the year appear to be of most significance:

Ownership of goods moved in interstate commerce is immaterial.—Despite the Supreme Court's reminder in the *Jones & Laughlin* decision² that interstate commerce is a "practical conception," and its holding in the *Fainblatt* case³ and in earlier decisions that the situs of title to goods moving in interstate commerce is not a prerequisite to amenability to Congressional regulation, challenges to the Board's jurisdiction based upon the employer's lack of ownership in the goods in question persisted throughout the year. Rejecting definitely such claims, the Supreme Court held in *N. L. R. B. v. Bradford Dyeing Ass'n*, 310 U. S. 318, that "where the materials processed are moved to and from the processor by their owners through the channels of interstate commerce," the Act is plainly applicable to the processor. Thus, it now is absolutely clear that, where the goods or materials involved move to and from the employer across State lines, questions of title, and other technical features of commercial dealings once thought relevant, are of no significance; the actual interstate movement is the controlling fact. Similarly, in *N. L. R. B. v. Sunshine Mining Co.*, 110 F. (2d) 780 (C. C. A. 9)⁴ the court held that the Board's jurisdiction was not defeated by the fact that contracts for all purchases and all sales were technically consummated in the State, since the materials were brought into the State by the employer's local supplier⁵ and the product was sold out of the State by the employer's local purchaser. Another illustration is *N. L. R. B. v. Good Coal Co.*, 110 F. (2d) 501 (C. C. A. 6), certiorari denied, 310 U. S. 360, where the Act was held applicable to a coal mining company selling its product f. o. b. the mine. In a word, the courts are thoroughly aware of and give paramount consideration to the realities of commerce operations, disregarding the mere forms in which they are cast.

The relationship of the operations to interstate commerce, not their size, controls.—In the *Bradford Dyeing* case, the Supreme Court emphasized the applicability of the Act to an employer "who constitutes even a relatively small percentage of his industry's capacity." This decision, coupled with the earlier decision in the *Fainblatt* case

¹ *N. L. R. B. v. Jones & Laughlin Steel Corp.*, 301 U. S. 1, and companion cases.

² *Ibid.*, at 41-42.

³ *N. L. R. B. v. Fainblatt*, 306 U. S. 601.

⁴ Certiorari denied, January 13, 1941.

⁵ *Cf. N. L. R. B. v. Cowell Portland Cement Co.*, 108 F. (2d) 198 (C. C. A. 9).

and subsequent ones in the circuit courts⁶ show that the jurisdiction of the Board is governed neither by the relative size of the unit in its industry nor, as to any operations which may not be dismissed as trivial under the maxim *de minimis*, by their absolute size. What is important is the existence of a substantial relationship to and effect upon interstate commerce.⁷ Thus, in the *Planters* case, the court, while recognizing that its employer's volume of interstate sales was small, nevertheless regarded as controlling the fact that "Respondent competes in its sales in Virginia with manufacturers of similar containers whose plants are located in other states."⁸

Where operations substantially affect both intrastate and interstate commerce they are within the protection of the Act.—The well-established constitutional doctrine that the Federal power is dominant where operations substantially affect both interstate and intrastate commerce and the interstate and intrastate effects are intermingled, has been applied during the past year in a variety of situations. Where the interstate effects are substantial and direct, the Board has jurisdiction no matter what the percentage comparisons of interstate and intrastate effects are.⁹

A potential interference with or diversion of commerce is sufficient to confer jurisdiction.—Rejecting the common claim that an employer's unfair labor practices do not "affect commerce" where no actual interruption of commerce has occurred, the Supreme Court held in the *Bradford* case that "since the purpose of the act is to protect and foster interstate commerce, the Board's jurisdiction can attach, as here, before actual industrial strife materializes to obstruct that commerce."¹⁰

A fortiori, as the Supreme Court likewise held in the *Bradford* case, the Board's jurisdiction is not defeated by the possibility that "respondent's customers might be able to secure the same service from other [local] processors if a labor dispute should stop the interstate flow of materials to and from respondent's plant."¹¹

Public utilities servicing interstate industry are subject to the act.—In the far-reaching *Consolidated Edison* decision of the previous fiscal year¹² it was determined by the Supreme Court that the close relationship between a great utilities system and the interstate enterprises it supplied was adequate to support the Board's jurisdiction, although it did not itself directly engage in interstate commerce.¹³ The scope of this decision was further clarified this year in *Consumers Power Co. v. N. L. R. B.*, 113 F. (2d) 38 (C. C. A. 6)¹⁴ where

⁶ *Consumers Power Co. v. N. L. R. B.*, 113 F. (2d) 38 (C. C. A. 6); *N. L. R. B. v. Planters Mfg. Co., Inc.*, 105 F. (2d) 750 (C. C. A. 4); *N. L. R. B. v. Cowell Portland Cement Co.*, 103 F. (2d) 198 (C. C. A. 9).

⁷ *Consumers Power Co. v. N. L. R. B.*, 113 F. (2d) 38 (C. C. A. 6); *N. L. R. B. v. Planters Mfg. Co., Inc.*, 105 F. (2d) 750 (C. C. A. 4); *Southern Colorado Power Co. v. N. L. R. B.*, 111 F. (2d) 539 (C. C. A. 10).

⁸ See also *N. L. R. B. v. National Motor Bearing Co.*, 105 F. (2d) 652 (C. C. A. 9), decided in the previous fiscal year, where the court recited as material circumstances the facts that respondent "advertises on a Nation-wide basis" and that "All of respondent's competitors are located outside of California."

⁹ *Cf. N. L. R. B. v. Planters Mfg. Co., Inc.*, 105 F. (2d) 652 (C. C. A. 4); *N. L. R. B. v. Cowell Portland Cement Co.*, 103 F. (2d) 198 (C. C. A. 9).

¹⁰ *Cf. N. L. R. B. v. Sunshine Mining Co.*, 110 F. (2d) 780 (C. C. A. 3).

¹¹ *Of. Consumers Power Co. v. N. L. R. B.*, 113 F. (2d) 38 (C. C. A. 6); *Southern Colorado Power Co. v. N. L. R. B.*, 111 F. (2d) 539 (C. C. A. 10); *North Whittier Heights Citrus Assn. v. N. L. R. B.*, 109 F. (2d) 76 (C. C. A. 9), certiorari denied, 310 U. S. 632, rehearing denied, 61 S. Ct. 54.

¹² *Consolidated Edison Co. v. N. L. R. B.*, 305 U. S. 197.

¹³ The Edison Company received the bulk of its raw materials from sources outside the State, but the court did not base its opinion upon this narrower ground of decision.

¹⁴ See also, *Southern Colorado Power Co. v. N. L. R. B.*, 111 F. (2d) 539 (C. C. A. 10).

the court rejected a proposed distinction between an employer supplying power to a great industrial area and one supplying instrumentalities of commerce.

The "agricultural labor" question.—The same realism which we have noted in the approach of the courts to the commerce limitation upon the Board's jurisdiction has marked their approach to another jurisdictional problem—that of the agricultural labor exemption contained in section 2 (3) of the act. This question was first presented to the courts during this past year in two Ninth Circuit cases, *North Whittier Heights Citrus Ass'n. v. N. L. R. B.*, 109 F. (2d) 76 (C. C. A. 9), certiorari denied, 310 U. S. 632¹⁵ and *N. L. R. B. v. Tovrea Packing Co.*, 111 F. (2d) 626 (C. C. A. 9).¹⁶

In the *North Whittier* case, the court pointed out that "The pursuit of definitions of 'agricultural laborers' through the cases leads to confusion" and undertook a fresh examination of the question in the light of the purpose of the act and the economic realities of the case. In this view, it held that the true test is not the abstract nature of the work done but rather the nature of the work done in its actual practical context. In holding the act applicable to workers in a citrus fruit packing house, the court commented:

The production and marketing of citrus fruits in California have undergone changes as have various other activities in their transition from "one man" affairs to "big business" * * * Possibly the most marked change in this transition was that of systematic marketing and uniformity in preparation for marketing * * * Thus the growers themselves have separated from the farm, the work now done in the packing house * * * and have assigned it to an incorporated organization brought into being by the growers for such particular purpose (100 F. (2d) 76, at 79).

In similar realistic vein, the Court in the *Tovrea* case held the act applicable to employees in the feed mill and feeding pens maintained as an incident to the operation of a meat packing plant. The controlling reason for the decision was stated by the Court as follows:

* * * here we do not have stock raising or feeding as an incident to a stock ranch, nor do we have stock feeding or conditioning as a separate activity, but we do have stock ready for conditioning and fattening confined in relatively small corrals and fed intensively for short spaces of time as an incident to a meat slaughtering and packing industrial enterprise (111 F. (2d) 626, at 628).

The danger of treating questions of this sort in "an intellectual vacuum" is very apparent. As the cases of the past year demonstrate, the Courts have shown themselves disposed to consider such problems in their total commercial context, and the Board, in presenting its cases to the courts, has endeavored to assist their deliberations through the presentation of appropriate economic materials.

¹⁵ Rehearing denied, 61 S. Ct. 54.

¹⁶ Certiorari denied, 61 S. Ct. 28.

VII. LITIGATION

A marked increase in the volume of Board litigation was the most noteworthy incident of the present fiscal year. During this period 69 final decisions involving the enforcement or review of Board orders were rendered by the several circuit courts of appeals and the Supreme Court, a 60 percent increase over the 43 decisions handed down during 1939. Of these, the Board was sustained in whole or in part in 84 percent of the total cases decided, which compares with its record of 74 percent during the prior year. Other types of litigation to which the Board was a party showed a like increase. Failure to comply with court decrees enforcing Board orders has required the institution of contempt proceedings in a number of instances. Fortunately, however, the fiscal year 1940 marked an expansion in the number of cases amicably settled through the entry of consent decrees in the circuit courts of appeals, 169 such decrees having been entered during the year in contrast to the 147 listed in the Fourth Annual Report and the 11 entered in 1938.

A. ENFORCEMENT AND REVIEW

Cases involving orders of the Board come before the circuit courts of appeals, upon petition of the Board under section 10 (e) of the act or upon petition of any person aggrieved under section 10 (f). The filing of either petition invokes the reviewing jurisdiction of the court as defined in the act and the applicable decisions. In the appropriate exercise of its reviewing functions the court in either case has power to enforce, modify and enforce as modified, or to set aside the order. Below are briefly summarized the decisions of the Supreme Court during the present fiscal year involving either type of petition, and the decisions concerning contempt proceedings brought by the Board. Summaries of circuit court decisions in enforcement and review cases are omitted but a discussion of the more significant opinions rendered will be found in section D.

1. SUPREME COURT CASES

Nine cases involving the Board were decided by the Supreme Court during the past fiscal year. Six involved review of orders of the Board issued in unfair labor practice cases. In four of these, the Board's order was sustained in full, and in two the order was modified slightly. In two other cases, the court passed upon the jurisdiction of the federal courts to review actions of the Board in representation proceedings under Section 9 of the Act; the remaining case involved the question of whether a union had status to institute a proceeding to hold an employer in contempt of a court decree enforcing an order of the Board.¹

¹ Discussion of these three latter decisions will be found *infra*, at pp. 89.

N. L. R. B. v. Newport News Shipbuilding & Dry Dock Co., 308 U. S. 241, reversing in part, 101 F. (2d) 841 (C. C. A. 4), and enforcing *Matter of Newport News Shipbuilding & Dry Dock Company and Industrial Union of Marine and Shipbuilding Workers of America*, 8 N. L. R. B. 866. In this case, the lower court, although sustaining findings that the employer had originally participated in forming and thereafter had supported and interfered with the administration of a labor organization, set aside that portion of the order which directed disestablishment of the organization. In reversing this decision the Supreme Court held that the lower court erred in considering claims, outside the certified record, that the employer had subsequently removed its control from the dominated organization; that even if this claim were true, it would not warrant disturbing the disestablishment order, for where company domination had long existed, the Board is justified in finding that only complete disestablishment could eliminate its effects and restore the employees' freedom of choice. Endorsement of the organization by a majority of the employees and its operation to their apparent satisfaction was also held immaterial.

N. L. R. B. v. Falk Corp., 308 U. S. 453, reversing 106 F. (2d) 454 (C. C. A. 7), and enforcing *Matter of The Falk Corporation and Amalgamated Association of Iron, Steel, and Tin Workers of North America, Lodge 1528*, 6 N. L. R. B. 654. The Board here ordered the disestablishment of a company-dominated labor organization and had, in a consolidated representation proceeding, directed that an election be held without the disestablished organization appearing on the ballot. The Seventh Circuit sustained the disestablishment order but required that after a period of temporary disestablishment the disestablished organization be placed upon the ballot in any election which the Board should hold. The Supreme Court reversed, holding that the circuit court had no power to review or interfere with election proceedings conducted by the Board and approved the Board's view that it could properly conclude that full restoration of the employees' freedom of choice required complete elimination of the company union as a candidate for selection by the employees.

N. L. R. B. v. Waterman S. S. Corp., 309 U. S. 206, reversing 103 F. (2d) 157 (C. C. A. 5), and enforcing *Matter of Waterman Steamship Corporation and National Maritime Union of America, Engine Division, Mobile Branch, Mobile, Alabama*, 7 N. L. R. B. 237. This decision of the Supreme Court is of great importance in the field of administrative law generally for the Court, in holding that the lower court had exceeded its powers in setting aside the Board's order, stressed the strict necessity of judicial adherence to the congressional demarcation of power between administrative agencies and the reviewing courts, and admonished the lower court to refrain from encroaching upon the exclusive jurisdiction of the Board to make findings of fact upon the record. The Board was sustained in finding that where seamen, whose articles of employment had terminated, would normally have been given opportunity to sign new articles and thus be continued in the company's employ, a relationship of employment continued to exist despite the expiration of the articles, and that it was a violation of Section 8 (3) of the act to refuse them continued employment because of their union membership.

N. L. R. B. v. Bradford Dyeing Ass'n, 310 U. S. 318, reversing 106 F. (2d) 119 (C. C. A. 1), and enforcing *Matter of Bradford Dyeing Association (U. S. A.)* and *Textile Workers' Organizing Committee of the C. I. O.*, 4 N. L. R. B. 604. In this case the court affirmed its determination previously made in the *Fainblatt case*,² that the Board's jurisdiction attaches although the employer involved may not itself ship goods in interstate commerce but merely processes goods which its customers ship to it and later remove. In sustaining the Board's findings and reversing the lower court, the Supreme Court held that a shift in the majority status of a union due to the unfair labor practices of the employer does not affect the validity of an order based upon the original designations. Accordingly, the Board's order that the employer bargain with the union which had been freely designated was enforced as were other provisions of the order.

National Licorice Co. v. N. L. R. B., 309 U. S. 350, affirming as modified, 104 F. (2d) 655, which enforced as modified *Matter of National Licorice Company* and *Bakery and Confectionery Workers International Union of America, Local Union 405, Greater New York and Vicinity*, 7 N. L. R. B. 537. Here the Supreme Court upheld findings of the Board that "Balleisen type" contracts³ which the employer exacted from its employees were illegal because, *inter alia*, they were procured through the mediation of a company-dominated organization, and prevented the employees from bargaining for a closed shop or a signed contract with a union. The order setting aside the contracts was sustained over the objection that the individual employees who entered into these contracts were not parties to the proceeding before the Board. The Board's order was modified slightly so as to omit from the notice provision the statement that the contracts were "void," since the proceeding did not foreclose the assertion by the individual employees of private rights which they may have acquired under the contracts.

American Mfg. Co. v. N. L. R. B., 309 U. S. 629, affirming as modified 106 F. (2d) 61 (C. C. A. 2), which enforced as modified *Matter of American Manufacturing Company et al. and Textile Workers' Organizing Committee, C. I. O.*, 5 N. L. R. B. 443. The petition for certiorari in this case raised the same issues as those raised in the *National Licorice* case. The court, in a *per curiam* opinion, directed that the Board's order be modified as was the order in that case, and that the order, as so modified, be enforced.

2. CIRCUIT COURTS OF APPEALS CASES

During the present fiscal year the several Circuit Courts of Appeals ruled on Board orders in 63 unfair labor practice cases, an increase of 65 percent over the 38 such decisions rendered in the previous fiscal year. Of the 63 cases, Board orders were enforced in full in 22 cases, and were enforced as modified in 30 cases. In 11 cases, Board orders were set aside, although in 2 cases new hearings were ordered,⁴ in another the decision was subsequently reversed by the

² *N. L. R. B. v. Fainblatt*, 306 U. S. 601.

³ See *infra*, pp. 93, 95.

⁴ *Inland Steel Co. v. N. L. R. B.*, 109 F. (2d) 9 (C. C. A. 7); *N. L. R. B. v. Cowell Portland Cement Co.*, 108 F. (2d) 198 (C. C. A. 9).

Supreme Court,⁵ and in a fourth the court partially vacated a prior decision.⁶ A summary of the principles established in these cases appears below at pp. 91-109.

B. PROCEEDINGS FOR CONTEMPT OF COURT DECREES ENFORCING BOARD ORDERS

During the fiscal year two adjudications of contempt were obtained by the Board for non-compliance with court decrees enforcing its orders, and five were denied. Four petitions for contempt citations were pending at the close of the year.⁷ In another case a petition for contempt citation was filed by the union involved in the proceeding rather than the Board. Because of the growing importance of such cases, brief summaries of the eight decisions of the year are listed below:

N. L. R. B. v. Federal Bearing Co., Inc., 109 F. (2d) 945 (C. C. A. 2). In this case the employer's failure to reinstate employees pursuant to a decree enforcing 4 N. L. R. B. 467, entered April 28, 1938, was held not contemptuous, since consent to its entry was given in ignorance of the employees' conviction of petty larceny which would have constituted a valid ground for refusing reinstatement. Likewise, failure to reinstate another employee to his specific position was held not in contempt of the enforcement decree where the position was abolished for business reasons and the employee had rejected an offer of a comparable position.

N. L. R. B. v. Eavenson & Levering Co. Board's petition for contempt citation denied August 9, 1939 (C. C. A. 3). The court's decree of December 30, 1938, enforcing 8 N. L. R. B. 602 and 10 N. L. R. B. 785, which required reinstatement for certain individuals, was held not disobeyed since the employees involved had not applied for reinstatement within a specified period.

N. L. R. B. v. Nebel Knitting Company, Inc. Order entered discharging rule to show cause January 18, 1940 (C. C. A. 4). Original decree enforcing 6 N. L. R. B. 284, entered pursuant to 103 F. (2d) 594. The proceedings here were dismissed on the entry of a consent order for the payment by the employer of certain sums as back pay to the individuals involved and repayment of unemployment benefits to the state agency.

N. L. R. B. v. Tidewater Iron & Steel Co., Inc. Citation granted, March 12, 1940 (C. C. A. 3). Here the court found the employer in contempt for having violated its decree, entered September 9, 1939, enforcing 9 N. L. R. B. 624, which required certain reinstatements with back pay.

N. L. R. B. v. Pacific Greyhound Lines, Inc. Citation denied, 106 F. (2d) 867 (C. C. A. 9). The court's decree, entered pursuant to the decision of the Supreme Court in 303 U. S. 272, prohibited favoritism for or discrimination against the named union or "any other labor organization." The court found that the employer's alleged acts of favoritism to a union not in existence at the time of

⁵ *N. L. R. B. v. Bradford Dyeing Ass'n.*, 310 U. S. 318, reversing 106 F. (2d) 119 (C. C. A. 1).

⁶ *N. L. R. B. v. Sterling Electric Motors, Inc.*, 114 F. (2d) 738 (C. C. A. 9).

⁷ *Infra*, p. 120.

the order and occurring during the life of a valid closed-shop contract with the same, were not contemptuous.

N. L. R. B. v. Red River Lumber Co. Citation denied, 109 F. (2d) 157 (C. C. A. 9), rehearing denied 110 F. (2d) 810. The decree in this case (101 F. (2d) 1014), prohibited breaches of the peace designed to interfere with the rights of employees under the Act. The court held allegations of the rule to show cause insufficient to warrant citation for contempt as responsibility for nonfeasance or malfeasance of civil officers, who were the employees of company, was not shown to attach to the employer in absence of its direct interference or instructions.

N. L. R. B. v. American Potash and Chemical Corp. Citation partially granted, 113 F. (2d) 232 (C. C. A. 9). The decree of enforcement, entered in accordance with the court's decision in 98 F. (2d) 488, required reinstatement and back pay for a number of employees in addition to disestablishment of a company-dominated labor organization. The employer's offer of a bonus as an inducement to the employees to waive their reinstatement rights was held to violate the decree but no contempt was found as to an alleged violation of the 8 (2) requirement because of the length of time intervening before contempt proceedings were instituted.

Amalgamated Utility Workers v. Consolidated Edison Company of New York, Inc., 309 U. S. 261, affirming 106 F. (2d) 991. Here, in denying a union's motion for a citation of an employer in contempt of an enforcement decree entered pursuant to the decision of the Supreme Court in 305 U. S. 197, it was held that authority to institute such a proceeding rests exclusively with the Board.

C. MISCELLANEOUS COURT PROCEEDINGS

In addition to the normal litigation involving the enforcement or review of its orders the Board has engaged during the fiscal year in an increasing amount of miscellaneous litigation.

A number of such cases arose out of proceedings under section 9 (c) of the Act which provides for the investigation and certification of representatives for the purpose of collective bargaining. Two of these, *American Federation of Labor v. N. L. R. B.*, 308 U. S. 401, affirming 103 F. (2d) 933 (App. D. C.) and *International Brotherhood of Electrical Workers v. N. L. R. B.*, 308 U. S. 413, reversing 105 F. (2d) 598 (C. C. A. 6), involving petitions for review of a Board certification⁸ and direction of election,⁹ respectively, are of primary importance in defining the jurisdiction of the circuit courts in proceedings of this character. The petitions were dismissed on the ground that the Act does not confer jurisdiction to review such a determination. In deciding the latter case the court stated: "The direction for an election is but a part of the representation proceeding authorized by section 9 (c) and is no more subject to review under section 10 (f) than is a certification which is the final step in such a proceeding and which we have just held [308 U. S. 401] Congress has excluded from the review afforded by that subdivision" (308 U. S. 413, at 414-415).

⁸ *Matter of Shipowners' Ass'n of the Pacific Coast et al. and Int. Longshoremen's and Warehousemen's Union, Dist. No. 1*, 7 N. L. R. B. 1002.

⁹ *Matter of Consumers Power Co. and Int'l Brotherhood of Elec. Workers*, 11 N. L. R. B. 848. See also *N. L. R. B. v. The Falk Corp.*, 308 U. S. 453, enforcing the Board's order in 6 N. L. R. B. 654, a consolidated proceeding involving both an unfair labor practice order and a direction of election.

In eight other cases petitions were filed to review or stay direction of elections ordered by the Board under section 9 (c) of the Act, five of which were dismissed on consent,¹⁰ two on Board motion,¹¹ and one continued indefinitely subject to call on notice.¹² In another case, *International Brotherhood of Electrical Workers v. Bowen* (E. D. Mich.), a United States District Court, contrary to the applicable decisions of the United States Supreme Court, granted a motion for preliminary injunction to restrain the holding of a run-off election.¹³

Two cases involving suits for mandatory injunctions to compel withdrawal of certifications of representatives also occurred during this period, *American Federation of Labor v. Madden, et al.*, Nos. 2214 and 5517 (D. C. D. C.).¹⁴ The bill of complaint in No. 2214 was dismissed on stipulation but the Board's motion to dismiss a similar bill in No. 5517 was denied.¹⁵

Attempts to inquire into Board methods of decision through interrogatories or depositions were made in four cases during the year; in each case the application was denied.¹⁶

In one case, *In re Hamilton-Brown Shoe Co., Bankrupt* (E. D. Mo., No. 9734) the Board filed a proof of claim in the bankruptcy court based on nonpayment of back pay awards ordered by the Board in 9 N. L. R. B. 1072 and enforced by the Eighth Circuit Court of Appeals in 104 F. (2d) 49. The district court denied the claim and an appeal is now pending in the Eighth Circuit.

In six cases where Board subpoenas had not been compiled with, enforcement proceedings, pursuant to section 11 (2) of the Act, were commenced in district courts. The application was granted in three¹⁷ instances, denied in one¹⁸ and is pending in two.¹⁹ In *United States Line Co. v. N. L. R. B.* (S. D. N. Y.) an application to vacate a Board's subpoena was withdrawn at the close of oral argument before the court. One adjudication for contempt was obtained for non-compliance with an order of a district court requiring obedience to Board subpoenas.²⁰

In *Progressive Mine Workers Union of America v. N. L. R. B.*, No. 7616 (App. D. C.), a petition was filed for review of a Board ruling

¹⁰ *Aluminum Emp. Ass'n v. N. L. R. B.* No. 8389, Mar. 11, 1940 (C. C. A. 6); *Aluminum Emp. Ass'n v. N. L. R. B.* No. 8408, Mar. 11, 1940 (C. C. A. 6); *National Flat Glass Workers' Union of America v. N. L. R. B.* No. 8278, Mar. 11, 1940 (C. C. A. 6); *Pick Mfg. Co. v. N. L. R. B.* No. 7156, Jan. 31, 1940 (C. C. A. 7); *United Rubber Workers of America v. N. L. R. B.* No. 8444, Jan. 17, 1940 (C. C. A. 6).

¹¹ *Cudahy Packing Co. v. N. L. R. B.*, No. 452, Orig., Feb. 26, 1940 (C. C. A. 8); *Libbey-Owens-Ford Glass Co. v. N. L. R. B.*, No. 8346, Apr. 12, 1940 (C. C. A. 6).

¹² *Ass'n of Western Union Employees v. N. L. R. B.* (C. C. A. 2).

¹³ The run-off election restrained was that provided for in the direction of election which had been set aside in the Sixth Circuit (105 F. (2d) 742, reversed by the Supreme Court in 308 U. S. 413). As the Board later changed its policy on run-off elections so as to provide a different kind of ballot (*Matter of Le Blond Machine Tool Co.*, March 30, 1940, 22 N. L. R. B. No. 17), it did not appeal from the District Court's restraining order, and it later conducted the election to conform to its new doctrine whereby run-off elections are conducted as between the two unions receiving the highest number of votes on the first ballot (*Matter of Consumers Power Co.*, 27 N. L. R. B. No. 44, September 12, 1940).

¹⁴ Footnote 8, *supra*.

¹⁵ June 3, 1940. Petition for special appeal granted Dec. 11, 1940.

¹⁶ *Foot Bros. Gear & Mach. Corp. v. N. L. R. B.*, Mar. 6, 1940 (C. C. A. 7); *N. L. R. B. v. Botany Worsted Mills*, 106 F. (2d) 263 (C. C. A. 3); *N. L. R. B. v. Ford Motor Company*, Feb. 15, 1940 (C. C. A. 6); *N. L. R. B. v. Lane Cotton Mills*, 108 F. (2d) 568 (C. C. A. 5).

¹⁷ *N. L. R. B. v. Cudahy Packing Co.*, May 3, 1940, 34 F. Supp. 53 (D. Kan.); *N. L. R. B. v. Rheam*, Jan. 15, 1940 (N. D. Okla.); *N. L. R. B. v. West Coast Macaroni Mfg. Co.*, Jan. 12, 1940 (N. D. Calif.).

¹⁸ *N. L. R. B. v. Chambers Corp.*, Nov. 2, 1939 (S. D. Ind.).

¹⁹ *N. L. R. B. v. The Barrett Co.* (S. D. Ill.); *N. L. R. B. v. Climber* (N. D. Ohio).

²⁰ *N. L. R. B. v. Ritholz* (N. D. Ill.). On September 17, 1940, the court ordered respondent committed to jail until he complied with the subpoena and assessed the costs of the proceeding against him.

sustaining a regional director's refusal to issue a complaint. The Board's motion to dismiss was pending at the close of the year.²¹ Two other suits have been filed during this period to "review" or "stay" intermediate orders of the Board in unfair labor practice cases²² and two attempts were made to enjoin unfair labor practice hearings.²³

The Board has been granted an order to restrain an employer from prosecuting suits in a State court against employees for rental of employer-owned houses occupied by them after their discharge.²⁴ The injunction was issued by the circuit court in aid of its prior decree under section 10 (d) of the Act enforcing the Board's order requiring reinstatement of employees with back pay (110 F. (2d) 501 enforcing 12 N. L. R. B. 136), and was continued until compliance by the employer with the circuit court's enforcing decree was obtained. As a condition of the stay of decree pending application for certiorari, which was denied on May 6, 1940, the employer was required to post bond to secure back pay. A petition for adjudication of contempt is now pending in the circuit court.²⁵

D. PRINCIPLES ESTABLISHED

As in preceding years the procedural and substantive principles established in the increasing volume of litigation arising under the Act have been so numerous that only the most important ones are set forth below.

UNFAIR LABOR PRACTICES—SECTION 8 (1)

During the year the courts have passed upon a great number of violations of section 8 (1) of the Act, which prohibits interference, restraint or coercion with the exercise by employees of the rights guaranteed them in section 7 of the Act. Of the multitude of issues raised the following are the most significant:

Section 8 (1) is also violated where unfair labor practices under other sections of the act are found.—It has long been the Board's view, in accord with the Congressional intent,²⁶ that the prohibitions of section 8 (1) are general and embrace all the unfair labor practices defined in the remaining subsections of section 8. This view has been generally accepted by the courts with respect to violations of section 8 (2), (3) and (4).²⁷ Thus, encouragement of a company-dominated union in violation of section 8 (2) clearly operates to discourage membership in a competing outside union and hence interferes with the

²¹ *In the Matter of Acme Semi-Anthracite Coal Company and Progressive Mine Workers of America, International Union*, XVI-C-451, motion to dismiss granted Oct. 22, 1940.

²² *Ex Lar, Inc. v. N. L. R. B.*, denied Feb. 28, 1940 (C. C. A. 2); *Wilson & Co. v. N. L. R. B.*, dismissed July 18, 1940 (C. C. A. 3).

²³ *Remington-Rand, Inc. v. N. L. R. B.*, denied Oct. 6, 1939 (C. C. A. 2); *Sanco Piece Dye Works Inc. v. Herrick* (S. D. N. Y.), dismissed, 33 F. Supp. 80; application for stay pending appeal denied Apr. 17, 1940 (C. C. A. 2).

²⁴ *N. L. R. B. v. The Good Coal Co.*, Apr. 12, 1940 (C. C. A. 6).

²⁵ See contempt proceedings, pp. 88, 120.

²⁶ Senate Rept. No. 573, 74th Cong., 1st Sess., p. 9; House Rept. No. 1147, 74th Cong., 1st Sess., pp. 15, 17.

²⁷ *Union Drawn Steel Co. v. N. L. R. B.*, 109 F. (2d) 587 (C. C. A. 3); *N. L. R. B. v. H. B. Fletcher Co.*, 108 F. (2d) 459 certiorari denied, 309 U. S. 678; *Titan Metal Mfg. Co. v. N. L. R. B.*, 106 F. (2d) 254 (C. C. A. 3), certiorari denied, 308 U. S. 615; see also *N. L. R. B. v. Remington Rand, Inc.*, 94 F. (2d) 862 (C. C. A. 2), certiorari denied 304 U. S. 576; *N. L. R. B. v. Stackpole Carbon Co.*, 105 F. (2d) 167 (C. C. A. 3), certiorari denied 308 U. S. 605; *N. L. R. B. v. Willard, Inc.*, 98 F. (2d) 244 (App. D. C.), decided during the previous fiscal years.

right of self-organization in violation of section 8 (1).²⁸ By the same token, free self-organization is interfered with and restrained by discriminatory treatment of union members violative of section 8 (3),²⁹ and by a refusal to bargain with the designated representatives of employees in violation of section 8 (5).³⁰ To illustrate, a refusal to bargain is not uncommonly followed by a falling away of the union's majority³¹ and it frequently constitutes part of the means employed to establish a company-dominated union.³²

Antiunion statements.—During the past year, several forms of antiunion statements have been held violative of section 8 (1). Among these we may note statements suggesting or soliciting renunciation of the right to bargain collectively;³³ expressing a preference for inside as against outside unions³⁴ or for individual bargaining instead of collective bargaining;³⁵ open or veiled threats of discrimination against union members;³⁶ and denunciations of a union or its leaders, such as statements that the union is injurious to business and its leaders are "reds" and racketeers.³⁷ A particularly common technique to prevent free self-organization is the use of specially prepared statements purporting to explain the Act, but so phrased as to make clear the employer's opposition to legitimate or nationally affiliated unions, or so as plainly to imply that the Act

²⁸ *N. L. R. B. v. Tourea Packing Co.*, 111 F. (2d) 626 (C. C. A. 9), certiorari denied, 61 S. Ct. 28. Cf. *Titan Metal Mfg. Co. v. N. L. R. B.*, 106 F. (2d) 254 (C. C. A. 3), certiorari denied, 308 U. S. 615; *Continental Oil Co. v. N. L. R. B.*, 113 F. (2d) 478 (C. C. A. 10), certiorari granted as to another issue, 61 S. Ct. 72; *N. L. R. B. v. Falk Corp.*, 308 U. S. 453; *N. L. R. B. v. Newport News Shipbuilding & Dry Dock Co.*, 308 U. S. 241.

²⁹ *Continental Oil Co. v. N. L. R. B.*, 113 F. (2d) 473 (C. C. A. 10), certiorari granted, 61 S. Ct. 72.

³⁰ *N. L. R. B. v. Griswold Mfg. Co.*, 106 F. (2d) 713 (C. C. A. 3); *N. L. R. B. v. Piqua Munising Wood Products Co.*, 109 F. (2d) 552 (C. C. A. 6); *Art Metal Construction Co. v. N. L. R. B.*, 110 F. (2d) 148 (C. C. A. 2), overruling *N. L. R. B. v. Remington Rand, Inc.*, 94 F. (2d) 862 (C. C. A. 2), certiorari denied, 304 U. S. 576.

³¹ *N. L. R. B. v. Highland Park Mfg. Co.*, 110 F. (2d) 632 (C. C. A. 4); *M. H. Ritzwoller Co. v. N. L. R. B.*, 114 F. (2d) 432 (C. C. A. 7).

³² *National Licorice Co. v. N. L. R. B.*, 309 U. S. 350; *American Mfg. Co. v. N. L. R. B.*, 309 U. S. 629; *N. L. R. B. v. Somerset Shoe Co.*, 111 F. (2d) 681 (C. C. A. 1).

³³ *N. L. R. B. v. Somerset Shoe Co.*, 111 F. (2d) 681 (C. C. A. 1); *National Licorice Co. v. N. L. R. B.*, 309 U. S. 350; *American Mfg. Co. v. N. L. R. B.*, 309 U. S. 629, affirming as modified, 106 F. (2d) 61 (C. C. A. 2).

³⁴ *Ibid.*

³⁵ *National Licorice Co. v. N. L. R. B.*, 309 U. S. 350; *American Mfg. Co. v. N. L. R. B.*, 309 U. S. 629 (C. C. A. 2); *Southern Colorado Power Co. v. N. L. R. B.*, 111 F. (2d) 539 (C. C. A. 10); *N. L. R. B. v. Sunshine Mining Co.*, 110 F. (2d) 780, certiorari denied January 13, 1941.

³⁶ *Botany Worsted Mills v. N. L. R. B.*, 106 F. (2d) 263 (C. C. A. 3); *Cupples Co. Manufacturers v. N. L. R. B.*, 106 F. (2d) 100 (C. C. A. 8); *N. L. R. B. v. Boss Mfg. Co.*, 107 F. (2d) 574 (C. C. A. 7); *N. L. R. B. v. Planters Mfg. Co.*, 105 F. (2d) 750 (C. C. A. 4); *Republic Steel Corp. v. N. L. R. B.*, 107 F. (2d) 472 (C. C. A. 3), certiorari denied, 309 U. S. 684, upon rehearing Board order modified as to one issue only, 311 U. S. 7; *Southern Colorado Power Co. v. N. L. R. B.*, 111 F. (2d) 539 (C. C. A. 10); *Titan Metal Mfg. Co. v. N. L. R. B.*, 106 F. (2d) 254 (C. C. A. 3), certiorari denied, 308 U. S. 615; *International Ass'n of Machinists v. N. L. R. B.*, 110 F. (2d) 29 (App. D. C.), affirmed 311 U. S. 72; *N. L. R. B. v. Lane Cotton Mills*, 111 F. (2d) 814 (C. C. A. 5), certiorari dismissed December 9, 1940. Cf. *Fort Wayne Corrugated Paper Co. v. N. L. R. B.*, 111 F. (2d) 869 (C. C. A. denied, 310 U. S. 632, rehearing denied, 61 S. Ct. 54.

³⁷ *International Ass'n of Machinists v. N. L. R. B.*, 110 F. (2d) 29 (App. D. C.), affirmed, 311 U. S. 72; *Titan Metal Mfg. Co. v. N. L. R. B.*, 106 F. (2d) 254 (C. C. A. 3), certiorari denied, 308 U. S. 615; *Montgomery Ward & Co. v. N. L. R. B.*, 107 F. (2d) 555 (C. C. A. 7); *North Whittier Heights Citrus Ass'n v. N. L. R. B.*, 109 F. (2d) 76 (C. C. A. 9), certiorari denied, 310 U. S. 632, rehearing denied, 61 S. Ct. 54; *Republic Steel Corp. v. N. L. R. B.*, 107 F. (2d) 472 (C. C. A. 3), certiorari denied, 309 U. S. 684, upon rehearing, Board order modified as to one issue only, 311 U. S. 7; *N. L. R. B. v. Planters Mfg. Co.*, 105 F. (2d) 750 (C. C. A. 4); *American Mfg. Co. v. N. L. R. B.*, 309 U. S. 629; *McNeely & Price Co. v. N. L. R. B.*, 106 F. (2d) 878 (C. C. A. 3); *N. L. R. B. v. Griswold Mfg. Co.*, 106 F. (2d) 713 (C. C. A. 3); *N. L. R. B. v. Boss Mfg. Co.*, 107 F. (2d) 574 (C. C. A. 7); *N. L. R. B. v. Good Coal Co.*, 110 F. (2d) 501 (C. C. A. 6); certiorari denied, 310 U. S. 630; *N. L. R. B. v. Sunshine Mining Co.*, 110 F. (2d) 780 (C. C. A. 9), certiorari denied January 13, 1941; *N. L. R. B. v. Lane Cotton Mills*, 111 F. (2d) 814 (C. C. A. 5), certiorari dismissed December 9, 1940; *Humble Oil & Refining Co. v. N. L. R. B.*, 113 F. (2d) 85 (C. C. A. 5); *Union Drawn Steel Co. v. N. L. R. B.*, 109 F. (2d) 587 (C. C. A. 3).

affords no adequate protection against discriminatory conduct.³⁸

Anti-union violence instigated by the employer.—Physical violence against employees because of their union membership is, of course, a violation of the Act, and an employer may be held responsible for such violence where he has instigated, encouraged, or tactfully countenanced and condoned it.³⁹

Espionage.—Section 8 (1) findings based upon the use of the pernicious technique of industrial espionage have been uniformly sustained,⁴⁰ and one court has noted that the employment of labor spies carries with it a presumption that the information so obtained was put to use.⁴¹

Anti-union contracts.—A modified form of “yellow-dog” contract which “stipulated for the renunciation by the employees of rights guaranteed by the Act,” was declared in *National Licorice Co. v. N. L. R. B.*, 309 U. S. 350, to be “a continuing means of thwarting the policy of the act.”⁴²

Other interference.—Among other forms of interference recognized by the courts during the past year were the ever-recurring questioning of employees concerning their union affiliations with express or implied warnings against such membership;⁴³ the holding of elections under the employer’s auspices or by company union officers with the employer’s consent;⁴⁴ the solicitation or repudiations of union membership, circulation of “loyalty” petitions, and the instigation of “back-to-work” movements;⁴⁵ the utterance of threats of or the actual shutdown or removal of operations to discourage union activity,⁴⁶

³⁸ *National Licorice Co. v. N. L. R. B.*, 309 U. S. 350; *American Mfg. Co. v. N. L. R. B.*, 309 U. S. 629; *N. L. R. B. v. Goshen Rubber Mfg. Co.*, 110 F. (2d) 432 (C. C. A. 7); *North Whittier Heights Citrus Ass’n v. N. L. R. B.*, 109 F. (2d) 76 (C. C. A. 9), certiorari denied, 310 U. S. 632, rehearing denied, 61 S. Ct. 54.

³⁹ *N. L. R. B. v. Sunshine Mining Co.*, 110 F. (2d) 780 (C. C. A. 9), certiorari denied January 13, 1941; *N. L. R. B. v. J. Greenbaum Tanning Co.*, 110 F. (2d) 984 (C. C. A. 7), certiorari denied, 61 S. Ct. 18; *N. L. R. B. v. Good Coal Co.*, 110 F. (2d) 501 (C. C. A. 6), certiorari denied, 310 U. S. 630; *Republic Steel Corp. v. N. L. R. B.*, 107 F. (2d) 472 (C. C. A. 3), certiorari denied, 309 U. S. 684, upon rehearing Board order modified as to one issue only 311 U. S. 7; *N. L. R. B. v. Planters Mfg. Co.*, 105 F. (2d) 750 (C. C. A. 4); but see *N. L. R. B. v. Asheville Hosiery Co.*, 108 F. (2d) 288 (C. C. A. 4).

⁴⁰ *Republic Steel Corp. v. N. L. R. B.*, 107 F. (2d) 472 (C. C. A. 3), certiorari denied, 309 U. S. 684, upon rehearing, Board order modified as to one issue only, 311 U. S. 7; *Montgomery Ward & Co. v. N. L. R. B.*, 107 F. (2d) 555 (C. C. A. 7); *Link-Belt Co. v. N. L. R. B.*, 110 F. (2d) 506 (C. C. A. 7), affirmed, 61 S. Ct. 358; *Kansas City Power & Light Co. v. N. L. R. B.*, 111 F. (2d) 340 (C. C. A. 8); *Fort Wayne Corrugated Paper Co. v. N. L. R. B.*, 111 F. (2d) 869 (C. C. A. 7).

⁴¹ *Montgomery Ward & Co. v. N. L. R. B.*, 107 F. (2d) 555 (C. C. A. 7).

⁴² Accord: *American Mfg. Co. v. N. L. R. B.*, 309 U. S. 629; see *infra*, p. 95.

⁴³ *Botany Worsted Mills v. N. L. R. B.*, 106 F. (2d) 263 (C. C. A. 3); *N. L. R. B. v. Lane Cotton Mills*, 111 F. (2d) 814 (C. C. A. 5), certiorari dismissed December 9, 1940; *Montgomery Ward & Co. v. N. L. R. B.*, 107 F. (2d) 555 (C. C. A. 7); *North Whittier Heights Citrus Ass’n v. N. L. R. B.*, 109 F. (2d) 76 (C. C. A. 9), certiorari denied, 310 U. S. 632, rehearing denied, 61 S. Ct. 54.

⁴⁴ *American Mfg. Co. v. N. L. R. B.*, 309 U. S. 629; *Titan Metal Mfg. Co. v. N. L. R. B.*, 106 F. (2d) (C. C. A. 2), certiorari denied, 308 U. S. 615; *McNeely & Price Co. v. N. L. R. B.*, 106 F. (2d) 878 (C. C. A. 3); *N. L. R. B. v. Sunshine Mining Co.*, 110 F. (2d) 780 (C. C. A. 9), certiorari denied, January 13, 1941; *N. L. R. B. v. Somerset Shoe Co.*, 111 F. (2d) 681 (C. C. A. 1).

⁴⁵ *American Mfg. Co. v. N. L. R. B.*, 309 U. S. 629; *Republic Steel Corp. v. N. L. R. B.*, 107 F. (2d) 472 (C. C. A. 3), certiorari denied, 309 U. S. 684, upon rehearing Board order modified as to one issue only, 311 U. S. 7; *N. L. R. B. v. Good Coal Co.*, 110 F. (2d) 501 (C. C. A. 6), certiorari denied, 310 U. S. 630; *N. L. R. B. v. Goshen Rubber Mfg. Co.*, 110 F. (2d) 432 (C. C. A. 7); *N. L. R. B. v. Sunshine Mining Co.*, 110 F. (2d) 780 (C. C. A. 9), certiorari fled, denied, January 13, 1941; *N. L. R. B. v. Lane Cotton Mills*, 111 F. (2d) 814 (C. C. A. 5), certiorari dismissed 61 S. Ct. 316; *N. L. R. B. v. Somerset Shoe Co.*, 111 F. (2d) 681 (C. C. A. 1).

⁴⁶ *Republic Steel Corp. v. N. L. R. B.*, 107 F. (2d) 472 (C. C. A. 3), certiorari denied, 309 U. S. 684, upon rehearing Board order modified as to one issue only, 311 U. S. 7; *Titan Metal Mfg. Co. v. N. L. R. B.*, 106 F. (2d) 254 (C. C. A. 3), certiorari denied, 308 U. S. 615; *McNeely & Price Co. v. N. L. R. B.*, 106 F. (2d) 878 (C. C. A. 3); *Montgomery Ward & Co. v. N. L. R. B.*, 103 F. (2d) 147 (C. C. A. 8); *N. L. R. B. v. Asheville Hosiery Co.*, 108 F. (2d) 288 (C. C. A. 4); but see *Empire Furniture Corp. v. N. L. R. B.*, 107 F. (2d) 92 (C. C. A. 6).

and the granting of concessions to employees to discourage or forestall union organization.⁴⁷

UNFAIR LABOR PRACTICES—SECTION 8 (2)

Perhaps the most significant development in this field has been the delineation of certain characteristic patterns in the mechanics by which company-dominated unions are formed. Side by side with this development has occurred a growing appreciation of the significance of some of the less apparent but effective methods by which employer influence may be exerted over labor organizations.

A widespread and important pattern of company-union formation largely developed since the decisions of April 1937⁴⁸ is the use of the prestige given to a well-entrenched and clearly illegal company-dominated organization or "representation plan" to carry over after ostensible dissolution of the old organization. Experience shows that little or no overt employer action is needed to cause a nominally new body to rise in place of the old under the same leadership, which enjoys influence amongst the employees because of the employer's favor and which remains subservient to the employer's wishes. To cause this to happen, an employer does not have to act; it may be sufficient for him to refrain from acting.⁴⁹

In its most characteristic form the "made-over" company union succeeds the old organization "without any line of fracture."⁵⁰ Thus, the employer's intention to abandon the old company union is announced first, or only, to "insiders"—to the leaders and organizers of the old union;⁵¹ or if any announcement is made to the employees at large it is accompanied by praise for the "harmonious relations" existing under the old plan and an expression of hope that means will be found to continue such relationships;⁵² or the illegality of the old plan is admitted, but placed upon a very narrow ground, suggesting that minor or technical changes will be sufficient;⁵³ or the new organization follows substantially the outlines or structure of the old;⁵⁴ or interim

⁴⁷ *Southern Colorado Power Co. v. N. L. R. B.*, 111 F. (2d) 539 (C. C. A. 10); *American Mfg. Co. v. N. L. R. B.*, 309 U. S. 629; *M. H. Ritzwoller Co. v. N. L. R. B.*, 114 F. (2d) 432; *Montgomery Ward & Co., Inc. v. N. L. R. B.*, 103 F. (2d) 147 (C. C. A. 8).

⁴⁸ *N. L. R. B. v. Jones & Laughlin Steel Corp.*, 301 U. S. 1, and companion cases.

⁴⁹ *N. L. R. B. v. Newport News Shipbuilding & Dry Dock Corp.*, 308 U. S. 241, and other cases *infra* under "ORDERS."

⁵⁰ *Westinghouse Electric & Mfg. Co. v. N. L. R. B.*, 112 F. (2d) 657 (C. C. A. 2), certiorari granted, 61 S. Ct. 135.

⁵¹ *Westinghouse Electric & Mfg. Co. v. N. L. R. B.*, 112 F. (2d) 657 (C. C. A. 2), certiorari granted, 61 S. Ct. 135; *Kansas City Power & Light Co. v. N. L. R. B.*, 111 F. (2d) 340 (C. C. A. 8); *Continental Oil Co. v. N. L. R. B.*, 113 F. (2d) 473 (C. C. A. 10), certiorari granted as to another issue, 61 S. Ct. 72; *N. L. R. B. v. Greenebaum Tanning Co.*, 110 F. (2d) 984 (C. C. A. 7), certiorari denied, 61 S. Ct. 18; *Texas Co. v. N. L. R. B.*, 112 F. (2d) 744 (C. C. A. 5), certiorari denied, 61 S. Ct. 392; *N. L. R. B. v. Swift & Co.*, 108 F. (2d) 988 (C. C. A. 7), enforcing, as modified, 11 N. L. R. B. 809; *cf. N. L. R. B. v. H. E. Fletcher Co.*, 108 F. (2d) 459 (C. C. A. 1), certiorari denied, 309 U. S. 678; *cf. House Report 1147* (74th Cong., 1st sess.), p. 18.

⁵² *N. L. R. B. v. J. Greenebaum Tanning Co.*, 110 F. (2d) 984 (C. C. A. 7), certiorari denied, 61 S. Ct. 18; *Union Drawn Steel Co. v. N. L. R. B.*, 109 F. (2d) 587 (C. C. A. 3); *cf. Texas Co. v. N. L. R. B.*, 112 F. (2d) 744 (C. C. A. 5), certiorari denied, 61 S. Ct. 392; *N. L. R. B. v. Swift & Co.*, 108 F. (2d) 988 (C. C. A. 7), enforcing, as modified, 11 N. L. R. B. 809.

⁵³ *N. L. R. B. v. Swift & Co.*, 108 F. (2d) 988 (C. C. A. 7), enforcing, as modified, 11 N. L. R. B. 809; *cf. N. L. R. B. v. Newport News Shipbuilding & Dry Dock Co.*, 308 U. S. 241; *N. L. R. B. v. H. E. Fletcher Co.*, 108 F. (2d) 459 (C. C. A. 1), certiorari denied, 309 U. S. 678.

⁵⁴ *Westinghouse Electric & Mfg. Co. v. N. L. R. B.*, 112 F. (2d) 657 (C. C. A. 2), certiorari granted, 61 S. Ct. 135; *Continental Oil Co. v. N. L. R. B.*, 113 F. (2d) 473 (C. C. A. 10), certiorari granted as to another issue, 61 S. Ct. 72; *N. L. R. B. v. Swift & Co.*, 108 F. (2d) 988 (C. C. A. 7), enforcing, as modified, 11 N. L. R. B. 809.

continuance in the office of the old officers is provided for;⁵⁵ or elections for the new are held under the auspices of the old,⁵⁶ and, generally, upon company time or property and with the assent of the supervisory staff.

A noteworthy incident of the year's litigation was the outlawing by the Supreme Court of the "Balleisen formula"⁵⁷ as an effective means of curbing genuine self-organization through the establishment of company unions and the execution of "yellow-dog" contracts. *National Licorice Co. v. N. L. R. B.*, 309 U. S. 350 and *American Manufacturing Co. v. N. L. R. B.*, 309 U. S. 629. Under this technique, a bona fide attempt at union organization is met with an expression of the employer's preference to deal with an inside group. The inside group, which is organized in response to this suggestion with greater or less direct employer assistance as need may arise, is rewarded with prompt recognition and immediate concessions. Its major and frequently its only accomplishment is to obtain the signatures of the employees to a modified form of "yellow-dog" contract. Any appearance of spontaneity on the part of the employees in their participation in this program is effectively unmasked by the reiteration of the same pattern of action in case after case.⁵⁸

Among the elements employed in the "successor" company-union device and in the "Balleisen formula", several recur with significant frequency in other contexts. Among these we may mention the use of a wage increase or other concession as a lever to favor the inside union;⁶⁰ the use of an election initiated by the employer;⁶¹ and the use of economic and community pressure by tying up the possibility of return to work in the case of a strike or lock-out with the success of the inside union⁶² or by threatening to shut down the plant if the outside union should prove successful.⁶³

The keynote of the development of case law in this field has been the increasing recognition by the reviewing courts of something that opponents of employee self-organization have long known and acted upon: that the older crude methods of employer interference are unnecessary to override the free choice of the economically dependent employee. Early in the Act's administration, the typical company union showed its illegality upon its face. Now, more subtle methods

⁵⁵ *Westinghouse Electric & Mfg. Co. v. N. L. R. B.*, 112 F. (2d) 657 (C. C. A. 2), certiorari granted, 61 S. Ct. 135; *Kansas City Power & Light Co. v. N. L. R. B.*, 111 F. (2d) 340 (C. C. A. 8); cf. *N. L. R. B. v. J. Greenebaum Tanning Co.*, 110 F. (2d) 984 (C. C. A. 7), (C. C. A. 7), certiorari denied, 64 S. Ct. 18.

⁵⁶ *Republic Steel Corp. v. N. L. R. B.*, 107 F. (2d) 472 (C. C. A. 3), certiorari denied, 309 U. S. 684, upon rehearing, Board order modified as to work-relief provision, 311 U. S. 7; *N. L. R. B. v. Brown Paper Mill Co.*, 108 F. (2d) 867 (C. C. A. 5), certiorari denied, 310 U. S. 651; *N. L. R. B. v. Swift & Co.*, 108 F. (2d) 988 (C. C. A. 7), enforcing as modified, 11 N. L. R. B. 809; cf. *N. L. R. B. v. J. Greenebaum Tanning Co.*, 110 F. (2d) 984 (C. C. A. 7), certiorari denied, 64 S. Ct. 18.

⁵⁷ So called after its originator, L. L. Balleisen, then Industrial Secretary of the Brooklyn Chamber of Commerce.

⁵⁸ Numerous cases wherein this device was employed are cited by the Supreme Court in footnote 1 of the *National Licorice* decision, 309 U. S., at 354.

⁵⁹ *N. L. R. B. v. Falk Corp.*, 308 U. S. 453; *N. L. R. B. v. Newport News Shipbuilding & Dry Dock Co.*, 308 U. S. 241; *International Ass'n of Machinists v. N. L. R. B.*, 110 F. (2d) 29 (App. D. C.) affirmed, 311 U. S. 72; *M. H. Ritzwoller Co. v. N. L. R. B.*, 114 F. (2d) 432 (C. C. A. 7); cf. *N. L. R. B. v. Norfolk Shipbuilding & Drydock Corp.*, 109 F. (2d) 128 (C. C. A. 4).

⁶⁰ *Titan Metal Mfg. Co. v. N. L. R. B.*, 106 F. (2d) 254 (C. C. A. 3); *N. L. R. B. v. Sun-shine Mining Co.*, 110 F. (2d) 780 (C. C. A. 9), certiorari denied, January 13, 1941.

⁶¹ *N. L. R. B. v. Griswold Mfg. Co.*, 106 F. (2d) 713 (C. C. A. 3), certiorari denied, 309 U. S. 615; *Titan Fetal Mfg. Co. v. N. L. R. B.*, 106 F. (2d) 254 (C. C. A. 3), certiorari denied, 308 U. S. 615; *H. J. Heinz Co. v. N. L. R. B.*, 110 F. (2d) 843 (C. C. A. 6), affirmed 61 S. Ct. 320; *N. L. R. B. v. Somerset Shoe Co.*, 111 F. (2d) 681 (C. C. A. 1).

⁶² *N. L. R. B. v. Bradford Dyeing Ass'n*, 310 U. S. 318.

of control are used, and the attention of the courts has shifted to the background and genesis of challenged organizations to uncover the significant differences which appear between spurious organizations and those of genuine self-organization.

UNFAIR LABOR PRACTICES—SECTION 8 (3)

Numerous questions concerning the interpretation and application of Section 8 (3) of the act have been considered by the courts during the current fiscal year, some of the more important of which are discussed below:

What constitutes violation of section 8 (3).—Termination of employment by discharge or lay-off is not the only form in which the discrimination prohibited by section 8 (3) of the act may be manifested. A transfer or change in the nature of the job may be held to have been discriminatory.⁶⁴ Likewise, discrimination against union leaders in the rehiring of strikers is a violation of the act.⁶⁵ Since an employer is under a duty to reinstate employees who have gone on strike because of the employer's unfair labor practices, it is a violation of Section 8 (3) to refuse such reinstatement upon application.⁶⁶ Further, the necessity for any such application may be eliminated where the employer makes it clear that strikers will not be taken back if they do apply.⁶⁷

Where men are employed under written contracts for a specified term, it may be shown that it is customary, upon expiration of the contractual term, to offer new contracts of employment. In such a situation, a discriminatory refusal to reemploy is a violation of section 8 (3).⁶⁸

During the current fiscal year it was held by the first court which had yet had occasion to pass on the question that a violation of section 8 (3) could not be found in a refusal to hire a man who was not, at the time of the refusal, an employee within the meaning of section 2 (3) of the act.⁶⁹

A resignation procured by an employer because of the union activity of an employee may not be set up subsequently as a defense to an alleged discriminatory discharge;⁷⁰ and an employer is responsible for a discharge, although effected by an official of a company-dominated organization who did not have authority to make the discharge, if the company approved his act.⁷¹ However, where an employee is driven from the plant by the hostility of other employees, the employer is not responsible if it did not provoke the hostility,⁷² but an employer may

⁶⁴ *Kansas City Power & Light Co. v. N. L. R. B.*, 111 F. (2d) 340 (C. C. A. 8); *Continental Oil Co. v. N. L. R. B.*, 113 F. (2d) 473 (C. C. A. 10), certiorari granted, 61 S. Ct. 72.

⁶⁵ *Republic Steel Corp. v. N. L. R. B.*, 107 F. (2d) 472 (C. C. A. 3), certiorari denied, 309 U. S. 684 on rehearing, Board order modified as to work-relief provision only, 311 U. S. 7.

⁶⁶ *American Mfg. Co. v. N. L. R. B.*, 106 F. (2d) 61 (C. C. A. 2), affirmed as modified, 309 U. S. 629; *M. H. Ritzwoller v. N. L. R. B.*, 114 F. (2d) 432 (C. C. A. 7). In the *American* case it was also held to be an unfair labor practice to condition reinstatement on acceptance by the employees of individual contracts which were illegal under the act.

⁶⁷ *N. L. R. B. v. Sunshine Mining Co.*, 110 F. (2d) 780 (C. C. A. 9), certiorari denied, January 13, 1941.

⁶⁸ *N. L. R. B. v. Waterman Steamship Corp.*, 309 U. S. 206, rehearing denied, 309 U. S. 696.

⁶⁹ *N. L. R. B. v. National Casket Co., Inc.*, 107 F. (2d) 992 (C. C. A. 2). Since the close of the fiscal year, the Circuit Court of Appeals for the First Circuit has reached the opposite result in *N. L. R. B. v. Waumbeo Mills, Inc.*, 114 F. (2d) 226 (C. C. A. 1), where it was held that a refusal to hire a man, solely because of his union activities at plants where he had previously worked, warranted a finding of 8 (3) violation and an appropriate order for reinstatement and remedial pay. The Second Circuit since followed its decision in the *National Casket* case in *Phelps Dodge v. N. L. R. B.*, 113 F. (2d) 202 (C. C. A. 2), and the question is now before the Supreme Court on writ of certiorari granted January 13, 1941.

⁷⁰ *N. L. R. B. v. Leviton Mfg. Co.*, 111 F. (2d) 619 (C. C. A. 2).

⁷¹ *N. L. R. B. v. J. Greenebaum Tanning Co.*, 110 F. (2d) 984 (C. C. A. 7), certiorari denied, 61 S. Ct. 18. The same result was reached without discussion in *N. L. R. B. v. Planters Mfg. Co.*, 105 F. (2d) 750 (C. C. A. 4).

⁷² *N. L. R. B. v. Asheville Hosiery Co.*, 108 F. (2d) 288 (C. C. A. 4).

not defend its discharge of an employee on the ground of hostility to the union on the part of its other employees, where that hostility was provoked by its own actions.⁷³

Finally, a discharge is discriminatory if prompted by the union activity of a relative of the discharged employee.⁷⁴

Evidence of 8 (3) violation—Intent to discourage union activity.—The antiunion purpose of a discharge, lay-off, or other change in employment, may be shown in various ways. Thus, an inference of discriminatory purpose may be drawn from the fact that the employer was hostile to union activity.⁷⁵ Such hostility may be shown by the employer's refusal to bargain with a union,⁷⁶ his questioning of employees concerning their union membership,⁷⁷ his threats of discharge if union activities are continued,⁷⁸ or his attempts to induce the discharged employee to abandon the Union.⁷⁹ And where an employer engages in espionage to ascertain the union affiliations of its employees, a presumption is warranted that he used the information received.⁸⁰

Evidence of 8 (3) violation—Union activity of affected employees.—The fact that the percentage of union members among a group of employees laid off was unusually high may be taken into consideration in determining whether the lay-off was discriminatory.⁸¹ Likewise pointing to discriminatory intent is the fact that the employees discharged were leaders or otherwise outstanding in union activity,⁸² or that they refused to join a company-dominated union.⁸³

Evidence of 8 (3) violation—Failure of employer's explanation.—Where there are circumstances tending to show anti-union discrimination, and the employer's attempt to establish a legitimate basis for the discharge fails, or appears plainly inadequate, a finding of discrimination is all the more indicated, e. g., where the reason given by the employer for the discharge is obviously a mere pretext;⁸⁴ or where

⁷³ *N. L. R. B. v. Sunshine Mining Co.*, 110 F. (2d) 780 (C. C. A. 9), certiorari denied January 13, 1941.

⁷⁴ *Megia Textile Mills v. N. L. R. B.*, 110 F. (2d) 565 (C. C. A. 5).

⁷⁵ *Union Drawn Steel Co. v. N. L. R. B.*, 109 F. (2d) 587 (C. C. A. 3); *Hartsell Mills Co. v. N. L. R. B.*, 111 F. (2d), 291 (C. C. A. 4); *N. L. R. B. v. Planters Mfg. Co.*, 105 F. (2d) 750 (C. C. A. 4); *Montgomery Ward & Co. v. N. L. R. B.*, 107 F. (2d) 555 (C. C. A. 7); *Cupples Co. Mfrs. v. N. L. R. B.*, 106 F. (2d) 100 (C. C. A. 8); *Kansas City Power & Light Co. v. N. L. R. B.*, 111 F. (2d) 340 (C. C. A. 8); but cf. *Empire Furniture Corp. v. N. L. R. B.*, 107 F. (2d) 92 (C. C. A. 6).

⁷⁶ *Busmann Mfg. Co. v. N. L. R. B.*, 111 F. (2d) 783 (C. C. A. 8).

⁷⁷ *Botany Worsted Mills v. N. L. R. B.*, 106 F. (2d) 263 (C. C. A. 3).

⁷⁸ *Arcadia Hosiery Co. v. N. L. R. B.*, 112 F. (2d) 326 (C. C. A. 3), certiorari denied, 61 S. Ct. 38; *Cupples Co. Mfrs. v. N. L. R. B.*, 106 F. (2d) 100 (C. C. A. 8).

⁷⁹ *N. L. R. B. v. Tovrea Packing Co.*, 111 F. (2d) 626 (C. C. A. 9), certiorari denied, 61 S. Ct. 28.

⁸⁰ *Montgomery Ward & Co. v. N. L. R. B.*, 107 F. (2d) 555 (C. C. A. 7). Conversely, absence of evidence that the employer knew of the union membership or activity of the discharged employee tends to disprove discrimination. *N. L. R. B. v. Asheville Hosiery Co.*, 108 F. (2d) 288 (C. C. A. 4); *N. L. R. B. v. Boss Mfg. Co.*, 107 F. (2d) 574 (C. C. A. 7); *N. L. R. B. v. Link-Belt Co.*, 61 S. Ct. 358.

⁸¹ *Montgomery Ward & Co. v. N. L. R. B.*, 107 F. (2d) 555 (C. C. A. 7); *Cupples Co. Mfrs. v. N. L. R. B.*, 106 F. (2d) 100 (C. C. A. 8); *Kansas City Power & Light Co. v. N. L. R. B.*, 111 F. (2d) 340 (C. C. A. 8); *North Whittier Heights Citrus Ass'n v. N. L. R. B.*, 109 F. (2d) 76 (C. C. A. 9), certiorari denied, 310 U. S. 632, rehearing denied, 61 S. Ct. 54.

⁸² *American Mfg. Co. v. N. L. R. B.*, 106 F. (2d) 61 (C. C. A. 2), affirmed as modified 309 U. S. 629; *N. L. R. B. v. Leviton Mfg. Co.*, 111 F. (2d) (C. C. R. 2); *N. L. R. B. v. National Casket Co., Inc.*, 107 F. (2d) 992 (C. C. A. 2); *Arcadia Hosiery Co. v. N. L. R. B.*, 112 F. (2d) 326 (C. C. A. 3), certiorari denied, 61 S. Ct. 38; *Hartsell Mills Co. v. N. L. R. B.*, 111 F. (2d) 291 (C. C. A. 4); *N. L. R. B. v. Planters Mfg. Co., Inc.*, 105 F. (2d) 750 (C. C. A. 4); *N. L. R. B. v. Tovrea Packing Co.*, 111 F. (2d) 626 (C. C. A. 9), certiorari denied, 61 S. Ct. 28; *Continental Oil Co. v. N. L. R. B.*, 113 F. 473 (C. C. A. 10), certiorari granted, 61 S. Ct. 72; *Southern Colorado Power Co. v. N. L. R. B.*, 111 F. (2d) 539 (C. C. A. 10).

⁸³ *N. L. R. B. v. J. Greencbaum Tanning Co.*, 110 F. (2d) 984 (C. C. A. 7), certiorari denied, 61 S. Ct. 18.

⁸⁴ *Arcadia Hosiery Co. v. N. L. R. B.*, 112 F. (2d) 326 (C. C. A. 3), certiorari denied, 61 S. Ct. 38; *Busmann Mfg. Co. v. N. L. R. B.*, 111 F. (2d) 783 (C. C. A. 8).

the reason relied upon by the employer was not given to the employee at the time of his discharge;⁸⁵ or where an employee is allegedly discharged for violation of a claimed plant rule but it appears that it is questionable whether the rule existed, or, if it did, that discharge was not the normal penalty,⁸⁶ or that it was enforced on the occasion in question only against the leaders of union activity⁸⁷ and not against others. Also, where inefficiency or misconduct is advanced as the basis for a discharge or lay-off (a valid defense, of course, where shown to have been the actual motivating cause),⁸⁸ the defense is rebutted by evidence that the employee had a good record or had been employed for a long time⁸⁹ without disciplinary action because of the alleged inefficiency or misconduct.⁹⁰

Discontinuance or curtailment of the operations upon which an employee has been engaged may likewise be a valid explanation for a layoff,⁹¹ but not if used as a cover for discriminating against union members,⁹² as where, in order to eliminate union employees, they are transferred to operations about to be discontinued⁹³ or where the normal seniority practices of the employer are disregarded,⁹⁴ or where the employee is replaced by another so that the job is not in fact discontinued.⁹⁵

UNFAIR LABOR PRACTICES—SECTION 8 (5)

The employer must grant exclusive recognition to the union as a union.—A union selected by a majority of the employees in an appropriate unit is entitled to recognition as the exclusive representative of all of the employees in that unit. Hence a refusal to accord it such recognition is a violation of section 8 (5) of the Act.⁹⁶ Furthermore, the union is entitled to recognition *qua* union, and the employer may not limit the recognition given in such fashion as to deprive this union of its status as an equal in the bargaining relationship.⁹⁷

⁸⁵ *N. L. R. B. v. National Casket Co., Inc.*, 107 F. (2d) 992 (C. C. A. 2).

⁸⁶ *N. L. R. B. v. Bradford Dyeing Ass'n.*, 310 U. S. 318; *Botany Worsted Mills v. N. L. R. B.*, 106 F. (2d) 263 (C. C. A. 3); *N. L. R. B. v. Good Coal Co.*, 110 F. (2d) 501 (C. C. A. 6), certiorari denied 310 U. S. 630; *Bussmann Mfg. Co. v. N. L. R. B.*, 111 F. (2d) 783 (C. C. A. 8).

⁸⁷ *American Mfg. Co. v. N. L. R. B.*, 309 U. S. 629.

⁸⁸ *Arcadia Hosiery Co. v. N. L. R. B.*, 112 F. (2d) 326 (C. C. A. 3), certiorari denied, 61 S. Ct. 38; *N. L. R. B. v. Asheville Hosiery Co.*, 108 F. (2d) 288 (C. C. A. 4).

⁸⁹ *Arcadia Hosiery Co. v. N. L. R. B.*, 112 F. (2d) 326 (C. C. A. 3), certiorari denied 61 S. Ct. 38; *Montgomery Ward & Co. v. N. L. R. B.*, 107 F. (2d) 555 (C. C. A. 7);

Kansas City Power & Light Co. v. N. L. R. B., 111 F. (2d) 340 (C. C. A. 8); *Southern Colorado Power Co. v. N. L. R. B.*, 111 F. (2d) 539 (C. C. A. 10);

Hartsell Mills Co. v. N. L. R. B., 111 F. (2d) 291 (C. C. A. 4); *Montgomery Ward & Co. v. N. L. R. B.*, 107 F. (2d) 555 (C. C. A. 7).

⁹⁰ *N. L. R. B. v. Norfolk Shipbuilding & Drydock Corp.*, 109 F. (2d) 128 (C. C. A. 4); *Empire Furniture Corp. v. N. L. R. B.*, 107 F. (2d) 92 (C. C. A. 6); *N. L. R. B. v. Boss Mfg. Co.*, 107 F. (2d) 574 (C. C. A. 7).

⁹¹ *Montgomery Ward & Co. v. N. L. R. B.*, 107 F. (2d) 555 (C. C. A. 7); *Cupples Co. Mfrs. v. N. L. R. B.*, 106 F. (2d) 100 (C. C. A. 8); *Southern Colorado Power Co. v. N. L. R. B.*, 111 F. (2d) 539 (C. C. A. 10); and see *Union Drawn Steel Co. v. N. L. R. B.*, 109 F. (2d) 587 (C. C. A. 3).

⁹² *Arcadia Hosiery Co. v. N. L. R. B.*, 112 F. (2d) 326 (C. C. A. 3), certiorari denied, 61 S. Ct. 38.

⁹³ *Arcadia Hosiery Co. v. N. L. R. B.*, 112 F. (2d) 326 (C. C. A. 3), certiorari denied, 61 S. Ct. 38; *Kansas City Power & Light Co. v. N. L. R. B.*, 111 F. (2d) 340 (C. C. A. 8); *Southern Colorado Power Co. v. N. L. R. B.*, 111 F. (2d) 539 (C. C. A. 10).

⁹⁴ *Arcadia Hosiery Co. v. N. L. R. B.*, 112 F. (2d) 326 (C. C. A. 3), certiorari denied, 61 S. Ct. 38; *Union Drawn Steel Co. v. N. L. R. B.*, 109 F. (2d) 587 (C. C. A. 3); *Montgomery Ward & Co. v. N. L. R. B.*, 107 F. (2d) 555 (C. C. A. 7).

⁹⁵ *National Licorice Co. v. N. L. R. B.*, 309 U. S. 350; *Hartsell Mills Co. v. N. L. R. B.*, 111 F. (2d) 291 (C. C. A. 4); *N. L. R. B. v. Boss Mfg. Co.*, 107 F. (2d) 574 (C. C. A. 7); *N. L. R. B. v. Sunshine Mining Co.*, 110 F. (2d) 780 (C. C. A. 9), certiorari denied January 13, 1941; *Continental Oil Co. v. N. L. R. B.*, 113 F. (2d) 473 (C. C. A. 10), certiorari granted as to another issue, 61 S. Ct. 72.

⁹⁶ *N. L. R. B. v. Griswold Mfg. Co.*, 106 F. (2d) 713 (C. C. A. 3); *N. L. R. B. v. Piqua Munising Wood Products Co.*, 109 F. (2d) 552 (C. C. A. 6); *H. J. Heinz Co. v. N. L. R. B.*, 61 S. Ct. 320; *Fort Wayne Corrugated Paper Co. v. N. L. R. B.*, 111 F. (2d) 869 (C. C. A. 7).

Refusal to enter into written agreement covering matters agreed upon.—The duty to bargain collectively includes an obligation to attempt in good faith to reach a collective bargaining contract.⁸³ As the Circuit Court of Appeals for the Third Circuit has stated:

It is obvious that the employer who enters into negotiations with a labor union representing his employees, with his mind hermetically sealed against even the thought of entering into an agreement with the union, is guilty of refusing to bargain collectively with the representatives of his employees in good faith, as required by the act, and is therefore guilty of an unfair labor practice.⁸⁴

Thus the requirements of section 8 (5) are not met merely by meeting with representatives of the majority union,¹ nor by the adjustment of grievances through the Union.²

It has likewise been held by the Circuit Courts of Appeals for the Second, Fourth, Sixth and Tenth Circuits that a refusal on the part of an employer to enter into a signed contract with the representative of its employees, embodying any terms which may be agreed upon, constitutes a refusal to bargain within the meaning of Section 8 (5).³ In addition, the Circuit Court of Appeals for the Ninth Circuit has held that where there is a refusal to bargain upon other grounds, the Board may, in the exercise of its power to order appropriate affirmative action, direct the employer to embody in a written contract any terms which may be agreed upon in the bargaining which he is ordered to perform.⁴ The Circuit Court of Appeals for the Seventh Circuit has alone taken the opposite view,⁵ although it has held that the employer's refusal to sign a written contract may be considered as indicating a refusal to bargain in good faith.⁶

Majority status of union at time of refusal to bargain is determinative.—In determining whether or not an employer has refused to bargain within the meaning of Section 8 (5), the issue of the Union's majority status must be determined as of the date of the alleged refusal to bargain. Hence the fact that thereafter the Union may have lost its majority cannot "relieve [the employer] from the consequences of its refusal to bargain, which was an unfair labor prac-

⁸³ *N. L. R. B. v. Somerset Shoe Co.*, 111 F. (2d) 681 (C. C. A. 1); *N. L. R. B. v. Express Publishing Co.*, 111 F. (2d) 588 (C. C. A. 5), certiorari granted, 61 S. Ct. 134.

⁸⁴ *N. L. R. B. v. Griswold Mfg. Co.*, 106 F. (2d) 713, 723 (C. C. A. 3).

¹ *N. L. R. B. v. Griswold Mfg. Co.*, 106 F. (2d) 713 (C. C. A. 3); *N. L. R. B. v. Express Publishing Co.*, 111 F. (2d) 588 (C. C. A. 5), certiorari granted, 61 S. Ct. 134.

² *N. L. R. B. v. Highland Park Mfg. Co.*, 110 F. (2d) 632 (C. C. A. 4).

³ *Art Metal Construction Co. v. N. L. R. B.*, 110 F. (2d) 148 (C. C. A. 2); *N. L. R. B. v. Highland Park Mfg. Co.*, 110 F. (2d) 632 (C. C. A. 4); *Hartsell Mills Co. v. N. L. R. B.*, 111 F. (2d) 291 (C. C. A. 4); *Continental Oil Co. v. N. L. R. B.*, 113 F. (2d) 473 (C. C. A. 10), certiorari granted as to another issue, 61 S. Ct. 72. This position has since been affirmed by the decisive ruling of the Supreme Court in *H. J. Heinz v. N. L. R. B.*, 61 S. Ct. 320, affirming 110 F. (2d) 843 (C. C. A. 6); see also *Bethlehem Shipbuilding Corp. v. N. L. R. B.*, 114 F. (2d) 930 (C. C. A. 1), certiorari dismissed January 13, 1941; *Wilson & Co. Inc. v. N. L. R. B.*, 114 F. (2d) 759 (C. C. A. 8), all decided after the close of the fiscal year.

⁴ *N. L. R. B. v. Sunshine Mining Co.*, 110 F. (2d) 780 (C. C. A. 9), certiorari denied January 13, 1941. Although one of the judges who participated in this determination was of the opinion that the refusal to sign a contract was of itself a violation of section 8 (5), the other two judges thought the point not directly raised in the case, and rested their decision to enforce the Board's order on the theory described in the text. This view was likewise expressed by the fourth, sixth, and tenth circuits as an independent ground for enforcing the orders of the Board reviewed by them in the cases cited in the preceding footnote. In each of these cases, there was proof of a refusal to bargain, independent of the refusal to sign a written contract.

⁵ *Inland Steel Co. v. N. L. R. B.*, 109 F. (2d) 9 (C. C. A. 7); *M. H. Ritzwoller Co. v. N. L. R. B.*, 114 F. (2d) 432 (C. C. A. 7).

⁶ *Fort Wayne Corrugated Paper Co. v. N. L. R. B.*, 111 F. (2d) 869 (C. C. A. 7).

tice."⁷ It has likewise been established that an employer may not refuse to bargain with a union on the ground that it has lost its majority status, where the defections from the union were caused by the employer's unfair labor practices;⁸ and loss of majority, if shown, will be presumed to have resulted from the occurrence of unfair labor practices.⁹

Where majority status is not questioned at time of refusal to bargain, union need not prove majority to employer.—An employer who refuses to bargain regardless of whether the union represents a majority may not later defend that refusal upon the ground that the union did not prove its majority prior to the refusal. In such a case the employer takes the risk of what the facts may show as to the Union's majority status.¹⁰

Obligation to bargain continues during strike or shut-down.—The obligation to bargain collectively is not terminated by the commencement of a strike,¹¹ nor by a temporary shut-down of the employer's plant.¹²

Requirement that employer bargain in good faith.—It has been universally recognized that the requirements of section 8 (5) demand more than lip service, and that hence the employers' conduct must evidence an effort in good faith to arrive at understandings with the representatives of its employees.¹³ Lack of good faith is indicated where the employer engages in unfair labor practices while bargaining with the union;¹⁴ where it engages in dilatory tactics during negotiations;¹⁵ or where it ignores requests for conferences;¹⁶ or where it institutes a wage cut by unilateral action and without consulting the majority representative;¹⁷ or where he goes over the heads of the union representatives and attempts to bargain individually with the employees or to induce them to abandon the

⁷ *National Licorice Co. v. N. L. R. B.*, 309 U. S. 350, 357. Accord: *N. L. R. B. v. Highland Park Mfg. Co.*, 110 F. (2d) 632 (C. C. A. 4); *Hartsell Mills Co. v. N. L. R. B.*, 111 F. (2d) 291 (C. C. A. 4); *Bussmann Mfg. Co. v. N. L. R. B.*, 111 F. (2d) 783 (C. C. A. 8); *Continental Oil Co. v. N. L. R. B.*, 113 F. (2d) 473 (C. C. A. 10), certiorari granted as to other issues, 61 S. Ct. 72; *International Ass'n of Machinists v. N. L. R. B.*, 110 F. (2d) 29 (App. D. C.) affirmed 311 U. S. 72. It has also been held that the majority status of a union, once shown, will be presumed to have continued, if the contrary is not shown. *N. L. R. B. v. Highland Park Mfg. Co.*, *supra*; *N. L. R. B. v. Whittier Mills Co.*, 111 F. (2d) 474 (C. C. A. 5); *N. L. R. B. v. Piqua Munising Wood Products Co.*, 109 F. (2d) 552 (C. C. A. 6); *M. H. Ritzwoller Co. v. N. L. R. B.*, 114 F. (2d) 432 (C. C. A. 7).

⁸ *N. L. R. B. v. Bradford Dyeing Ass'n.*, 310 U. S. 318; *American Mfg. Co. v. N. L. R. B.*, 106 F. (2d) 61 (C. C. A. 2), affirmed as modified, 308 U. S. 629; *N. L. R. B. v. Somerset Shoe Co.*, 111 F. (2d) 681 (C. C. A. 1); *Continental Oil Co. v. N. L. R. B.*, 113 F. (2d) 473 (C. C. A. 10), certiorari granted, 61 S. Ct. 72.

⁹ *N. L. R. B. v. Highland Park Mfg. Co.*, 110 F. (2d) 632 (C. C. A. 4); *M. H. Ritzwoller Co. v. N. L. R. B.*, 114 F. (2d) 432 (C. C. A. 7); *Bussmann Mfg. Co. v. N. L. R. B.*, 111 F. (2d) 783 (C. C. A. 8). The question of the effect upon the Board's remedial order of alleged defections from the Union is treated below at p. 105.

¹⁰ *N. L. R. B. v. Somerset Shoe Co.*, 111 F. (2d) 681 (C. C. A. 1); *American Mfg. Co. v. N. L. R. B.*, 106 F. (2d) 61 (C. C. A. 2), affirmed as modified, 309 U. S. 629; *Hartsell Mills Co. v. N. L. R. B.*, 111 F. (2d) 291 (C. C. A. 4); *N. L. R. B. v. Piqua Munising Wood Products Co.*, 109 F. (2d) 552 (C. C. A. 6); *M. H. Ritzwoller Co. v. N. L. R. B.*, 114 F. (2d) 432 (C. C. A. 7); *Continental Oil Co. v. N. L. R. B.*, 113 F. (2d) 473 (C. C. A. 10), certiorari granted as to other issues, 61 S. Ct. 72. Where the employer does demand proof of majority, he must accept a reasonable offer of such proof as in the normal case, signed membership cards. *N. L. R. B. v. Dahlstrom Metallic Door Co.*, 112 F. (2d) 756 (C. C. A. 2).

¹¹ *N. L. R. B. v. Piqua Munising Wood Products Co.*, 109 F. (2d) 552 (C. C. A. 6); *M. H. Ritzwoller Co. v. N. L. R. B.*, 114 F. (2d) 432 (C. C. A. 7).

¹² *N. L. R. B. v. Somerset Shoe Co.*, 111 F. (2d) 681 (C. C. A. 1).

¹³ See, for example, *National Licorice Co. v. N. L. R. B.*, 309 U. S. 350.

¹⁴ *American Mfg. Co. v. N. L. R. B.*, 106 F. (2d) 61 (C. C. A. 2), affirmed as modified, 309 U. S. 629.

¹⁵ *H. J. Heinz Co. v. N. L. R. B.*, 61 S. Ct. 320; *M. H. Ritzwoller Co. v. N. L. R. B.*, 114 F. (2d) 432 (C. C. A. 7).

¹⁶ *N. L. R. B. v. Somerset Shoe Co.*, 111 F. (2d) 681 (C. C. A. 1); *N. L. R. B. v. Good Coal Co.*, 110 F. (2d) 501 (C. C. A. 6), certiorari denied, 310 U. S. 630; *M. H. Ritzwoller Co. v. N. L. R. B.*, 114 F. (2d) 432 (C. C. A. 7).

¹⁷ *N. L. R. B. v. Whittier Mills Co.*, 111 F. (2d) 474 (C. C. A. 5).

union¹⁸ An employer may not justify its failure to negotiate toward an agreement upon various proposals upon the ground that one proposal, such as a provision for a closed shop, was unacceptable to it.¹⁹

EMPLOYEE STATUS UNDER THE ACT

Employees retain employment status during a labor dispute.—Full recognition is given now to the statutory principle that striking employees retain their employment status and are entitled to reinstatement or preferential listing at the conclusion of the labor dispute, depending upon the circumstances involved. *Republic Steel Corp. v. N. L. R. B.*, 107 F. (2d) 472 (C. C. A. 3), certiorari denied, 309 U. S. 684, upon rehearing, Board order modified as to work-relief provisions only, 311 U. S. 7.²⁰ A discriminatory refusal to reinstate following the conclusion of such a dispute is an unfair labor practice. *M. H. Ritzwoller Co. v. N. L. R. B.*, 114 F. (2d) 432 (C. C. A. 7). A purported discharge of an employee during a labor dispute is, of course, legally ineffective to terminate the employment status. *N. L. R. B. v. Good Coal Co.*, 110 F. (2d) 501 (C. C. A. 6), certiorari denied, 310 U. S. 630.²¹

Employment status retained during seasonal shut-down.—When an employer shuts down operations because of the seasonal nature of his business, but customarily recalls the same employees upon resumption of operations, such laid-off employees retain their employment status under the act and are entitled to reinstatement and back pay if discriminated against because of union activities upon resumption of operations. The employment relationship does not necessarily depend upon continuity of actual every-day work. *North Whittier Heights Citrus Ass'n. v. N. L. R. B.*, 109 F. (2d) 76 (C. C. A. 9), certiorari denied, 310 U. S. 632, rehearing denied, 61 S. Ct. 54.

Seamen do not lose employment status through termination of shipping articles.—Where seamen customarily retain their positions and reshipe on new voyages of the same vessel, the mere signing off of the shipping articles at the conclusion of prior voyages (required by seamen's laws), does not terminate their employee status. *N. L. R. B. v. Waterman Steamship Corp.*, 309 U. S. 206, rehearing denied, 309 U. S. 696.

Termination of employee status because of misconduct.—In the past year the *Fansteel* doctrine²² has undergone further clarification. Participants in a "sit-down" strike are not entitled to reinstatement despite the fact that they were not specifically discharged by the employer for such conduct and had obeyed court process to vacate the seized plant one court has held. *McNeely & Price Co. v. N. L. R. B.*, 106 F. (2d) 878 (C. C. A. 3).²³ On the other hand, engaging in a

¹⁸ *National Licorice Co. v. N. L. R. B.*, 309 U. S. 350; *American Mfg. Co. v. N. L. R. B.*, 106 F. (2d) (C. C. A. 2), affirmed as modified, 309 U. S. 629; *N. L. R. B. v. Piqua Munting Wood Products Co.*, 109 F. (2d) 552 (C. C. A. 6).

¹⁹ *M. H. Ritzwoller Co. v. N. L. R. B.*, 114 F. (2d) 432 (C. C. A. 7).

²⁰ *N. L. R. B. v. Sunshine Mining Co.*, 110 F. (2d) 780 (C. C. A. 9), certiorari denied, January 13, 1941; *Union Draven Steel Co. v. N. L. R. B.*, 109 F. (2d) 587 (C. C. A. 3); *Titan Metal Mfg. Co. v. N. L. R. B.*, 106 F. (2d) 254 (C. C. A. 3), certiorari denied, 308 U. S. 615; *N. L. R. B. v. Boss Mfg. Co.*, 107 F. (2d) 574 (C. C. A. 7).

²¹ Here the dispute involved a refusal of the employees to work on Labor Day.

²² *N. L. R. B. v. Fansteel Metallurgical Corp.*, 306 U. S. 240. See Fourth Annual Report, pp. 127-128.

²³ Employees will not be barred from reinstatement because of alleged incitation to a "sit-down" strike where the conduct was denied and not proved. *N. L. R. B. v. Bradford Dyeing Ass'n*, 310 U. S. 318.

brief 2-hour "stay-in" strike, involving a mere stoppage of work without violence or resistance to plant discipline, does not make employment status terminable by the employer. *American Mfg. Co. v. N. L. R. B.*, 309 U. S. 629.²⁴ Conviction of minor misdemeanors engaged in during a strike, such as drunkenness, violation of a court order, disturbing the peace, so-called rioting or unlawful assembly, assault and battery of a lesser nature, etc., does not operate to terminate the employment status so as to deprive a striker of his reinstatement rights. *Republic Steel Corp. v. N. L. R. B.*, 107 F. (2d) 472 (C. C. A. 3), certiorari denied, 309 U. S. 684, upon rehearing, Board order modified as to work relief provisions only, 311 U. S. 7. As stated by Judge Maris:

We think it must be conceded, however, that some disorder is unfortunately quite usual in any extensive or long drawn-out strike. * * * Rising passions call forth hot words. Hot words lead to blows on the picket lines. * * * Violence of this nature, however much it is to be regretted, must have been in the contemplation of the Congress when it provided in Sec. 13 of the Act that nothing therein should be construed so as to interfere with or impede or diminish in any way the right to strike. (107 F. (2d) 472, at 479.)

Conviction of major disorders, however, *e. g.*, malicious destruction of property, obstructing the mails and railroad tracks, discharging firearms, carrying concealed weapons, assault and battery of a serious nature, etc., has been held a bar to reinstatement. *Ibid.*

EMPLOYERS

Supervisory Employees bind Employers by their Acts.—During the past year the courts have adopted an increasingly realistic approach to the question of the employer's responsibility for the coercive actions of supervisory employees. Realizing that the supervisors' activities bear weight solely because of their positions in the hierarchy of management and that, therefore, strict application of the doctrines of authorization or ratification involved in common-law principles would permit most interference and restraint by supervisory employees to go untouched, some of the courts have laid the old rules aside in favor of the controlling consideration whether the supervisor's authority and responsibilities, or other circumstances surrounding his actions, were such that the employees could reasonably regard him as a representative of the management. *H. J. Heinz Co. v. N. L. R. B.*, 110 F. (2d) 843 (C. C. A. 6).^{24a} As stated in *Consumers Power Co. v. N. L. R. B.*, 113 F. (2d) 38 (C. C. A. 6):

The contention that the several anti-union acts * * * were not authorized and were beyond the scope of authority entrusted to these men, must be rejected, not necessarily upon a strict application of the doctrine of *respondet superior* as it has been applied in private controversies * * * acts of coercion and intimidation by supervisory employees may be restrained and their resumption interdicted * * * even in the absence of clear demonstration of prior authorization or subsequent ratification, at least where the circumstances are

²⁴ In *C. G. Conn. Ltd. v. N. L. R. B.*, 108 F. (2d) 390 (C. C. A. 7), it was ruled, erroneously, the Board believes, that a refusal to work overtime on proffered terms permits a valid termination of the employment status.

^{24a} Affirmed, 61 S. Ct. 520.

such as to induce in subordinate employees a reasonable apprehension that the acts condemned reflect the policy of the employer. (113 F. (2d) 38, at 44.)²⁵

In no event is it necessary to prove specific authorization by the employer for the acts of interference. Such "authority may be deduced from acts of the employer coupled with the type of the employees' authority which make probable the link." *N. L. R. B. v. Swank Products, Inc.*, 108 F. (2d) 872, at 875 (C. C. A. 3). Mere instructions to supervisors cannot remove the basis for an injunction and remedial order of the Board, for the employer is under an affirmative obligation to prevent misuse of his economic power over the employees by persons whom he has placed in positions of authority; he must take "effective means to stop repeated violations of the Act."²⁶ In the *Heinz* case the court pointed out that an employer who merely issues instructions to supervisors without communicating his neutrality to the employees generally, in fact does little to remove the effects of prior coercion and interference. 110 F. (2d) at 847.

In accordance with these principles, no one of the many indicia of authority, such as the power to hire and fire, may be held conclusive upon the question of employer responsibility. One circuit which previously suggested the hire and fire test has since abandoned it. *N. L. R. B. v. American Mfg. Co.*, 106 F. (2d) 61 (C. C. A. 2), affirmed 309 U. S. 629.²⁷ Two other reviewing courts have rejected it. *International Ass'n of Machinists v. N. L. R. B.*, 110 F. (2d) 29 (App. D. C.); ^{27a} *Virginia Ferry Corp. v. N. L. R. B.*, 101 F. (2d) 103 (C. C. A. 4).²⁸

ORDERS

Of the numerous remedial provisions of Board orders passed upon by the reviewing courts, the following appear most significant:

Invalidation of contracts.—The power of the Board to invalidate contracts which stand in the way of free self-organization of employees received important clarification in *National Licorice Co. v. N. L. R. B.*, 309 U. S. 350. It is, of course, clear that a contract of an employer with a dominated labor organization may be invalidated as a necessary incident to the disestablishment of the illegal organization.²⁹ In this case the contracts involved were modified "yellow-dog" contracts "executed between the company and each workman individually and not as a collective agreement with the representatives of

²⁵ In a far-reaching decision rendered subsequent to the close of the fiscal year, the Supreme Court in *International Ass'n of Machinists v. N. L. R. B.*, 311 U. S. 72, fully approved the modern view of employer responsibility advanced in the *Heinz* and *Consumers Power* cases. Accord: *N. L. R. B. v. American Mfg. Co.*, 106 F. (2d) 61 (C. C. A. 2), affirmed, 309 U. S. 629; *N. L. R. B. v. Griswold Mfg. Co.*, 106 F. (2d) 713 (C. C. A. 3); *N. L. R. B. v. Planters Mfg. Co., Inc.*, 105 F. (2d) 750 (C. C. A. 4); *N. L. R. B. v. Brown Paper Mill Co.*, 108 F. (2d) 867 (C. C. A. 5), certiorari denied 310 U. S. 651; *N. L. R. B. v. Lane Cotton Mills*, 111 F. (2d) 814 (C. C. A. 5), certiorari dismissed, 61 S. Ct. 316; *N. L. R. B. v. Sunshine Mining Co.*, 110 F. (2d) 780 (C. C. A. 9), certiorari denied January 13, 1941.

²⁶ *N. L. R. B. v. Swift & Co.*, 108 F. (2d) 87, at 93 (C. C. A. 10), decided in the previous fiscal year (italics supplied); but see *C. G. Conn, Ltd. v. N. L. R. B.*, 108 F. (2d) 390 (C. C. A. 7).

²⁷ Compare the earlier decision of the Second Circuit in *Ballston-Stillwater Knitting Co., Inc. v. N. L. R. B.*, 98 F. (2d) 758, at 762.

^{27a} Affirmed, 311 U. S. 72.

²⁸ While the Seventh Circuit has not uniformly applied the "hire and fire" test, it held in *Link Belt Co. v. N. L. R. B.*, 110 F. (2d) 506, that the employer was not responsible for the antiunion activities of foremen, in part upon the ground that they lacked this power. This decision has since been reversed, 61 S. Ct. 358.

²⁹ *N. L. R. B. v. H. E. Fletcher Co.*, 108 F. (2d) 459 (C. C. A. 1), certiorari denied, 309 U. S. 678.

the employees, as provided by the act".³⁰ The contracts foreclosed the employees from seeking a closed shop, or a signed agreement by the employer "with any union" and, further, forestalled collective bargaining with respect to discharges. The court held that the Board was empowered to invalidate such contracts, as against the employer, since they were "the fruits of unfair labor practices, stipulated for the renunciation by the employees of rights guaranteed by the Act, and were a continuing means of thwarting the policy of the Act." 309 U. S. 350, at 354. The absence of the individual employees is no bar to such action as their rights under the contracts are not affected.³¹

Disestablishment of company-dominated unions.—In the past year the Board has obtained judicial approval of its position that the disestablishment which it required in the case of a company-dominated or assisted labor organization is "complete disestablishment". *N. L. R. B. v. Newport News Shipbuilding & Dry Dock Co.*, 308 U. S. 241; *N. L. R. B. v. Falk Corp.*, 308 U. S. 453. Even if all objectionable structural features of the company union are eliminated, free self-organization of the employees may still be obstructed by "the existence and recognition by the management of an old plan or organization, the original structure or operation of which was not in accordance with the provisions of the law * * * disestablishment of a bargaining unit previously dominated by the employer may be the only effective way of wiping the slate clean and affording the employees an opportunity to start afresh in organizing for the adjustment of their relations with the employer". 308 U. S. 241, at 250. And again in the *Falk* case, where the issue was sharply raised by the Circuit Court's decision providing only for temporary disestablishment, the Supreme Court ruled that "the Board justifiably drew the inference that this company-created union could not emancipate itself from habitual subservience to its creator, and that in order to insure employees that complete freedom of choice guaranteed by Sec. 7, Independent must be completely disestablished and kept off the ballot," 308 U. S. 453, at 461.

These decisions are of particular importance because of the prevalence of "made-over" or "successor" company unions. Since mere discontinuance of unfair labor practices does not "set free the employees' impulse to seek the organization which would most effectively represent him,"³² a cessation of the visible forms of interference and support from a labor organization already firmly entrenched with employer assistance is not enough; experience has shown that such organizations remain subservient.³³ Accordingly, the Board has held, and the courts have sustained its view, that it is not sufficient for an employer to discontinue interference in the affairs of a labor organization;³⁴ or that an amendment of the structure of a once-dominated organization be made;³⁵ or that there be a *pro forma* dissolution of the dominated organization, followed by reorganization under the

³⁰ *N. L. R. B. v. Hopwood Retinning Co., Inc.*, 98 F. (2d) 97, 100 (C. C. A. 2); see also cases cited in *National Licorice Co. v. N. L. R. B.*, 309 U. S. 350, at footnote 1.

³¹ This holding was followed without discussion in the parallel case of *American Mfg. Co. v. N. L. R. B.*, 309 U. S. 629, where contracts of the same character were involved.

³² *N. L. R. B. v. Pacific Greyhound Lines, Inc.*, 303 U. S. 272, at pp. 274-275.

³³ See discussion under Section 8 (2), *supra*, at p. 94.

³⁴ *N. L. R. B. v. Griswold Mfg. Co.*, 106 F. (2d) 713 (C. C. A. 3); *H. J. Heinz Co. v. N. L. R. B.*, 110 F. (2d) 843 (C. C. A. 6), affirmed, 61 S. Ct. 320.

³⁵ *N. L. R. B. v. Newport News Shipbuilding & Dry Dock Co.*, 308 U. S. 241; *N. L. R. B. v. H. E. Fletcher Co.*, 105 F. (2d) 459 (C. C. A. 1), certiorari denied. 309 U. S. 678.

same leadership.³⁶ Disestablishment must be complete, unconditional and permanent.³⁷

Effect of a shift of majority after a refusal to bargain.—Enforcement of Board orders to bargain has frequently been resisted upon the ground that the union had lost or might have lost, its majority after the employer's refusal to bargain with it. Commonly, although not always, the beneficiary of the shift of representation is a company-sponsored organization. The Board's view has been that such change of majority status must be presumed to be attributable to the employer's unfair labor practices; that the employer should not be permitted to take the benefit of his own wrong; and that the Act otherwise is rendered unworkable by successive claims of loss of majority. The circuit courts have uniformly approved the Board's position during this year,³⁸ and where the record itself shows that the loss was due to unfair labor practices, the Supreme Court held during the year that "unfair labor practices of the respondent cannot operate to change the bargaining representative previously selected by the untrammelled will of the majority." *N. L. R. B. v. Bradford Dyeing Ass'n*, 310 U. S. 318, 340.

Effect upon reinstatement orders of misconduct by strikers.—A number of decisions rendered during the past year have aided in defining the implications of the *Fansteel* decision. It appears now to be established that while serious misconduct by an employee may bar reinstatement,³⁹ minor misconduct such as may commonly occur in the course of a strike will not do so.⁴⁰ Furthermore, no employee should be held accountable in this respect for actions which he did not authorize or in which he did not himself participate.⁴¹

Other Remedial Action.—In addition to the questions reviewed above, which may be said to have been definitely settled, a number of important issues have been presented to the courts during the past year but have met with a conflict of opinion among the various cir-

³⁶ *International Ass'n of Machinists v. N. L. R. B.*, 110 F. (2d) 29 (App. D. C.), affirmed, 311 U. S. 72; *Republic Steel Corp. v. N. L. R. B.*, 107 F. (2d) 472 (C. C. A. 3), certiorari denied, 309 U. S. 684, upon rehearing, Board order modified as to work relief provisions only, 311 U. S. 7; *Union Draven Steel Co. v. N. L. R. B.*, 109 F. (2d) 587 (C. C. A. 3); *N. L. R. B. v. Bronco Paper Mill Co.*, 108 F. (2d) 867 (C. C. A. 5), certiorari denied, 310 U. S. 651; *Westinghouse Electric & Mfg. Co. v. N. L. R. B.*, 112 F. (2d) 657 (C. C. A. 2), certiorari granted, 61 S. Ct. 135; *N. L. R. B. v. J. Greenebaum Tanning Co.*, 110 F. (2d) 984 (C. C. A. 7), certiorari denied, 61 S. Ct. 18; *Continental Oil Co. v. N. L. R. B.*, 113 F. (2d) 473 (C. C. A. 10), certiorari granted as to other issues, 61 S. Ct. 72; *N. L. R. B. v. Swift & Co.*, 108 F. (2d) 988 (C. C. A. 7); *Kansas City Power & Light Co. v. N. L. R. B.*, 111 F. (2d) 340 (C. C. A. 8).

³⁷ In a few instances Circuit Courts of Appeals have overruled Board orders requiring the disestablishment of successor organizations. In each, this result was reached because the courts believed, contrary to the Board's finding, that the predecessors, company sponsored organizations, had in fact been definitively disestablished with no carry-over of coercive effect to the new ones. *L. Greif & Bros., Inc. v. N. L. R. B.*, 108 F. (2d) 551 (C. C. A. 4); *Hink-Bell Co. v. N. L. R. B.*, 110 F. (2d) 506 (C. C. A. 7), since reversed, 61 S. Ct. 358; *Lumber Oil & Refining Co. v. N. L. R. B.*, 113 F. (2d) 85 (C. C. A. 5); *Magnolia Petroleum Co. v. N. L. R. B.*, 112 F. (2d) 545 (C. C. A. 5).

³⁸ *Continental Oil Co. v. N. L. R. B.*, 113 F. (2d) 473 (C. C. A. 10), certiorari granted as to other issues, 61 S. Ct. 72; *Bussmann Mfg. Co. v. N. L. R. B.*, 111 F. (2d) 783 (C. C. A. 8); *N. L. R. B. v. Highland Park Mfg. Co.*, 110 F. (2d) 632 (C. C. A. 4); *N. L. R. B. v. Somerset Shoe Co.*, 111 F. (2d) 681 (C. C. A. 1); *International Ass'n of Machinists v. N. L. R. B.*, 110 F. (2d) 29 (App. D. C.), affirmed, 311 U. S. 72.

³⁹ *McNeely & Price Co. v. N. L. R. B.*, 106 F. (2d) 878 (C. C. A. 3); *Republic Steel Corp. v. N. L. R. B.*, 107 F. (2d) 472 (C. C. A. 3), certiorari denied, 309 U. S. 684, upon rehearing, Board order modified as to work relief provisions only, 61 S. Ct. 77; see discussion *supra* at pp. 101-102.

⁴⁰ *American Mfg. Co. v. N. L. R. B.*, 309 U. S. 629; *Republic Steel Corp. v. N. L. R. B.*, 107 F. (2d) 472 (C. C. A. 3), certiorari denied, 309 U. S. 684, upon rehearing, Board order modified as to work relief provisions only, 311 U. S. 7.

⁴¹ *Republic Steel Corp. v. N. L. R. B.*, 107 F. (2d) 472 (C. C. A. 3), certiorari denied, 309 U. S. 684, upon rehearing, Board order modified as to work relief provisions only, 61 S. Ct. 77.

cuits. Among the more important are the power of the Board to require, as affirmative relief in a case of refusal to bargain, that agreements reached between the parties be embodied in a signed writing;⁴² and whether the Board, in ordering reimbursement of wages lost by an employee, may provide that monies received from a work relief agency be deducted and turned over by the employer to the appropriate governmental fiscal agency.⁴³

PROCEDURE BEFORE THE BOARD

There were numerous court decisions during the past year upon procedural points in the initiation and hearing of proceedings before the Board. The outstanding decision was one of the United States Supreme Court upon the question of proper parties in unfair labor practice proceedings under the act. *National Licorice Co. v. N. L. R. B.*, 309 U. S. 350. The precise point decided by the Supreme Court in this case was that the Board is empowered to find that certain contracts executed with individual employees were made in violation of the Act and to order the employer not to enforce them, despite the fact that the individual employees were not given notice of or made parties to the proceeding before the Board. In reaching this conclusion, the court announced that proceedings under the Act were for the protection, not of private, but of public rights, and that there was little room in such a proceeding for application of the rules governing joinder of parties in litigation determining private rights. The apparent effect of the decision is that no person other than the employer is a necessary party to an unfair labor practice case so long as the Board's order is directed only to the employer and requires him to take action which is appropriate to vindicate the public right protected by the Act but violated by the unfair labor practices. The decision clearly reaffirms the previous decisions of the Supreme Court holding that an employer may be ordered to disestablish a company-dominated or interfered with organization despite the absence of notice and hearing to it.⁴⁴ Similarly, the Second Circuit has held that persons hired by the employer to fill the places of strikers entitled to reinstatement, are not entitled to notice and hearing in the unfair labor practice proceeding leading to the reinstatement order.⁴⁵

⁴² This question is distinct from the question whether a refusal to enter into a signed written agreement is itself a violation of the Act, *supra*, p. 99. The Board's power to require, by way of affirmative relief, a written agreement covering matters agreed upon by the parties has been sustained in *N. L. R. B. v. Highland Park Mfg. Co.*, 110 F. (2d) 632 (C. C. A. 4); *H. J. Heinz Co. v. N. L. R. B.*, 110 F. (2d) 843 (C. C. A. 6), since affirmed in 61 S. Ct. 320; *N. L. R. B. v. Sunshine Mining Co.*, 110 F. (2d) 780 (C. C. A. 9), certiorari granted January 13, 1941; *Art Metal Construction Co. v. N. L. R. B.*, 110 F. (2d) 148 (C. C. A. 2); cf. *M. H. Ritzwoller Co. v. N. L. R. B.* 114 F. (2d) 432 (C. C. A. 7).

⁴³ The Supreme Court has subsequently held such provisions inappropriate to effectuate the purposes of the Act. *Republic Steel Corp. v. N. L. R. B.*, 311 U. S. 7.

⁴⁴ *N. L. R. B. v. Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261; *N. L. R. B. v. Pacific Greyhound Lines, Inc.*, 303 U. S. 272. Accord: *Republic Steel Corp. v. N. L. R. B.*, 107 F. (2d) 472 (C. C. A. 3), certiorari denied, 309 U. S. 684 upon rehearing, Board order modified as to work relief provisions only, 311 U. S. 7; *Inland Steel Co. v. N. L. R. B.*, 109 F. (2d) 9 (C. C. A. 7); *American Mfg. Co. v. N. L. R. B.*, 309 U. S. 629. See Fourth Annual Report, pp. 132-133. The Ninth Circuit Court of Appeals, however, has declined to regard these decisions of the United States Supreme Court as controlling. In *N. L. R. B. v. Sterling Electric Motors*, 112 F. (2d) 63, decided subsequent to the *National Licorice* case, that court, Judge Healy dissenting, set aside a disestablishment order of the Board because the disestablished organization had not been made a party to the proceedings. Upon the Board's filing a petition for writ of certiorari and a motion to reverse this order, the majority of the circuit court, on September 13, 1940, took the unprecedented action of vacating and setting aside its outstanding order although the opinion was not withdrawn.—In an apparent attempt, the dissenting judge said to defeat the appellate jurisdiction of the Supreme Court. (114 F. (2d) 738). The Board thereafter withdrew its petition for certiorari, 61 S. Ct. 69.

⁴⁵ *N. L. R. B. v. American Mfg. Co.*, 106 F. (2) 61 (C. C. A. 2), affirmed, 309 U. S. 629.

Only brief references need be made to certain other procedural points passed upon during the year. It has been held that while the Board may not issue its complaint until a charge has been filed with it by some third person,⁴⁶ the charge may be in general language where the Board's complaint is sufficiently specific,⁴⁷ or where all pertinent facts are brought out at the hearing without prejudicial surprise.⁴⁸ It has likewise been held that unfair labor practices which developed subsequent to those stated in the charge may be found by the Board where related to those stated in the charge.⁴⁹ In each of the foregoing situations, the principal position of the Board has been that a charge is not in the nature of a pleading at all, since it is the Board's complaint which initiates the unfair labor practice proceeding and states the issues to be heard, and that actually the requirement that a charge be filed was intended by Congress only to prevent the Board from initiating unfair labor practice proceedings upon its own motion. In the Board's view, therefore, after a charge is filed, it is free to allege in its complaint what appear from its investigation to be the unfair labor practices committed, whether they are more or less than or differ from, the matters brought to its attention in the charge. This position is further supported by the obvious fact that many charges are filed by laymen or by organizations not having the benefit of expert legal advice, whom the Act does not contemplate shall make the intensive investigation which the agents of the Board must necessarily undertake. In the decisions referred to above the courts have found it unnecessary to pass upon this broad view since the objections raised could be decided favorably to the Board on narrower grounds; the Board has no doubt, however, of the correctness of its broad view.⁵⁰

With respect to complaints issued by the Board, the courts have held that the sole function of a complaint is to inform the employer of the unfair labor practices in issue and to give him a plain statement of the matters claimed to constitute them; accordingly, the complaint need not be as particular as a common law pleading, and neither the detailed facts of alleged violations nor the relief sought need be set forth in it.⁵¹ Similarly, the courts will disregard minor variances between the complaint and the findings, and amendments of the complaint to conform to the proof are proper.⁵²

With respect to hearings for the taking of evidence before trial examiners, the decisions of the courts during the past year recognize the right of trial examiners to engage in the examination of witnesses to bring out all relevant facts,⁵³ to obtain instructions from the Board on troublesome questions arising from the hearing⁵⁴ and to moderate

⁴⁶ *N. L. R. B. v. Piqua Munising Wood Products Co.*, 109 F. (2d) 552 (C. C. A. 6).

⁴⁷ *Consumers Power Co. v. N. L. R. B.*, 113 F. (2d) 38 (C. C. A. 6).

⁴⁸ *Fort Wayne Corrugated Paper Co. v. N. L. R. B.*, 111 F. (2d) 869 (C. C. A. 7).

⁴⁹ *National Lignite case*, *supra*.

⁵⁰ *Cf. Federal Trade Commission v. Klesner*, 280 U. S. 19.

⁵¹ *Consumers Power Co. v. N. L. R. B.*, 113 F. (2d) 38 (C. C. A. 6); *N. L. R. B. v. Piqua Munising Wood Products Co.*, 109 F. (2d) 552 (C. C. A. 6); *Republic Steel Corp. v. N. L. R. B.*, 107 F. (2d) 472 (C. C. A. 3), certiorari denied, 309 U. S. 684, upon rehearing, Board order modified as to work relief provisions only, 311 U. S. 7.

⁵² *M. H. Ritzwoller Co. v. N. L. R. B.*, 114 F. (2d) 432 (C. C. A. 7).

⁵³ *Cupples Co. Mfrs. v. N. L. R. B.*, 106 F. (2d) 100 (C. C. A. 8); *Arcadia Hosiery Co. v. N. L. R. B.*, 112 F. (2d) 326 (C. C. A. 3), certiorari denied, 61 S. Ct. 38. *Cf. Inland Steel Co. v. N. L. R. B.*, 109 F. (2d) 9 (C. C. A. 7), in which the court predicated its conclusion that the employer had not received a fair hearing in part upon its view that the trial examiner had engaged in undue and disproportionate cross-examination.

⁵⁴ *Consumers Power Co. v. N. L. R. B.*, 113 F. (2d) 38 (C. C. A. 6).

the hearing in such respects as determining the length of continuances.⁵⁵ There have also been decisions giving effect to the statutory provision that the regular rules of evidence do not control proceedings under the act,⁵⁶ and approving the admissibility and relevance of evidence upon events predating the act but having some relation to subsequent unfair labor practices.⁵⁷

PROCEDURE ON ENFORCEMENT AND REVIEW

Findings of the Board as to the facts, if supported by evidence, are conclusive upon the reviewing courts.⁵⁸ During the past year, the Supreme Court has held that it is essential to the orderly disposition of cases arising before the Board, and to administrative law generally, that full respect be paid to this Congressional mandate that the reviewing court may not substitute its judgment on disputed facts for that of the Board. *N. L. R. B. v. Waterman Steamship Corp.*, 309 U. S. 206, rehearing denied, 309 U. S. 696. In a similar case in which the Circuit Court failed to give effect to this line of demarcation between its functions and those of the Board, the Supreme Court announced that if the Board has acted within the compass of the authority given it by Congress, a like obedience to the statutory division of responsibility is required to reviewing courts. *N. L. R. B. v. Bradford Dyeing Ass'n*, 310 U. S. 318. In line with these fundamental principles, decisions during the year reemphasize the fact that on a review of its findings and order in a case, the Board is entitled to have the evidence and all reasonable inferences thereupon viewed in the light most favorable to its conclusions; that credibility of witnesses,⁵⁹ the inferences of fact⁶⁰ and the weight to be given the testimony are within the sole province of the Board;⁶¹ that the reviewing court's view of conflicting evidence is immaterial;⁶² and that sharp conflicts in the testimony do not permit a reversal of Board findings⁶³ if they are

⁵⁵ *M. H. Ritzwoller Co. v. N. L. R. B.*, 114 F. (2d) 432 (C. C. A. 7).

⁵⁶ *International Ass'n of Machinists v. N. L. R. B.*, 110 F. (2d) 29 (App. D. C.), affirmed 311 U. S. 72; *Union Drawn Steel Co. v. N. L. R. B.*, 109 F. (2d) 587 (C. C. A. 3); *Hartsell Mills Co. v. N. L. R. B.*, 111 F. (2d) 291 (C. C. A. 4). Cf. *Empire Furniture Corp. v. N. L. R. B.*, 107 F. (2d) 92 (C. C. A. 6); *C. G. Conn. Ltd. v. N. L. R. B.*, 108 F. (2d) 390 (C. C. A. 7).

⁵⁷ *International Ass'n of Machinists v. N. L. R. B.*, 110 F. (2d) 29 (App. D. C.), affirmed, 311 U. S. 72; *N. L. R. B. v. H. E. Fletcher Co.*, 108 F. (2d) 459 (C. C. A. 1), certiorari denied, 309 U. S. 678; *N. L. R. B. v. Boss Mfg. Co.*, 107 F. (2d) 574 (C. C. A. 7); *Titan Metal Mfg. Co. v. N. L. R. B.*, 106 F. (2d) 254 (C. C. A. 3), certiorari denied, 308 U. S. 615; *Republic Steel Corp. v. N. L. R. B.*, 107 F. (2d) 472 (C. C. A. 3), certiorari denied, 309 U. S. 684, upon rehearing. Board order modified as to work provisions only, 311 U. S. 7; *Fort Wayne Corrugated Paper Co. v. N. L. R. B.*, 111 F. (2d) 869 (C. C. A. 7).

⁵⁸ Section 10 (e) of the act.

⁵⁹ *N. L. R. B. v. Piqua Munising Wood Products Co.*, 109 F. (2d) 552 (C. C. A. 6); *Cupples Co. Mfrs. v. N. L. R. B.*, 106 F. (2d) 100 (C. C. A. 8); *International Ass'n of Machinists v. N. L. R. B.*, 110 F. (2d) 29 (App. D. C.), affirmed, 311 U. S. 72.

⁶⁰ *N. L. R. B. v. Falk Corp.*, 308 U. S. 453; *N. L. R. B. v. Bradford Dyeing Ass'n*, 310 U. S. 318; *N. L. R. B. v. Swanik Products, Inc.*, 108 F. (2d) 872 (C. C. A. 3); *Montgomery Ward & Co. v. N. L. R. B.*, 107 F. (2d) 555 (C. C. A. 7).

⁶¹ *Cupples Co. Mfrs. v. N. L. R. B.*, 106 F. (2d) 100 (C. C. A. 8).

⁶² *N. L. R. B. v. Waterman Steamship Corp.*, 309 U. S. 206, rehearing denied, 309 U. S. 696.

⁶³ *Southern Colorado Power Co. v. N. L. R. B.*, 111 F. (2d) 539 (C. C. A. 10); *N. L. R. B. v. Griswold Mfg. Co.*, 106 F. (2d) 713 (C. C. A. 3); *Montgomery Ward & Co. v. N. L. R. B.*, 107 F. (2d) 555 (C. C. A. 7); *Republic Steel Corp. v. N. L. R. B.*, 107 F. (2d) 472 (C. C. A. 3), certiorari denied, 309 U. S. 684, upon rehearing, Board order modified as to work provisions only, 311 U. S. 7.

supported⁶⁴ by substantial evidence⁶⁵ on which reasonable minds would differ,⁶⁶ or which would not warrant a directed verdict had the trial been to a jury at common law.⁶⁷

Other miscellaneous procedural points passed on during the year are that objections not raised before the Board will not be heard in the reviewing court;⁶⁸ that enforcement may not be refused on grounds not raised before the Board;⁶⁹ that unsupported charges of an unfair hearing and lack of due process will be given no weight;⁷⁰ and that where no objections are raised to a provision of a Board order enforcement will be granted.⁷¹

During the year the Supreme Court also held that the Act expressly deprives a reviewing court of power to consider facts brought to its attention outside of the certified record, *N. L. R. B. v. Newport News Shipbuilding & Dry Dock Co.*, 308 U. S. 241,⁷² since Sections 10 (e) and (f) of the Act provide an appropriate method for adding facts to the record in proper cases. *Ibid.*⁷³ And where at final hearings before the Board are necessary, the courts during the year have ordered remands for such purposes.⁷⁴

⁶⁴ *N. L. R. B. v. Griswold Mfg. Co.*, 106 F. (2d) 713 (C. C. A. 3); *N. L. R. B. v. Planters Mfg. Co., Inc.*, 105 F. (2d) 750 (C. C. A. 4); *Cupples Co. Mfrs. v. N. L. R. B.*, 106 F. (2d) 100 (C. C. A. 8).

⁶⁵ *N. L. R. B. v. Swank Products, Inc.*, 108 F. (2d) 872 (C. C. A. 3); *Montgomery Ward & Co. v. N. L. R. B.*, 107 F. (2d) 555 (C. C. A. 7); *Republic Steel Corp. v. N. L. R. B.*, 107 F. (2d) 472 (C. C. A. 3), certiorari denied, 309 U. S. 684, upon rehearing. Board order modified as to work provisions only, 311 U. S. 7; *Cupples Co. Mfrs. v. N. L. R. B.*, 106 F. (2d) 100 (C. C. A. 8); *N. L. R. B. v. Boss Mfg. Co.*, 107 F. (2d) 574 (C. C. A. 7); *Empire Furniture Corp. v. N. L. R. B.*, 107 F. (2d) 92 (C. C. A. 6); *N. L. R. B. v. Planters Mfg. Co., Inc.*, 105 F. (2d) 750 (C. C. A. 4); *N. L. R. B. v. National Casket Co., Inc.*, 107 F. (2d) 992 (C. C. A. 2).

⁶⁶ *International Ass'n of Machinists v. N. L. R. B.*, 110 F. (2d) 29 (App. D. C.), affirmed, 311 U. S. 72; *Empire Furniture Corp. v. N. L. R. B.*, 107 F. (2d) 92 (C. C. A. 6); *Montgomery Ward & Co. v. N. L. R. B.*, 107 F. (2d) 555 (C. C. A. 7); *Cupples Co. Mfrs. v. N. L. R. B.*, 106 F. (2d) 100 (C. C. A. 8).

⁶⁷ *N. L. R. B. v. Asheville Hosiery Co.*, 108 F. (2d) 288 (C. C. A. 4); *Montgomery Ward & Co. v. N. L. R. B.*, 107 F. (2d) 555 (C. C. A. 7); *N. L. R. B. v. Boss Mfg. Co.*, 107 F. (2d) 574 (C. C. A. 7); *Cupples Co. Mfrs. v. N. L. R. B.*, 106 F. (2d) 100 (C. C. A. 8).

⁶⁸ *N. L. R. B. v. Sunshine Mining Co.*, 110 F. (2d) 780 (C. C. A. 9), certiorari denied January 13, 1941.

⁶⁹ *N. L. R. B. v. Bradford Dyeing Ass'n*, 310 U. S. 318.

⁷⁰ *Continental Box Co., Inc. v. N. L. R. B.*, 113 F. (2d) 93 (C. C. A. 5); *North Whittier Heights Citrus Ass'n v. N. L. R. B.*, 109 F. (2d) 76 (C. C. A. 9), certiorari denied, 310 U. S. 632, rehearing denied, 61 S. Ct. 54.

⁷¹ *Link-Belt Co. v. N. L. R. B.*, 110 F. (2d) 506 (C. C. A. 7), since reversed on other grounds, 61 S. Ct. 358.

⁷² *N. L. R. B. v. Sunshine Mining Co.*, 110 F. (2d) 780 (C. C. A. 9), certiorari denied January 13, 1941; *N. L. R. B. v. Highland Park Mfg. Co.*, 110 F. (2d) 632 (C. C. A. 4); *Inland Steel Co. v. N. L. R. B.*, 109 F. (2d) 9 (C. C. A. 7); *International Ass'n of Machinists v. N. L. R. B.*, 110 F. (2d) 29 (App. D. C.), affirmed, 311 U. S. 72; *cf. Bussman Mfg. Co. v. N. L. R. B.*, 111 F. (2d) 783 (C. C. A. 8).

⁷³ *Republic Steel Corp. v. N. L. R. B.*, 107 F. (2d) 472 (C. C. A. 3), certiorari denied, 309 U. S. 684 upon rehearing. Board order modified as to work relief provisions only, 311 U. S. 7; *Cupples Co. Mfrs. v. N. L. R. B.*, 106 F. (2d) 100 (C. C. A. 8); *N. L. R. B. v. Boss Mfg. Co.*, 107 F. (2d) 574 (C. C. A. 7); *N. L. R. B. v. Sunshine Mining Co.*, 110 F. (2d) 780 (C. C. A. 9) certiorari denied January 13, 1941; *International Ass'n of Machinists v. N. L. R. B.*, 110 F. (2d) 29 (App. D. C.), affirmed, 311 U. S. 72.

⁷⁴ See *N. L. R. B. v. National Casket Co., Inc.*, 107 F. (2d) 992 (C. C. A. 2); *N. L. R. B. v. Sterling Electric Motors*, 112 F. (2d) 63 (C. C. A. 9); *Botany Worsted Mills v. N. L. R. B.*, 106 F. (2d) 263 (C. C. A. 3); *Mooresville Cotton Mills v. N. L. R. B.*, 97 F. (2d) 959 (C. C. A. 4); *N. L. R. B. v. Cornell Portland Cement Co.*, 108 F. (2d) 198 (C. C. A. 9); *Inland Steel Co. v. N. L. R. B.*, 109 F. (2d) 9 (C. C. A. 7); *N. L. R. B. v. Somerset Shoe Co.*, 111 F. (2d) 681 (C. C. A. 1).

E. SUMMARY OF LITIGATION FOR FISCAL YEAR 1940

I. PROCEEDINGS FOR THE ENFORCEMENT OR REVIEW OF BOARD ORDERS

A. PROCEEDINGS ON THE MERITS

Supreme Court Cases

1. Cases in which the Supreme Court upheld orders of the Board:
 - N. L. R. B. v. Bradford Dyeing Association*, 310 U. S. 318.
 - N. L. R. B. v. The Falk Corp.*, 308 U. S. 453.
 - N. L. R. B. v. Newport News Shipbuilding & Dry Dock Co.*, 308 U. S. 241.
 - N. L. R. B. v. Waterman Steamship Corp.*, 309 U. S. 206.
2. Cases in which the Supreme Court enforced modified orders of the Board:
 - American Mfg. Co. v. N. L. R. B.*, 309 U. S. 629.
 - National Licorice Co. v. N. L. R. B.*, 309 U. S. 350.
3. Cases in which the Supreme Court denied petitions for writs of certiorari to review decisions of circuit courts of appeals enforcing Board orders:
 - N. L. R. B. v. Brown Paper Mill Co.*, 310 U. S. 651.
 - N. L. R. B. v. Crowe Coal Co.*, 308 U. S. 584.
 - Cudahy Packing Co. v. N. L. R. B.*, 308 U. S. 565.
 - N. L. R. B. v. H. E. Fletcher Co.*, 309 U. S. 678.
 - N. L. R. B. v. Good Coal Co.*, 310 U. S. 360.
 - N. L. R. B. v. Louisville Refining Co.*, 308 U. S. 568.
 - North Whittier Heights Citrus Ass'n v. N. L. R. B.*, 310 U. S. 623.¹
 - Republic Steel Corp. v. N. L. R. B.*, 309 U. S. 684.²
 - N. L. R. B. v. Stackpole Carbon Co.*, 308 U. S. 605.
 - Titan Metal Mfg. Co. v. N. L. R. B.*, 308 U. S. 615.
4. Pending cases; see list *d*, infra p. 118.

Circuit Courts of Appeals Cases

1. Circuit court decisions granting enforcement of Board orders.
 - (a) Board orders enforced without modification:
 - N. L. R. B. v. Berkey & Gay Furniture Co.*, 6 L. R. R. 647 (C. C. A. 6).
 - N. L. R. B. v. Brown Paper Mill Co.*, 108 F. (2d) 867 (C. C. A. 5), certiorari denied, 310 U. S. 651.
 - Consumers Power Co. v. N. L. R. B.*, 113 F. (2d) 38 (C. C. A. 6).
 - Continental Box Co., Inc. v. N. L. R. B.*, 113 F. (2d) 93 (C. C. A. 5).
 - N. L. R. B. v. Dahlstrom Metallic Door Co.*, 112 F. (2d) 756 (C. C. A. 2).
 - N. L. R. B. v. Eastern Footwear Corp.*, 112 F. (2d) 716 (C. C. A. 2).
 - N. L. R. B. v. H. E. Fletcher Co.*, 108 F. (2d) 459 (C. C. A. 1), certiorari denied, 309 U. S. 678.
 - N. L. R. B. v. Good Coal Co.*, 110 F. (2d) 501 (C. C. A. 6), certiorari denied, 310 U. S. 360.
 - N. L. R. B. v. The Griswold Mfg. Co.*, 106 F. (2d) 713 (C. C. A. 3).
 - H. J. Heinz Co. v. N. L. R. B.*, 110 F. (2d) 843 (C. C. A. 6).^{2a}
 - N. L. R. B. v. Highland Park Mfg. Co.*, 110 F. (2d) 632 (C. C. A. 4).
 - International Ass'n of Machinists v. N. L. R. B.*, 110 F. (2d) 29 (App. D. C.)³
 - N. L. R. B. v. Lane Cotton Mills*, 111 F. (2d) 814 (C. C. A. 5).⁴
 - Mexia Textile Mills v. N. L. R. B.*, 110 F. (2d) 565 (C. C. A. 5).
 - North Whittier Heights Citrus Ass'n v. N. L. R. B.*, 109 F. (2d) 76 (C. C. A. 9), certiorari denied, 310 U. S. 632.⁵
 - N. L. R. B. v. Piqua Munising Wood Products Co.*, 109 F. (2d) 552 (C. C. A. 6).
 - N. L. R. B. v. Planters Mfg. Co., Inc.*, 105 F. (2d) 750 (C. C. A. 4).
 - Southern Colorado Power Co. v. N. L. R. B.*, 111 F. (2d) 539 (C. C. A. 10).
 - N. L. R. B. v. Sunshine Mining Co.*, 110 F. (2d) 780 (C. C. A. 9).⁶

¹ Rehearing denied, 61 S. Ct. 54.² Upon rehearing Board order modified as to one issue only, 311 U. S. 7.^{2a} Affirmed, 61 S. Ct. 320.³ Affirmed, 311 U. S. 72, rehearing denied, December 9, 1940.⁴ Certiorari dismissed, 61 S. Ct. 316.⁵ Rehearing denied, 61 S. Ct. 54.⁶ Certiorari denied, 61 S. Ct. 54.

- The Texas Company v. N. L. R. B.*, 112 F. (2d) 744 (C. C. A. 5), certiorari denied, 61 S. Ct. 392.
- Titan Metal Mfg. Co. v. N. L. R. B.*, 106 F. (2d) 254 (C. C. A. 3), certiorari denied, 308 U. S. 615.
- N. L. R. B. v. Whittier Mills Co.*, 111 F. (2d) 474 (C. C. A. 5).
- (b) Board orders enforced as modified by circuit court decision:
- N. L. R. B. v. American Mfg. Co.*, 106 F. (2d) 61 (C. C. A. 2) affirmed, 309 U. S. 629.
- Arcadia Hosiery Co. v. N. L. R. B.*, 112 F. (2d) 326 (C. C. A. 3).⁷
- Art Metal Construction Co. v. N. L. R. B.*, 110 F. (2d) 148 (C. C. A. 2).
- N. L. R. B. v. Asheville Hosiery Co.*, 108 F. (2d) 288 (C. C. A. 4).
- N. L. R. B. v. Boss Manufacturing Co.*, 107 F. (2d) 574 (C. C. A. 7).
- Botany Worsted Mills v. N. L. R. B.*, 106 F. (2d) 263 (C. C. A. 3).
- Bussmann Mfg. Co. v. N. L. R. B.*, 111 F. (2d) 783 (C. C. A. 8).
- Continental Oil Co. v. N. L. R. B.*, 113 F. (2) 473 (C. C. A. 10).⁸
- Cupples Company, Mfgs. v. N. L. R. B.*, 106 F. (2d) 100 (C. C. A. 8).
- N. L. R. B. v. Express Publishing Co.*, 111 F. (2d) 588 (C. C. A. 5).⁹
- Fort Wayne Corrugated Paper Co. v. N. L. R. B.*, 111 F. (2d) 869 (C. C. A. 7).
- N. L. R. B. v. Goshen Rubber Mfg. Co.*, 110 F. (2d) 432 (C. C. A. 7).
- N. L. R. B. v. J. Greenbaum Tanning Co.*, 110 F. (2d) 984 (C. C. A. 7).¹⁰
- Hartsell Mills Co. v. N. L. R. B.*, 111 F. (2d) 291 (C. C. A. 4).
- Humble Oil & Refining Co. v. N. L. R. B.*, 113 F. (2d) 85 (C. C. A. 5).
- Kansas City Power & Light Co. v. N. L. R. B.*, 111 F. (2d) 340 (C. C. A. 8).
- N. L. R. B. v. Leviton Mfg. Co.*, 111 F. (2d) 619 (C. C. A. 2).
- Link-Belt Co. v. N. L. R. B.*, 110 F. (2d) 506 (C. C. A. 7).¹¹
- McNeely & Price Co. v. N. L. R. B.*, 106 F. (2d) 878 (C. C. A. 3).
- Montgomery Ward & Co. v. N. L. R. B.*, 107 F. (2d) 555 (C. C. A. 7).
- Mooreville Cotton Mills v. N. L. R. B.*, 110 F. (2d) 179 (C. C. A. 4).
- N. L. R. B. v. National Casket Co., Inc.*, 107 F. (2d) 992 (C. C. A. 2).
- N. L. R. B. v. Norfolk Shipbuilding & Drydock Corp.*, 109 F. (2d) 128 (C. C. A. 4).
- Republic Steel Corp. v. N. L. R. B.*, 107 F. (2d) 472 (C. C. A. 3), certiorari denied, 309 U. S. 684.¹²
- M. H. Ritzwoller Co. v. N. L. R. B.*, 114 F. (2d) 432 (C. C. A. 7).
- N. L. R. B. v. Somerset Shoe Co.*, 111 F. (2d) 681 (C. C. A. 1).
- N. L. R. B. v. Swift & Co.*, 108 F. (2d) 988 (C. C. A. 7).
- N. L. R. B. v. Tovrea Packing Co.*, 111 F. (2d) 626 (C. C. A. 9).¹³
- Union Drawn Steel Co. v. N. L. R. B.*, 109 F. (2d) 587 (C. C. A. 3).
- Westinghouse Electric & Mfg. Co. v. N. L. R. B.*, 112 F. (2d) 657 (C. C. A. 2).¹⁴
2. Circuit Court decisions denying enforcement of Board orders:
- N. L. R. B. v. Bradford Dyeing Ass'n*, 106 F. (2d) 119 (C. C. A. 1), reversed, 310 U. S. 318.
- C. G. Conn, Ltd., v. N. L. R. B.*, 108 F. (2d) 390 (C. C. A. 7).
- N. L. R. B. v. Cowell Portland Cement Co.*, 108 F. (2d) 198 (C. C. A. 9).
- Empire Furniture Corp. v. N. L. R. B.*, 107 F. (2d) 92 (C. C. A. 6).
- L. Greif & Bro., Inc. v. N. L. R. B.*, 108 F. (2d) 551 (C. C. A. 4).
- Inland Steel Co. v. N. L. R. B.*, 109 F. (2d) 9 (C. C. A. 7).
- Magnolia Petroleum Co. v. N. L. R. B.*, 112 F. (2d) 545 (C. C. A. 5).
- Midland Steel Products Co. v. N. L. R. B.*, 113 F. (2d) 800 (C. C. A. 6).
- N. L. R. B. v. J. S. Popper, Inc.*, 113 F. (2d) 602 (C. C. A. 3).
- N. L. R. B. v. Sterling Electric Motors*, 109 F. (2d) 194 (C. C. A. 9), upon rehearing affirmed, 112 F. (2d) 63.¹⁵
- N. L. R. B. v. Swank Products, Inc.*, 108 F. (2d) 872 (C. C. A. 3).

⁷ Certiorari denied, 61 S. Ct. 38.

⁸ Certiorari granted as to one issue, 61 S. Ct. 72.

⁹ Certiorari granted, 61 S. Ct. 134.

¹⁰ Certiorari denied, 61 S. Ct. 18.

¹¹ Reversed, 61 S. Ct. 358.

¹² Upon rehearing Board order modified as to one issue only, 311 U. S. 7.

¹³ Certiorari denied, 61 S. Ct. 28.

¹⁴ Certiorari granted, 61 S. Ct. 135.

¹⁵ Certiorari filed, July 16, 1940; decision below vacated but opinion not withdrawn, 114 F. (2d) 738; leave to withdraw petition for certiorari granted, 61 S. Ct. 69.

B. CONSENT DECREES

First Circuit

- Boston Leather Specialties, Inc.*, entered May 27, 1940, enforcing 23 N. L. R. B., No. 104.
Jacob Finkelstein & Sons, entered August 2, 1939, enforcing 8 N. L. R. B. 1051.
Joseph Freeman Shoe Co., Inc., entered August 2, 1939, enforcing 12 N. L. R. B. 720.
Harris Woolen Mills, entered November 7, 1939, enforcing as modified 11 N. L. R. B. 964.
Louis Shoe Co., Inc., entered January 23, 1940, enforcing 17 N. L. R. B. 1065.
Narragansett Plush Company, Inc., entered May 9, 1940, enforcing 22 N. L. R. B., No. 50.
Patriarca Store Fixtures, Inc., entered August 2, 1939, enforcing as modified 12 N. L. R. B. 93.
Somersworth Shoe Co., Inc., entered August 2, 1939, enforcing 12 N. L. R. B. 634.
Springfield Photo Mount Co., entered August 2, 1939, enforcing 13 N. L. R. B. 22.

Second Circuit

- American Numbering Machine Co.*, entered May 7, 1940, enforcing as modified 10 N. L. R. B. 536.
American White Cross Laboratories, Inc., entered June 17, 1940, enforcing 24 N. L. R. B., No. 28.
Bendythe Corporation (see *Malina Company, Inc.*).
Best Coat & Apron Mfg. Co., Inc., entered July 5, 1939, enforcing 12 N. L. R. B. 111.
Biltwell Umbrella Company, entered January 24, 1940, enforcing 19 N. L. R. B., No. 10.
Brodhaven Mfg. Co., Inc., entered June 3, 1940, enforcing 23 N. L. R. B., No. 98.
Brooklyn Yarn Dye Co., Inc., entered August 30, 1939, enforcing 14 N. L. R. B. 726.
Cayuga Lincn & Cotton Mills, Inc., entered February 27, 1940, enforcing 20 N. L. R. B., No. 30.
Centre Brass Works, Inc., entered September 21, 1939, enforcing as modified 10 N. L. R. B. 1060.
Endicott Johnson Corporation, entered September 22, 1939, enforcing 15 N. L. R. B. 77.
The Fanny Farmer Candy Shops, Inc., entered April 12, 1940, enforcing as modified 10 N. L. R. B. 288.
J. P. Fischer, Inc., entered April 20, 1940, enforcing 21 N. L. R. B., No. 108.
Imperial Reed & Fibre Co., entered May 9, 1940, enforcing 23 N. L. R. B., No. 45.
The Jacobs Bros. Co., Inc., entered October 3, 1939, enforcing as modified 5 N. L. R. B. 620.
David E. Kennedy, Inc., entered April 26, 1940, enforcing as modified 6 N. L. R. B. 699.
Kirkham Engineering & Manufacturing Corp., entered February 14, 1940, enforcing 19 N. L. R. B., No. 2.
R. Kolodney & Co., Inc., entered November 21, 1939, enforcing 16 N. L. R. B. 918.
Luckenbach Steamship Company, Inc., entered January 22, 1940, enforcing 19 N. L. R. B., No. 15.
Malina Company, Incorporated, entered September 22, 1939, enforcing 15 N. L. R. B. 187.
National Herald, Inc., entered May 9, 1940, enforcing 23 N. L. R. B., No. 31.
National Meter Co., entered March 22, 1940, enforcing as modified 11 N. L. R. B. 320.

- National Motor Rebuilding Corp.*, entered June 8, 1940, enforcing as modified 19 N. L. R. B., No. 56.
- Paramount Broadcasting Corp.*, entered July 5, 1939, enforcing 13 N. L. R. B. 59.
- Rabhor Company, Inc.*, entered January 12, 1940, enforcing as modified 1 N. L. R. B. 470.
- Rushmore Paper Mills, Inc.*, entered September 8, 1939, enforcing 14 N. L. R. B. 512.
- Scandore Paper Box Co. Inc.*, entered November 16, 1939, enforcing as modified 4 N. L. R. B. 910.
- Paul Siewers & McKay*, entered October 16, 1939, enforcing 15 N. L. R. B. 794.
- L. C. Smith & Corona Typewriters, Inc.*, entered October 3, 1939, enforcing as modified, 11 N. L. R. B. 1382.
- Superior Reed & Rattan Furniture Co.*, entered January 10, 1940, enforcing 17 N. L. R. B. 440.
- Superior Table Novelties Corp.*, entered January 24, 1940, enforcing 17 N. L. R. B. 689.
- Triple Cities Civic and Workers Committee* (see *Endicott Johnson Corporation*).
- A. Werman & Sons, Inc.*, entered October 14, 1939, enforcing 15 N. L. R. B. 179.

Third Circuit

- American Brake Shoe & Foundry Co.*, entered July 5, 1939, enforcing 12 N. L. R. B. 1047.
- Continental Upholstered Furniture Company*, entered October 2, 1939, enforcing 14 N. L. R. B. 451.
- Israel G. Cutler, Nathan P. Cutler, Charles Cutler, Louis Cutler* (see *Continental Upholstered Furniture Company*).
- Florence Pipe Foundry & Machine Co.*, entered May 9, 1940, enforcing as modified 19 N. L. R. B., No. 13.
- Hatfield Clothing Co.*, entered July 17, 1939, enforcing 10 N. L. R. B. 1374.
- Holly Hosiery Mills*, entered February 5, 1940, enforcing 18 N. L. R. B., No. 30.
- Jersey Maid Corporation*, entered May 9, 1940, enforcing 21 N. L. R. B., No. 101.
- David Kahn, Inc.*, entered January 20, 1940, enforcing 14 N. L. R. B. 299.
- LaFavorite Rubber Mfg. Co., Inc.*, entered March 9, 1940, enforcing 17 N. L. R. B. 955.
- La Parce Undergarment Company, Inc.*, entered May 9, 1940, enforcing as modified 17 N. L. R. B. 166.
- Lycorning Hosiery Mills* (see *Park Hosiery Dyeing & Finishing Company, Inc.*).
- Mayfair Handbags and Mayfair Leather Goods Co., Inc.*, entered December 4, 1939, enforcing 17 N. L. R. B. 177.
- Meadville Malleable Iron Co.*, entered November 20, 1939, enforcing 9 N. L. R. B. 845.
- Medford Upholstery, Inc.*, (see *Continental Upholstered Furniture Company*).
- Mercer Textile Mills, Inc.*, entered February 5, 1940, enforcing 17 N. L. R. B. 1011.
- Montgomery Dyeing Company, Inc.*, (see *Z. B. Yarn Mills, Inc.*).
- National Steel Equipment Company*, entered March 1, 1940, enforcing 19 N. L. R. B., No. 98.
- North River Yarn Dyers*, entered November 6, 1939, enforcing 15 N. L. R. B. 831.
- Park Hosiery Dyeing & Finishing Company, Inc.*, entered January 18, 1940, enforcing 17 N. L. R. B. 10.
- Pennsylvania Furnace & Iron Company*, entered July 5, 1939, enforcing 13 N. L. R. B. 49.
- Rea Textile*, entered September 19, 1939, enforcing 15 N. L. R. B. 170.
- Harry Schwartz Yarn Co., Inc.*, entered June 29, 1940, enforcing as modified 12 N. L. R. B. 1139.
- Standard Handbags, Inc.* (see *Standard Novelties, Inc.*).

- Standard Novelties, Inc.*, entered May 9, 1940, enforcing 22 N. L. R. B. No. 48.
Sunshine Wet Wash Laundry, Inc., entered March 9, 1940, enforcing 19 N. L. R. B., No. 82.
Thermoid Company, entered June 21, 1940, enforcing 24 N. L. R. B., No. 11.
Tidewater Iron & Steel Co., Inc., entered September 19, 1939, enforcing as modified 9 N. L. R. B. 624.
P. Wall Manufacturing Supply Co., entered October 30, 1939, enforcing 16 N. L. R. B. 6.
Z. B. Yarn Mills, Inc., entered October 31, 1939, enforcing 14 N. L. R. B. 94.

Fourth Circuit

- Atlantic States Motor Lines*, entered September 19, 1939, enforcing 14 N. L. R. B. 1458.
Dunbar Glass Corporation, entered July 21, 1939, enforcing as modified 6 N. L. R. B. 789.
Jac. Feinberg Hosiery Mills, Inc., entered May 31, 1940, enforcing as modified 19 N. L. R. B., No. 72.
Gaffney Mfg. Co., entered August 10, 1939, enforcing 12 N. L. R. B. 1408.
Monarch Mills, Inc., entered November 14, 1939, enforcing 16 N. L. R. B. 57.
Piedmont Shirt Company, entered July 21, 1939, enforcing 13 N. L. R. B. 14.
Southern Oil Transportation Company, Inc., entered September 19, 1939, enforcing 14 N. L. R. B. 844.
Standard Cap & Molding Co., Inc., entered March 14, 1940, enforcing 19 N. L. R. B., No. 111.
Standard Wholesale Phosphate & Acid Works, Inc., entered April 16, 1940, enforcing 21 N. L. R. B. No. 58.
Startea Mills, entered August 7, 1939, enforcing 12 N. L. R. B. 1402.
Tri-State Towel Service of the Independent Towel Supply Co., entered March 11, 1940, enforcing 20 N. L. R. B. No. 9.

Fifth Circuit

- Champion Paper & Fibre Co.*, entered February 19, 1940, enforcing 19 N. L. R. B. No. 96.
Cluett, Peabody & Co., Inc., entered May 7, 1940, enforcing 22 N. L. R. B. No. 58.
Collins Baking Co., entered April 16, 1940, enforcing as modified 19 N. L. R. B. No. 42.
Eagle & Phenix Mills, entered October 16, 1939, enforcing as modified 11 N. L. R. B. 361; 12 N. L. R. B. 164.
Isle of Dreams Broadcasting Corporation, entered July 27, 1939, enforcing 13 N. L. R. B. 388.
Jacobs Mfg. Co., entered May 17, 1940, enforcing 23 N. L. R. B., No. 64.
Lone Star Gas Co., entered March 21, 1940, enforcing as modified 18 N. L. R. B., No. 62.
Miami Daily News, Inc. (see *Isle of Dreams Broadcasting Corporation*).
Peerless Woolen Mills, entered October 16, 1939, enforcing as modified 13 N. L. R. B. 438.
Quality Shirt Mfg. Co., entered April 1, 1940, enforcing as modified 18 N. L. R. B., No. 53.
Robbins Tire & Rubber Co., entered May 14, 1940, enforcing 23 N. L. R. B., No. 30.
United Motor Freight Terminal, Inc., entered August 7, 1939, enforcing 13 N. L. R. B. 661.

Sixth Circuit

- Appalachian Mills Company*, entered January 17, 1940, enforcing 17 N. L. R. B. 764.
Charles H. Bacon Company, entered October 9, 1939, enforcing 13 N. L. R. B. 732.
Belding Hosiery Mills, Inc., entered March 11, 1940, enforcing 20 N. L. R. B. No. 59.

- The Bishop Products Company*, entered October 13, 1939, enforcing 15 N. L. R. B. 807.
- Blue Valley Coal Corporation*, entered February 15, 1940, enforcing 17 N. L. R. B. 539.
- Dawson Collieries, Inc.*, entered February 14, 1940, enforcing 17 N. L. R. B. 593.
- Dawson Daylight Coal Company*, entered February 14, 1940, enforcing 17 N. L. R. B. 581.
- Detroit Gasket & Manufacturing Co.*, entered January 17, 1940, enforcing 16 N. L. R. B. 238.
- Empire Mining Company*, entered February 12, 1940, enforcing 17 N. L. R. B. 558.
- Flat Creek Coal Company*, entered February 12, 1940, enforcing 17 N. L. R. B. 546; 18 N. L. R. B. No. 69.
- General Baking Co.*, entered May 9, 1940, enforcing 21 N. L. R. B. No. 107.
- Hart Coal Company*, entered February 13, 1940, enforcing 17 N. L. R. B. 641.
- Lick Creek Coal Company*, entered February 13, 1940, enforcing 17 N. L. R. B. 654.
- Newcoal Corporation*, entered February 13, 1940, enforcing 17 N. L. R. B. 617.
- Norton Coal Corp.*, entered April 10, 1940, enforcing 17 N. L. R. B. 569.
- The Ohio Rubber Company*, entered February 12, 1940, enforcing 17 N. L. R. B. 526.
- The Perry Fay Co.*, entered June 27, 1940, enforcing 23 N. L. R. B. No. 134.
- Providence Coal Mining Co.*, entered May 9, 1940, enforcing 22 N. L. R. B. No. 39.
- The Reliable Rubber Company*, entered June 7, 1940, enforcing 23 N. L. R. B. No. 127.
- Reynolds Spring Co.*, entered November 7, 1939, enforcing 15 N. L. R. B. 721.
- Ruckman Coal Company*, entered February 15, 1940, enforcing 17 N. L. R. B. 604.
- Schwarze Electric Company*, entered May 14, 1940, enforcing as modified 16 N. L. R. B. 246.
- Southern Manufacturing Company*, entered February 16, 1940, enforcing 13 N. L. R. B. 304.
- Sport-Wear Hosiery Mills*, entered May 14, 1940, enforcing 23 N. L. R. B., No. 44.
- The Stanley Mfg. Co.*, entered March 11, 1940, enforcing 18 N. L. R. B., No. 38.
- Steel Stamping Company*, entered November 7, 1939, enforcing 16 N. L. R. B. 1.
- Tennessee Electric Power Co.*, entered February 12, 1940, enforcing 19 N. L. R. B., No. 21.
- Thompson Cabinet Co.*, entered March 11, 1940, enforcing 20 N. L. R. B., No. 3.
- The Titan Valve & Manufacturing Co.*, entered October 9, 1939, enforcing 15 N. L. R. B. 661.
- United Telephone Co.*, entered June 27, 1940, enforcing 24 N. L. R. B., No. 22.
- Williams Coal Company*, entered November 15, 1939, enforcing as modified, 11 N. L. R. B. 579.
- Williams Coal Company*, entered March 11, 1940, enforcing 17 N. L. R. B. 629.
- Williams Mfg. Co.*, entered May 9, 1940, enforcing as modified 6 N. L. R. B. 135.

Seventh Circuit

- Altorfer Bros. Co.*, entered October 23, 1939, enforcing as modified 5 N. L. R. B. 713.
- Anderson Mattress Company*, entered January 17, 1940, enforcing 17 N. L. R. B. 473.
- W. F. & John Barnes Company*, entered January 17, 1940, enforcing as modified, 12 N. L. R. B. 1028.

- Deere & Company*, entered December 20, 1939, enforcing 15 N. L. R. B. 779.
- Drovers Journal Publishing Company*, entered October 16, 1939, enforcing 15 N. L. R. B. 654.
- Hemp & Co.*, entered June 12, 1940, enforcing as modified 9 N. L. R. B. 449.
- International Furniture Co.*, entered April 12, 1940, enforcing 18 N. L. R. B., No. 89.
- International Furniture Co.*, entered April 12, 1940, enforcing 12 N. L. R. B. 1277.
- Kuehne Manufacturing Company*, entered July 10, 1939; amended October 24, 1939, enforcing as modified, 7 N. L. R. B. 304.
- Lacon Woolen Mills of John Grieves Sons*, entered February 1, 1940, enforcing 17 N. L. R. B. 696.
- Mt. Vernon Car Manufacturing Co.*, entered June 14, 1940, enforcing as modified, 11 N. L. R. B. 500.
- Overhead Door Corporation*, entered September 27, 1939, enforcing 13 N. L. R. B. 1152.
- Rayner, Dalheim & Co.*, entered November 9, 1939, enforcing 16 N. L. R. B. 50.
- Valley Steel Products Co.*, entered March 27, 1940, enforcing 20 N. L. R. B., No. 85.

Eighth Circuit

- American Scale Co.*, entered June 22, 1940, enforcing as modified 14 N. L. R. B. 971.
- George Benz Sons, Inc.*, entered June 22, 1940, enforcing 24 N. L. R. B., No. 4.
- Dain Manufacturing Company* (see *John Deere Tractor Company*).
- Deere & Company* (see *John Deere Tractor Company*).
- John Deere Tractor Company*, entered December 16, 1939, enforcing 15 N. L. R. B. 779.
- Faribault Woolen Mills Company*, entered June 13, 1940, enforcing 23 N. L. R. B., No. 118.
- Great States Manufacturing Co.*, entered August 8, 1939, enforcing 13 N. L. R. B. 115.
- F. Jaden Mfg. Co.*, entered May 2, 1940, enforcing as modified 19 N. L. R. B., No. 23.
- Kansas City Structural Steel Co.*, entered April 3, 1940, enforcing as modified 12 N. L. R. B. 327.
- Klauer Manufacturing Co.*, entered March 20, 1940, enforcing 17 N. L. R. B. 717.
- Lincoln Engineering Co.*, entered May 25, 1940, enforcing 23 N. L. R. B., No. 39.
- Majestic Flour Mills*, entered March 28, 1940, enforcing as modified 15 N. L. R. B. 541.
- Mandan Radio Association, Inc.*, entered June 18, 1940, enforcing 23 N. L. R. B., No. 54.
- Missouri-Arkansas Coach Lines Inc.*, entered January 31, 1940, enforcing as modified 7 N. L. R. B. 186.
- Missouri-Arkansas Coach Lines Inc.*, entered January 31, 1940, enforcing 17 N. L. R. B. 711.
- R. C. Can Company*, entered July 11, 1939, enforcing 12 N. L. R. B. 447.
- Reade Manufacturing Company*, entered November 9, 1939, enforcing 16 N. L. R. B. 171.
- Union Stock Yards Company*, entered February 9, 1940, enforcing as modified 15 N. L. R. B. 897.
- Watson Bros., Transportation Co.*, entered November 7, 1939, enforcing as modified 12 N. L. R. B. 432.
- Bob White Mills, Inc.*, entered June 22, 1940, enforcing 24 N. L. R. B., No. 31.

Ninth Circuit

- American Hair & Felt Co.*, entered April 29, 1940, enforcing as modified 19 N. L. R. B., No. 25.
Columbia Mills, Inc., entered April 29, 1940, enforcing 21 N. L. R. B., No. 57.
Crane Creek Lumber Company, Meta C. Boutin doing business as, entered September 18, 1939, enforcing 13 N. L. R. B. 105.
Douglas Aircraft Company, Inc., entered September 22, 1939, enforcing as modified 10 N. L. R. B. 242.
Maurice Holman, Inc., entered March 18, 1940, enforcing 18 N. L. R. B., No. 37.
Los Angeles Brick & Clay Products Co., entered January 15, 1940, enforcing as modified 11 N. L. R. B. 750.
Luckenbach Gulf Steamship Company, Inc. (see *Luckenbach Steamship Company, Inc.*).
Luckenbach Steamship Company, Inc., entered September 7, 1939, enforcing as modified 8 N. L. R. B. 1280.
Mission Hosiery Mills, entered January 2, 1940, enforcing as modified 16 N. L. R. B. 925.
The Ohio Match Company, entered July 25, 1939, enforcing 12 N. L. R. B. 683.
Producers Cotton Oil Co., entered October 30, 1939, enforcing 15 N. L. R. B. 470.
Rosa-Lee Mfg. Co., Inc., entered September 5, 1939, enforcing 14 N. L. R. B. 853.
Star & Crescent Boat Co., entered April 29, 1940, enforcing as modified 18 N. L. R. B., No. 68.
Swayne & Hoyt, Ltd., entered December 8, 1939, enforcing 15 N. L. R. B. 788.

Tenth Circuit

- All Steel Products Mfg. Co.*, entered May 2, 1940, enforcing as modified 16 N. L. R. B. 72.
Cullen-Thompson Motor Co., entered August 30, 1939, enforcing as modified 10 N. L. R. B. 1173.
R. H. Hall, Inc., entered August 30, 1939, enforcing as modified 10 N. L. R. B. 1173.
Howry-Berg, Inc., entered August 30, 1939, enforcing as modified 10 N. L. R. B. 1173.
Larson-Nash Motors Co., entered August 30, 1939, enforcing as modified 10 N. L. R. B. 1173.
The Mountain Motors Company, entered August 30, 1939, enforcing as modified 10 N. L. R. B. 1173.

C. CASES IN WHICH AN ADJUDICATION OF CONTEMPT FOR FAILURE TO COMPLY WITH COURT DECREES ENFORCING BOARD ORDERS WAS SOUGHT

1. Granted:

- N. L. R. B. v. American Potash & Chemical Corp.*, 113 F. (2d) 232 (C. C. A. 9).
N. L. R. B. v. Tidewater Iron & Steel Co., Inc., March 12, 1940 (C. C. A. 3).

2. Denied:

- Amalgamated Utility Workers v. Consolidated Edison Co. of New York, Inc., et al.*, 309 U. S. 261, affirming 106 F. (2d) 991 (C. C. A. 2).¹
N. L. R. B. v. Euvenson & Levering Co., Aug. 9, 1939 (C. C. A. 3).
N. L. R. B. v. Federal Bearings Co., Inc., 109 F. (2d) 945 (C. C. A.).
N. L. R. B. v. Nebel Knitting Co., Inc., January 18, 1940, contempt citation denied but concurrent order entered by consent for payment of certain monies (C. C. A. 4).
N. L. R. B. v. Pacific Greyhound Lines, Inc., 106 F. (2d) 867 (C. C. A. 9).
N. L. R. B. v. Red River Lumber Co., 109 F. (2d) 157; rehearing denied 110 F. (2d) 810 (C. C. A. 9).

¹ The Board was not a party to this proceeding.

D. CASES PENDING AT CLOSE OF FISCAL YEAR 1940

1. Supreme Court of the United States:

*H. J. Heinz Co. v. N. L. R. B.**International Ass'n of Machinists v. N. L. R. B.**North Whittier Heights Citrus Ass'n v. N. L. R. B.*, certiorari denied, 310 U. S. 632, pending on rehearing.*Republic Steel Corporation v. N. L. R. B.*, certiorari denied, 309 U. S. 684; pending on rehearing as to work relief issue only.*J. Greenebaum Tanning Co. v. N. L. R. B.*

2. Circuit Court of Appeals:

*First Circuit**Bethlehem Shipbuilding Corp. v. N. L. R. B.**General Body of Employees Representatives.**N. L. R. B. v. Henry Levaur, Inc., et al.**N. L. R. B. v. Crystal Springs Finishing Co.**N. L. R. B. v. Reed and Prince Mfg. Co.**N. L. R. B. v. Waumbec Mills, Inc.**Second Circuit**N. L. R. B. v. Acme Air Appliance Co.**N. L. R. B. v. S. Blechman & Sons, Inc.* (2 cases).*Corning Glass Works v. N. L. R. B.**N. L. R. B. v. Dahlstrom Metallic Door Co.**N. L. R. B. v. Eastern Footwear Corp.**Fedders Manufacturing Co. v. N. L. R. B.**Marlin-Rockwell Corp. v. N. L. R. B.**Phelps-Dodge Corp. v. N. L. R. B.**N. L. R. B. v. Phelps-Dodge.**N. L. R. B. v. Timken Silent Automatic Co.**N. L. R. B. v. Todd Shipyards Corp.**Western Union Telegraph Co. v. N. L. R. B.**Association of Western Union Employees v. N. L. R. B.**Westinghouse Electric & Mfg. Co. v. N. L. R. B.**N. L. R. B. v. Westinghouse Electric & Mfg. Co., et al.**N. L. R. B. v. Yale & Towne Mfg. Co.**Third Circuit**Berkshire Knitting Mills v. N. L. R. B.**Berkshire Employees Ass'n v. N. L. R. B.**Burk Bros. v. N. L. R. B.**N. L. R. B. v. Elkland Leather Co., Inc.**N. L. R. B. v. John A. Roebling's Sons Co.**Roebling Employees Ass'n v. N. L. R. B.**N. L. R. B. v. J. S. Popper, Inc.**Southern Steamship Co. v. N. L. R. B.**N. L. R. B. v. Stehli & Co., Inc.**N. L. R. B. v. Suburban Lumber Co.**Windsor Mfg. Co. v. N. L. R. B.**Fourth Circuit**N. L. R. B. v. American Oil Co.**Martel Mills Corp. v. N. L. R. B.**N. L. R. B. v. Mathieson Alkali Works.**N. L. R. B. v. Phillips Packing Co.**Virginia Electric & Power Co. v. N. L. R. B.*

Independent Organization of Employees of the Virginia Electric & Power Co. v. N. L. R. B.
N. L. R. B. v. White Swan Co.

Fifth Circuit

Continental Box Co. v. N. L. R. B.
El Paso Electric Co. v. N. L. R. B.
N. L. R. B. v. Express Publishing Co.
N. L. R. B. v. Ed. Friedrich, Inc.
Humble Oil & Refining Co. v. N. L. R. B.
Magnolia Petroleum Co. v. N. L. R. B.
Phillips Petroleum Co. v. N. L. R. B. (2 cases).
The Solvay Process Co. v. N. L. R. B.
South Atlantic Steamship Co. v. N. L. R. B.
N. L. R. B. v. Southport Petroleum Co.
The Texas Company v. N. L. R. B.
N. L. R. B. v. Texas Mining & Smelting Co

Sixth Circuit

N. L. R. B. v. Alloy Cast Steel Company.
N. L. R. B. v. Ann Arbor Press.
The Atlas Underwear Co. v. N. L. R. B.
N. L. R. B. v. Berkey & Gay Furniture Co.
Combustion Engineering Co., Inc., v. N. L. R. B.
Consumers Power Co. v. N. L. R. B.
N. L. R. B. v. The Dow Chemical Co.
N. L. R. B. v. Ford Motor Co.
N. L. R. B. v. Knoxville Publishing Co.
N. L. R. B. v. P. Lorillard Co.
Midland Steel Products Co. v. N. L. R. B.
The Ohio Power Co. v. N. L. R. B.
N. L. R. B. v. West Kentucky Coal Co.

Seventh Circuit

N. L. R. B. v. Aluminum Products Co. et al.
Armour & Co. v. N. L. R. B.
Employees Mutual Ass'n v. N. L. R. B.
N. L. R. B. v. Automotive Maintenance Machinery Co.
N. L. R. B. v. Chicago Apparatus Co.
Foote Bros. Gear & Machine Corp. v. N. L. R. B.
Independent Union of Gear Workers v. N. L. R. B.
N. L. R. B. v. General Motors Corp.
Illinois Publishing & Printing Co. et al. v. N. L. R. B.
American Federation of Labor et al. v. N. L. R. B.
N. L. R. B. v. Lightner Publishing Corp.
McQuay-Norris Mfg. Co. v. N. L. R. B.
New Idea, Inc. v. N. L. R. B.
Independent Employees Association of New Idea, Inc. v. N. L. R. B.
New York Handkerchief Mfg. Co. v. N. L. R. B.
M. H. Ritzwoller Co. v. N. L. R. B.
A. E. Staley Mfg. Co. v. N. L. R. B.
Stewart Die Casting Corp. v. N. L. R. B.
N. L. R. B. v. Vincennes Steel Corp.

Eighth Circuit Court of Appeals

N. L. R. B. v. Brashear Freight Lines, Inc.
N. L. R. B. v. Central Missouri Telephone Co.
N. L. R. B. v. Christian Board of Publication.
Cudahy Packing Co. v. N. L. R. B.
Donnelly Garment Co. v. N. L. R. B.
Eagle-Picher Mining & Smelting Co. v. N. L. R. B.
N. L. R. B. v. International Shoe Co.
Montgomery Ward & Co., Inc. v. N. L. R. B.

Pittsburgh Plate Glass Co. v. N. L. R. B.
Crystal City Glass Workers Union v. N. L. R. B.
N. L. R. B. v. Pearlstone Printing & Stationery Co.
N. L. R. B. v. Rath Packing Co.
N. L. R. B. v. Skinner & Kennedy Stationery Co.
Southwestern Gas & Electric Co. v. N. L. R. B.
N. L. R. B. v. Swift & Co.
N. L. R. B. v. Viking Pump Co.
Wilson & Co. v. N. L. R. B.

Ninth Circuit Court of Appeals

N. L. R. B. v. Pacific Gas & Electric Co.
N. L. R. B. v. Sterling Electric Motors, Inc.
The Texas Co. v. N. L. R. B.
N. L. R. B. v. Washington Dehydrated Food Co.

Tenth Circuit Court of Appeals

N. L. R. B. v. Clovis News-Journal.
The Colorado Fuel & Iron Corp. v. N. L. R. B.
Continental Oil Co. v. N. L. R. B.
Cudahy Packing Co. v. N. L. R. B.
Magnolia Petroleum Co. v. N. L. R. B.
Magnolia Production Employees Ass'n v. N. L. R. B.
Pueblo Gas & Fuel Co. v. N. L. R. B.
N. L. R. B. v. Stover Bedding Co.

United States Court of Appeals for the District of Columbia

N. L. R. B. v. Arcade Sunshine Co.
Bethlehem Steel Co. v. N. L. R. B.
Plan of Employees Representation v. N. L. R. B.
McKesson & Robbins, Inc. v. N. L. R. B.
Warehousemen's Union, etc. v. N. L. R. B.
The Press Co., Inc. v. N. L. R. B.
The Gannett Co., Inc. v. N. L. R. B.
Progressive Mine Workers v. N. L. R. B.

3. Cases pending adjudication of contempt for failure to comply with court decrees enforcing Board orders:

N. L. R. B. v. Carlisle Lumber Co. (C. C. A. 9).
N. L. R. B. v. Good Coal Co. (C. C. A. 6).
N. L. R. B. v. Imperial Reed & Fibre Co. (C. C. A. 2).
N. L. R. B. v. Remington Rand, Inc. (C. C. A. 2).

II. PROCEEDINGS ARISING OUT OF REPRESENTATION CASES

A. SUITS TO REVIEW CERTIFICATIONS

Amer. Fed. of Labor v. N. L. R. B., 103 F. (2d) 933 (App. D. C.), affirmed 308 U. S. 401. Petition for review dismissed.

B. SUITS TO COMPEL WITHDRAWAL OF CERTIFICATION

Amer. Fed. of Labor v. Madden, et al. (D. C. D. C.) No. 2214, dismissed on stipulation January 22, 1940.
Amer. Fed. of Labor v. Madden (D. C. D. C.). Board motion to dismiss denied, 33 F. Supp. 943. Petition for special appeal pending.¹

C. SUITS TO STAY OR REVIEW DIRECTIONS OF ELECTIONS

Aluminum Employees Assn. v. N. L. R. B., No. 8389 (C. C. A. 6). Stay denied August 30, 1939, and petition dismissed by consent March 11, 1940.
Aluminum Employees Assn. v. N. L. R. B., No. 8408 (C. C. A. 6). Petition for review dismissed by consent March 11, 1940.

¹ Granted. December 11, 1940.

- Association of Western Union Employees v. N. L. R. B.* (C. C. A. 2). Petition for review and motion for stay indefinitely postponed.
- Cudahy Packing Company v. N. L. R. B.*, No. 452, Original (C. C. A. 8). Petition for review dismissed on Board's motion February 26, 1940.
- N. L. R. B. v. International Brotherhood of Electrical Workers*, 105 F. (2d) 598 (C. C. A. 6) reversed, 308 U. S. 413. Petition for review of direction of run-off election.
- Libby-Owens-Ford Glass Co. v. N. L. R. B.*, No. 8246 (C. C. A. 6) dismissed.
- National Flat Glass Workers' Union of Amer. v. N. L. R. B.*, No. 8278 (C. C. A. 6). Petition dismissed on consent March 11, 1940.
- Pick Mfg. Co. v. N. L. R. B.*, No. 7156 (C. C. A. 7). *Ex parte* application for stay denied December 5, 1939. Petition for review dismissed on consent January 31, 1940.
- United Rubber Workers of Amer. v. N. L. R. B.* (C. C. A. 6). Petition dismissed on consent January 17, 1940.

D. SUITS TO ENJOIN HOLDING OF ELECTIONS

- International Brotherhood of Electrical Workers v. Bowen* (E. D. Mich.) March 21, 1940.¹

III. MISCELLANEOUS COURT PROCEEDINGS

A. INJUNCTION PROCEEDINGS

- Remington Rand, Inc. v. N. L. R. B.* (C. C. A. 2) denied October 6, 1939.
- Sanco Piece Dye Works, Inc. v. Herrick*, 33 F. Supp. 80 (S. D. N. Y.) dismissed. Application for stay pending appeal denied (C. C. A. 2) April 17, 1940.

B. CASES INVOLVING BOARD SUITS PURSUANT TO SECTION II (2) OF THE ACT FOR THE ENFORCEMENT OF SUBPOENAS

1. Granted:

- N. L. R. B. v. Cudahy Packing Co.*, 34 F. Supp. (53 D. C. Kan.).
- N. L. R. B. v. Rheam* (N. D. Okla.) January 15, 1940.
- N. L. R. B. v. West Coast Macaroni Mfg. Co.* (N. D. Calif.) January 12, 1940.

2. Denied:

- N. L. R. B. v. Chambers Corp.* (S. D. Ind.) November 2, 1939.

3. Pending decision:

- N. L. R. B. v. The Barrett Co.* (S. D. Ill.)^{1a}
- N. L. R. B. v. Goodyear Tire & Rubber Co. et al.*² (N. D. Ohio).

C. ADJUDICATION AND COMMITMENT FOR CONTEMPT BASED ON NONCOMPLIANCE WITH ORDER REQUIRING OBEDIENCE TO BOARD SUBPOENA

- N. L. R. B. v. Ritholz* (N. D. Ill.) Motion to dismiss Board petition to adjudge in contempt denied April 16, 1940, and matter referred to master.³

D. CASES INVOLVING ATTEMPTS TO VACATE BOARD SUBPOENAS

- United States Lines Co. v. N. L. R. B.* (S. D. N. Y.). Application withdrawn during argument February 16, 1940.

E. CASES IN WHICH INTERROGATORIES OR DEPOSITIONS WERE REFUSED

- Foote Bros. Gear & Mach. Corp. v. N. L. R. B.*, 114 F. (2d) 611 (C. C. A. 7).
- Botany Worsted Mills v. N. L. R. B.*, 106 F. (2d) 263 (C. C. A. 3).
- Ford Motor Company v. N. L. R. B.*, 5 L. R. R. 764 (C. C. A. 6).
- N. L. R. B. v. Lane Cotton Mills*, 108 F. (2d) 568 (C. C. A. 5).

¹ See text p. 90, *supra*.

^{1a} Granted October 3, 1940.

² Granted November 27, 1940.

³ On September 17, 1940, the court ordered respondent committed to jail until he complied with the subpoena and assessed the costs of the proceeding against him.

122 FIFTH ANNUAL REPORT OF NATIONAL LABOR RELATIONS BOARD

F. CASES WHERE PETITION TO REVIEW WAS DISMISSED ON CONSENT FOLLOWING AMICABLE DISPOSITION OF CASE

Amer. Fed. of Labor, et al. v. N. L. R. B., No. 7293 (C. C. A. 7) August 8, 1940
Bayuk Cigars, Inc. v. N. L. R. B. (C. C. A. 2) May 13, 1940.
Ill. Publishing and Printing Co. v. N. L. R. B., No. 7299 (C. C. A. 7) June 3, 1940.
Rosedale Employees Ass'n v. N. L. R. B., No. 7331 (C. C. A. 3) June 6, 1940.
Shell Petroleum Corp. v. N. L. R. B. (C. C. A. 8).⁴
Southern Steamship Co. v. N. L. R. B., No. 7115 (C. C. A. 3) March 15, 1940.
Southwestern Gas & Electric Co. v. N. L. R. B., No. 458 Original (C. C. A. 8) August 3, 1940.

G. BILL OF REVIEW DENIED

N. L. R. B. v. Thompson Products, Inc., No. 7863 (C. C. A. 6). Board petition for leave to file bill of review for newly discovered evidence denied, October 6, 1939 (see 97 F. (2d) 13).

H. PROCEEDING BY BOARD TO ENJOIN PRIVATE SUIT BY EMPLOYER AGAINST EMPLOYEES IN A STATE COURT

N. L. R. B. v. The Good Coal Co. (C. C. A. 6) April 12, 1940.

I. PROCEEDING REQUIRING EMPLOYER TO POST BOND TO SECURE BACK PAY AS CONDITION TO STAY OF DECREE PENDING APPLICATION FOR CERTIORARI

N. L. R. B. v. The Good Coal Co. (C. C. A. 6) April 12, 1940.

J. BANKRUPTCY PROCEEDINGS

In re Hamilton-Brown Shoe Co., Bankrupt (E. D. Mo., No. 9734). Board claim based on nonpayment of back-pay award denied (see 104 F. (2d) 49).⁵

K. SUITS AGAINST BOARD AGENTS

Associate Investment Co. v. Marsden, No. 372-640, Municipal Court, D. C., dismissed March 7, 1940.
Manning v. Feidelson (Sup. Ct. Tenn.). Action to restrain distribution of back-pay award dismissed for lack of jurisdiction February 20, 1940. 136 S. W. (2d) 510 (Tenn. S. Ct.). Rehearing denied.

L. SUITS TO COMPEL THE ISSUANCE OF A COMPLAINT IN AN UNFAIR LABOR PRACTICE CASE

Progressive Mine Workers Union of America v. N. L. R. B. (App. D. C.). Board motion to dismiss pending.⁶

M. SUITS TO REVIEW BOARD ORDER DISMISSING COMPLAINT

Hicks v. N. L. R. B., dismissed May 31, 1939 (C. C. A. 2), certiorari denied, 308 U. S. 554.⁷

N. SUITS TO REVIEW OR STAY AN INTERMEDIATE ORDER OF THE BOARD IN AN UNFAIR LABOR PRACTICE CASE

Ex Laz, Inc. v. N. L. R. B. (C. C. A. 2) denied February 28, 1940.
Wilson & Co. v. N. L. R. B. (C. C. A. 3) dismissed July 16, 1939.

O. ACTION FOR SPECIFIC PERFORMANCE OF CLOSED-SHOP CONTRACT WHERE THE BOARD WAS "VOUCHED" INTO COURT

McCloud v. Davidson Granite Co., Inc., No. 8852 (Superior Ct. of De Kalb County Ga.). Action pending at close of fiscal year.

⁴ Board order vacated July 14, 1939, after service of petition, but prior to filing.

⁵ Appeal pending at close of the fiscal year.

⁶ Motion granted October 22, 1940.

⁷ See also, 100 F(2d) 804 (C. C. A. 4).

VIII. THE TRIAL EXAMINERS DIVISION

The Trial Examiners Division, under the direct supervision of the Chief Trial Examiner, conducts hearings in the field for the purpose of taking evidence. Members of the Trial Examiners Division are assigned to preside over hearings on formal complaints, alleging the commission of unfair labor practices, and on petitions for certification of representatives. After the evidence has been presented in the former type of case the trial examiners prepare findings of fact and recommendations that are submitted to the Board. In cases involving certification of representatives they prepare memorandum reports for the Chief Trial Examiner.¹

Budget reductions occurring during the year made a reduction in personnel of the Trial Examiners Division necessary. Ten of the thirty-five trial examiners were separated from the Division. This reduction in personnel made it impossible for staff trial examiners to continue to hear all of the scheduled hearings in representation cases. It was, therefore, determined by the Board to use employees attached to the regional staffs as trial examiners, in those representation cases which, because of the issues involved, did not require the services of a staff trial examiner. Such designations of persons attached to the field staff, as trial examiners, have been made in a number of cases. The practice so inaugurated has been successful. Employees attached to the field staffs of the various regional offices have heard approximately 90 percent of all of the representation cases since June 1, 1940.

The reduction in the budget made necessary another change in procedure. The Fourth Annual Report (p. 150) outlines the practice then obtaining of reviewing Intermediate Reports. Up to June 1, 1940, this work had been done by trial examiners. When the staff of the Trial Examiners Division was reduced it was no longer possible to assign trial examiners for this type of work. However, it was clearly necessary that further assistance be afforded the Chief Trial Examiner in the work of analyzing the Intermediate Reports and the records of hearings. The work done by the review trial examiners had clearly indicated the desirability of the continuance of this function. Accordingly, five associate attorneys were assigned to assist the Chief Trial Examiner in that work.

During the year much progress was made in shortening the time between the closing of the hearing and the issuance of the intermediate report. Further progress in that regard is to be expected.

¹ The Chief Trial Examiner is aided by two Assistant Chief Trial Examiners. The current report omits discussion of the matter of procedure and training of employees, as the procedure followed in hearings and also the discussions of the training program for employees in the Division were treated fully in the Fourth Annual Report.

IX. DIVISION OF ECONOMIC RESEARCH¹

A. VOLUME AND CHARACTER OF WORK

During the fiscal year substantial assignments were done by the Division on more than 200 cases; this number omits minor services for a number of additional cases. Publications of the Division were also drawn upon, e. g., use of the bulletin on written trade agreements² in drafting the Board's Brief for the *Art Metal Construction Company case*³ and use of the bulletin on coal mining⁴ in the Board's Brief for the *Crowe Coal Company case*.

The Court stated in its decision in the latter case:

The propriety of introducing in evidence economic data of the character of Board's exhibit 11 [Bulletin No. 2, "The Effect of Labor Relations in the Bituminous Coal Industry upon Interstate Commerce"], obtained from governmental or other authoritative sources, is well settled. See, for example, *Virginian Railway Company v. System Federation No. 40*, 300 U. S. 515, footnotes 4 and 5, pp. 545, 546, in which the Supreme Court referred to the bulletin entitled "Governmental Protection of Labor's Right to Organize," which is Bulletin No. 1 in a series prepared by the Board's Division of Economic Research. The exhibit now under consideration is Bulletin No. 2 of the same series. And see *National Labor Relations Board v. Jones & Laughlin Steel Corp.*, 301 U. S. 1, footnote 8, p. 43; *National Labor Relations Board v. Pennsylvania Greyhound Lines*, 303 U. S. 261, footnote 2, p. 267. (*N. L. R. B. v. Crowe Coal Company*, 104 F. (2d) 633 (C. C. A. 8) enforcing 9 N. L. R. B. 1149 (C-564) 60 S. Ct. 107, cert. denied.)

In the course of its decision upholding the ruling of the Board, the Court made direct use of factual material contained in the Bulletin:

It is argued in respondent's brief that it has "no knowledge * * * of the use to which this coal will be put or the place to which it will be transported," but no such want of knowledge was stipulated or found by the Board. It is stated in the Bulletin of the economic division in evidence that "typically there is no provision for storage of coal at the mine" and that "production is customarily not undertaken until orders are received and a supply of cars assured."⁵

The work of the Division was done at different stages of Board activity in accordance with the needs of specific cases. Provision of commerce data and analyses of employment records for cases of alleged discrimination usually occurred during the investigation of a charge or in connection with a hearing. Characteristically, work done at the review or briefing stage involved the provision of specific information (from sources of which the Courts take judicial notice)

¹ The Division's name was changed on July 1, 1940, to Technical Service Division. Subsequently, on October 11, following passage of a bill in Congress abolishing the Division, the Board eliminated the Division from its organization.

² National Labor Relations Board, Division of Economic Research, *Bulletin No. 4, Written Trade Agreements in Collective Bargaining*, 1940.

³ Case No. C-1126.

⁴ National Labor Relations Board, Division of Economic Research, *Bulletin No. 2, The Effect of Labor Relations in the Bituminous Coal Industry upon Interstate Commerce*, 1939.

⁵ *National Labor Relations Board v. Crowe Coal Company*, 104 F. (2d) 633 (C. C. A. 8), enforcing 9 N. L. R. B. 1149 (C-564) 60 S. Ct. 107, cert. denied.

or the analysis of technical data incorporated in the record. After decisions were issued and sometimes after enforcement of the Board's order, the Division was requested in a number of cases to compute back pay or provide materials necessary to effectuate back-pay awards and orders of reinstatement.

Materials prepared for use in a number of cases involving a general principle or problem were sometimes extended and made available for subsequent cases. Materials on collective bargaining practice with reference to the written trade agreement were edited and published during the past year. A study of industries allied to agriculture, emphasizing preparatory processing functions, was undertaken for cases involving the "agricultural laborer" exemption of the act; materials from this study were utilized in drafting the Board brief in *The Grower-Shipper case*.⁶

In addition to its work on specific cases, the Division maintained Board records and in this connection issued periodical reports on Board and regional activity for the Board's Annual Report and for internal administrative purposes. These reports include statistics on new cases received by the Board and its various offices, on cases pending, and on cases disposed of. Data are compiled and tabulated to provide a picture of the progress of cases through the Board and of the performance of its various offices.

During the past year, in addition to the preparation of data for the Annual Report and monthly reports of Board and regional activity, the Division answered special requests for information that may in the future be tabulated periodically, e. g., time consumed in handling cases in various sections of the Board in Washington, disposition of employer petitions, and disposition of appeals from refusals of the regional directors to issue complaints. Past methods of record keeping made necessary special tabulations for these purposes, but since more complete records are now being kept and new methods of tabulation used, the data can be tabulated regularly instead of occasionally.

A considerable volume of work was done to answer requests of the House Committee investigating the Board; a special study of the size of Board respondents formed part of the Board's statement before the Committee. From time to time, for the House investigation and for other purposes, the Division drew comparisons between strike activity and the volume of Board cases and studied the effects of the Act upon industrial peace, readapting data compiled by the United States Bureau of Labor Statistics.

B. CASE WORK, ILLUSTRATED

Although it is not possible to report comprehensively upon all the case work done during the past fiscal year, a description may be drawn in terms of typical cases covering the major provisions of the Act under which the services of the Division were utilized

⁶ Case No. C-178, etc.

DESCRIPTIVE MATERIAL ON INDUSTRIES ALLIED TO AGRICULTURE—
SECTION 2 (3)

For the Board's circuit court brief in the *Tovrea Packing Company case*⁷ the Division was requested to prepare factual data on the company's operations, with particular reference to the feeding and fattening of livestock. The Division's study discussed the company's interest in producing dressed beef of high quality, making it necessary to use "finished cattle." This the company was unable to purchase at regular "finished cattle" markets because its location hundreds of miles from these markets and the meat-packing centers made transportation costs prohibitive. Accordingly, the company purchased range cattle near by and finished them itself, maintaining feed lots for the purpose, as an incident to its meat-packing activities.

The Division also investigated and presented to the Board the history of the treatment of livestock feeders under the Fair Labor Standards Act and the Social Security Act. Part of the material prepared by the Division was incorporated in the Board's brief and is found again in the court decision upholding the Board's ruling in this case.⁸

DESCRIPTIVE MATERIAL ON INDUSTRIAL ORGANIZATION—
SECTION 2 (7)

The provision of commerce data, including facts on company ownership and operations, was originally a major function. The volume of this work has diminished during the past year since many controversial questions have been decided, thus making it possible to secure commerce data in routine fashion. Borderline questions do continue to arise, however, and these require considerable study and analysis.

An example of the latter type is the *John Hancock Life Insurance Company case*⁹ in which the company denied the Board's jurisdiction after unions had petitioned for representation elections. The Division was directed to make a general study of the insurance business preliminary to the hearing. The results of the study became the basis for drafting a stipulation, including the integrated character of the company's operations, its investment and banking activities, its use of advertising facilities, etc. Upon the basis of the stipulation of facts, the Board assumed jurisdiction and proceeded to order elections.

STUDIES OF LABOR POLICY—SECTION 8 (2)

In the *Ohio Power Company case*¹⁰ the Division's services were requested by the attorney preparing a brief for presentation before the circuit court. Three types of technical information were prepared. The first was a job description of relay testing to clarify the significance of an itinerary followed by an employee who had been charged with aiding the company in the formation of a union. From

⁷ Case No. C-622.

⁸ *N. L. R. B. v. Tovrea Packing Co.*, April 30, 1940 (C. C. A. 9), enforcing as modified

12 *N. L. R. B.* 1063 (C-622), cert. denied, Oct. 14, 1940.

⁹ R-1747, R-1748.

¹⁰ Case No. C-624. 115 S. (2d) (C. C. A. 6).

the printed hearings of the La Follette Committee the Division secured information on the espionage activities of particular persons involved in the charge and additional material on antiunion practices of the company. Finally, the Division contrasted the functioning of the dominated union with the functioning of bona fide unions, e. g., the bar against strikes and the limitations upon dues in the union's constitution and the autonomy of its chapters in negotiation procedures.

RECORD ANALYSES FOR CHARGES OF DISCRIMINATION—SECTION 8 (3)

Analyses of employer records became a major function of the Division during the past year. For cases of alleged discrimination, these analyses involve a detailed study of the treatment of individual employees during given periods of lay-off and rehiring. Thus the Board secures a picture of the exact manner in which discharges were made. This kind of analysis makes it possible to determine partly upon the basis of objective evidence whether discharges were made in accordance with a nondiscriminatory principle during the ordinary course of business. The analyses are conducted by agreement with the company and with the company's cooperation in most cases.

A typical illustration is the *Hat Corporation of America case*,¹¹ in which more than a hundred workers were initially involved in a discrimination charge. Contradicting the union, the company stated that lay-offs were attributable to lack of work and that they had been made in accordance with a seniority principle taking account of efficiency, number of dependents, and place of residence. In order to weigh the conflicting statements affecting more than a hundred workers, the Board needed factual information on the precise manner in which the lay-offs had been made, information that could be procured only through a detailed analysis of employer records.

The Division's first step was a preliminary comparison of employment trends in the given company and in the industry as a whole, to ascertain whether or not the company's employment experience departed significantly from that of the industry. The second step in the analysis was a detailed comparison of the seniority records of discharged persons and those of persons retained in employment. Other comparisons were made with respect to the application of the efficiency, dependent, and residence factors. Following the analysis, the Division prepared a report which was made available to all parties in the case. The information secured from the employment records was subsequently reworked by the Division and presented in tabular form for use at the hearing.

In the *Hanover Heel and Innersole Company case*¹² discharges were attributed by the company to poor business conditions, and it was stated that the lay-offs had been made in accordance with seniority, efficiency, and the need for a particular operation. The Division studied the company's employment policy in earlier years to ascertain whether or not it had been the policy to share work among employees during periods of low business activity. Individual worker records were also studied by the Division to ascertain in what precise manner

¹¹ Case No. 2-C-1996.

¹² Case No. 4-C-787.

discharges had occurred. The analysis indicated that a number of complainants had been discharged or laid off at the same time that comparable employees of lower efficiency were retained on the pay roll. The results of the analysis were utilized in the issuance of a complaint. The case was settled informally during the course of hearing.

RECORD ANALYSES FOR REINSTATEMENT AND COMPUTATION OF
BACK PAY—SECTION 10 (c)

When the Board was confronted in the *Stackpole Carbon case*¹³ with the necessity of reinstating an unknown number of workers and securing an unknown amount of back pay, record-analysis techniques were adopted as the only means of securing enforcement. The circuit court had upheld the Board's decision awarding reinstatement and back pay to employees who had gone out on strike in 1937 and who made proper application in accordance with the Board order. The Supreme Court refused to grant certiorari. The Division entered the case to aid the Regional Director who was responsible for securing enforcement.

The problem was complicated by fluctuations in the company's employment during the period between the strike and the court decision. At the time of the strike in 1937, 800 workers were employed. When the Supreme Court refused to grant certiorari, the number of employees was only 550, and it had been as low as 350 during the previous year. Only 3 of the 134 workers who had gone out on strike had been reemployed by the company.

The Division was directed to find out how many of these 134 workers were entitled to employment during each pay-roll period between the time of their applications for reinstatement and their actual reinstatement dates. The record analysis utilized a seniority principle as a basis for reinstatement. The union and the company agreed to the use of an adjusted departmental seniority system and to specific seniority dates for individual employees, fixed prior to the computation.

The basic operation in determining eligibility to reinstatement was a seniority array of all employees within their respective units for each pay-roll period. Thus, persons who had gone out on strike and were not subsequently employed by the company were restored to the positions they would have occupied if a seniority system of lay-off and rehiring had been used. Ninety-eight workers were entitled to reinstatement and were ordered reinstated in March 1940. By July the company had offered reinstatement to the entire number. Increased business activity made it possible to effect the reinstatement without laying off any other employees.

In addition to the reinstatement report, the Division computed back pay by ascertaining the number of hours that each person would have worked during the various pay-roll periods, (upon the assumption that work would have been distributed in accordance with a seniority principle,) and then multiplying the number of hours by appropriate rates. The Division's computation was used as the basis for a compliance stipulation agreed upon by both parties.

¹³ Case No. C-232. 105 S. (2d) 167; cert. denied 308 U. S. 605.

FINANCIAL ANALYSIS TO ASCERTAIN ABILITY TO MEET BACK-PAY ORDER—SECTION 10 (c)

The Division's work on the *Carlisle Lumber Company case*¹⁴ illustrates not only an unusual use of technical data and analysis but also the complexities and time consumed in a single case in the history of the Board. A complaint was filed in January 1936. After finding the company guilty of unfair labor practices including discrimination against more than 100 workers, the Board issued its decision in September of the same year, including an order of back pay subsequently found to be in the amount of \$158,000. Lengthy court proceedings intervened until March 1939, when the Supreme Court denied a writ of certiorari, thus upholding the Board's decision and order.¹⁵ The controversy affecting the company was not ended at this point, since its financial condition precluded immediate cash settlement.

When the Division was consulted on the case in the summer of 1939, a summary report had already been made by a certified public accountant. Since this covered only the current financial position of the company, the Division extended the analysis to include financial operations during the preceding four years. The extended report would serve as a partial basis for estimating the company's future ability to pay. Its cash position was clearly too weak to permit immediate payment, and its working capital position was equally poor because of bank indebtedness secured by lumber inventories and receivables, but there was evidence of ability to pay over a period of time without forcing liquidation. Such payment could be made through gradual processing and sale of available timber. Accordingly, the Division recommended a deferred payment plan, together with suggestions for adequate safeguards against unnecessary losses to claimants resulting, e. g., from retroactive salary increases to officers of the company.

During the settlement negotiations, the Division acted directly as consultant to the Board, participating at each step in the conferences. A plan providing for deferred payment of 40 percent of the back pay award and payment of 60 percent in land script was tentatively approved by the interested parties. As the details of the plan were evolved, however, further disagreement arose. One difficulty was the existence of tax liens against the land, which would render the partial payment virtually worthless.

In view of its inability to effect a settlement, the Board asked the circuit court to appoint a special master. The master's findings, which were subsequently approved with slight modification by the court, outlined a deferred payment plan similar to the plan suggested by the Division.

STUDIES OF COLLECTIVE BARGAINING PRACTICE—SECTION 8 (5)

In the case of *Saffer & Sons*,¹⁶ the union charged that the company had refused to bargain collectively when it moved its factory from New York to Baltimore, during the course of bargaining conferences, without giving notice. The union further alleged that,

¹⁴ Case No. C-93.

¹⁵ 99 F. (2d) 533, enforcing back-pay provisions; 306 U. S. 646, certiorari denied.

¹⁶ Case No. 2-C-2444.

in moving, the company discriminated against the employees on its own premises and those directly under its exclusive contractor.

The Division was requested, in connection with preparation for hearing, to provide materials bearing upon the several issues. Materials on the status of the manufacturer (respondent) in the clothing industry as the employer of his contractor's employees were developed with reference to the discrimination charge. With reference to the 8 (5) charge, materials were provided to indicate that the given situation did not constitute an impasse in bargaining, since both parties did not accept the disagreement as final and impossible of solution through negotiation. Materials were also prepared to show that the regulations in the industry, to which the company took objection and as a consequence of which it moved its plant, have not been unreasonable or capricious but have effected a measure of stability and order. The case was settled informally without hearing.

Another illustration is afforded by the *Griswold Manufacturing Company case*, for which the Board's chief economist testified on the essential elements in collective bargaining. The company had steadfastly refused to recognize the union which was representative of a majority of its employees, refusing to permit the union representatives to sign an agreement with the company, as representatives of their organization. Expert testimony in this case established the necessity for union recognition as one essential element in collective bargaining.

The third circuit court commented on the use of such testimony in its decision:

Brief mention may be made of the respondent's complaint that there was "prejudicial use of incompetent, irrelevant, and immaterial testimony." Particular objection was expressed by the respondent against the admission of the testimony of David J. Saposs, chief economist for the National Labor Relations Board, who was called as an expert by the petitioner. His testimony was on the subject of "the process of collective bargaining."

There is no merit to this objection.

In *National Labor Relations Board v. Pennsylvania Greyhound Lines, Inc., et al., supra* (p. 267), Mr. Justice Stone, in a footnote, cited numerous experts and textbooks "on the significance of recognition of collective bargaining." One of the expert authorities cited by Mr. Justice Stone was the 20th Century Fund, Inc. Mr. Saposs was a research associate with the 20th Century Fund, Inc. Nothing further need be said on this score.¹⁷

¹⁷ *N. L. R. B. v. The Griswold Manufacturing Co.*, 106 F. (2d) 713 (C. C. A. 3), enforcing 6 N. L. R. B. 298 (C-329).

X. INFORMATION DIVISION

A. FUNCTIONS OF THE INFORMATION DIVISION

The Division serves as a channel for the release to the public of information concerning the work of the Board. It assumes responsibility for all material distributed and for all responses to inquiries from the general public and the press, thereby relieving Board officers and attorneys from the necessity of being interrupted by constant requests for information on cases, decisions, and general activities.

The external function of the Division is to aid in providing a clearer public understanding of the policy of the Act and the operations of the Board. During the past fiscal year the Division prepared 1,393 releases. Preponderantly the releases were digests of Board decisions. Rulings on unfair labor practice disputes and representation issues by the Board are matters of immediate concern to the parties and to the public generally. The Information Division endeavors to condense the salient legal and factual points in a Board decision, which often cover many pages, into a release of a few hundred words. This is made public upon Board signature to the decision.

B. STAGES AT WHICH INFORMATION IS AVAILABLE

The following describes the progressive stages of Board unfair labor practice and representation cases, and states whether information is available at each stage or why it is withheld:

The fact that charges or petitions have been filed is available upon inquiry. Details of allegations are withheld because charges are unsubstantiated and the Board holds it unfair to employers to make them public prior to its investigation.

Formal complaints are issued when investigation reveals a basis for unfair labor practice allegations. Normally, complaints are made public in the regions where they originate. When the Board issues a complaint in its own name the text is released at Washington.

Hearings upon complaints or representation issues are open to the public.

The intermediate reports of trial examiners are made public in complaint cases. They are usually made public both by the regional director and at Washington. In representation cases, informal reports are submitted by the trial examiners to the Board, and are not made public.

Cease and desist orders and decisions or certifications in representation cases are made public in Washington when signed by the Board. Digests are simultaneously issued by the information division. The full text of each decision is available for reference immediately and is printed for general distribution within a short period.

Summaries of the Board's record in the courts are periodically issued. The texts of circuit courts of appeals decisions in Board cases are distributed as soon as possible.

C. ACTIVITIES OF INFORMATION DIVISION

The Information Division consists of a director, an assistant director, a senior information assistant, a secretary-clerk, and a stenographer-clerk. Its duty is to supply or make available information on the status of Board cases, the contents of examiners' reports, the text of Board decisions, and the course of litigation cases.

A mailing list is maintained for those who request regular receipt of material issued, including the monthly summary of Board activities. No names are placed on the list except by such specific request. Under these circumstances the list, on June 30, 1940, was as follows:

Receiving releases (including newspapers, labor organizations, trade journals, students, etc.)	1,802
Receiving court decisions	372
Receiving monthly summaries	702
Regional offices	22
Total	2,898

All decisions are printed at the Government Printing Office and may be obtained only through the Superintendent of Documents. A list of all Board publications available at the Government Printing Office is furnished upon request to the Board.

XI. LIST OF CASES HEARD AND DECISIONS RENDERED DURING THE FISCAL YEAR

Explanatory note.—Sec. 3 (c) of the act requires that the Board report in detail “the cases it has heard, the decisions it has rendered.” List (A) includes all cases in which hearings had occurred prior to the fiscal year and in which decisions were issued during the fiscal year; unfair labor practice cases and representation cases are grouped separately. List (B) includes all cases in which hearings were held during the past fiscal year, grouped again into unfair labor practice cases and representation cases. List (C) includes cases in which decisions were issued by stipulation before hearing.

A. CASES HEARD PRIOR TO THE FISCAL YEAR 1939-40, IN WHICH ACTION WAS TAKEN DURING THE FISCAL YEAR

Unfair labor practice cases

Name of case	Hearing		Decision issued
	Opened	Closed	
Acme-Evans Co.	Apr. 10, 1939	May 5, 1939	May 29, 1940
Do.	do.	do.	Do.
Adams Bros. Salesbook Co.	Dec. 15, 1938	Dec. 22, 1938	Nov. 21, 1939
Air Associates, Inc.	Sept. 22, 1938	Oct. 18, 1938	Feb. 10, 1940
Alabama Hosiery Mills	July 18, 1938	July 21, 1938	Sept. 16, 1939
Alabama Power Co.	Nov. 3, 1938	Dec. 7, 1938	Dec. 22, 1939
Aladdin Industries, Inc.	Aug. 30, 1937	Oct. 13, 1937	Apr. 20, 1940
Allsteel Products Manufacturing Co.	July 25, 1938	July 29, 1938	Oct. 17, 1939
Alma Mills	Dec. 13, 1938	Jan. 7, 1939	May 29, 1940
American Hair & Felt Co.	Nov. 7, 1938	Nov. 15, 1938	Jan. 8, 1940
American Machine & Foundry Co., Inc.	Feb. 14, 1938	Feb. 28, 1938	Aug. 14, 1939
American Newspapers, Inc., Illinois Publishing & Printing Co.	Oct. 22, 1938 ¹⁴	Nov. 18, 1938 ¹⁴	(?)
American Oil Co.	Apr. 14, 1938	Apr. 21, 1938	Aug. 23, 1939
American Scale Co.	May 2, 1938	May 5, 1938	Do.
American West African Lines	Apr. 21, 1938 ¹	June 15, 1938 ¹	Mar. 18, 1940
Anderson Mattress Co.	do.	Apr. 27, 1938	(?)
Ansley Radio Corporation	Jan. 13, 1938	Jan. 26, 1938	Dec. 29, 1939
Appalachian Mills	Apr. 25, 1938	May 7, 1938	(?)
Arma Engineering Co.	Jan. 31, 1938	Feb. 14, 1938	Aug. 17, 1939
Armour Packing Co.	Feb. 21, 1938 ¹⁵	Mar. 10, 1938 ¹⁵	Aug. 15, 1939
Aronsson Printing Co.	Jan. 27, 1938	Feb. 8, 1938	July 21, 1939
Athens Stove Works	May 5, 1938	May 6, 1938	Dec. 7, 1939
Atlas Powder Co.	June 23, 1938	June 30, 1938	Oct. 5, 1939
Atlas Underwear Co.	June 19, 1939	June 27, 1939	Dec. 15, 1939
Auburn Foundry, Inc.	Apr. 7, 1938	Apr. 15, 1938	Aug. 31, 1939
Ault Williamson Shoe Co.	Feb. 21, 1938	Feb. 21, 1938	Sept. 5, 1939
B. H. Body Co. et al.	Apr. 11, 1938	Sept. 8, 1938	(?)
C. H. Bacon Co.	Jan. 10, 1938	Jan. 21, 1938	July 19, 1939
Baldwin Locomotive Works	Dec. 16, 1938	May 27, 1939	Feb. 29, 1940
F. M. Ball & Co.	Apr. 11, 1938	Sept. 8, 1938	Mar. 29, 1940
P. Ballantine & Sons	Apr. 24, 1939	May 11, 1939	Dec. 29, 1939
Bank of America	June 27, 1938	July 6, 1938	Aug. 4, 1939
Bartson, Albert J.	Sept. 19, 1938	Sept. 20, 1938	May 8, 1940
Bauman Bros. Furniture Manufacturing Co.	Oct. 13, 1938	Oct. 25, 1938	Dec. 27, 1939
Bayuk Cigars, Inc.	Apr. 25, 1939	May 6, 1939	Mar. 26, 1940
Beckerman Shoe Corporation	Jan. 3, 1938	Jan. 8, 1938	Jan. 24, 1940
Beckerman Shoe Corporation of Boyertown	May 19, 1938	May 23, 1938	Mar. 27, 1940
Beckerman Shoe Corporation of Kutztown	do.	do.	Do.
Bercut-Richards Packing Co.	Apr. 11, 1938	Sept. 8, 1938	(?)
Berkshire Knitting Mills	Nov. 29, 1937	Feb. 1, 1938	Nov. 3, 1939
M. Bierner & Son	Sept. 30, 1937	Sept. 30, 1937	Feb. 21, 1940
Bilt-Well Umbrella Co.	Apr. 17, 1939	Apr. 26, 1939	(?)

See footnotes at end of table.

134 FIFTH ANNUAL REPORT OF NATIONAL LABOR RELATIONS BOARD

A. CASES HEARD PRIOR TO THE FISCAL YEAR 1939-40, IN WHICH ACTION WAS TAKEN DURING THE FISCAL YEAR—Continued

Unfair labor practice cases—Continued

Name of case	Hearing		Decision issued
	Opened	Closed	
Bisbee Linseed Co.....	Oct. 13, 1938	Oct. 18, 1938	Dec. 29, 1939
Blanton Co.....	June 16, 1938	June 21, 1938	Oct. 31, 1939
S. Bleeham & Sons, Inc.....	Sept. 19, 1938	Sept. 21, 1938	Feb. 16, 1940
Block-Friedman Co.....	Sept. 30, 1937	Nov. 3, 1937	Feb. 21, 1940
Bloomfield Manufacturing Co., The.....	June 19, 1939	June 22, 1939	Mar. 29, 1940
Blossom Products Co.....	Oct. 6, 1938	Oct. 11, 1938	Feb. 10, 1940
Boldemann Chocolate Co.....	June 20, 1938	June 22, 1938	July 31, 1939
Booth Fisheries Co.....	Mar. 23, 1939	Mar. 24, 1939	Apr. 25, 1940
Borden Mills, Inc.....	Dec. 13, 1937	Jan. 14, 1938	July 1, 1939
Bowman Elder Receiver, Indiana R. R.....	May 3, 1937	May 18, 1937	(3)
Bradley Lumber Co.....	Mar. 16, 1936	Mar. 23, 1936	(4)
Brewer-Tichener Corporation.....	Aug. 15, 1938	Aug. 19, 1938	Jan. 8, 1940
Brown Shoe Co.....	July 5, 1938	July 20, 1938	Apr. 18, 1940
Burk Bros.....	Jan. 5, 1939	Jan. 6, 1939	Mar. 27, 1940
Burnham, Frederic H.....	Mar. 16, 1939	Mar. 29, 1939	Jan. 27, 1940
Burson Knitting Co.....	Apr. 21, 1938	Apr. 23, 1938	Jan. 23, 1940
Bussmann Manufacturing Co.....	May 6, 1938	May 13, 1938	Aug. 9, 1939
Cactus Mines Co.....	Nov. 17, 1938	Nov. 29, 1938	Mar. 16, 1940
California Conserving Co., Inc.....	Apr. 11, 1938	Sept. 8, 1938	Mar. 29, 1940
California Cotton Oil Corporation.....	Sept. 26, 1938	Oct. 5, 1938	Feb. 16, 1940
Do.....	do.....	do.....	Do.....
California & Hawaiian Sugar Refining Corporation.....	May 2, 1938	May 9, 1938	(5)
California Packing Corporation.....	Apr. 11, 1938	Sept. 8, 1938	Mar. 29, 1940
Do.....	do.....	do.....	Do.....
California Walnut Growers Association.....	Mar. 3, 1938	May 19, 1938	Dec. 20, 1939
Calmar Steamship Corporation.....	Dec. 6, 1937	Feb. 15, 1938	Dec. 1, 1939
Do.....	do.....	do.....	Do.....
Do.....	do.....	do.....	Do.....
Do.....	do.....	do.....	Do.....
Do.....	do.....	do.....	Do.....
Do.....	do.....	do.....	Do.....
Do.....	do.....	do.....	Do.....
Do.....	do.....	do.....	Do.....
Calmar Steamship Corporation (S. S. <i>Loamar</i>).....	do.....	Jan. 10, 1938	Do.....
Calmar Steamship Corporation (S. S. <i>Flomar</i>).....	do.....	do.....	Do.....
Calmar Steamship Corporation (S. S. <i>Oakmar</i>).....	do.....	do.....	Do.....
Calmar Steamship Corporation.....	Dec. 14, 1937	Jan. 26, 1938	Do.....
Calumet Steel Co.....	May 12, 1938	May 13, 1938	Apr. 23, 1940
Capitol Bedding Co.....	Apr. 1, 1938	Apr. 4, 1938	Aug. 15, 1939
Capitol Theatre Bus Terminal.....	Aug. 25, 1938	Aug. 29, 1938	Oct. 18, 1939
Carbola Chemical Co., Inc.....	July 7, 1938	July 7, 1938	July 24, 1939
Carnation Lumber Co.....	Aug. 15, 1938	Aug. 23, 1938	Apr. 20, 1940
Celluloid Corporation of America, The.....	Jan. 23, 1939	Jan. 23, 1939	Oct. 16, 1939
Central Greyhound Lines.....	do.....	Jan. 27, 1939	Mar. 18, 1940
Central Missouri Telephone Co.....	Mar. 27, 1939	Mar. 29, 1939	Oct. 2, 1939
Chambers Corporation.....	Jan. 16, 1939	Feb. 2, 1939	Mar. 20, 1940
Charles Cushman Co.....	Feb. 21, 1938	Feb. 21, 1938	Sept. 5, 1939
Chicago Casket Co.....	Aug. 4, 1938	Aug. 12, 1938	Mar. 7, 1940
Christian Board of Publication.....	Mar. 10, 1938	Mar. 15, 1938	July 12, 1939
Clark Shoe Co.....	Apr. 12, 1938	Apr. 14, 1938	Nov. 30, 1939
Clovis News-Journal (R. C. Holles et al.).....	May 24, 1938	May 25, 1938	July 25, 1939
Do.....	do.....	do.....	Do.....
Cluett Peabody & Co., Inc.....	Mar. 28, 1940	Mar. 30, 1940	(2)
Coldwell Lawn Mower Co.....	Aug. 8, 1938	Aug. 10, 1938	Aug. 1, 1939
Collins Baking Co.....	Mar. 30, 1939	Mar. 31, 1939	Jan. 11, 1940
Colorado Fuel & Iron Corporation.....	July 5, 1938	July 20, 1938	Mar. 29, 1940
Do.....	do.....	do.....	Do.....
Combustion Engineering Co.....	Oct. 17, 1938	Oct. 17, 1938	Feb. 20, 1940
Condenser Corporation of America.....	Feb. 15, 1937	Oct. 15, 1937	Mar. 29, 1940
Consolidated Cigar Corporation.....	June 23, 1938	June 24, 1938	Nov. 2, 1939
Consolidated Cigar Co.....	Dec. 19, 1938	Jan. 18, 1939	(14)
Do.....	do.....	do.....	Do. 14
Continental Box Co.....	Nov 28, 1938	Dec. 5, 1938	Jan. 25, 1940
Continental Oil Co.....	June 13, 1938	June 21, 1938	Mar. 29, 1940
Continental Roll & Steel Foundry, Hubbard Division.....	Jan. 26, 1939	Feb. 20, 1939	Jan. 20, 1940
Continental Upholstered Furniture Co. (Israel G. Cutler et al.) and Medford Upholstery, Inc.....	Feb. 9, 1939	Feb. 20, 1939	(2)
Cooper-Wells & Co.....	May 12, 1938	May 26, 1938	Oct. 17, 1939
Do.....	do.....	do.....	Do.....
Corinth Hosiery Mills.....	Mar. 28, 1938	Apr. 2, 1938	Oct. 25, 1939
Corn Products Refining Co.....	Dec. 5, 1938	Jan. 7, 1939	Apr. 9, 1940
Corning Glass Works.....	Feb. 2, 1938	Feb. 17, 1938	Sept. 23, 1939
Cudahy Packing Co., Inc.....	Feb. 3, 1938	Feb. 17, 1938	Nov. 4, 1939
Do.....	July 7, 1938	July 15, 1938	Sept. 26, 1939
Culloom & Ghtner Co.....	June 20, 1938	June 23, 1938	Aug. 7, 1939

See footnotes at end of table.

A. CASES HEARD PRIOR TO THE FISCAL YEAR 1939-40, IN WHICH ACTION WAS TAKEN DURING THE FISCAL YEAR—Continued

Unfair labor practice cases—Continued

Name of case	Hearing		Decision issued
	Opened	Closed	
Dallas Cartage Co.....	June 30, 1938	July 2, 1938	Aug. 10, 1939
Danville Knitting Mills.....	May 25, 1939	May 27, 1939	(u)
Davis Granite Co.....	Apr. 17, 1939	Apr. 26, 1939	Dec. 21, 1939
Decatur Iron & Steel Co.....	Jan. 23, 1939	Jan. 26, 1939	Nov. 30, 1939
Decatur Newspapers, Inc.....	Apr. 18, 1938	Apr. 22, 1938	Oct. 26, 1939
Delco-Remy Corporation (General Motors Corporation).....	Feb. 21, 1938	Mar. 17, 1938	Aug. 2, 1939
Detroit Gasket & Manufacturing Co.....	May 26, 1938	June 21, 1938	(?)
Detroit Steel Products Co.....	Aug. 9, 1938	Aug. 12, 1938	Mar. 11, 1940
Diamond T Motor Car Co.....	Oct. 24, 1938	Nov. 1, 1938	Dec. 8, 1939
Douglas Aircraft Co. (Northrop Division).....	Feb. 9, 1938	Feb. 25, 1938	(1)
Dow Chemical Co.....	Mar. 24, 1938	Apr. 12, 1938	July 25, 1939
Duffy Silk Co.....	Jan. 5, 1939	Feb. 10, 1939	Jan. 5, 1940
Eagle & Phenix Mills.....	Feb. 27, 1939	Mar. 1, 1939	Oct. 11, 1939
Eagle-Picher Mining & Smelting Co.....	Dec. 6, 1937	Apr. 29, 1938	Oct. 27, 1939
Eastern States Petroleum Co., Inc.....	June 27, 1938	June 28, 1938	Sept. 16, 1939
Easton Publishing Co.....	June 8, 1939	June 12, 1939	Jan. 11, 1940
Elmhurst Packers, Inc.....	Apr. 11, 1938	Sept. 8, 1938	Mar. 29, 1940
Emerson Electric Mfg. Co.....	May 23, 1938	May 27, 1938	July 1, 1939
Emerson Radio & Television, Inc.....	Aug. 25, 1938	Sept. 12, 1938	(1)
Empire Distributing Electric Co.....	May 26, 1938	June 7, 1938	Mar. 13, 1940
Empire Worsted Mills, Inc.....	Mar. 14, 1938	Mar. 21, 1938	Apr. 29, 1940
Essex Wire Corporation.....	Oct. 4, 1938	Oct. 28, 1938	Jan. 5, 1940
Evening American Publishing Co.....	Sept. 29, 1938	Nov. 18, 1938	(?)
Express Publishing Co.....	Oct. 6, 1938	Oct. 6, 1938	July 28, 1939
Fall River Gas Works Co.....	May 18, 1936	May 19, 1936	(u)
Federal Mining & Smelting Co.....	June 6, 1938	June 14, 1938	Feb. 5, 1940
Federal Screw Works.....	Nov. 28, 1938	Dec. 8, 1938	Mar. 4, 1940
Jac Feinberg Hosiery Mills.....	Jan. 17, 1938	Jan. 22, 1938	Jan. 19, 1940
Fein's Tin Can Co., Inc.....	Nov. 25, 1938	Dec. 29, 1938	May 28, 1940
Fillice & Perrelli Canning Co., Inc.....	Apr. 11, 1938	Sept. 8, 1938	(?)
Finesilver Pants & Overall Manufacturing Co.....	Mar. 30, 1939	Apr. 3, 1939	(?)
Finkelstein Umbrella Co.....	Oct. 27, 1938	Oct. 29, 1938	(?)
Firestone Tire & Rubber Co.....	Jan. 4, 1938	Mar. 11, 1938	Mar. 30, 1940
Fitzsimons Manufacturing Co.....	Jan. 23, 1939	Feb. 17, 1939	(?)
Florence Pipe, Foundry & Machine Co.....	Aug. 1, 1938	Aug. 9, 1938	Jan. 5, 1940
Foote Bros. Gear & Machine Corporation.....	Jan. 10, 1938	Feb. 4, 1938	Aug. 24, 1939
Do.....	do.....	do.....	Do.....
Ford Motor Co.....	July 6, 1937	July 30, 1937	(u)
Do.....	Sept. 13, 1937	Sept. 20, 1937	Jan. 20, 1940
Do.....	Dec. 16, 1937	Apr. 9, 1938	Apr. 29, 1940
Do.....	Jan. 11, 1938	Feb. 4, 1938	May 7, 1940
Do.....	June 6, 1938	June 16, 1938	Dec. 8, 1939
Fort Wayne Corrugated Paper Co.....	Apr. 14, 1938	Apr. 15, 1938	Aug. 1, 1939
Foster Bros. Manufacturing Co.....	Aug. 18, 1938	Aug. 25, 1938	(?)
Fox Bros. Manufacturing Co.....	May 5, 1938	May 9, 1938	(?)
Fox-Coffey-Edge Millinery.....	Sept. 30, 1937	Oct. 13, 1937	Feb. 21, 1940
Ed. Friedrick, Inc.....	Nov. 15, 1937	Nov. 19, 1937	Nov. 6, 1939
Garden State Lines, Inc.....	Mar. 14, 1938	Mar. 26, 1938	(?)
Henry Glass & Co.....	Jan. 5, 1939	Jan. 13, 1939	Mar. 18, 1940
Glory Knitting Mills, Dunitz, J., doing business under firm name of.....	Mar. 27, 1939	Mar. 31, 1939	Jan. 20, 1940
Golden Cycle Corporation.....	July 21, 1938	Aug. 2, 1938	(?)
Goodyear Tire & Rubber Co.....	Aug. 19, 1937	Dec. 1, 1937	Mar. 9, 1940
J. Greenebaum Tanning Co.....	Jan. 9, 1939	Jan. 9, 1939	Nov. 2, 1939
John Grieves Sons.....	Oct. 10, 1938	Oct. 14, 1938	(?)
Grower-Shipper Vegetable Association.....	Apr. 12, 1937	May 18, 1937	Sept. 15, 1939
Gulf Produce Co-op, Inc.....	July 21, 1938	July 21, 1938	(?)
Gulf Public Service Co.....	Aug. 8, 1938	Sept. 6, 1938	Dec. 21, 1939
Gulf Refining Co., The.....	May 18, 1939	June 9, 1939	(?)
Gunn Furniture Co.....	May 25, 1939	May 26, 1939	(?)
Gutmann & Co.....	Aug. 18, 1938	Aug. 27, 1938	Dec. 1, 1939
Half Manufacturing Co.....	Apr. 24, 1939	Apr. 28, 1939	Oct. 27, 1939
Hammond Lumber Co.....	Feb. 10, 1938	Feb. 17, 1938	(?)
Hamrick Mills.....	Dec. 13, 1938	Jan. 7, 1939	May 29, 1940
M. A. Hanna Ore Mining Co.....	June 2, 1938	June 8, 1938	Mar. 23, 1940
Harbor Plywood Corporation.....	June 29, 1939	Aug. 7, 1939	(?)
Harrisburg Children's Dress Co.....	May 9, 1938	May 12, 1938	Aug. 24, 1939
Hartsell Mills Co.....	July 21, 1938	July 23, 1938	Dec. 12, 1939
Heintz Manufacturing Co.....	May 8, 1939	May 12, 1939	June 26, 1940
H. J. Heinz Corporation.....	Apr. 11, 1938	Sept. 8, 1938	Mar. 29, 1940
Heyward Granite Co.....	May 9, 1938	May 11, 1938	Dec. 21, 1939
Highland Shoe, Inc.....	Apr. 1, 1938	Apr. 4, 1938	Apr. 26, 1940

See footnotes at end of table.

136 FIFTH ANNUAL REPORT OF NATIONAL LABOR RELATIONS BOARD

A. CASES HEARD PRIOR TO THE FISCAL YEAR 1939-40, IN WHICH ACTION WAS TAKEN DURING THE FISCAL YEAR—Continued

Unfair labor practice cases—Continued

Name of case	Hearing		Decision issued
	Opened	Closed	
Hilgartner Marble Co.....	Apr. 18, 1938	Apr. 19, 1938	July 27, 1939
Holland Manufacturing Co.....	Oct. 13, 1938	Oct. 19, 1938	May 27, 1940
Hollywood Citizen-News Co.....	July 5, 1938	July 12, 1938	Mar. 26, 1940
Holston Manufacturing Co.....	July 7, 1938	July 8, 1938	July 20, 1939
Hood Rubber Co.....	Apr. 14, 1938	Apr. 21, 1938	Aug. 1, 1939
Hoosier Veneer Co.....	Oct. 6, 1938	Oct. 12, 1938	Mar. 22, 1940
Hops Webbing Co.....	Jan. 31, 1938	Feb. 17, 1938	Aug. 1, 1939
E. Hubschman & Sons, Inc.....	Dec. 15, 1937	Dec. 15, 1937	Aug. 5, 1939
Humble Oil & Refining Co.....	Mar. 7, 1938	Apr. 2, 1938	Oct. 18, 1939
Do.....	do.....	do.....	Do.....
Hummer Manufacturing Co.....	Sept. 1, 1938	Sept. 2, 1938	Nov. 18, 1939
Do.....	do.....	do.....	Do.....
Hunt Brothers Packing Co.....	Apr. 11, 1938	Sept. 8, 1938	Mar. 29, 1940
Ideal Electric Manufacturing Co.....	Oct. 3, 1938	Oct. 17, 1938	Feb. 27, 1940
Illinois Tool Works.....	May 8, 1939	May 9, 1939	Nov. 27, 1939
Illinois Zinc Co.....	Aug. 15, 1938	Aug. 29, 1938	(?)
Independent Pneumatic Tool Co.....	May 12, 1938	May 13, 1938	Sept. 6, 1939
Indiana & Michigan Electric Co.....	Nov. 28, 1938	Dec. 9, 1938	Feb. 28, 1940
Inter-Allied Slipper Co., Inc.....	May 22, 1939	May 23, 1939	(?)
International Agricultural Corporation.....	May 26, 1938	June 1, 1938	Oct. 19, 1939
Do.....	do.....	do.....	Do.....
International Furniture Co.....	Aug. 29, 1938	Sept. 14, 1938	(?)
Interstate Aircraft & Engineering Corporation.....	Apr. 18, 1938	Apr. 25, 1938	(?)
Interstate Fireproof Storage Co.....	July 5, 1938	July 5, 1938	Aug. 10, 1939
Irving Tanning Co. & Hartland Tanning Co.....	Jan. 30, 1939	Feb. 11, 1939	Mar. 28, 1940
Isthmian Steamship Co.....	Dec. 21, 1937	June 10, 1938	Apr. 4, 1940
F. Jaden Manufacturing Co., Inc.....	Nov. 14, 1938	Nov. 22, 1938	Jan. 8, 1940
Jamestown Metal Equipment Co. et al.....	Oct. 24, 1938	Oct. 27, 1938	Nov. 17, 1939
Jefferson Lake Oil Co., Inc.....	Apr. 18, 1938	Apr. 26, 1938	Oct. 24, 1939
Johns-Manville Corporation.....	Aug. 4, 1938	Aug. 24, 1938	Nov. 17, 1939
C. D. Johnson Lumber et al.....	Oct. 18, 1937	May 23, 1938	Jan. 25, 1940
Do.....	do.....	do.....	Do.....
Johnston Pump Co.....	May 11, 1939	May 16, 1939	(?)
Joliet Wrought Washer Co.....	Apr. 7, 1938	Apr. 13, 1938	(?)
David Kahn, Inc.....	July 12, 1938	July 19, 1938	Aug. 8, 1939
Keystone Frame & Manufacturing Co.....	May 22, 1939	May 26, 1939	(?)
Killefer Manufacturing Corporation, Ltd.....	Apr. 28, 1938	June 7, 1938	Mar. 30, 1940
Klauer Manufacturing Co.....	Feb. 2, 1939	Feb. 8, 1939	(?)
J. Klotz & Co.....	Dec. 10, 1937	Mar. 14, 1938	July 20, 1939
Koss Shoe Co.....	Feb. 21, 1938	Feb. 21, 1938	Sept. 5, 1939
Kramer & Uchitelle.....	May 22, 1939	June 9, 1939	(?)
F. W. Kurtz & Co., Inc.....	June 6, 1938	June 8, 1938	(?)
L. & A. Bus Lines, C. G. Lashley, doing business as.....	May 2, 1938	May 4, 1938	Aug. 15, 1939
La Favorite Rubber Co.....	Jan. 26, 1939	Feb. 23, 1939	(?)
La Patee Undergarment Co.....	Dec. 20, 1938	Dec. 22, 1938	Nov. 2, 1939
Do.....	do.....	do.....	Do.....
Laird, Schober Shoe Co.....	June 2, 1938	June 7, 1938	Aug. 26, 1939
Lancaster Iron Works, Inc.....	Jan. 17, 1938	Feb. 8, 1938	Feb. 23, 1940
Lansing Co.....	June 30, 1938	July 8, 1938	Feb. 14, 1940
E. C. Leach & Co.....	Mar. 6, 1939	Mar. 20, 1939	Apr. 20, 1940
Lennox Furnace Co.....	Feb. 20, 1939	Mar. 2, 1939	Feb. 28, 1940
Libby, McNeill & Libby.....	Apr. 11, 1938	Sept. 8, 1938	Mar. 29, 1940
Liberty Dry Docks & Repair Co.....	July 12, 1938	July 12, 1938	(17)
Limestone Mills.....	Dec. 13, 1938	Jan. 7, 1939	May 29, 1940
Litwin & Sons.....	July 7, 1938	July 13, 1938	(5)
Lone Star Gas Co.....	Nov. 11, 1937	Dec. 3, 1937	Dec. 18, 1939
Lorillard, P., Co.....	Apr. 21, 1938	Apr. 21, 1938	Oct. 27, 1939
Do.....	Apr. 23, 1938 ¹⁸	Apr. 23, 1938 ¹⁸	Oct. 27, 1939
Louis Shoe Co.....	Feb. 27, 1939	Mar. 10, 1939	(?)
Lown Shoe Co.....	Feb. 21, 1938	Feb. 21, 1938	Sept. 5, 1939
Lumbard Shoe Co.....	do.....	do.....	Do.....
Lund, C. A.....	July 6, 1937	July 9, 1937	(?)
Luxuray, Inc.....	Aug. 18, 1938	Aug. 18, 1938	Oct. 17, 1939
Magnolia Petroleum Co.....	June 1, 1938	June 14, 1938	Dec. 16, 1939
Do.....	Dec. 12, 1938	Dec. 20, 1938	Jan. 8, 1940
Majne Shoes, Inc.....	Feb. 21, 1938	Feb. 21, 1938	Sept. 5, 1939
Majestic Flour Mills.....	June 3, 1938	July 2, 1938	Sept. 21, 1939
Malone Aluminum & Bronze Powder Co.....	Oct. 3, 1938	Oct. 14, 1938	Sept. 12, 1939

See footnotes at end of table.

A. CASES HEARD PRIOR TO THE FISCAL YEAR 1939-40, IN WHICH ACTION WAS TAKEN DURING THE FISCAL YEAR—Continued

Unfair labor practice cases—Continued

Name of case	Hearing		Decision issued
	Opened	Closed	
Mandan Radio Association	May 18, 1939	May 19, 1939	(?)
Marlin-Rockwell Corporation	Aug. 25, 1938	Aug. 30, 1938	Jan. 19, 1940
Martel Mills Corporation	Feb. 2, 1939	Feb. 3, 1939	Feb. 23, 1940
Maryland Bolt & Nut Co.	June 2, 1938	June 7, 1938	Aug. 16, 1939
Mason Mfg. Co.	May 26, 1938	do	Sept. 15, 1939
Massachusetts Knitting Mills	Apr. 14, 1938	Apr. 16, 1938	Nov. 8, 1939
Massachusetts Trawling Co.	Mar. 23, 1939	Mar. 24, 1939	Apr. 25, 1940
Mathieson Alkali Works, Inc.	June 6, 1938	June 24, 1938	July 24, 1939
Mayer Handbag Co.	Aug. 4, 1938	Aug. 15, 1938	Dec. 27, 1939
Mercer Textile Co.	Aug. 1, 1938	Aug. 3, 1938	(?)
Merchants Transfer & Storage Co.	Apr. 25, 1938	Apr. 25, 1938	(?)
Metal Hose & Tubing Co.	Jan. 23, 1939	Feb. 15, 1939	May 23, 1940
B. Miffilin Hood Co.	Feb. 7, 1938	Feb. 18, 1938	(?)
Milan Shirt Manufacturing Co.	Apr. 24, 1939	May 3, 1939	Apr. 20, 1940
Miller Abattoir Co.	Nov. 17, 1938	Nov. 18, 1938	Nov. 17, 1939
Millie Chair Co.	Apr. 28, 1938	May 6, 1938	Dec. 1, 1939
Mission Hosiery Mills	June 6, 1938	June 10, 1938	Oct. 30, 1939
Mo-Ark Coach Lines, Inc.	Apr. 21, 1938	Apr. 21, 1938	(?)
Model Blouse Co.	Nov. 3, 1938	Nov. 22, 1938	Sept. 7, 1939
Moltrup Steel Products Co.	Feb. 7, 1938	Mar. 30, 1938	Jan. 15, 1940
Monarch Co., The	June 6, 1938	June 11, 1938	Aug. 29, 1939
Monarch Mills, Inc.	July 25, 1938	Jan. 19, 1939	Oct. 17, 1939
Monte Glove Co.	Apr. 6, 1939	Apr. 10, 1939	Nov. 6, 1939
Montgomery Ward & Co.	July 21, 1938	July 26, 1938	Nov. 2, 1939
Monticello Manufacturing Co.	July 20, 1938	July 27, 1938	Nov. 30, 1939
Moore-Lowry Flour Mills Co.	July 7, 1938	July 9, 1938	Mar. 25, 1940
Mor-Pak Preserving Corp.	Apr. 11, 1938	Sept. 8, 1938	Mar. 29, 1940
Morgan Packing Co.	Oct. 7, 1937	Oct. 16, 1937	(?)
Do	do	do	Mar. 29, 1940
Motor Specialties Corporation	Apr. 10, 1939	Apr. 14, 1939	Apr. 12, 1940
Murray Hat Co.	July 14, 1938	July 27, 1938	(?)
McAlbert Oil Co., Inc., and McDaniel, D. B., Drilling Corporation	Sept. 22, 1938	Sept. 27, 1938	Mar. 22, 1940
McGoldrick Lumber Co.	Oct. 18, 1937	May 23, 1938	Jan. 25, 1940
McKesson & Robbins, Inc.	Sept. 19, 1938	Sept. 22, 1938	Jan. 23, 1940
Do	do	do	Do
McQuay-Norris Manufacturing Co.	Mar. 9, 1939	Mar. 11, 1939	Mar. 18, 1940
Narragansett Plush, Inc.	Aug. 1, 1938	Aug. 10, 1938	(?)
Nash-Kelvinator Corporation	do	Aug. 8, 1938	Dec. 27, 1939
National Battery Co.	May 1, 1939	May 12, 1939	(?)
National City Lines et al.	Mar. 13, 1939	Mar. 15, 1939	(?)
National Electric Products Corporation	Oct. 25, 1938	Oct. 25, 1938	Oct. 27, 1939
National Mirror Advertising Co.	Oct. 27, 1938	Nov. 2, 1938	(?)
National Motor Rebuilding Corporation	Mar. 13, 1939	Mar. 20, 1939	Jan. 15, 1940
National Supply Co., The	Apr. 14, 1938	Apr. 26, 1938	Oct. 23, 1939
Nebraska Power Co.	June 16, 1938	July 1, 1938	Jan. 11, 1940
C. Nelson Manufacturing Co.	June 9, 1938	June 15, 1938	Oct. 11, 1939
New Era Die Co.	Mar. 23, 1939	Mar. 24, 1939	Jan. 8, 1940
New York Handkerchief Co.	June 30, 1938	July 8, 1938	Oct. 26, 1939
Newark Morning Ledger Co.	July 22, 1938	Sept. 16, 1938	Mar. 23, 1940
Newberry Lumber & Chemical Co.	Nov. 7, 1938	Nov. 12, 1938	Nov. 17, 1939
Ray Nichols, Inc.	June 27, 1938	June 29, 1938	Oct. 3, 1939
Niles Fire Brick Co., The	Mar. 10, 1938	Mar. 17, 1938	Dec. 28, 1939
Northland Ski Mfg. Co.	July 6, 1937	July 9, 1937	(25)
O'Hara Brothers Company, Inc.	Mar. 23, 1939	Mar. 24, 1939	Apr. 25, 1940
Ohio Brass Co.	June 27, 1938	June 29, 1938	Sept. 12, 1939
Ohio Greyhound Lines, Inc.	Jan. 23, 1939	Jan. 27, 1939	Mar. 18, 1940
Oil Well Mfg. Corporation	Nov. 8, 1937	Nov. 12, 1937	Aug. 24, 1939
Okey Hosiery Co.	June 27, 1938	June 29, 1938	Apr. 8, 1940
Old Straight Creek Coal Co.	July 14, 1938	July 19, 1938	(?)
Omaha & Council Bluffs Street Railway Co.	July 11, 1938	Aug. 18, 1938	Dec. 1, 1939
Pacific Gas Radiator Co.	Jan. 26, 1939	Feb. 16, 1939	Mar. 13, 1940
Pacific Greyhound Lines	June 29, 1939	June 30, 1939	(?)
Packwell Corporation	Apr. 11, 1938	Sept. 8, 1938	(?)
J. E. Pearce Contracting & Stevedoring Co.	Nov. 21, 1938	Mar. 2, 1939	Feb. 29, 1940
Pearlstone Printing & Stationery Co.	Mar. 31, 1938	Mar. 31, 1938	Oct. 27, 1939
Peerless Knitting Mills	Apr. 11, 1938	Apr. 15, 1938	July 1, 1939
Perfection Steel Body Co.	July 1, 1938	July 6, 1938	Apr. 23, 1940
Peter Pan Co., Inc.	Nov. 17, 1938	Nov. 17, 1938	Mar. 11, 1940
Do	May 22, 1939	May 23, 1939	Do

See footnotes at end of table.

138 FIFTH ANNUAL REPORT OF NATIONAL LABOR RELATIONS BOARD

A. CASES HEARD PRIOR TO THE FISCAL YEAR 1939-40, IN WHICH ACTION WAS TAKEN DURING THE FISCAL YEAR—Continued

Unfair labor practice cases—Continued

Name of case	Hearing		Decision issued
	Opened	Closed	
Phelps Dodge Corporation.....	Jan. 27, 1938	Feb. 3, 1938	Jan. 16, 1940
Phelps Dodge Corporation (United Verde branch).....	Dec. 8, 1938	Dec. 9, 1938	Sept. 27, 1939
Phillips Petroleum Co.....	Aug. 11, 1938	Aug. 18, 1938	May 13, 1940
Geo. P. Pilling & Son Co.....	Feb. 23, 1939	Feb. 24, 1939	Oct. 27, 1939
Pilot Radio Corporation.....	Nov. 8, 1937	Dec. 4, 1937	Aug. 24, 1939
Pittsburgh Metallurgical Co., Inc.....	Sept. 13, 1938	Sept. 13, 1938	Feb. 29, 1940
Pittsburgh Plate Glass Co.....	Mar. 6, 1939	Mar. 6, 1939	Sept. 19, 1939
Pittsburgh Standard Envelope Co.....	June 6, 1938	June 17, 1938	Feb. 16, 1940
J. S. Popper, Inc.....	Jan. 3, 1939	Jan. 3, 1939	Nov. 20, 1939
Potlatch Forests et al.....	Oct. 18, 1937	May 23, 1938	Jan. 25, 1940
Premier Furnace Co., Inc.....	May 25, 1939	June 3, 1939	May 1, 1940
Press Co., Inc., The, and Gannett Co., The.....	Oct. 25, 1937	Jan. 21, 1937	July 18, 1939
Princess Garment Co., Fashion Frocks, Inc.....	Apr. 13, 1939	Apr. 29, 1939	(4)
Producers Produce Co.....	July 14, 1938	July 18, 1938	May 16, 1940
Protective Motor Service Co.....	Jan. 8, 1936	Feb. 8, 1936	Mar. 12, 1940
Pullman Standard Car Manufacturing Co.....	Mar. 9, 1939	Apr. 5, 1939	Mar. 27, 1940
Purity Biscuit Co., Incorporated.....	Apr. 22, 1938	Apr. 27, 1938	July 24, 1939
Quality Art Novelty Co.....	May 19, 1938	June 17, 1938	Feb. 24, 1940
Quality Shirt Manufacturing Co.....	Mar. 28, 1938	Mar. 31, 1938	Dec. 15, 1939
R. H. H. Steel Laundry.....	Nov. 17, 1938	Dec. 5, 1938	(7)
Ramsey, Edward J.....	Feb. 21, 1938	Feb. 23, 1938	(8)
Rath Packing Co.....	Apr. 25, 1938	Apr. 27, 1938	Aug. 31, 1939
Reading Battery Co., Inc.....	Apr. 28, 1938	May 5, 1938	Jan. 9, 1940
Reichelt, Paul A., Co.....	Aug. 15, 1938	Aug. 16, 1938	Mar. 7, 1940
Republic Cresoting Co.....	Aug. 26, 1937	Sept. 4, 1937	Jan. 9, 1940
Republic Rubber Co. (Lee Rubber & Tire).....	May 22, 1939	June 8, 1939	Dec. 1, 1939
Republic Steel Corporation.....	Apr. 22, 1940	May 1, 1940	(1)
Revere Copper & Brass Co.....	July 11, 1938	July 15, 1938	Oct. 25, 1939
Richard Bros. Corporation.....	Mar. 7, 1939	Mar. 7, 1939	(4)
Richmond-Chase Co.....	Apr. 11, 1938	Sept. 8, 1938	Mar. 29, 1940
The M. H. Ritzwoller Co.....	Mar. 14, 1938	Mar. 22, 1938	Sept. 1, 1939
Riverside Manufacturing Co.....	Aug. 8, 1938	Aug. 16, 1938	Feb. 12, 1940
Rockford Mitten & Hosiery Co.....	July 25, 1938	July 27, 1938	Oct. 26, 1939
Rockton and Rion R. R.....	May 9, 1938	May 11, 1938	Dec. 21, 1939
John A. Roebling's Sons Co.....	July 7, 1938	July 14, 1938	Nov. 10, 1939
Roemer Bros. Trucking Co., Inc.....	Mar. 31, 1938	Apr. 2, 1938	July 12, 1939
Fred Rueping Leather Co.....	do.....	Apr. 29, 1938	June 29, 1940
Rushmore Paper Co.....	Jan. 26, 1939	Feb. 1, 1939	(2)
Ryan Car Co.....	Aug. 11, 1938	Aug. 12, 1938	Mar. 5, 1940
Sager Lock Works.....	June 23, 1938	June 30, 1938	Nov. 13, 1939
Salt Lake Transfer Co.....	July 8, 1938	July 12, 1938	(4)
Samuel Stamping & Enameling Co.....	May 29, 1939	May 30, 1939	(4)
San Diego Ice & Cold Storage.....	Nov. 17, 1937	Dec. 13, 1937	Nov. 8, 1939
J. W. Sanders Cotton Mill.....	May 25, 1936	May 26, 1936	(8)
Sanitary Refrigerator Co.....	May 5, 1938	June 11, 1938	(7)
Santa Cruz Fruit Packing Co.....	Apr. 11, 1938	Sept. 8, 1938	Mar. 29, 1940
Schlerbrock Motors.....	Nov. 21, 1938	Nov. 21, 1938	Oct. 13, 1939
Schwarze Electric Co.....	Dec. 2, 1937	Dec. 9, 1937	Oct. 23, 1939
Scobey Fireproof Storage Co.....	Apr. 28, 1938	Apr. 30, 1938	July 25, 1939
Scottdale Mills.....	Nov. 7, 1938	Jan. 26, 1939	Sept. 16, 1939
Seattle Post-Intelligencer.....	Mar. 10, 1938	Apr. 1, 1938	July 31, 1939
Se-Ling Hosiery Mills, Inc.....	July 11, 1938	July 14, 1938	Aug. 12, 1939
Semet-Solvay Coal Co.....	Jan. 12, 1938	Feb. 24, 1938	(8)
Shepard Steamship Co.....	Jan. 12, 1939	Jan. 12, 1939	(4)
Sierra Madre Lamanda Citrus Association and/or Betz Packing Co.....	Oct. 4, 1938	Oct. 10, 1938	Apr. 23, 1940
Siewers, Paul & McKay.....	July 5, 1938	July 7, 1938	Oct. 2, 1939
Simplicity Pattern Co.....	Oct. 18, 1937	Nov. 10, 1937	Oct. 23, 1939
Do.....	do.....	do.....	Do.....
Sinclair Refining Co.....	Feb. 23, 1939	Feb. 28, 1939	Feb. 24, 1940
Skinner & Kennedy Printing Co.....	June 6, 1938	June 10, 1938	July 26, 1939
Smith Wood Products, Inc.....	Feb. 2, 1938	Feb. 5, 1938	Oct. 27, 1939
Do.....	Apr. 25, 1938	Apr. 27, 1938	Do.....
Solvay Process Co.....	Sept. 15, 1938	Oct. 7, 1938	Mar. 22, 1940
Somerset Shoe Co.....	Feb. 21, 1938	Feb. 21, 1938	Sept. 5, 1939
South Texas Coaches, et al.....	Apr. 20, 1939	May 6, 1939	Mar. 30, 1940

See footnotes at end of table.

A. CASES HEARD PRIOR TO THE FISCAL YEAR 1939-40, IN WHICH ACTION WAS TAKEN DURING THE FISCAL YEAR—Continued

Unfair labor practice cases—Continued

Name of case	Hearing		Decision issued
	Opened	Closed	
Southern Colorado Power Co.....	June 2, 1938	June 6, 1938	July 19, 1939
Southern Pacific Steamship Co.....	Jan. 20, 1938 ^m	Feb. 16, 1938 ^m	(1)
Southern Steamship Co.....	Dec. 5, 1938	Jan. 9, 1939	Apr. 22, 1940
Southwestern Gas & Electric Co.....	Jan. 20, 1938	Jan. 22, 1938	Oct. 26, 1939
Southwestern Greyhound Lines, Inc.....	Apr. 4, 1938	Dec. 3, 1938	Mar. 28, 1940
Sparks-Withington Co.....	Sept. 22, 1938	Sept. 28, 1938	Mar. 1, 1940
Sprague Specialties Co.....	Sept. 16, 1938	Sept. 22, 1938	Feb. 19, 1940
A. E. Staley Manufacturing Co.....	Dec. 12, 1938	Dec. 16, 1938	Apr. 2, 1940
Standard Hat Co.....	Apr. 27, 1939	Apr. 28, 1939	Nov. 17, 1939
Star & Crescent Boat Co.....	Jan. 5, 1939	Jan. 13, 1939	Dec. 19, 1939
Stewart Die Casting Corporation.....	Jan. 20, 1938 ⁿ	Feb. 9, 1938 ⁿ	Aug. 22, 1939
Do.....	June 21, 1938	June 24, 1938	Do.
Stockholders Publishing Co.....	Apr. 4, 1938	Apr. 9, 1938	(1)
Stockton Food Products, Inc.....	Apr. 11, 1938	Sept. 8, 1938	Mar. 29, 1940
Stoneville Furniture Co.....	Sept. 30, 1937	Sept. 30, 1937	Dec. 28, 1939
Stover Bedding Co.....	Apr. 7, 1938	Apr. 8, 1938	Sept. 25, 1939
Stromberg Carlson Telephone Co.....	Feb. 10, 1938 ⁿ	Apr. 7, 1938 ⁿ	Dec. 21, 1939
Superfine Slipper Co.....	July 25, 1938	July 26, 1938	(1)
Superior Cabinet Corporation et al.....	June 5, 1939	June 15, 1939	Nov. 14, 1939
Superior Reed & Rattan Furniture Co.....	Jan. 3, 1939	Jan. 10, 1939	(1)
Superior Table Novelty Corporation.....	June 5, 1939	June 15, 1939	(1)
Superior Tanning Co.....	Feb. 14, 1938	Feb. 17, 1938	Aug. 23, 1939
Surpass Leather Co.....	June 16, 1938	June 23, 1938	Mar. 27, 1940
Swayne & Hoyt, Ltd.....	Feb. 3, 1938	Feb. 4, 1938	Oct. 2, 1939
Swift & Co.....	June 6, 1938	June 8, 1938	July 19, 1939
Do.....	Aug. 8, 1938	Aug. 11, 1938	Oct. 9, 1939
Swift Packing Co.....	Oct. 17, 1938	Nov. 11, 1938	Mar. 27, 1940
N. & G. Taylor Co.....	Nov. 15, 1937	Nov. 18, 1937	Do.
Tennessee Electric Power Co.....	Nov. 7, 1938	Nov. 10, 1938	(1)
Terminal Manufacturing Co.....	Feb. 27, 1939	Mar. 8, 1939	(1)
Texas Co.....	May 16, 1938	May 28, 1938	Nov. 17, 1939
Texas Co. (Port Neches Works).....	do.....	do.....	Do.
Texas Co., The.....	Sept. 12, 1938	Nov. 29, 1938	Jan. 24, 1940
Texas Mining & Smelting Co.....	Feb. 14, 1938	Feb. 25, 1938	July 25, 1939
Theurer Wagon Works.....	Jan. 27, 1938	Feb. 28, 1938	Dec. 23, 1939
Thompson Cabinet Co.....	Mar. 10, 1938	Mar. 12, 1938	(2)
Times Publishing Co.....	May 2, 1938	May 6, 1938	July 13, 1939
Tri-State Towel Service Co.....	Nov. 26, 1937	Nov. 26, 1937	(2)
Do.....	do.....	do.....	(2)
Tulsa Boiler & Machinery Co.....	June 2, 1938	June 9, 1938	May 15, 1940
Union Forging Co.....	May 15, 1939	May 23, 1939	(1)
Union Stock Yards Co.....	June 20, 1938	June 22, 1938	Oct. 5, 1939
United States Pipe & Foundry Co.....	Feb. 21, 1939	Feb. 22, 1939	May 28, 1940
Universal Engraving & Colorplate Co.....	Mar. 9, 1939	Mar. 18, 1939	(1)
Universal Film Exchange, Inc.....	May 26, 1938	May 27, 1938	July 1, 1939
Universal Match Co.....	June 16, 1938	July 12, 1938	Apr. 25, 1940
Utah Copper Co.....	June 8, 1939	June 9, 1939	(1)
Vall-Ballou Press, Inc.....	May 23, 1938	May 27, 1938	Sept. 15, 1939
Valley Camp Coal Co., The.....	Feb. 9, 1939	Feb. 17, 1939	Nov. 13, 1939
Valley Mould & Iron Corporation.....	May 1, 1939	May 3, 1939	Feb. 5, 1940
Van Iderstine Co., The.....	Mar. 31, 1938	Apr. 6, 1938	Nov. 17, 1939
Venus Shoe Co.....	Feb. 21, 1938	Feb. 21, 1938	Sept. 5, 1939
Viking Pump Co.....	Apr. 28, 1938	May 4, 1938	July 13, 1939
Vincennes Steel Corporation.....	Dec. 1, 1938	Dec. 7, 1938	Nov. 17, 1939
Virginia Electric & Power Co.....	May 19, 1938	June 18, 1938	Feb. 27, 1940
Do.....	do.....	do.....	Do.
Do.....	do.....	do.....	Do.

See footnotes at end of table.

140 FIFTH ANNUAL REPORT OF NATIONAL LABOR RELATIONS BOARD

A. CASES HEARD PRIOR TO THE FISCAL YEAR 1939-40, IN WHICH ACTION WAS TAKEN DURING THE FISCAL YEAR—Continued

Unfair labor practice cases—Continued

Name of case	Hearing		Decision issued
	Opened	Closed	
Walworth Manufacturing Co.....	June 13, 1938	June 23, 1938	Mar. 27, 1940
Warren Textile Print Works.....	July 5, 1938	July 6, 1938	Oct. 6, 1939
Washington Dehydrated Food Co.....	Feb. 23, 1938	Feb. 25, 1938	Aug. 14, 1939
Washington Tin Plate Co.....	Aug. 11, 1938	Aug. 12, 1938	Oct. 27, 1939
Washougal Woolen Mills.....	Feb. 21, 1938	Mar. 2, 1938	Apr. 22, 1940
Waubec Mills, Inc., Pacific Mills.....	June 27, 1938	June 27, 1938	Sept. 1, 1939
H. R. Webb Neckwear Manufacturing Co.....	Nov. 28, 1938	Nov. 29, 1938	Feb. 29, 1940
Weinberger Banana Co., Inc.....	Feb. 21, 1938	Mar. 8, 1938	Dec. 27, 1939
West Kentucky Coal Co.....	Sept. 15, 1938	Sept. 16, 1938	Nov. 15, 1939
West Oregon Lumber Co.....	May 26, 1938	June 30, 1938	Feb. 1, 1940
West Texas Utilities Co.....	July 25, 1938	Aug. 16, 1938	Mar. 30, 1940
Westinghouse Electric & Manufacturing Co.....	May 5, 1938	May 13, 1938	Dec. 13, 1939
White Swan Laundry.....	May 18, 1939	May 27, 1939	Jan. 30, 1940
Whittier Mills Co. and Silver Lake Co.....	Nov. 7, 1938	Jan. 26, 1939	Sept. 16, 1939
Wickwire Bros., Inc.....	Aug. 1, 1938	Aug. 12, 1938	Oct. 23, 1939
Wilson & Co.....	Nov. 28, 1938	Nov. 30, 1938	Jan. 27, 1940
Wilson H. Lee Co.....	May 15, 1939	June 2, 1939	(?)
Wilson Line, Inc.....	Nov. 21, 1938	Dec. 17, 1938	May 27, 1940
Do.....	do.....	do.....	Do.....
Windsor Manufacturing Co.....	Mar. 8, 1939	Mar. 13, 1939	Feb. 9, 1940
Winnboro Granite Co.....	May 9, 1938	May 11, 1938	Dec. 21, 1939
Woodside Cotton Mills Co.....	June 8, 1939	June 9, 1939	Mar. 2, 1940
Yellow Cab & Baggage Co.....	Oct. 6, 1938	Oct. 17, 1938	Nov. 10, 1939
I. Youlin & Co.....	Aug. 22, 1938	Aug. 26, 1938	Apr. 12, 1940

- 1 Additional hearing on Oct. 27-28, 1938.
- 2 Decision issued by stipulation.
- 3 Dismissed after hearing.
- 4 Settled after hearing.
- 5 Settled after hearing.
- 6 Additional hearing on Sept. 7, 1939, and Sept. 20, 1939.
- 7 Case closed, company out of business.
- 8 Case closed by compliance with intermediate report.
- 9 Withdrawn after hearing.
- 10 Additional hearing on Sept. 10, 1937.
- 11 Previous decision vacated Aug. 9, 1939.
- 12 Board refused to issue decision on account of jurisdiction.
- 13 Decision set aside Mar. 14, 1940, and modified order substituted.
- 14 Intermediate report found no violation.
- 15 Secured compliance with proposed order.
- 16 Additional hearing on Nov. 20, 1939.
- 17 Additional hearing on Sept. 7, 1939, through Sept. 20, 1939.
- 18 Settled after issuance of intermediate report.
- 19 Additional hearing on July 25, 1938.
- 20 Additional hearing on Aug. 15, 1940.
- 21 Additional hearing called Apr. 28, 1938; closed Apr. 30, 1938.
- 22 Additional hearing, June 21 to June 24, 1938.
- 23 Additional hearing, Feb. 10 to Mar. 1, 1939.
- 24 Set aside decision of Mar. 14, 1939, and closed by stipulation Feb. 1, 1940.
- 25 Set aside decision of Mar. 14, 1939, and closed by stipulation Feb. 3, 1940.
- 26 Set aside decision of June 29, 1938, and closed by stipulation Feb. 3, 1940.
- 27 Set aside decision of Apr. 5, 1938, and closed by stipulation Dec. 22, 1939.

A. CASES HEARD PRIOR TO THE FISCAL YEAR 1939-40, IN WHICH ACTION WAS TAKEN DURING THE FISCAL YEAR—Continued

Representation cases

Name of case	Hearing		Decision issued
	Opened	Closed	
Acme-Evans Co.....	Apr. 10, 1939	May 5, 1939	May 29, 1940
Alabama Mills, Inc.....	June 5, 1939	June 5, 1939	Aug. 5, 1939
Alpena Garment Co.....	Apr. 20, 1939	Apr. 22, 1939	July 19, 1939
Alston Coal Co.....	Apr. 3, 1939	Apr. 13, 1939	(¹)
American Boston Mining Co. et al., The.....	June 2, 1938	June 8, 1938	Mar. 23, 1940
American Can Co.....	Jan. 9, 1939	Jan. 9, 1939	July 29, 1939
Do.....	do.....	do.....	Do.....
American Machine & Foundry Co., Inc.....	Feb. 14, 1938	Feb. 28, 1938	Aug. 14, 1939
American Oil Co., Inc.....	Apr. 14, 1938	Apr. 21, 1938	Aug. 23, 1939
American Pioneer Line.....	Sept. 20, 1937	Sept. 20, 1937	(⁹)
American Seantic Lines, Inc.....	Mar. 20, 1939	Mar. 20, 1939	(⁹)
American West African Line.....	Aug. 5, 1937	Aug. 5, 1937	(⁹)
Ansley Radio Corporation.....	Jan. 3, 1938	Jan. 13, 1938	Dec. 29, 1939
Arma Engineering Co.....	Jan. 31, 1938	Feb. 14, 1938	Aug. 17, 1939
Armour & Co., auxiliary plants.....	May 22, 1939	May 24, 1939	July 25, 1939
Armour & Co.....	June 19, 1939	June 27, 1939	Sept. 14, 1939
Do.....	do.....	do.....	Do.....
Do.....	do.....	do.....	Do.....
Do.....	do.....	do.....	Oct. 5, 1939
Armour Packing Co.....	Mar. 2, 1939 ¹	Mar. 8, 1939 ¹	Aug. 15, 1939
Associated Banning Co. et al.....	Jan. 30, 1939	Jan. 31, 1939	Jan. 8, 1940
Auburn Foundry, Inc.....	Apr. 7, 1938	Apr. 15, 1938	Aug. 31, 1939
P. Ballantine & Sons.....	Apr. 24, 1939	May 11, 1939	Dec. 29, 1939
Bauman Bros. Furniture Co.....	Oct. 13, 1938	Oct. 25, 1938	Dec. 27, 1939
Beckerman Shoe Co.....	Jan. 3, 1938	Jan. 8, 1938	Jan. 24, 1940
Bendix Products Corporation.....	Nov. 17, 1938	Nov. 17, 1938	Oct. 7, 1939
Do.....	do.....	do.....	Do.....
Berkeley Granite Corporation.....	May 11, 1939	May 12, 1939	Dec. 7, 1939
Borden Mills, Inc.....	Dec. 13, 1937	Jan. 14, 1938	July 1, 1939
Bradley Lumber Co.....	Mar. 19, 1936	Apr. 16, 1936	July (²⁹)
Bradley Lumber Co. of Arkansas.....	June 29, 1939	June 29, 1939	July 22, 1939
Briggs Manufacturing Co.....	June 5, 1939	June 19, 1939	July 31, 1939
Brooklyn Daily Eagle.....	Jan. 5, 1939	Jan. 6, 1939	July 24, 1939
Brooklyn Union Gas Co.....	Oct. 17, 1938	Nov. 7, 1938	(¹)
Do.....	do.....	do.....	(¹)
Brown Shoe Co., Inc.....	July 5, 1938	July 20, 1938	Apr. 13, 1940
Buckley Hemlock Lumber Co.....	July 25, 1938	July 29, 1938	Sept. 19, 1939
Burroughs Adding Machine Co.....	Apr. 6, 1939	Apr. 7, 1939	Aug. 19, 1939
Burson Knitting Co.....	Apr. 21, 1938	Apr. 23, 1938	Jan. 23, 1940
California Walnut Growers Association.....	Mar. 3, 1938	Mar. 14, 1938	Dec. 20, 1939
Canyon Lumber Co.....	June 22, 1939	June 22, 1939	Aug. 23, 1939
Celanese Corporation of America.....	July 6, 1937 ¹¹	July 6, 1937 ¹¹	Dec. 29, 1939
Celanese Corporation of America.....	July 6, 1937 ¹²	July 6, 1937 ¹²	Dec. 29, 1939
Chicago Malleable Casting Co.....	Feb. 27, 1939	Feb. 27, 1939	Oct. 16, 1939
Chicago, North Shore & Milwaukee R. R. Co.....	Aug. 22, 1938	Aug. 27, 1938	(¹)
Do.....	do.....	do.....	(¹)
Chrysler Corporation.....	Mar. 6, 1939 ¹⁴	Mar. 7, 1939 ¹⁴	July 31, 1939
Do.....	do, ¹⁷	do, ¹⁷	Do.....
Do.....	May 16, 1939	June 8, 1939	Do.....
Do.....	do.....	do.....	Do.....
Climax Machinery Co.....	May 25, 1939	May 25, 1939	Aug. 5, 1939
Clyde-Mallory Lines.....	Mar. 27, 1939	Mar. 30, 1939	Oct. 10, 1939
Coldwell Lawnmower.....	Aug. 8, 1938	Aug. 10, 1938	Aug. 1, 1939
Colorado Builders Supply Co., The.....	May 11, 1939	May 12, 1939	Dec. 1, 1939
Colorado Fuel & Iron Corporation, The.....	July 5, 1938	July 20, 1938	Mar. 29, 1940
Columbia Pictures Corporation.....	Aug. 30, 1938	Oct. 17, 1938	July 22, 1939
Do.....	Sept. 8, 1938	Oct. 19, 1938	Do.....
Columbia Pictures et al.....	Sept. 22, 1938	Oct. 20, 1938	Do.....
Condenser Corporation of America.....	Sept. 2, 1937	Oct. 30, 1937	Mar. 29, 1940
Consolidated Steamship Co. et al.....	Jan. 30, 1939	Jan. 31, 1939	Jan. 8, 1940
Coos Bay Logging Co.....	Apr. 4, 1939	Apr. 4, 1939	July 24, 1939
Coos Bay Lumber Co.....	do.....	Apr. 5, 1939	Aug. 30, 1939
Cornell Dubillier Corporation.....	Sept. 2, 1937	Oct. 30, 1937	Mar. 29, 1940
Crescent Wharf & Warehouse Co. et al.....	Jan. 30, 1939	Jan. 31, 1939	Jan. 8, 1940
Cudahy Packing Co.....	July 19, 1937	July 22, 1937	Nov. 4, 1939
Do.....	May 12, 1938 ⁵	May 13, 1938 ⁵	Aug. 5, 1939
Do.....	Nov. 21, 1938	Nov. 23, 1938	Sept. 26, 1939
Do.....	Mar. 10, 1939	Mar. 16, 1939	July 12, 1939
Detroit Gasket & Mfg. Co.....	May 26, 1938	June 21, 1938	(¹)
Dickson-Jenkins Mfg. Co.....	May 5, 1938	May 21, 1938	Nov. 1, 1939

See footnotes at end of table.

142 FIFTH ANNUAL REPORT OF NATIONAL LABOR RELATIONS BOARD

A. CASES HEARD PRIOR TO THE FISCAL YEAR 1939-40, IN WHICH ACTION WAS TAKEN DURING THE FISCAL YEAR—Continued

Representation cases—Continued

Name of case	Hearing		Decision issued
	Opened	Closed	
Walt Disney Productions, Inc.	Oct. 24, 1938	Oct. 25, 1938	July 22, 1939
Walt Disney Productions, Ltd.	do	do	Do.
Douglas Aircraft Co., Inc., El Segundo Division	June 30, 1939	June 30, 1939	Oct. 18, 1939
Eagle Shoe Manufacturing Co.	Dec. 19, 1938	Dec. 20, 1938	(³)
Easton Publishing Co.	June 8, 1939	June 12, 1939	Jan. 11, 1940
Eastern States Petroleum Co., Inc.	May 2, 1938	June 28, 1938	(¹)
Electric Steel Elevator Co.	June 22, 1939	June 22, 1939	Aug. 10, 1939
Federal Fibre Mills.	June 19, 1939	June 21, 1939	Sept. 13, 1939
Federal Screw Works.	Nov. 28, 1938	Dec. 8, 1938	Mar. 4, 1940
Federated Fishing Boats of New England & New York, Inc.	Oct. 31, 1938	Nov. 5, 1938	Oct. 13, 1939
Jac Feinberg Holsery Mills, Inc.	Jan. 17, 1938	Jan. 22, 1938	Jan. 19, 1940
Paul Finkelstein Sons	May 15, 1939	May 17, 1939	July 19, 1939
Ford Motor Co.	Dec. 16, 1937 ¹⁹	Apr. 9, 1938 ¹⁹	Apr. 29, 1940
Do.	June 6, 1938	June 16, 1938	Dec. 8, 1939
General Electric Co.	Aug. 26, 1937 ⁷	Aug. 26, 1937 ⁷	Feb. 29, 1940
Do.	do. ²¹	do. ²²	Do.
General Motors Corporation, Hyatt Bearings Division	Mar. 20, 1939	Apr. 3, 1939	Aug. 10, 1939
Henry Glass & Co.	Apr. 29, 1938	Apr. 29, 1938	Mar 18, 1940
Globe Newspaper Co.	June 20, 1939	June 23, 1939	Oct. 7, 1939
Samuel Goldwyn Inc., Ltd.	Sept. 22, 1938	Oct. 20, 1938	July 22, 1939
Goodyear Tire & Rubber Co.	May 22, 1939	(¹⁹)	
Grayson Heat Control, Ltd.	June 26, 1939	June 27, 1939	Aug. 12, 1939
Great Lakes Steel Corporation	Mar. 16, 1939	Mar. 17, 1939	Aug. 4, 1939
Do.	do	do	Do.
Gulf Public Service Co.	Aug. 18, 1938	Sept. 6, 1938	Dec. 21, 1939
Hammond Shipping Co., Ltd., et al.	Jan. 30, 1939	Jan. 31, 1939	Jan. 8, 1940
Harris-Hub Bed & Spring Co.	June 8, 1939	June 9, 1939	July 28, 1939
Hartsell Mills Co.	July 21, 1938	July 23, 1938	Dec. 12, 1939
Hood Rubber Co.	Oct. 25, 1937	Oct. 26, 1937	Aug. 1, 1939
Hydril Co.	May 16, 1939	May 16, 1939	July 7, 1939
Ideal Electric & Mfg. Co.	Oct. 3, 1938	Oct. 17, 1938	Feb. 27, 1940
Illinois Printing & Publishing, Evening American	May 26, 1938 ¹¹	June 15, 1938 ¹¹	Apr. 12, 1940
Illinois Zinc Co.	Aug. 15, 1938	Aug. 29, 1938	Feb. 28, 1940
International Furniture Co.	Aug. 29, 1938	Sept. 14, 1938	(¹⁶)
International Shoe Co., heel and rand factory.	June 15, 1939	June 15, 1939	Aug. 26, 1939
Isthmian Steamship Co.	June 17, 1938	June 17, 1938	Jan. 2, 1940
Do.	June 20, 1939	June 20, 1939	July 24, 1939
Jersey City Dry Docks Co.	Feb. 14, 1939	May 8, 1939	Aug. 29, 1939
David Kahn, Inc.	July 12, 1938	July 19, 1938	Aug. 8, 1939
Do.	do	do	(⁴)
Karpen & Bros., S	Mar. 16, 1939	Mar. 17, 1939	Aug. 11, 1939
Killefer Mfg. Corporation, Ltd.	Apr. 28, 1938	June 7, 1938	Mar. 30, 1940
Koppers Co.	June 19, 1939	June 21, 1939	Aug. 26, 1939
Kramer & Uchitelle.	May 22, 1939	June 9, 1939	(¹)
LaPlant-Choate Co.	Do.	May 22, 1939	July 28, 1939
Wilson H. Lee Co.	May 18, 1939	June 2, 1939	Jan. 22, 1940
Lennox Furnace Co., Inc.	Feb. 20, 1939	Mar. 2, 1939	Feb. 28, 1940
Locke Insulator Corporation.	Apr. 24, 1939	Apr. 24, 1939	July 17, 1939
Loew's Inc., M. G. M., et al.	Sept. 22, 1938	Oct. 20, 1938	July 22, 1939
Long Bell Lumber Co.	Mar. 20, 1939	Mar. 22, 1939	Oct. 30, 1939
Longbell Lumber Co.	do	do	Do.
Los Angeles & San Francisco Navigation Co. et al.	Jan. 30, 1939	Jan. 31, 1939	Jan. 8, 1940
Joe Lowe Corporation	Mar. 20, 1939	Mar. 30, 1939	July 18, 1939
Lykes Brothers Coastwise Line, Inc.	Apr. 6, 1939	Apr. 6, 1939	July 31, 1939
Do.	do	do	Do.
Marine Terminals Corporation et al.	Jan. 30, 1939	Jan. 31, 1939	Jan. 8, 1940
Markham & Callow, Inc.	May 8, 1939	May 8, 1939	July 24, 1939
John E. Marshall Inc. et al.	Jan. 30, 1939	Jan. 31, 1939	Jan. 8, 1940
Maryland Bolt & Nut Co.	June 2, 1938	June 7, 1938	Aug. 16, 1939
Matson Navigation Co. et al.	Jan. 30, 1939	Jan. 31, 1939	Jan. 8, 1940
Metropolitan Stevedoring Co. et al.	do	do	Do.
M. G. M. Corporation	Aug. 30, 1938	Oct. 17, 1938	July 22, 1939
Do.	Sept. 8, 1938	Oct. 19, 1938	Do.
Miller Abattoir Co.	Nov. 17, 1938	Nov. 18, 1938	Nov. 17, 1939
Miller & Sons, L. Inc.	May 8, 1939	May 9, 1939	July 18, 1939
Milton Bradley Co.	May 11, 1939	May 11, 1939	Oct. 10, 1939

See footnotes at end of table.

A. CASES HEARD PRIOR TO THE FISCAL YEAR 1939-40, IN WHICH ACTION WAS TAKEN DURING THE FISCAL YEAR—Continued

Representation cases—Continued

Name of case	Hearing		Decision issued
	Opened	Closed	
Minneapolis Moline Power Implement Co.....	June 5, 1939	June 6, 1939	Aug. 23, 1939
Monte Glove Co., Inc., The.....	Apr. 6, 1939	Apr. 10, 1939	Nov. 6, 1939
Mooremack Gulf Lines, Inc.....	Mar. 20, 1939	Mar. 20, 1939	(⁹)
Morgan Packing Co.....	Oct. 7, 1937	Oct. 16, 1937	(⁹)
Motor Products Corporation.....	June 1, 1939	June 7, 1939	July 31, 1939
McCormick Steamship Co. et al.....	Jan. 30, 1939	Jan. 31, 1939	Jan. 8, 1940
McQuay-Norris Mfg. Co.....	Mar. 9, 1939	Mar. 11, 1939	Mar. 18, 1940
N. & G. Taylor Co., The.....	Sept. 9, 1937 ¹⁴	Sept. 20, 1937 ¹⁴	Mar. 27, 1940
National Can Co.....	Apr. 17, 1939	Apr. 19, 1939	July 29, 1939
Do.....	do.....	do.....	Do.
Do.....	do.....	do.....	Do.
National Carbon Co.....	Apr. 13, 1939	Apr. 20, 1939	July 24, 1939
National Motor Rebuilding Corporation.....	Mar. 13, 1939	Mar. 20, 1939	Jan. 15, 1940
National Sugar Refining Co.....	Mar. 20, 1939	Mar. 21, 1939	July 1, 1939
National Sugar Refining Co. of New Jersey.....	do.....	do.....	Do.
Naumkeag Steam Cotton Co.....	Feb. 16, 1939	Feb. 21, 1939	July 8, 1939
Do.....	do.....	do.....	Do.
New Era Die Co.....	Mar. 23, 1939	Mar. 24, 1939	Jan. 8, 1940
New York Post, Inc.....	Apr. 27, 1939	Apr. 28, 1939	Aug. 24, 1939
Niles Fire Brick Co.....	Nov. 1, 1937	Nov. 2, 1937	Dec. 28, 1939
North American Aviation, Inc.....	Oct. 10, 1938 ²¹	Oct. 10, 1938 ²¹	July 25, 1939
Do.....	do.....	do.....	Do.
Ohio Greyhound Lines, Inc.....	Jan. 23, 1939	Jan. 27, 1939	Mar. 18, 1940
Oppenheimer Casing Co.....	Apr. 13, 1939 ¹⁸	Apr. 14, 1939 ¹⁸	Sept. 26, 1939
B. Oshrin & Bros.....	June 26, 1939	June 26, 1939	(⁹)
Outer Harbor Dock & Wharf Co. et al.....	Jan. 30, 1939	Jan. 31, 1939	Jan. 8, 1940
Overhead Door Corporation.....	May 6, 1938	May 9, 1938	July 26, 1939
Paramount Pictures, Inc.....	Aug. 30, 1938	Oct. 17, 1938	July 22, 1939
Do.....	Sept. 8, 1938	Oct. 19, 1938	Do.
Paramount Pictures, Inc., et al.....	Sept. 22, 1938	Oct. 20, 1938	Do.
Peoples Gas Light & Coke Co., The.....	June 12, 1939	June 14, 1939	Oct. 11, 1939
Philadelphia Inquirer Co.....	May 11, 1939	May 19, 1939	Aug. 18, 1939
Philadelphia Record Co.....	do.....	do.....	Do.
Pilot Radio Corporation.....	Nov. 8, 1937	Dec. 4, 1937	Aug. 24, 1939
Port of Los Angeles Stevedoring & Ballast Co. et al.....	Jan. 30, 1939	Jan. 31, 1939	Jan. 8, 1940
Premier Furnace Co.....	May 25, 1939	June 5, 1939	(⁹)
Principal Productions, Inc.....	Sept. 22, 1938	Oct. 20, 1938	July 22, 1939
Public Service Co. of Colorado.....	Feb. 16, 1939	Feb. 18, 1939	Aug. 30, 1939
Quality Art Novelty Co.....	May 19, 1938	June 17, 1938	Feb. 24, 1940
Radio Corporation of America.....	Dec. 19, 1938	Dec. 19, 1938	July 18, 1939
Reading Batteries, Inc.....	Apr. 28, 1938	May 5, 1938	Jan. 9, 1940
Rembrandt Lamp Corporation.....	Apr. 17, 1939	Apr. 17, 1939	July 24, 1939
Riverside Mfg. Co.....	Aug. 8, 1938	Aug. 16, 1938	Feb. 12, 1940
RKO Radio Pictures.....	Sept. 8, 1938	Oct. 19, 1938	July 22, 1939
Do.....	Aug. 30, 1938	Oct. 17, 1938	Do.
RKO Radio Pictures et al.....	Sept. 22, 1938	Oct. 20, 1938	Do.
Hal Roach Studios.....	do.....	do.....	Do.
Robertl Bros., Inc.....	Apr. 25, 1939	Apr. 28, 1939	July 26, 1939
Ryan Aeronautical Co.....	June 29, 1939	June 29, 1939	Oct. 2, 1939
San Diego Ice & Cold Storage Co.....	Nov. 17, 1937	Dec. 13, 1937	Nov. 8, 1939
Scottdale Mills, Inc.....	Jan. 23, 1939	Jan. 26, 1939	Sept. 16, 1939
Seaboard Stevedoring Co. et al.....	Jan. 30, 1939	Jan. 31, 1939	Jan. 8, 1940
Seaboard Transportation Co. et al.....	do.....	do.....	Do.
Selby Shoe Co.....	June 29, 1939	June 30, 1939	Sept. 19, 1939
Do.....	do.....	do.....	Do.
Selznick International Pictures, Inc.....	Sept. 22, 1938	Oct. 20, 1938	July 22, 1939
Showers Brothers Co.....	Apr. 20, 1939	Apr. 22, 1939	Do.
Sloss Sheffield Steel & Iron Co.....	Mar. 6, 1939	Mar. 7, 1939	Aug. 4, 1939
Do.....	do.....	do.....	Do.
Solvay Process Co.....	Sept. 15, 1938	Oct. 7, 1938	Mar. 22, 1940
Soto Shipping Co., P. F. Ltd., et al.....	Jan. 30, 1939	Jan. 31, 1939	Jan. 8, 1940
Southeast Portland Lumber Co.....	Feb. 27, 1939	Mar. 1, 1939	July 1, 1939
Southwestern Engineering Co.....	Mar. 30, 1939	Mar. 30, 1939	Aug. 1, 1939
Do.....	do.....	do.....	Do.
Southwestern Stevedoring Co., et al.....	Jan. 30, 1939	Jan. 31, 1939	Jan. 8, 1940
Standard Hat Co.....	Nov. 14, 1938	Nov. 15, 1938	Nov. 17, 1939
Standard Insulation Co.....	Mar. 27, 1939 ⁹	Mar. 29, 1939 ⁹	Apr. 8, 1940
Star & Crescent Boat Co.....	Jan. 5, 1939	Jan. 13, 1939	(⁹)
Stokely Brothers & Co., Inc. & Van Camps.....	May 15, 1939	May 20, 1939	Oct. 4, 1939

See footnotes at end of table.

144 FIFTH ANNUAL REPORT OF NATIONAL LABOR RELATIONS BOARD

A. CASES HEARD PRIOR TO THE FISCAL YEAR 1939-40, IN WHICH ACTION WAS TAKEN DURING THE FISCAL YEAR—Continued

Representation cases—Continued

Name of case	Hearing		Decision issued
	Opened	Closed	
Sun Shipbuilding & Dry Dock Co.....	June 23, 1938	June 24, 1938	Aug. 7, 1939
Swift & Co.....	Oct. 17, 1938	Nov. 10, 1938	Mar. 27, 1940
Tampa Inter-Ocean Steamship Co.....	Apr. 6, 1939	Apr. 6, 1939	July 31, 1939
Texas Mining & Smelting Co.....	Feb. 14, 1938	Feb. 25, 1938	July 25, 1939
Thermoid Co.....	Apr. 24, 1939	June 5, 1939	(1)
Do.....	do.....	do.....	(1)
Do.....	do.....	do.....	(1)
Do.....	do.....	do.....	(1)
Do.....	do.....	do.....	(1)
Do.....	do.....	do.....	(1)
Do.....	do.....	do.....	(1)
Toledo Steel Tube Co.....	Mar. 8, 1938	Mar. 8, 1938	Oct. 3, 1939
Tucker Oil Co.....	Apr. 24, 1936	Apr. 25, 1936	(4)
Twentieth Century-Fox Film.....	Aug. 30, 1938	Oct. 17, 1938	July 22, 1939
Do.....	Sept. 8, 1938	Oct. 19, 1938	Do.
Do.....	Sept. 22, 1938	Oct. 20, 1938	Do.
Union Forging Co.....	May 15, 1939	May 23, 1939	(1)
Union Manufacturing Co., Inc.....	do.....	May 15, 1939	Sept. 7, 1939
United Artists Studio.....	Sept. 8, 1938	Oct. 19, 1938	July 22, 1939
Universal Film Exchange Inc.....	May 26, 1938	May 27, 1938	July 1, 1939
Universal Picture Co.....	Aug. 30, 1938	Oct. 17, 1938	July 22, 1939
Do.....	Sept. 8, 1938	Oct. 19, 1938	Do.
Universal Pictures et al.....	Sept. 22, 1938	Oct. 20, 1938	Do.
Vail-Ballou Press, Inc.....	May 23, 1938	May 27, 1938	Sept. 15, 1939
Do.....	do.....	do.....	Do.
Vanadium Corporation of America.....	June 14, 1939	June 14, 1939	July 22, 1939
Van Camp's Inc.....	May 15, 1939	May 20, 1939	Oct. 4, 1939
Do.....	do.....	do.....	Do.
Wade Manufacturing Co.....	Apr. 27, 1939	Apr. 27, 1939	Aug. 26, 1939
Walgreen Drug Stores, Inc.....	Apr. 18, 1939	do.....	Oct. 10, 1939
Warner Bros.....	Aug. 30, 1938	Oct. 17, 1938	July 22, 1939
Do.....	Sept. 8, 1938	Oct. 19, 1938	Do.
Warner Bros. Pictures et al.....	Sept. 22, 1938	Oct. 20, 1938	Do.
H. R. Webb Neckwear Mfg. Co.....	May 5, 1938	May 5, 1938	Feb. 29, 1940
Weinberger Banana Co., Inc.....	Feb. 21, 1938	May 28, 1938	Dec. 27, 1939
West Coast Wood Preserving Co.....	May 29, 1939	May 29, 1939	Sept. 1, 1939
Western Pipe & Steel Co.....	Aug. 25, 1938	Feb. 11, 1939	Aug. 11, 1939
Do.....	Feb. 9, 1939	do.....	Do.
Do.....	do.....	do.....	Do.
Western Union Telegraph Co.....	June 22, 1939	June 24, 1939	Nov. 14, 1939
Westinghouse Electric & Manufacturing Co.....	do.....	June 23, 1939	Aug. 5, 1939
West Kentucky Coal Co.....	May 22, 1939	May 23, 1939	June 21, 1940
West Oregon Lumber Co.....	Sept. 1, 1938	Sept. 2, 1938	Feb. 1, 1940
Weyerhaeuser Timber Co.....	Mar. 9, 1939	Mar. 18, 1939	Oct. 30, 1939
Weyerhaeuser Timber Co. (Longview branch).....	do.....	do.....	Do.
Do.....	do.....	do.....	Do.
Whittier Mills Co.....	Jan. 23, 1939	Jan. 26, 1939	Sept. 16, 1939
Wilson & Co.....	Nov. 28, 1938	Nov. 30, 1938	Jan. 27, 1940
Do.....	May 11, 1939	May 12, 1939	Aug. 7, 1939
Woodward Iron Co.....	May 1, 1939	May 5, 1939	July 17, 1939

1 Withdrawn after hearing.

2 Settled by consent election.

3 Additional hearing on Nov. 20, 1939.

4 Dismissed after hearing.

5 Additional hearing on June 27, 1938, to June 29, 1938.

6 Dismissed by Board order.

7 Additional hearing on Aug. 14, 1939, Aug. 16, 1939, and Oct. 26, 1939.

8 Settled by recognition of union.

9 Additional hearing on Feb. 13, 1940, to Feb. 23, 1940.

10 Hearing in progress.

11 Additional hearing on Sept. 7, 1939, to Sept. 20, 1939.

12 Additional hearing on Nov. 16, 1939.

13 Additional hearing on Nov. 16, 1939.

14 Additional hearing on Nov. 2, 1937.

15 Additional hearing on May 16, 1939, to June 8, 1939.

16 Dismissed by Board order Dec. 29, 1939.

17 Additional hearing on May 16, 1939, to June 8, 1939.

18 Additional hearing on Aug. 21, 1939, to Sept. 21, 1939.

19 Additional hearing on Apr. 20, 1938.

20 Settled after hearing.

21 Additional hearing on Sept. 18, 1939, to Sept. 19, 1939.

22 Additional hearing on Aug. 14, 1939, Aug. 16, 1939, and Oct. 26, 1939.

B. CASES HEARD DURING THE FISCAL YEAR 1939-40

Unfair labor practice cases

Name of case	Hearing		Decision issued
	Opened	Closed	
Abinante & Nola Packing Co.	July 17, 1939	Aug. 11, 1939	()
Algoma Plywood and Veneer Co.	Feb. 13, 1940	Feb. 28, 1940	()
Allied Yarns Corporation	Sept. 18, 1939	Sept. 22, 1939*	Aug. 26, 1940
Alloy Cast Steel Co.	July 20, 1939	July 20, 1939	Jan. 2, 1940
American Auto Parts Co.	Nov. 13, 1939	Nov. 13, 1939	()
American Enka Corporation	Apr. 15, 1940	Apr. 26, 1940	()
American Hat Mfg. Co., Inc.	Feb. 5, 1940	Feb. 8, 1940	()
Do	May 13, 1940	May 18, 1940	()
American Products Inc.	May 14, 1940	May 27, 1940	()
American Rolling Mill Co.	Mar. 7, 1940	Mar. 14, 1940	()
American Shoe Machinery & Tool Co.	Sept. 11, 1939	Sept. 20, 1939	May 28, 1940
American Smelting & Refining Co.	Apr. 23, 1940	May 4, 1940	()
American White Cross Laboratories, Inc.	July 6, 1939	July 18, 1939	*June 4, 1940
Armour and Co.	July 24, 1939	July 26, 1939	()
Bank of America	Dec. 18, 1939	Jan. 11, 1940	()
Barre Wool Combing Co.	Aug. 24, 1939	Jan. 24, 1940	()
A. S. Beck Shoe Corporation	Sept. 18, 1939	Sept. 22, 1939	()
Belding Hosiery Co.	Aug. 14, 1939	Aug. 21, 1939	*Feb. 19, 1940
Bemis Bros. Bag Co.	Jan. 8, 1940	Jan. 8, 1940	*Feb. 5, 1940
Do	June 10, 1940	June 12, 1940	()
Blackburn, Jasper Products Corporation	Nov. 2, 1939	Nov. 7, 1939	Mar. 27, 1940
Blue-Bell Globe Mfg. Co.	Sept. 11, 1939	Sept. 12, 1939	May 29, 1940
George Bollman & Co.	Feb. 5, 1940	Feb. 9, 1940	()
Bradburn Motors Co.	July 6, 1939	July 22, 1939	*Nov. 28, 1939
Braswell Motor Freight Lines	June 3, 1940	June 6, 1940	()
Brillo Mfg. Co.	Nov. 6, 1939	Nov. 17, 1939	Feb. 24, 1940
Brown-McLaren Mfg. Co.	Nov. 9, 1939	Nov. 17, 1939	()
Ruhl Optical Co. and Steel City Optical Corp.	Feb. 19, 1940	Mar. 5, 1940	()
Bunte Bros. Candy Mfg. Co.	June 29, 1939	July 15, 1939	()
Burry Biscuit Corporation (Educator plant)	Dec. 21, 1939	Jan. 6, 1940	()
B-Z-B Knitting Co.	Apr. 29, 1940	May 1, 1940	()
California Prune & Apricot Growers Association	Mar. 27, 1940	Mar. 29, 1940	()
Calumet Steel Division of Borg-Warner Corporation	July 27, 1939	July 28, 1939	Apr. 23, 1940
Capitol Piece Dye Works	Apr. 11, 1940	May 7, 1940	()
M. Carpenter Baking Co.	Mar. 25, 1940	Apr. 11, 1940	()
Castle & Cook Terminals, Ltd.	Mar. 14, 1940	Apr. 19, 1940	()
Cayuga Linen & Cotton Mills, Inc.	Jan. 8, 1940	Jan. 9, 1940	*Feb. 9, 1940
Central Glove Co.	Oct. 12, 1939	Oct. 16, 1939	()
Central Metallic Casket Co.	July 24, 1939	July 28, 1939	()
Chattanooga Bakery, Inc., and Mountain City Mill Co.	Dec. 14, 1939	Dec. 20, 1939	()
Chippewa County Dairy	May 27, 1940	May 27, 1940	()
C. Clemens Horst Co.	July 27, 1939	July 28, 1939	May 25, 1940
Colonial Togs Co., Nathan Levine doing business as	Apr. 25, 1940	Apr. 25, 1940	*June 13, 1940
Colt-Brady Co.	June 29, 1939	July 22, 1939	*Nov. 28, 1939
Cook Coffee Co.	July 20, 1939	July 27, 1939	Apr. 13, 1940
Crown Central Petroleum Corporation	Aug. 24, 1939	Aug. 30, 1939	May 31, 1940
Cudahy Packing Co.	Oct. 16, 1939	Oct. 24, 1939	Feb. 3, 1940
Do	Jan. 4, 1940	Jan. 25, 1940	()
Dain Mfg. Co.	Feb. 8, 1940	Feb. 15, 1940	()
Davidson Granite Co.	July 17, 1939	Aug. 26, 1939	()
Decatur Iron and Steel Co.	June 17, 1940	July 19, 1940	()
Deere, John Harvester Works of Deere & Co.	Aug. 21, 1939	Aug. 24, 1939	*Sept. 30, 1939
Dining Room, Inc., The	June 24, 1940	June 26, 1940	()
Donnelly Garment Co.	June 5, 1939	July 15, 1939	Mar. 6, 1940
Downie Bros. Inc. et al	Oct. 16, 1939	June 3, 1940	()
E. I. Du Pont de Nemours & Co.	June 22, 1939	Aug. 4, 1939	()
Eagle-Ottawa Leather Co.	June 8, 1939	Sept. 13, 1939	()
Eavenson & Levering Co., Inc.	June 26, 1940	July 3, 1940	()
Kavenson, J., & Sons, Inc.	Aug. 7, 1939	Sept. 25, 1939	()
Entwistle Mfg. Co.	Aug. 18, 1939	Aug. 22, 1939	May 22, 1940
Evelyn Coats	Dec. 1, 1938	Dec. 28, 1939	*Apr. 17, 1940
Excel Curtain Co., Inc.	Sept. 25, 1939	Oct. 6, 1939	()
Faribault Woolen Mills	Apr. 25, 1940	Apr. 26, 1940	*May 23, 1940
Federbush Loose Leaf & Binder Co., Inc.	Feb. 15, 1940	Feb. 23, 1940	()
Firth Carpet Co. (Firthcliffe plant)	Feb. 5, 1940	Feb. 16, 1940	()
Fletcher Paper Co.	Jan. 26, 1940	Jan. 31, 1940	()
Floor City Box & Crating Co.	Oct. 30, 1939	Nov. 1, 1939	()

See footnotes at end of table.

B. CASES HEARD DURING THE FISCAL YEAR 1939-40—Continued

Unfair labor practice cases—Continued

Name of case	Hearing		Decision issued
	Opened	Closed	
Ford Motor Co.....	Feb. 14, 1938	July 19, 1939	(1)
Do.....	Feb. 26, 1940	Mar. 28, 1940	(1)
Do.....	do	do	May 23, 1940
Do.....	do	do	Do.
Do.....	do	do	Do.
Do.....	do	do	Do.
F. S. Frost & F. N. Netzel.....	Dec. 11, 1939	Dec. 11, 1939	May 22, 1940
Frost Rubber Works, The.....	do	do	Do.
General Baking Co., Inc.....	Feb. 19, 1940	Feb. 19, 1940	3 Mar. 26, 1940
General Shale Products Corporation.....	Apr. 25, 1940	Apr. 30, 1940	(1)
Gillespie Furniture Co.....	Dec. 7, 1939	Dec. 7, 1939	Jan. 11, 1940
Goldblatt Bros., Inc.....	Apr. 2, 1940	Apr. 2, 1940	(9)
Goodyear Tire & Rubber Co.....	May 22, 1939	Apr. 8, 1940	(9)
Graves Co.....	June 20, 1939	July 7, 1939	Mar. 26, 1940
Great Southern Trucking Co.....	Dec. 14, 1939	Dec. 21, 1939	(1)
Greer Steel Co.....	Feb. 13, 1940	Feb. 22, 1940	(1)
Gregory, Joseph R.....	May 9, 1940	May 10, 1940	(1)
Gritty Adrian Mfg. Co.....	Feb. 8, 1940	Feb. 15, 1940	(1)
Gunlocke Chair Co., The W. H.....	Feb. 26, 1940	Feb. 27, 1940	(1)
Hat Corporation of America.....	July 1, 1940	(9)	(9)
Hawk and Buck Mfg. Co.....	Oct. 23, 1939	Oct. 27, 1939	(1)
Haylind Artificial Flower Co., Inc.....	May 23, 1940	June 6, 1940	(1)
Hazel Atlas Glass Co.....	Apr. 15, 1940	May 31, 1940	(1)
Heilig Bros. Co., Inc.....	May 7, 1940	May 16, 1940	(1)
Heinsheimer Bros.....	Feb. 29, 1940	Mar. 8, 1940	(1)
Herald Statesman, Inc., Westchester Co. Pub., Inc.....	Nov. 27, 1939	Dec. 22, 1939	(1)
C. G. Hitchcock & Co.....	June 24, 1940	June 27, 1940	(1)
Hobart Cabinet Co.....	Apr. 1, 1940	Apr. 1, 1940	(1)
Holly Hosiery Mills.....	Aug. 21, 1939	Aug. 25, 1939	3 Dec. 8, 1939
Hollywood Maxwell Brassiere Co.....	July 10, 1939	July 28, 1939	(1)
Honolulu Stevedores, Ltd.....	Mar. 14, 1940	Apr. 19, 1940	(1)
Hudson Motor Car Co.....	May 7, 1940	June 11, 1940	(1)
Hydril Company of California.....	Feb. 5, 1940	Feb. 5, 1940	May 18, 1940
Ideal Leather Mfg. Co.....	Sept. 7, 1939	Sept. 9, 1939	(9)
Imperial Reed and Fibre Co.....	Apr. 22, 1940	Apr. 23, 1940	3 May 6, 1940
Indianapolis Power and Light Co.....	July 31, 1939	Aug. 4, 1939	(1)
Inland Lime & Stone Co.....	Nov. 24, 1939	Nov. 25, 1939	(1)
International Envelope Co.....	June 13, 1940	June 14, 1940	(1)
International Harvester Co.....	June 22, 1939	Oct. 5, 1939	(1)
Do.....	do	do	(1)
Do.....	do	do	(1)
Do.....	do	do	(1)
Do.....	do	do	(1)
International Harvester Co., Farmall works.....	do	do	(1)
Jackee Mfg. Co.....	Jan. 8, 1940	Jan. 9, 1940	May 31, 1940
Jackson Shoe Mfg. Co., doing business as H. Jacob & Sons, Inc.....	May 6, 1940	May 7, 1940	(10)
Jahn & Ollier Engraving Co.....	Jan. 29, 1940	Jan. 31, 1940	(1)
Jensen Radio Mfg. Co.....	Mar. 25, 1940	Mar. 30, 1940	(1)
Jersey Maid Dairy Co., Inc.....	Mar. 1, 1940	Mar. 1, 1940	3 Mar. 25, 1940
Johnson Spring Co., Inc., The.....	June 6, 1940	June 14, 1940	(1)
Joma Manufacturing Co.....	Feb. 8, 1940	Feb. 16, 1940	(9)
David Karron, Inc.....	Nov. 6, 1939	Dec. 15, 1939	(1)
Kennecott Copper Corporation & Santa Rita Stores Co.....	Dec. 7, 1939	Dec. 7, 1939	Aug. 24, 1940
Kentucky Utilities Co.....	Apr. 8, 1940	Apr. 19, 1940	(1)
Do.....	do	do	(1)
Keystone Freight Line.....	Oct. 26, 1939	Oct. 31, 1939	(1)
Morris P. Kirk & Son.....	June 10, 1940	June 20, 1940	(1)
W. H. Kistler Stationery Co.....	Apr. 15, 1940	Apr. 15, 1940	(1)
Kramer Co., The.....	May 16, 1940	May 18, 1940	(1)
Kraus Cleaners.....	Apr. 15, 1940	Apr. 20, 1940	(1)
S. H. Kress & Co.....	Nov. 16, 1939	Feb. 13, 1940	(1)
Do.....	do	do	(1)
Kroger Grocery & Baking Co.....	July 12, 1939	July 27, 1939 ¹¹	(1)
Kudile Bros., trading as Hasbrouck Heights Dairy.....	June 10, 1940	June 15, 1940	(1)
M. Kutz Co.....	May 13, 1940	May 18, 1940	(1)

See footnotes at end of table.

B. CASES HEARD DURING THE FISCAL YEAR 1939-40—Continued

Unfair labor practice cases—Continued

Name of case	Hearing		Decision issued
	Opened	Closed	
Lawrenceburg Roller Mills Co.....	Aug. 28, 1939	Sept. 8, 1939	May 18, 1940
Leitz Carpet Co.....	May 2, 1940	May 3, 1940	(1)
Henry Levear, Inc.....	July 6, 1939	July 22, 1939	Nov. 28, 1939
Leybrow Manufacturing Co.....	July 31, 1939	Sept. 20, 1939	June 17, 1940
Libby McNeill & Libby.....	Nov. 13, 1939	Nov. 17, 1939	May 11, 1940
Lincoln Telephone & Telegraph Co.....	Apr. 25, 1940	May 9, 1940	(1)
Link Belt Co.....	Sept. 18, 1939	Oct. 24, 1939	(1)
Link Belt Co., Dodge plant.....	do.....	do.....	(1)
Long Bell Lumber Co.....	Sept. 28, 1939	Sept. 29, 1939	(1)
Long Lake Lumber Co.....	Mar. 11, 1940	Mar. 21, 1940	(1)
Los Angeles Examiner.....	Sept. 28, 1939	Nov. 16, 1939	(1)
R. C. Mahon Co.....	July 17, 1939	July 20, 1939	May 22, 1940
Mayfair Bag Co., Inc.....	July 24, 1939	Aug. 28, 1939	* Nov. 2, 1939
Mellus Bros. & Co., Inc., et al.....	Oct. 16, 1939	June 3, 1940	(1)
M. F. A. Milling Co.....	Nov. 27, 1939	Dec. 23, 1939	(1)
Midwest Steel Corporation.....	Apr. 29, 1940	May 1, 1940	(1)
Missouri Portland Cement Co.....	June 27, 1940	July 3, 1940	(1)
Missouri Utilities Co.....	Jan. 11, 1940	Jan. 16, 1940	(1)
Moore-McCormick Lines, Inc., filed as American Seantile Lines.....	Mar. 20, 1939	Aug. 18, 1939 ¹⁵	(1)
Motor Products Corporation.....	Apr. 22, 1940	Apr. 26, 1940	(1)
National Cash Register Co.....	Apr. 24, 1939	July 25, 1939	(1)
National Herald, Inc.....	Apr. 11, 1940	Apr. 11, 1940	* Apr. 30, 1940
National Steel Equipment Co.....	Aug. 31, 1939	Aug. 31, 1939	* Jan. 27, 1940
New Idea, Inc.....	July 6, 1939	July 14, 1939	Mar. 7, 1940
Do.....	Apr. 25, 1940	May 1, 1940	(1)
New York & Cuba Mail Steamship Co.....	Mar. 22, 1940	(1)	(1)
New York & Porto Rico Steamship Co.....	do.....	(1)	(1)
Nippu Jiji Co.....	Mar. 4, 1940	Mar. 9, 1940	(1)
Northern Ohio Telephone Co.....	May 27, 1940	June 1, 1940	(1)
Odanah Iron Co. et al.....	June 29, 1939	July 19, 1939	(1)
Ohio Calcium Co.....	July 31, 1939	Aug. 25, 1939	(1)
Ohio Fuel Gas Co., The.....	June 3, 1940	June 4, 1940	(1)
Paper, Calmenson & Co.....	Sept. 25, 1939	Sept. 26, 1939	(1)
Paragon Die Casting Co.....	Apr. 8, 1940	Apr. 12, 1940	(1)
Park Hosiery Dyeing & Finishing Co., The.....	Oct. 2, 1939	Oct. 2, 1939	* Nov. 1, 1939
Pequano Rubber Co.....	Apr. 18, 1940	Apr. 26, 1940	(1)
Philadelphia Gear Works.....	Feb. 29, 1940	Mar. 2, 1940	(1)
Pickands-Mather Co.....	June 7, 1940	June 8, 1940	(1)
Pickands, Mather & Co., Zenith mine.....	June 29, 1939	July 19, 1939	(1)
Poe Manufacturing Co.....	Feb. 15, 1940	Feb. 19, 1940	(1)
Poultry Producers of Central California.....	Jan. 29, 1940	Feb. 2, 1940	July 13, 1940
Precision Castings Co., Inc.....	Mar. 11, 1940	Apr. 3, 1940	(1)
Pueblo Gas & Fuel Co.....	Oct. 9, 1939	Oct. 9, 1939	May 20, 1940
Radio Condenser Co.....	June 29, 1939	July 6, 1939	* July 31, 1939
Radio Station WCOV, doing business as G. W. Covington.....	June 3, 1940	June 6, 1940	(1)
Ralston Purina Co.....	Oct. 2, 1939	Oct. 12, 1939	June 12, 1940
Rapid Roller Co.....	Dec. 11, 1939	Jan. 16, 1940	(1)
Ray Bell Films, Inc.....	June 10, 1940	June 11, 1940	(1)
Remington Rand, Inc.....	Sept. 25, 1939	Mar. 29, 1940	(1)
Republic Steel Corporation.....	May 25, 1939	Aug. 25, 1939	(1)
Do.....	do.....	do.....	(1)
Do.....	Feb. 15, 1940	July 31, 1940	(1)
Do.....	June 24, 1940	(1)	(1)
Rex Textile Co., Inc.....	June 26, 1939	July 12, 1939	* Sept. 11, 1939
Robbins Tire & Rubber Co.....	Nov. 9, 1939	Nov. 15, 1939	* Apr. 30, 1940
Rock Hill Printing & Finishing Co.....	Mar. 11, 1940	Apr. 24, 1940	(1)
Rosedale Knitting Co.....	Oct. 2, 1939	Oct. 3, 1939	Feb. 10, 1940
Royal Lace Paper Works.....	June 3, 1940	June 7, 1940	(1)
Rutland Courts Apartments.....	do.....	June 4, 1940	(1)
Sanco Piece Dye Works.....	Apr. 11, 1940	May 7, 1940	(1)
Sbicca, Inc.....	Jan. 11, 1940	Jan. 18, 1940	(1)
Schmidt Baking Co.....	Apr. 25, 1940	Apr. 25, 1940	(1)
Schult Trailers, Inc.....	May 27, 1940	June 6, 1940	(1)
Security Warehouse & Cold Storage Co.....	Jan. 15, 1940	Mar. 22, 1940	(1)
J. Allen Smith Co.....	Feb. 23, 1940	Feb. 24, 1940	(1)
Socony Vacuum Oil Co.....	Apr. 18, 1940	Apr. 23, 1940	(1)

See footnotes at end of table.

B. CASES HEARD DURING THE FISCAL YEAR 1939-40—Continued

Unfair labor practice cases—Continued

Name of case	Hearing		Decision issued
	Opened	Closed	
Southern Manufacturing Co.	May 2, 1940	May 9, 1940	(1)
Sport Wear Hosiery Co.	Feb. 29, 1940	Mar. 1, 1940	³ May 6, 1940
Standard Cap & Molding Co.	Nov. 30, 1939	Nov. 30, 1939	³ Jan. 30, 1940
Standard Hat Co.	May 13, 1940	May 18, 1940	(1)
Standard Knitting Mills, Inc.	Jan. 8, 1940	Jan. 12, 1940	(1)
Standard Novelty Co. and Julius Miller	July 24, 1939	July 24, 1939	³ Apr. 8, 1940
Standard Wholesale Phosphate & Acid Works, Inc.	Feb. 15, 1940	Feb. 16, 1940	³ Mar. 13, 1940
Stoner Manufacturing Corporation.	July 6, 1939	Aug. 4, 1939	(1)
Stonewall Cotton Mills, Inc.	June 17, 1940	June 28, 1940	(1)
Sunday Lake Iron Co. et al.	June 29, 1939	July 19, 1939	(1)
Sun Tent Luebbert Co.	Oct. 16, 1939	June 3, 1940	(1)
Superior Packing Co.	Apr. 29, 1940	Apr. 29, 1940	(1)
Swift & Co.	Jan. 11, 1940	Jan. 26, 1940	(1)
Technical Porcelain & China Ware Co.	Jan. 22, 1940	Jan. 22, 1940	³ Apr. 4, 1940
Texarkana Bus Co.	Mar. 7, 1940	Mar. 13, 1940	(1)
Texas Co., The.	Sept. 7, 1939	Sept. 13, 1939	(1)
Texas Corporation.	Apr. 1, 1940	Apr. 11, 1940	³ Aug. 8, 1940
Tex-O-Kan Co., Burrus Mill & Elevator Co.	Sept. 18, 1939	Sept. 28, 1939	(1)
Tex-O-Kan Co., Morten Milling Co. branch	do.	do.	(1)
Thermoid Co.	Apr. 8, 1940	Apr. 28, 1940	³ May 31, 1940
Triplett Electrical Instrument Co. & Readrite Meter Co.	June 17, 1940	June 18, 1940	(1)
Ulich, Paul & Co., Inc.	Sept. 18, 1939	Oct. 7, 1939	Aug. 16, 1940
Union Mfg. Co.	Mar. 21, 1940	Mar. 22, 1940	(1)
Do.	May 6, 1940	May 6, 1940	(1)
United Dredging Co.	May 25, 1939	July 11, 1939	(1)
United Tent & Awning Co., Ltd., et al.	Oct. 16, 1939	Jan. 8, 1940 ¹³	³ Feb. 14, 1940
Vermont Dairy Co., Inc.	Dec. 21, 1939	Dec. 28, 1939	(1)
Victor Monaghan Co.	July 20, 1939	July 21, 1939	May 15, 1940
P. Wall Mfg. & Supply Co.	Sept. 15, 1939	Sept. 16, 1939	³ Oct. 16, 1939
Walnut Hosiery Mills, also known as Lark Hosiery Mills.	May 23, 1940	May 24, 1940	³ June 25, 1940
WEBM Broadcasting Stations, Indianapolis Power & Light Co.	July 31, 1939	Aug. 4, 1939	(1)
Webster Mfg. Co.	June 24, 1940	June 25, 1940	(1)
Weirton Coal Co.	June 17, 1940	July 24, 1940	(1)
Wessel Co., The.	Apr. 11, 1940	Apr. 13, 1940	(1)
Westchester Newspapers, Inc., et al.	Nov. 27, 1939	Dec. 22, 1939	(1)
Western Union Telegraph Co.	Dec. 11, 1939	Dec. 21, 1939	(1)
Westinghouse Air-Brake Co.	Sept. 28, 1939	Oct. 3, 1939	(1)
Weyerhaeuser Timber Co.	Oct. 30, 1939	Oct. 31, 1939	May 31, 1940
Do.	May 23, 1940	May 29, 1940	(1)
White, Bob Mills, Inc.	May 6, 1940	May 6, 1940	³ June 6, 1940
H. F. Wilcox Oil & Gas Co.	Feb. 12, 1940	Feb. 23, 1940	(1)
Williams Motor Co.	Feb. 29, 1940	Mar. 5, 1940	(1)
Wilson & Co., Inc.	Nov. 27, 1939	Dec. 5, 1939	(1)
Woonsocket Rayon Co.	May 16, 1940	June 21, 1940	(1)
Yale Leather Goods Co. and Aaron Miller	July 24, 1939	July 24, 1939	(1) ⁴
Youngstown Mines Corporation.	June 29, 1939	July 19, 1939	(1)
Youngstown Mines Corporation et al.	do.	do.	(1)

¹ A waiting decision.² Additional hearing on Feb. 26, 1940.³ Decision issued by stipulation after hearing.⁴ Case closed by compliance with intermediate report.⁵ Subsequently set aside by Board.⁶ Settled after hearing.⁷ Hearing adjourned indefinitely.⁸ Hearing still in progress.⁹ Settled after issuance of intermediate report.¹⁰ Case closed by intermediate report dismissing complaint.¹¹ Additional hearing on Jan. 4, 1940.¹² Decision issued by stipulation after hearing; set aside Dec. 6, 1939.¹³ Additional hearing on June 3, 1940.¹⁴ Withdrawn; company went out of business.¹⁵ Additional hearing on Mar. 18, 1940, through May 17, 1940.

B. CASES HEARD DURING THE FISCAL YEAR 1939-40—Continued

Representation cases

Name of case	Hearing		Decision issued
	Opened	Closed	
A & B Freight, Inc.	June 10, 1940	June 13, 1940	(*)
Abbott Worsted Mill, Inc.	Oct. 23, 1939	Oct. 23, 1939	Dec. 5, 1939
Do.	do.	do.	Do.
Abinante & Nola Packing Co.	July 17, 1939	Aug. 11, 1939	(*)
Acme Paper Box Co.	Dec. 21, 1939	Dec. 21, 1939	Feb. 5, 1940
Affiliated Dress Manufacturers, Inc., et al.	May 2, 1940		(*)
Albuquerque & Cerrillos Coal Co.	Dec. 21, 1939	Dec. 21, 1939	(*)
Alden Coal Co.	Sept. 7, 1939	Sept. 15, 1939	Jan. 5, 1940
All-States Freight Co.	June 10, 1940	June 13, 1940	(*)
Allied Laboratories, Inc. (Pitman Moore Division)	Mar. 14, 1940	Mar. 15, 1940	Apr. 25, 1940
Do.	do.	do.	Do.
Allison Engineering Co.	Apr. 18, 1940	Apr. 22, 1940	May 15, 1940
American Cyanamid Co.	Dec. 20, 1939	Dec. 20, 1939	Jan. 29, 1940
American Cyanamid & Chemical Corporation.	Feb. 5, 1940	Feb. 5, 1940	Mar. 21, 1940
American Furniture Novelty Co.	May 20, 1940	May 21, 1940	June 7, 1940
American Hair & Felt Co.	June 26, 1939	July 11, 1939	Sept. 22, 1939
Do.	Jan. 25, 1940	Jan. 25, 1940	Mar. 13, 1940
American Sales Book Co., Inc.	Apr. 18, 1940	Apr. 18, 1940	May 7, 1940
American Scale Co.	Nov. 28, 1939	Nov. 29, 1939	Jan. 8, 1940
American Smelting & Refining Co.	Apr. 23, 1940	May 4, 1940	(*)
American Steel Scraper Co.	Jan. 30, 1940	Jan. 30, 1940	Mar. 7, 1940
American White Cross Laboratory	July 6, 1939	July 18, 1939	(*)
American Woolen Co.	Mar. 18, 1940	Mar. 22, 1940	Apr. 22, 1940
Anacortes Canning Co.	July 28, 1939	July 28, 1939	Nov. 6, 1939
Armour & Co.	Apr. 6, 1939	Apr. 8, 1939	July 12, 1939
Do.	July 6, 1939	July 8, 1939	Aug. 22, 1939
Do.	Aug. 3, 1939	Aug. 3, 1939	Oct. 24, 1939
Do.	Oct. 18, 1939	Oct. 18, 1939	Do.
Do.	May 2, 1940	May 2, 1940	May 17, 1940
Do.	May 31, 1940	May 31, 1940	(*)
Armour & Co. (Bloomer, Wis., plant).	June 24, 1940	June 24, 1940	(*)
Armour & Co. (St. Louis branch house).	Jan. 18, 1940	Jan. 18, 1940	Feb. 23, 1940
Association of Motion Picture Producers, Inc., and Columbia Pictures Corporation of California, Inc.	Aug. 21, 1939	Aug. 24, 1939	Aug. 28, 1939
Association of Motion Picture Producers, Inc., and Loew's Inc.	do.	do.	Do.
Association of Motion Picture Producers, Inc., and Paramount Pictures, Inc.	do.	do.	Do.
Association of Motion Picture Producers, Inc., and R. K. O. Radio Pictures, Inc.	do.	do.	Do.
Association of Motion Picture Producers, Inc., and Hal Roach Pictures, Inc.	Aug. 21, 1939	Aug. 24, 1939	Aug. 28, 1939
Association of Motion Picture Producers, Inc., and Twentieth Century-Fox Film.	do.	do.	Do.
Association of Motion Picture Producers, Inc., and United Artists Corporation.	do.	do.	Do.
Association of Motion Picture Producers, Inc., and Universal Pictures Co.	do.	do.	Do.
Association of Motion Picture Producers, Inc., and Warner Bros. Pictures, Inc.	do.	do.	Do.
Atlas Underwear Co.	Nov. 13, 1939	Nov. 13, 1939	Do. (*)
B & B Shoe Co.	Aug. 21, 1939	Aug. 21, 1939	Sept. 29, 1939
Babcock & Wilcox Tube Co.	Feb. 15, 1940	Feb. 15, 1940	Mar. 8, 1940
Baby Line Furniture Co. and Automatic Tension Screen Co.	June 6, 1940	June 11, 1940	(*)
Baltimore Brick Co.	June 10, 1940	June 10, 1940	(*)
Baltimore Mail—United States Line.	Nov. 20, 1939	Nov. 28, 1939	Mar. 13, 1940
Barre Wool Combng Co., Ltd., The	Oct. 26, 1939	Oct. 27, 1939	Jan. 29, 1940
Barrett Co., The	Oct. 30, 1939	Oct. 30, 1939	Nov. 17, 1939
Do.	May 23, 1940	May 23, 1940	June 15, 1940
Beach Packing Co.	Sept. 25, 1939	Sept. 25, 1939	Nov. 1, 1939
Biles-Colman Lumber Co.	Apr. 29, 1940	Apr. 29, 1940	June 27, 1940
Bishop Products Co.	Apr. 23, 1940	Apr. 23, 1940	May 18, 1940
Blue Bell—Globe Mfg. Co.	Mar. 11, 1940	Mar. 11, 1940	Apr. 13, 1940
Blue Diamond Corporation, Ltd.	Nov. 6, 1939	Nov. 7, 1939	Dec. 27, 1939
Bon Ton Curtain Co.	Jan. 4, 1940	Jan. 6, 1940	Feb. 16, 1940
Borg Corporation, George W.	June 6, 1940	June 7, 1940	(*)
Borg-Warner Corporation (Muncie Foundry Division).	Nov. 27, 1939	Nov. 28, 1939	Jan. 16, 1940
Brewster Aeronautical Corporation.	June 28, 1939	July 10, 1939	Aug. 24, 1939
Brillo Mfg. Co.	May 2, 1940	May 2, 1940	May 26, 1940
Buckeye Bumper Co.	June 17, 1940	June 17, 1940	(*)
Bulldog Electric Products Co.	Mar. 12, 1940	Mar. 13, 1940	Apr. 17, 1940
Bunting Glider Co.	Mar. 21, 1940	Mar. 21, 1940	Apr. 20, 1940
Burton Dixie Co.	Jan. 8, 1940	Jan. 8, 1940	Mar. 8, 1940
Burton Dixie Corporation.	Apr. 29, 1940	Apr. 29, 1940	May 18, 1940
Butler Specialty Co.	May 21, 1940	May 21, 1940	June 6, 1940

See footnotes at end of table.

150 FIFTH ANNUAL REPORT OF NATIONAL LABOR RELATIONS BOARD

B. CASES HEARD DURING THE FISCAL YEAR 1939-40—Continued

Representation cases—Continued

Name of case	Hearing		Decision issued
	Opened	Closed	
Cameron Glass & Manufacturing Co.....	June 6, 1940	June 6, 1940	(?)
Capital Automatic Music Co., Inc.....	Oct. 30, 1939	Oct. 30, 1939	Dec. 1, 1939
J. I. Case Co.....	May 27, 1940	May 27, 1940	June 12, 1940
Celluloid Corporation.....	May 24, 1940	June 13, 1940	(?)
Central Foundry Co.....	Dec. 1, 1939	Dec. 5, 1939	Feb. 5, 1940
Century Engraving & Embossing Co.....	Apr. 18, 1940	Apr. 18, 1940	May 13, 1940
Chain Belt Co.....	Sept. 18, 1939	Sept. 19, 1939	Nov. 2, 1939
Champion Blower & Forge Co.....	Jan. 11, 1940	Jan. 11, 1940	Feb. 8, 1940
Cberner Motor Co.....	Nov. 6, 1939	Nov. 8, 1939	Jan. 17, 1940
Chevrolet-Commercial Body, Division of General Motors Corporation.....	Apr. 18, 1940	Apr. 22, 1940	May 15, 1940
Do.....	do.....	do.....	Do.....
Chrysler New York Company, Inc.....	Jan. 22, 1940	Jan. 22, 1940	Feb. 21, 1940
Do.....	do.....	do.....	Do.....
Cities Service Oil Co.....	Oct. 23, 1939	Oct. 24, 1939	Nov. 22, 1939
City Auto Stamping Co., The.....	Aug. 25, 1939	Aug. 26, 1939	Oct. 11, 1939
Do.....	do.....	do.....	Do.....
Cleveland Co.....	Oct. 30, 1939	Nov. 4, 1939	Jan. 15, 1940
Cleveland Hobbing Machine Co.....	Oct. 23, 1939	Oct. 23, 1939	Dec. 18, 1939
Clinton Co.....	June 27, 1940	July 8, 1940	July 27, 1940
Columbia Pictures Corporation of California, Ltd.....	Aug. 21, 1939	Aug. 24, 1939	Aug. 28, 1939
Do.....	do.....	do.....	Do.....
Do.....	do.....	do.....	Do.....
Columbia Pictures Corporation of California, Ltd., et al.....	do.....	do.....	Do.....
Columbia Pictures Corporation, et al.....	do.....	do.....	Do.....
Commerce Clearing House, Inc.....	Feb. 15, 1940	Feb. 15, 1940	Mar. 13, 1940
Consolidated Edison Co. of New York et al.....	Oct. 16, 1939	Oct. 20, 1939	Mar. 2, 1940
Consolidated Edison Co. of New York.....	Feb. 9, 1940	Feb. 14, 1940	Do.....
Consolidated Paper Co.....	Jan. 18, 1940	Jan. 18, 1940	Mar. 5, 1940
Do.....	Jan. 25, 1940	Jan. 25, 1940	Do.....
Consolidated Steel Corporation, Ltd.....	June 27, 1940	June 28, 1940	(?)
Corona Citrus Association.....	June 3, 1940	June 3, 1940	(?)
Crown Central Petroleum Corporation.....	Aug. 24, 1939	Aug. 30, 1939	May 31, 1940
Crown Willamette Paper Co.....	Apr. 29, 1940	Apr. 29, 1940	(?)
Crown Worsted Mills, Inc.....	Feb. 19, 1940	Feb. 20, 1940	Mar. 25, 1940
Cudahy Packing Co.....	Jan. 25, 1940	Feb. 12, 1940	Apr. 17, 1940
Davidson Granite Co.....	July 17, 1939	Aug. 26, 1939	June 4, 1940
Dayton Malleable Iron Co. (G. H. R. Foundry Division).....	Apr. 15, 1940	Apr. 15, 1940	May 22, 1940
Dayton & Waldrip Co.....	Mar. 1, 1940	Mar. 1, 1940	July 17, 1940
DeCamp Bus Lines, Inc.....	Dec. 4, 1939	Dec. 4, 1939	Feb. 6, 1940
Detroit Free Press, The.....	Oct. 12, 1939	Oct. 13, 1939	Oct. 25, 1939
DeVilbiss Co., The.....	Nov. 2, 1939	Nov. 2, 1939	Dec. 8, 1939
Diamond Coal Co.....	May 27, 1940	May 27, 1940	June 12, 1940
Dictaphone Corporation.....	July 10, 1939	July 10, 1939	Aug. 23, 1939
Dixie Ohio Express Co.....	June 10, 1940	June 13, 1940	(?)
Domínguez Chemical Co.....	Feb. 26, 1940	Feb. 27, 1940	Mar. 20, 1940
Dreamland Bedding & Upholstery Co.....	Mar. 21, 1940	Mar. 22, 1940	Apr. 10, 1940
Du Pont Chemical Co.....	June 22, 1939	Aug. 4, 1939	June 22, 1940
J. Eavenson & Sons.....	Aug. 7, 1939	Sept. 25, 1939	(?)
J. Edwards & Co.....	Nov. 20, 1939	Nov. 24, 1939	Feb. 6, 1940
Electrogas Furnace Co.....	Feb. 21, 1940	Feb. 21, 1940	Mar. 27, 1940
Elliott Bay Mill Co.....	Jan. 25, 1940	Jan. 25, 1940	Mar. 13, 1940
Endicott-Johnson Corporation.....	Oct. 23, 1939	Oct. 23, 1939	Nov. 24, 1939
Do.....	do.....	do.....	Do.....
Do.....	do.....	do.....	(?)
Endicott-Johnson (Paracord Division).....	do.....	do.....	(?)
Endicott-Johnson Corporation (Power).....	do.....	do.....	(?)
Equitable Life Insurance Co.....	Jan. 25, 1940	Jan. 25, 1940	Mar. 2, 1940
Evening American Publishing Co.....	Sept. 7, 1939	Sept. 20, 1939	Apr. 12, 1940
Everitte Pump Manufacturing Co., Inc.....	Mar. 26, 1940	Mar. 26, 1940	Apr. 20, 1940
Excel Curtain Co., Inc.....	Sept. 25, 1939	Oct. 6, 1939	(?)
Farnsworth Television & Radio Corporation.....	Feb. 15, 1940	Feb. 15, 1940	Mar. 11, 1940
Farwest Fishermen, Inc.....	July 28, 1939	July 28, 1939	Nov. 6, 1939
Federal Shipbuilding & Dry Dock Co.....	Oct. 16, 1939	Oct. 23, 1939	Jan. 11, 1940
Fenske Bros.....	May 20, 1940	May 20, 1940	June 7, 1940
Firth Carpet Co.....	Jan. 29, 1940	Feb. 3, 1940	(?)
Fisherman's Packing Corporation.....	Sept. 25, 1939	Sept. 25, 1939	Nov. 6, 1939
Flintkote Co.....	Mar. 25, 1940	Mar. 25, 1940	(?)
Florence Pipe Foundry & Machine Co.....	Aug. 10, 1939	Aug. 11, 1939	Sept. 13, 1939
Fox-Coffey-Edge Millinery Co.....	Sept. 30, 1937	Nov. 16, 1937	Feb. 21, 1940
J. Frezzer & Son.....	Sept. 11, 1939	Sept. 11, 1939	Oct. 7, 1939
French Paper Co.....	Mar. 26, 1940	Mar. 26, 1940	Apr. 17, 1940
Friday Harbor Canning Co.....	Aug. 31, 1939	Aug. 31, 1939	Oct. 11, 1939
Fruehauf Trailer Company of Kansas, Inc.....	June 25, 1940	June 25, 1940	(?)

See footnotes at end of table.

B. CASES HEARD DURING THE FISCAL YEAR 1939-40—Continued

Representation cases—Continued

Name of case	Hearing		Decision issued
	Opened	Closed	
General Clay Products Co., The.....	May 28, 1940	May 28, 1940	(?)
General Electric Co.....	Aug. 14, 1939	Aug. 16, 1939	(?)
Do.....	do.....	do.....	Oct. 20, 1939
Do.....	do.....	do.....	Feb. 29, 1940
General Industries Co.....	Jan. 26, 1940	Jan. 29, 1940	Mar. 5, 1940
General Metals Corporation.....	Nov. 20, 1939	Nov. 20, 1939	Dec. 26, 1939
General Motors Corporation.....	Jan. 13, 1940	Feb. 13, 1940	Feb. 28, 1940
Do.....	Jan. 30, 1940	do.....	Do.....
Do.....	do.....	do.....	Do.....
Do.....	do.....	do.....	Do.....
Do.....	do.....	do.....	Do.....
Do.....	do.....	do.....	Do.....
Do.....	do.....	do.....	Do.....
Do.....	do.....	do.....	Do.....
Do.....	do.....	do.....	Do.....
Do.....	do.....	do.....	Do.....
Do.....	Apr. 4, 1940	Apr. 29, 1940	May 28, 1940
Do.....	Apr. 18, 1940	Apr. 22, 1940	May 15, 1940
General Motors Corporation (Buick Motor Co. Division).....	Jan. 30, 1940	Feb. 13, 1940	Feb. 28, 1940
General Motors Corporation (Delco Products Division).....	Apr. 16, 1940	Apr. 16, 1940	May 20, 1940
Do.....	May 20, 1940	May 20, 1940	(?)
Do.....	do.....	do.....	(?)
Do.....	do.....	do.....	(?)
General Motors Corporation (Diesel Division).....	Mar. 29, 1940	Mar. 30, 1940	Apr. 12, 1940
General Motors Corporation (experimental).....	Jan. 30, 1940	do.....	Do.....
General Motors Corporation (Hyatt Bearings Division).....	Mar. 25, 1940	Mar. 25, 1940	Apr. 23, 1940
General Motors Sales Corporation (Frigidaire Division).....	Nov. 16, 1939	Nov. 21, 1939	Jan. 27, 1940
Do.....	Feb. 13, 1940	Feb. 23, 1940	Apr. 17, 1940
Do.....	May 6, 1940	May 8, 1940	June 20, 1940
General Motors Corporation and Yellow Truck & Coach Mfg. Co.....	Jan. 30, 1940	Feb. 1, 1940	June 12, 1940
Do.....	May 9, 1940	May 9, 1940	June 12, 1940
General Time Instruments Corporation.....	Jan. 10, 1940	Jan. 10, 1940	Feb. 9, 1940
Gettysburg Furniture Co., Gettysburg Panel Co., and Reaser Furniture Co.....	June 20, 1940	June 20, 1940	(?)
Gildden Co., The.....	Apr. 22, 1940	Apr. 22, 1940	May 11, 1940
Godchaux Sugars, Inc.....	June 24, 1940	June 25, 1940	(?)
Goldsmith Pickle Co., Inc.....	Apr. 1, 1940	Apr. 1, 1940	Apr. 22, 1940
Samuel Goldwyn, Inc., Ltd.....	Aug. 21, 1939	Aug. 24, 1939	(?)
A. Goodman & Son.....	July 17, 1939	July 18, 1939	Aug. 31, 1939
Goodrich Co., The B. F.....	June 30, 1939	July 6, 1939	Oct. 19, 1939
Do.....	Dec. 1, 1939	Dec. 14, 1939	Feb. 16, 1940
Great Lakes Terminal Warehouse Co.....	Feb. 9, 1940	Feb. 9, 1940	Mar. 13, 1940
Gross-Galesburg Co.....	Aug. 23, 1939	Aug. 23, 1939	Sept. 28, 1939
Gulf Oil Corporation.....	Oct. 16, 1939	Oct. 18, 1939	Jan. 11, 1940
Do.....	do.....	do.....	Do.....
Do.....	do.....	do.....	Do.....
Gulf Refining Co.....	Feb. 7, 1940	Feb. 8, 1940	Mar. 25, 1940
Do.....	June 21, 1940	June 21, 1940	(?)
John Hancock Mutual Life Insurance Co.....	Mar. 20, 1940	Apr. 16, 1940	(?)
Do.....	do.....	do.....	(?)
Harker & Beauman.....	May 23, 1940	May 23, 1940	June 17, 1940
Harrison Steel Castings Co.....	Nov. 2, 1939	Nov. 2, 1939	Jan. 11, 1940
Leo Hart Co.....	June 27, 1940	June 27, 1940	(?)
Hearst Publications, Inc. (Los Angeles Examiner Department).....	June 10, 1940	do.....	(?)
Henrietta Cotton Mills (Martel Mills).....	June 17, 1940	June 17, 1940	(?)
Herkert & Melsel Trunk Co.....	May 9, 1940	May 9, 1940	May 31, 1940
Hettrick Manufacturing Co.....	June 3, 1940	June 3, 1940	(?)
Hicks Body Co.....	Mar. 18, 1940	Mar. 19, 1940	Apr. 30, 1940
Highway Motor Freight Co.....	June 10, 1940	June 13, 1940	(?)
Higley Forwarding Co.....	do.....	do.....	(?)
M. Hoffman & Co.....	May 28, 1940	May 28, 1940	(?)
Holly Hosiery Mills.....	Aug. 22, 1939	Aug. 25, 1939	(?)
Alex Holstein, et al. (Syracuse Ornamental).....	Jan. 4, 1940	Jan. 5, 1940	Feb. 27, 1940
Home Beneficial Association of Richmond, Va.....	Oct. 11, 1939	Oct. 11, 1939	Nov. 28, 1939
Hood Rubber Co.....	Dec. 1, 1939	Dec. 14, 1939	Feb. 16, 1940
Hummer Mfg. Co. Branch of Montgomery Ward Co., Inc.....	June 17, 1940	June 17, 1940	(?)
Hunt-Spiller Manufacturing Corporation.....	Sept. 11, 1939	Sept. 12, 1939	(?)
Hy-Grade Food Products.....	Dec. 14, 1939	Dec. 15, 1939	Feb. 5, 1940
Illinois Publishing & Printing Co.....	Sept. 7, 1939	Sept. 20, 1939	Apr. 12, 1940
Illinois Tool Works.....	Feb. 19, 1940	Feb. 19, 1940	Mar. 14, 1940
Ingalis Shipbuilding Corporation.....	Feb. 16, 1940	Feb. 16, 1940	Mar. 20, 1940
Ingram-Richardson Mfg. Co. of Indiana, Inc.....	Mar. 20, 1940	Mar. 20, 1940	Apr. 23, 1940
International Agricultural Corporation.....	June 20, 1940	June 20, 1940	(?)

See footnotes at end of table.

152 FIFTH ANNUAL REPORT OF NATIONAL LABOR RELATIONS BOARD

B. CASES HEARD DURING THE FISCAL YEAR 1939-40—Continued

Representation cases—Continued

Name of case	Hearing		Decision issued
	Opened	Closed	
International Furniture Co.	May 20, 1940	May 21, 1940	June 7, 1940
International Harvester Co.	July 31, 1939	Aug. 1, 1939	(⁹)
Interstate Broadcasting Co., Inc.	Nov. 13, 1939	Nov. 13, 1939	Dec. 11, 1939
Interstate Steamship Co.	Oct. 26, 1939	Oct. 30, 1939	Nov. 6, 1939
Do.	do.	do.	Do.
Interstate Telephone & Telegraph Co.	Nov. 17, 1939	Nov. 17, 1939	Feb. 1, 1940
Iowa Poultry Producers Marketing Association.	Nov. 13, 1939	Nov. 13, 1939	Jan. 30, 1940
Iowa Southern Utilities Co.	July 31, 1939	Aug. 1, 1939	Sept. 22, 1939
Do.	do.	do.	Do.
Jameson Packing Co.	June 3, 1940	June 3, 1940	(⁹)
Johnson-Carper Furniture Co., Inc.	Aug. 10, 1939	Aug. 10, 1939	Aug. 24, 1939
Kalamazoo Paper Co.	Mar. 28, 1940	Mar. 28, 1940	Apr. 22, 1940
Kansas Milling Co.	July 13, 1939	July 15, 1939	Sept. 2, 1939
Kansas City Structural Steel Co.	Oct. 26, 1939	Oct. 27, 1939	Dec. 13, 1939
S. Karpen & Bros.	May 20, 1940	May 21, 1940	June 7, 1940
Raymond Katz Studio.	July 27, 1939	Aug. 2, 1939	Oct. 23, 1939
Kawneer Co.	Mar. 25, 1940	Mar. 25, 1940	Apr. 15, 1940
Kelsey-Hayes Wheel Co.	Sept. 15, 1939	Sept. 15, 1939	Oct. 28, 1939
Kentucky Fire Brick Co., The.	Dec. 14, 1939	Dec. 14, 1939	Jan. 16, 1940
King Features Syndicate, Inc.	Oct. 9, 1939	Nov. 10, 1939	May 24, 1940
Do.	Oct. 19, 1939	do.	Do.
Kingston Products Corporation.	June 18, 1940	June 20, 1940	(⁹)
Kingston Radio Co.	do.	do.	(⁹)
W. H. Kistler Stationery Co.	Dec. 4, 1939	Dec. 4, 1939	Dec. 29, 1939
Klauber and Wagenheim Wholesale Grocery Co.	June 4, 1940	June 4, 1940	(⁹)
Koontz Motor Freight Co.	June 10, 1940	June 13, 1940	(⁹)
Kroger Grocery & Baking Co.	July 12, 1939	July 27, 1939	(⁹)
M. Kutz Co.	Dec. 7, 1939	Dec. 8, 1939	Jan. 23, 1940
Chris Laganas Shoe Co., Inc.	May 14, 1940	May 15, 1940	June 6, 1940
Do.	do.	do.	Do.
Wm. Lans Co.	Jan. 25, 1940	Jan. 25, 1940	Mar. 2, 1940
Walter Lantz Productions.	July 27, 1939	Aug. 2, 1939	Oct. 23, 1939
Lawson Manufacturing Co.	Dec. 4, 1939	Dec. 4, 1939	Jan. 22, 1940
R. K. LeBlond Machine Tool Co. et al.	Dec. 7, 1939	Dec. 7, 1939	Jan. 30, 1940
Lee Rubber & Tire Corporation (Republic Rubber Division)	May 27, 1940	May 27, 1940	June 28, 1940
Lewis Bolt & Nut Co.	Mar. 21, 1940	Mar. 21, 1940	May 14, 1940
Lewis Steel Products Corporation.	Apr. 8, 1940	Apr. 8, 1940	May 15, 1940
Liberty Powder Co.	May 2, 1940	May 2, 1940	May 28, 1940
Life Insurance Co. of Virginia.	May 10, 1940	May 10, 1940	June 6, 1940
Lihue Plantation Co., Ltd.	Oct. 9, 1939	Oct. 12, 1939	Jan. 8, 1940
Do.	do.	do.	Do.
Lincoln Engineering Co.	June 10, 1940	June 10, 1940	(⁹)
Do.	do.	do.	(⁹)
Do.	do.	do.	(⁹)
Lindarme Tube Co., The.	Jan. 11, 1940	Jan. 11, 1940	Feb. 19, 1940
L. B. Lockwood Co.	Aug. 28, 1939	Aug. 29, 1939	Oct. 17, 1939
Loew's Incorporated.	Aug. 21, 1939	Aug. 24, 1939	Aug. 28, 1939
Do.	do.	do.	Do.
Loew's Inc., et al.	do.	do.	Do.
Do.	do.	do.	Do.
Do.	do.	do.	(¹)
P. Lorillard Co.	Feb. 13, 1940	Feb. 13, 1940	Mar. 26, 1940
Los Angeles Evening Herald & Express.	June 10, 1940	June 27, 1940	(⁹)
Los Angeles Evening News.	do.	do.	(⁹)
Luckenbach-Gulf Steamship Co.	May 6, 1940	May 7, 1940	(⁹)
Luckenbach Steamship Co.	do.	do.	(⁹)
Magnolia Petroleum Co.	May 9, 1938	June 14, 1938	Dec. 16, 1939
Malone Bronze Powder Works, Inc.	Nov. 16, 1939	Nov. 16, 1939	Jan. 15, 1940
Maryland Dry Dock Co., Inc.	Mar. 18, 1940	Mar. 18, 1940	May 17, 1940
Metro-Goldwyn-Mayer et al.	July 27, 1939	Aug. 2, 1939	Oct. 23, 1939
Mexican Petroleum Corporation & American Oil Co.	Dec. 18, 1939	Dec. 19, 1939	(⁹)
Meyer-Stark Manufacturing Co.	Mar. 4, 1940	Mar. 5, 1940	Mar. 26, 1940
Midland Steel Products Co. et al.	Oct. 19, 1939	Oct. 19, 1939	Nov. 20, 1939
Miller Cereal Mills.	Mar. 7, 1940	Mar. 7, 1940	Apr. 15, 1940
Miss Saylor's Chocolates, Inc.	Dec. 14, 1939	Dec. 14, 1939	Jan. 20, 1940
Missouri Utilities Co.	Jan. 11, 1940	Jan. 11, 1940	(¹)
Monteith Bros. Manufacturing Co.	May 6, 1940	May 7, 1940	June 18, 1940
Montgomery Ward & Co.	Mar. 14, 1940	Mar. 14, 1940	(⁹)
Do.	do.	do.	(⁹)
Do.	May 27, 1940	May 28, 1940	June 24, 1940
Do.	June 6, 1940	June 7, 1940	(⁹)

See footnotes at end of table.

B. CASES HEARD DURING THE FISCAL YEAR 1939-40—Continued

Representation cases—Continued

Name of case	Hearing		Decision issued
	Opened	Closed	
Mooremack Gulf Lines, Inc.	Mar. 20, 1939	Aug. 18, 1939	(9)
Morrison Motor Freight Co.	June 10, 1940	June 13, 1940	(2)
Motion Picture Producers & Distributors Association et al.	Aug. 21, 1939	Aug. 24, 1939	Aug. 28, 1939
Motion Picture Producers & Distributors Association	do	do	Do.
Motion Picture Producers, etc., Columbia Pictures	do	do	Do.
Motion Picture Producers, etc., Paramount Pictures	do	do	Do.
Motion Picture Producers, etc., RKO Pictures	do	do	Do.
Motion Picture Producers, etc., Hal Roach Studios	do	do	Do.
Motion Picture Producers, etc., United Artists	do	do	Do.
Motion Picture Producers, etc., Universal	do	do	Do.
Motion Picture Producers, etc., Warner Bros.	do	do	Do.
Muncie Foundry Co.	Nov. 27, 1939	Nov. 28, 1939	Jan. 16, 1940
Muncie Foundry Co. (Division of Borg-Warner)	do	do	Do.
Muskin Shoe Co., The	June 14, 1940	June 14, 1940	(7)
McAlbert Oil, Inc., and D. B. McDaniel Drilling Corporation	Sept. 22, 1938	Sept. 27, 1938	Mar. 22, 1940
McCormick Steamship Co.	May 6, 1940	May 6, 1940	(7)
McCormick Steamship Co., agent Pacific, Argentine-Brazil Line	do	do	(7)
McWane Cast Iron Pipe Co.	Dec. 4, 1939	Dec. 6, 1939	Jan. 15, 1940
James McWilliams Blue Line, Inc.	Feb. 13, 1940	Feb. 13, 1940	Mar. 11, 1940
National Battery Co.	Nov. 13, 1939	Nov. 21, 1939	(6)
National Distillers Products Corporation	Jan. 15, 1940	Jan. 15, 1940	Feb. 16, 1940
National Dress Manufacturers Association, Inc.	May 2, 1940	May 9, 1940	(3)
National Mineral Co.	May 23, 1940	May 24, 1940	(7)
Nebel Knitting Co., Inc.	May 9, 1940	May 9, 1940	May 24, 1940
Nebraska Power Co.	June 17, 1940	June 22, 1940	(2)
Neo-Gravure Co. of Chicago	May 22, 1940	May 22, 1940	June 10, 1940
Nevada-California Electric Corporation	Nov. 17, 1939	Nov. 17, 1939	Feb. 1, 1940
New England Overall Co.	May 27, 1940	May 28, 1940	(7)
New Idea, Inc.	Apr. 22, 1940	Apr. 23, 1940	(7)
New York & Cuba Mail Steamship Co.	Mar. 22, 1940	do	(7)
New York & Porto Rico Steamship Co.	do	do	(7)
Newark Rivet Works	Oct. 24, 1939	Nov. 2, 1939	Dec. 21, 1939
North American Rayon Corporation	Feb. 5, 1940	Feb. 5, 1940	(9)
O. K. Storage & Transfer Co., Inc.	Mar. 18, 1940	Mar. 18, 1940	Apr. 8, 1940
Oakes Manufacturing Co., Inc.	June 6, 1940	June 6, 1940	June 29, 1940
Old Mission Packing Corporation, Ltd.	Nov. 24, 1939	Nov. 24, 1939	Dec. 29, 1939
Overland Transportation Co.	June 10, 1940	June 13, 1940	(7)
Pacific Felt Co.	Mar. 21, 1940	Mar. 22, 1940	Apr. 19, 1940
Pacific Gas Heating Co.	Apr. 15, 1940	Apr. 15, 1940	May 24, 1940
Do	do	do	Do.
Pacific Telephone & Telegraph Co.	Jan. 11, 1940	Jan. 19, 1940	Apr. 27, 1940
Emil J. Paldar Co.	May 20, 1940	May 21, 1940	June 7, 1940
Palmer Bee Co.	Nov. 16, 1939	Nov. 18, 1939	(7)
Do	do	do	(7)
Paraffine Companies, Inc., The	June 26, 1940	June 27, 1940	(7)
Do	do	do	(7)
Paramount Pictures, Inc.	Aug. 21, 1939	Aug. 24, 1939	Aug. 28, 1939
Do	do	do	Do.
Do	do	do	Do.
Paramount Pictures, Inc., et al	do	do	Do.
Do	do	do	Do.
Park Drug Co.	July 31, 1939	Aug. 1, 1939	Sept. 1, 1939
Park Floral Co.	Sept. 12, 1939	Sept. 12, 1939	Jan. 11, 1940
Payne Furnace & Supply Co., Inc.	Feb. 1, 1940	Feb. 2, 1940	Mar. 20, 1940
Fearless of America, Inc.	June 25, 1940	June 25, 1940	(7)
Felican Bay Lumber Co.	Feb. 8, 1940	Feb. 8, 1940	May 7, 1940
Pennsylvania & Lake Erie Dock Co.	Oct. 27, 1939	Oct. 30, 1939	Nov. 6, 1939
Florida Cordage Co.	June 13, 1940	June 13, 1940	(9)
Ferry Truck Lines	June 10, 1940	June 10, 1940	(2)
Ptck Mfg. Co.	Oct. 30, 1939	Oct. 30, 1939	Nov. 22, 1939
Pickands-Mather & Co. and Verona Mining Co.	June 10, 1940	June 10, 1940	(7)
Do	do	do	(7)
Portland Iron Works	Feb. 5, 1940	Feb. 5, 1940	Mar. 11, 1940
Precision Castings Co., Inc.	May 23, 1940	May 24, 1940	June 27, 1940
Princely Products, Inc.	Aug. 21, 1939	Aug. 21, 1939	Sept. 16, 1939
Pure Oil Co.	Nov. 2, 1939	Nov. 2, 1939	(9)

See footnotes at end of table.

154 FIFTH ANNUAL REPORT OF NATIONAL LABOR RELATIONS BOARD

B. CASES HEARD DURING THE FISCAL YEAR 1939-40—Continued

Representation cases—Continued

Name of case	Hearing		Decision issued
	Opened	Closed	
Quaker Oats Co.	Apr. 18, 1940	Apr. 18, 1940	June 11, 1940
R. C. A. Manufacturing Co. of Camden, N. J.	Sept. 25, 1939	Sept. 26, 1939	Oct. 28, 1939
R. K. O. Radio Pictures, Inc.	Aug. 21, 1939	Aug. 24, 1939	Aug. 28, 1939
Do.	do	do	Do.
Do.	do	do	(1)
R. K. O. Radio Pictures, Inc., et al.	do	do	Aug. 28, 1939
Do.	do	do	Do.
Race Bros.	Apr. 8, 1940	Apr. 17, 1940	May 16, 1940
Raleigh Granite Co.	Apr. 25, 1940	Apr. 26, 1940	May 13, 1940
Ralston Purina Co.	Oct. 2, 1939	Oct. 12, 1939	June 12, 1940
Reeves Pulley Co.	Jan. 15, 1940	Jan. 16, 1940	Apr. 8, 1940
Do.	do	do	Do.
Republic Creosoting Co. and Reilly Tar & Chemical Corporation.	Mar. 21, 1940	Mar. 22, 1940	(2)
Rio Grande Truck Lines, Spitzer, R. G., doing business as Riverside and Fort Lee Ferry Co.	June 28, 1940	June 28, 1940	(2)
Hal Roach Studios, Inc.	Mar. 11, 1940	Mar. 12, 1940	May 1, 1940
Do.	Aug. 21, 1939	Aug. 24, 1939	Aug. 28, 1939
Do.	do	do	(1)
Hal Roach Studios, Inc., et al.	do	do	Aug. 28, 1939
Do.	do	do	Do.
Roach-Appleton Mfg. Co.	Mar. 25, 1940	Mar. 25, 1940	Apr. 17, 1940
Roadway Express Co.	June 10, 1940	June 13, 1940	(7)
Robbins Tire & Rubber Co.	Nov. 9, 1939	Nov. 15, 1939	(1)
Roberts & Manders Stove Co.	July 26, 1939	July 28, 1939	Oct. 31, 1939
Rock River Woolen Mills.	Nov. 7, 1939	Nov. 10, 1939	Dec. 23, 1939
Rome Company.	Mar. 21, 1940	Mar. 22, 1940	Apr. 19, 1940
H. O. Rondeau Shoe, Inc.	Aug. 28, 1939	Aug. 29, 1939	(6)
Rosedale Knitting Co.	Apr. 8, 1940	Apr. 8, 1940	May 6, 1940
Rutherford & Hood.	Mar. 21, 1940	Mar. 22, 1940	Apr. 19, 1940
S. & W. Cafeteria, Inc.	Jan. 8, 1940	Jan. 8, 1940	Feb. 6, 1940
Sager Lock Works, Barrows Lock Works (division of Yale & Towne)	Jan. 15, 1940	Jan. 15, 1940	(7)
Saginaw Dock & Terminal Co.	Apr. 1, 1940	Apr. 1, 1940	May 7, 1940
San Francisco Bedding Co.	Mar. 21, 1940	Mar. 22, 1940	Apr. 19, 1940
Saranac Machine Co. & Saranac Automatic Machine Corporation.	Nov. 9, 1939	Nov. 9, 1939	Dec. 5, 1939
Sbicca, Inc.	Jan. 11, 1940	Jan. 18, 1940	(7)
Schafer Brothers Lumber & Shingle Co.	Apr. 4, 1940	Apr. 4, 1940	May 23, 1940
Schawe-Gerwin Shoe Co.	Jan. 30, 1940	Jan. 30, 1940	(6)
Schlesinger, Leon, Productions Corporation.	July 27, 1939	Aug. 2, 1939	Oct. 23, 1939
Scripps-Howard Radio, Inc., station WCPO.	Jan. 31, 1940	Jan. 31, 1940	Mar. 8, 1940
Do.	do	do	Do.
Seeger Refrigerator Co.	June 3, 1940	June 3, 1940	(1)
Semet-Solvay Co.	Mar. 21, 1940	Mar. 21, 1940	Apr. 8, 1940
Shattuck-Denn Mining Corporation.	Dec. 12, 1939	Dec. 12, 1939	Jan. 20, 1940
Shell Oil Co. of California.	July 24, 1939	July 24, 1939	Feb. 28, 1940
Shenango Penn Mold Co.	Dec. 1, 1939	Dec. 1, 1939	Jan. 11, 1940
Silvray Lighting, Inc.	Sept. 25, 1939	Sept. 27, 1939	Dec. 26, 1939
Simplicity Pattern Co.	Feb. 15, 1940	Feb. 15, 1940	Mar. 11, 1940
Skelton Shovel Works of American Fork & Hoe Co.	May 29, 1940	May 29, 1940	June 25, 1940
J. Sklar Manufacturing Co.	June 14, 1940	June 14, 1940	(2)
Sloss Sheffield Steel & Iron Co.	July 17, 1939	July 18, 1939	Aug. 29, 1939
Socony-Vacuum Oil Co., Inc.	Oct. 23, 1939	Oct. 23, 1939	Nov. 30, 1939
Do.	Nov. 13, 1939	Nov. 22, 1939	May 16, 1940
Solvay Process Co. and/or William G. B. Thompson.	May 13, 1940	May 29, 1940	(2)
Southern California Telephone Co.	Jan. 11, 1940	Jan. 19, 1940	Apr. 27, 1940
South Texas Coaches, Inc.	Apr. 20, 1939	May 6, 1939	Mar. 30, 1940
John P. Squire Co., Swift & Co., doing business under Swift & Co., doing business under.	June 6, 1940	June 11, 1940	(7)
John P. Squire Co. and North Packing & Provision Co., Swift & Co., doing business under.	do	do	(7)

See footnotes at end of table.

B. CASES HEARD DURING THE FISCAL YEAR 1939-40—Continued

Representation cases—Continued

Name of case	Hearing		Decision issued
	Opened	Closed	
Standard Ice Corporation.....	Nov. 9, 1939	Nov. 9, 1939	Dec. 8, 1939
Standard Oil Co. of New Jersey.....	Nov. 13, 1939	Nov. 22, 1939	May 16, 1940
Standard Steel Spring Co.....	Dec. 1, 1939	Dec. 1, 1939	Dec. 26, 1939
Star-Times Publishing Co.....	June 14, 1940	June 14, 1940	(?)
Stevens Coal Co.....	Sept. 7, 1939	Sept. 15, 1939	Jan. 3, 1940
Stevens Coal Co. (Trevorton Washery).....	do	do	Do.
Stevens Coal Co. (Trout Run Washery).....	do	do	Do.
J. H. Stone & Sons.....	Mar. 21, 1940	Mar. 21, 1940	Apr. 11, 1940
Stonewall Cotton Mills, Inc.....	Sept. 23, 1939	Sept. 23, 1939	Oct. 26, 1939
Sebastian Stuart Fish Co.....	July 27, 1939	July 28, 1939	Nov. 6, 1939
Sun Life Insurance Co., the Washington branch.....	July 31, 1939	Aug. 1, 1939	Oct. 3, 1939
Sunset Feather Co.....	Mar. 21, 1940	Mar. 22, 1940	Apr. 19, 1940
Superior Felt & Bedding Co.....	July 10, 1939	July 14, 1939	Aug. 19, 1939
Swift & Co.....	Jan. 11, 1940	Jan. 26, 1940	(?)
Tarbardrey Manufacturing Co.....	Oct. 12, 1939	Oct. 12, 1939	Nov. 1, 1939
Technical Porcelain & Chinaware Co.....	Jan. 22, 1940	Jan. 23, 1940	Apr. 10, 1940
Tennessee Copper Co.....	May 23, 1940	May 23, 1940	(?)
Texas Co., The.....	Apr. 29, 1940	Apr. 30, 1940	May 20, 1940
Do.....	do	do	Do.
Texas Co. Building.....	Jan. 16, 1940	Jan. 16, 1940	Mar. 5, 1940
Texas-Empire Pipe Line Co.....	Oct. 12, 1939	Oct. 13, 1939	Jan. 19, 1940
Tide Water Associated Oil Co.....	Nov. 13, 1939	Nov. 22, 1939	May 14, 1940
Do.....	do	do	May 16, 1940
Tidewater Timber Co.....	Apr. 29, 1940	Apr. 29, 1940	(?)
Times Mirror Co.....	June 10, 1940	June 27, 1940	(?)
Tokheim Oil Tank & Pump Co.....	Apr. 25, 1940	Apr. 25, 1940	May 15, 1940
Truckowner Freight Co.....	June 10, 1940	June 13, 1940	(?)
Trucker Oil Co.....	Dec. 14, 1939	Dec. 16, 1939	Jan. 30, 1940
Twentieth Century-Fox Film Corporation.....	Aug. 21, 1939	Aug. 24, 1939	Aug. 28, 1939
Do.....	do	do	Do.
Do.....	do	do	(?)
Twentieth Century-Fox Film Corporation et al.....	do	do	Aug. 28, 1939
Do.....	do	do	Do.
United Artists Studio Corporation.....	Aug. 21, 1939	Aug. 24, 1939	(?)
United Artists Studio Corporation et al.....	do	do	Aug. 28, 1939
Do.....	do	do	Do.
United Artists Studio Corporation and Walter Wanger.....	do	do	Do.
Do.....	do	do	Do.
United States Lines Co.....	Nov. 20, 1939	Nov. 30, 1939	Mar. 13, 1940
Do.....	do	do	Do.
Do.....	do	Nov. 28, 1939	Do.
Do.....	do	do	Do.
United States Pipe & Foundry Co.....	Dec. 1, 1939	Dec. 6, 1939	Jan. 29, 1940
United States Rubber Co.....	Dec. 21, 1939	Dec. 21, 1939	Feb. 16, 1940
Do.....	Nov. 28, 1939	do	Do.
Do.....	do	do	Do.
Universal Pictures Co., Inc.....	Aug. 21, 1939	Aug. 24, 1939	(?)
Do.....	do	do	Aug. 28, 1939
Do.....	do	do	Do.
Do.....	do	do	Do.
Universal Pictures Co., Inc., et al.....	do	do	Do.
Do.....	do	do	Do.
Universal Products, Inc.....	Jan. 3, 1940	Jan. 4, 1940	Feb. 9, 1940
Utah Copper Co. and Kennecott Copper Corporation.....	Apr. 8, 1940	Apr. 8, 1940	May 24, 1940
Utah Poultry Producers Cooperative Association.....	July 13, 1939	July 14, 1939	Sept. 21, 1939
Do.....	do	do	Do.
Utica Knitting Co.....	Feb. 8, 1940	Feb. 8, 1940	Apr. 22, 1940
S. E. and M. Vernon Co.....	May 3, 1940	May 7, 1940	June 15, 1940
Volupte, Inc.....	Feb. 13, 1940	Feb. 16, 1940	Apr. 17, 1940
Vultee Aircraft Division, Aviation Mfg. Corporation.....	June 13, 1940	June 17, 1940	June 29, 1940

See footnotes at end of table.

156 FIFTH ANNUAL REPORT OF NATIONAL LABOR RELATIONS BOARD

B. CASES HEARD DURING THE FISCAL YEAR 1939-40—Continued

Representation cases—Continued

Name of case	Hearing		Decision issued
	Opened	Closed	
Wadsworth Watch Case Co., The.....	Jan. 29, 1940	Jan. 29, 1940	Mar. 11, 1940
Walton Lumber Co.....	Jan. 22, 1940	Jan. 22, 1940	Feb. 18, 1940
Walworth Co.....	Dec. 28, 1939	Dec. 29, 1939	Feb. 26, 1940
Do.....	do.....	do.....	Do.....
Ward Baking Co.....	Feb. 5, 1940	Feb. 5, 1940	Mar. 11, 1940
Ward-Stilson Co.....	June 28, 1940	June 28, 1940	(²)
Warner Brothers Pictures, Inc.....	Aug. 21, 1939	Aug. 24, 1939	(¹)
Do.....	do.....	do.....	Aug. 28, 1939
Do.....	Mar. 18, 1940	Mar. 18, 1940	Apr. 4, 1940
Warner Bros. Pictures, Inc., et al.....	Aug. 21, 1939	Aug. 24, 1939	Aug. 28, 1939
Do.....	do.....	do.....	Do.....
Do.....	do.....	do.....	Do.....
Wash. Branch Eureka Md. Assurance Corporation.....	Oct. 16, 1939	Oct. 16, 1939	Nov. 6, 1939
Wells-Lamont Smith Corporation.....	June 3, 1940	June 3, 1940	(²)
Wenzel Co.....	Jan. 29, 1940	Jan. 29, 1940	Feb. 23, 1940
West Side Lumber Co.....	Apr. 25, 1940	Apr. 25, 1940	June 6, 1940
West Texas Utilities Co.....	July 25, 1938	Aug. 16, 1938	(¹⁰)
Westchester Apartments.....	Oct. 19, 1939	Oct. 19, 1939	Nov. 8, 1939
Western Consumers Feed Co., Ltd.....	Mar. 15, 1940	Mar. 15, 1940	Apr. 8, 1940
Western Fisheries, a corporation.....	Sept. 25, 1939	Sept. 25, 1939	Nov. 6, 1939
Western Massachusetts Electric Co.....	May 2, 1940	May 3, 1940	June 6, 1940
Western Pipe & Steel Co. of California.....	Oct. 9, 1939	Oct. 13, 1939	Nov. 20, 1939
Do.....	do.....	do.....	Do.....
Western Rubber Co.....	Oct. 12, 1939	Oct. 12, 1939	Nov. 8, 1939
Do.....	do.....	do.....	Do.....
Western Union Telegraph Co., The.....	Jan. 25, 1940	Jan. 26, 1940	May 15, 1940
Westgate Sea Products Co.....	Mar. 11, 1940	Mar. 11, 1940	Apr. 22, 1940
Westinghouse Electric & Mfg. Co.....	Oct. 23, 1939	Oct. 23, 1939	Dec. 4, 1939
Do.....	Nov. 13, 1939	Nov. 13, 1939	Dec. 12, 1939
Do.....	do.....	do.....	Jan. 19, 1940
Do.....	Nov. 30, 1939	Nov. 30, 1939	Jan. 11, 1940
Do.....	do.....	do.....	Do.....
Do.....	Jan. 25, 1940	Jan. 26, 1940	Mar. 27, 1940
Do.....	Mar. 21, 1940	Mar. 21, 1940	June 18, 1940
Do.....	Apr. 8, 1940	Apr. 8, 1940	May 3, 1940
Do.....	May 24, 1940	May 24, 1940	June 12, 1940
Westinghouse Lamp Division.....	Jan. 25, 1940	Jan. 25, 1940	Mar. 27, 1940
White Motor Co.....	Apr. 3, 1940	Apr. 4, 1940	May 17, 1940
White Provision Co.....	May 23, 1940	May 23, 1940	June 6, 1940
White Star Lumber Co.....	June 6, 1940	June 6, 1940	July 13, 1940
Whiz Fish Co.....	Mar. 28, 1940	Mar. 28, 1940	June 12, 1940
Wickwire Spencer Steel Co.....	Nov. 6, 1939	Nov. 6, 1939	Dec. 16, 1939
Wilson & Co.....	July 20, 1939	July 20, 1939	Sept. 11, 1939
Do.....	June 3, 1940	June 4, 1940	(²)
Wilson & Co., Inc.....	Dec. 11, 1939	Dec. 11, 1939	Dec. 29, 1939
Wilson & Jansen.....	Mar. 21, 1940	Mar. 22, 1940	Apr. 19, 1940
Wilson-Jones Co.....	Oct. 16, 1939	Oct. 28, 1939	Mar. 22, 1940
Do.....	do.....	do.....	Do.....
Do.....	do.....	do.....	Do.....
Willys Overland Motors, Inc.....	July 27, 1939	July 28, 1939	Oct. 4, 1939
World Bestos Corporation.....	Nov. 13, 1939	Nov. 13, 1939	Dec. 15, 1939
Wyandotte Transportation Co.....	Apr. 3, 1940	Apr. 3, 1940	(²)
Yankee Truck Lines Co.....	June 10, 1940	June 13, 1940	(²)
L. J. Zerbee & Co.....	Apr. 19, 1940	Apr. 19, 1940	May 9, 1940

¹ Withdrawn after hearing.
² Awaiting decision.
³ Hearing in progress.
⁴ Settled by pay-roll check.
⁵ Dismissed after hearing.
⁶ Settled by consent election.
⁷ Additional hearing on Oct. 26, 1939.
⁸ Additional hearing on Apr. 12, 1940.
⁹ Dismissed by Board order.
¹⁰ Additional hearing on Dec. 19, 1938.

C. CASES IN WHICH DECISIONS WERE ISSUED BY STIPULATION BEFORE HEARING

Unfair labor practice cases

Name of case	Decision issued	Name of case	Decision issued
Atlantic States Motor Lines.....	Aug. 11, 1939	Malina Co., Inc.....	Sept. 11, 1939
Geo. Benz Sons, Inc.....	May 29, 1940	Milton Box Co.....	Jan. 29, 1940
Bishop Products Co.....	Oct. 2, 1939	Newcoal Corporation.....	Nov. 13, 1939
Blue Valley Coal Corporation.....	Nov. 13, 1939	Norton Coal Co.....	Do.
Boston Leather Specialties Co., Inc.....	May 18, 1940	Ohio Rubber Co.....	Do.
Brodhaven Manufacturing Co.....	May 17, 1940	Overhead Door Corporation.....	July 26, 1939
Brooklyn Yarn Dye Co., Inc.....	Aug. 17, 1939	Pacific Gas Heating Co.....	Apr. 17, 1940
California Fig Growers & Packers, Inc.....	May 28, 1940	Pacific Grape Products Co.....	May 31, 1940
Champion Paper & Fiber Co.....	Jan. 27, 1940	Perry-Fay Co., The.....	May 28, 1940
Chicago Daily Drivers Journal.....	Sept. 25, 1939	Producers Cotton Oil Co.....	Sept. 16, 1939
Columbia Mills, Inc.....	Mar. 13, 1940	Providence Coal Mining Co.....	Mar. 27, 1940
Dawson Collieries, Inc.....	Jan. 13, 1940	Rayner Dalheim & Co., Inc.....	Oct. 17, 1939
Dawson Daylight Coal Co.....	Nov. 13, 1939	Reade Mfg. Co.....	Oct. 19, 1939
Empire Mining Co.....	Do.	Reliable Rubber Co.....	May 27, 1940
Endicott Johnson Corporation.....	Sept. 2, 1939	Reynolds Spring Co.....	Sept. 27, 1939
J. P. Fischer, Inc.....	Mar. 26, 1940	Rosa-Lee Mfg. Co., Inc.....	Aug. 21, 1939
Flat Creek Coal Co.....	Nov. 13, 1939	Ruckman Coal Co.....	Nov. 13, 1939
Hart Coal Corporation.....	Do.	Southern Oil Transportation Co., Inc.....	Aug. 21, 1939
Maurice Holman, Inc.....	Dec. 11, 1939	Stanley Mfg. Co.....	Dec. 11, 1939
Jacobs Manufacturing Co., E. P. Jacobs, Mrs. Anna D. Harris, and Mrs. Fletcher Benham, doing business as.....	May 9, 1940	Steel Stamping Co.....	Oct. 16, 1939
Kelly Axe & Tool Co.....	July 15, 1939	Sunshine Wet Wash Laundry, Inc.....	Jan. 22, 1940
Kelly Axe & Tool Works.....	Do.	Titan Valve & Mfg. Co.....	Sept. 25, 1939
Kirkham Engineering Corporation.....	Jan. 2, 1940	United Motor Freight Terminal, Inc.....	July 18, 1939
Kolodney & Meyers, Inc.....	Oct. 30, 1939	United Telephone Co.....	June 3, 1940
Lick Creek Coal Co.....	Nov. 13, 1939	Valley Steel Products Co.....	Feb. 27, 1940
Lincoln Engineering Co.....	May 2, 1940	A. Werman & Sons, Inc.....	Sept. 11, 1939
Linderme Tube Co., The.....	Oct. 27, 1939	Williams Coal Co.....	Nov. 13, 1939
Luckenbach Steamship Co.....	Jan. 6, 1940	Z. B. Yarn Mills, Inc., and Montgomery Yarn Dye Works.....	Aug. 1, 1939

¹ Amended Apr. 2, 1940.

Representation cases

Name of case	Decision issued	Name of case	Decision issued
Brooklyn Yarn Dye Co., Inc.....	Aug. 17, 1939	Malina Co., Inc.....	Sept. 11, 1939
Dawson Collieries, Inc.....	Nov. 13, 1939	Newcoal Corporation.....	Nov. 13, 1939
Dawson Daylight Coal Co.....	Do.	Norton Coal Corporation.....	Do.
Henry Disston & Sons, Inc.....	Mar. 22, 1940	R. C. A. Mfg., Inc.....	Mar. 26, 1940
Empire Mining Co.....	Nov. 13, 1939	Read Machinery Co., Inc.....	Dec. 9, 1939
Flat Creek Coal Co.....	Do.	Do.....	Do.
Hall Aluminum Aircraft Corporation.....	Mar. 1, 1940	Reynolds Spring Co.....	Sept. 27, 1939
Hart Coal Co. and Hart Coal Corporation.....	Nov. 13, 1939	Ruckman Coal Co.....	Nov. 13, 1939
O. D. Jennings & Co.....	Apr. 4, 1940	Rushmore Paper Mills, Inc.....	Aug. 14, 1939
Lassen Lumber & Box Co.....	June 29, 1940	W. J. Schoenberger Co., The.....	May 29, 1940
Letz Manufacturing Co.....	June 15, 1940	Superior Packing Co.....	June 12, 1940
Lick Creek Coal Co.....	Nov. 13, 1939	Williams Coal Co.....	Nov. 13, 1939

XII. FISCAL STATEMENT

The expenditures and obligations for fiscal year ended June 30, 1940, are as follows:

Salaries.....	\$2,265,823
Travel.....	319,835
Communications.....	85,917
Reporting.....	24,265
Rent.....	188,249
Furniture and equipment.....	26,808
Supplies and materials.....	56,723
Special and miscellaneous.....	10,707
Transportation of things.....	2,002
Total salaries and expenses.....	<u>2,980,529</u>
Printing and binding.....	<u>203,692</u>
Grand total expenditures and obligations.....	<u>3,184,021</u>

APPENDIX

TABLE A.—*Number of cases brought before the National Labor Relations Board and number of strikes, by month, October 1935–June 1940*¹

Year and month	Number of cases brought before Board (1)	Number of strikes		Ratio of cases to strikes	
		Total	Involving recognition and discrimination	All strikes	Strikes involving recognition and discrimination
		(2)	(3)	(1/2)	(1/3)
<i>1935</i>					
October.....	203	169	79	1.20	2.57
November.....	153	119	50	1.29	3.06
December.....	110	80	33	1.38	3.33
<i>1936</i>					
Total.....	1,301	1,951	949	.67	1.37
January.....	110	138	64	.80	1.72
February.....	66	132	75	.50	.88
March.....	90	168	79	.54	1.14
April.....	142	158	75	.90	1.89
May.....	108	188	74	.57	1.46
June.....	86	168	89	.51	.97
July.....	74	144	71	.51	1.04
August.....	112	211	106	.53	1.06
September.....	150	209	95	.72	1.53
October.....	147	175	87	.84	1.69
November.....	88	131	68	.67	1.29
December.....	128	129	66	.99	1.94
<i>1937</i>					
Total.....	9,425	4,270	2,293	2.21	4.11
January.....	110	160	79	.69	1.39
February.....	195	199	103	.98	1.81
March.....	239	581	279	.41	.86
April.....	477	490	271	.97	1.76
May.....	1,064	532	265	2.00	4.02
June.....	1,283	552	301	2.32	4.26
July.....	1,325	400	250	3.31	5.30
August.....	1,119	400	226	2.80	4.95
September.....	994	321	186	3.10	5.34
October.....	1,054	278	157	3.79	6.71
November.....	959	232	117	4.13	8.20
December.....	606	125	54	4.85	11.22

¹ The number of strikes refers to strikes beginning in each month.

TABLE A.—Number of cases brought before the National Labor Relations Board and number of strikes, by month, October 1935—June 1940—Continued

Year and month	Number of cases brought before Board	Number of strikes		Ratio of cases to strikes	
		Total	Involving recognition and discrimination	All strikes	Strikes involving recognition and discrimination
	(1)	(2)	(3)	(1/2)	(1/3)
1938					
Total.....	7,990	2,180	958	3.67	8.34
January.....	674	148	59	4.55	11.42
February.....	629	156	75	4.03	8.39
March.....	896	216	103	4.15	8.70
April.....	823	207	94	3.98	8.76
May.....	624	233	98	2.68	6.37
June.....	727	178	58	4.08	12.53
July.....	605	164	47	3.69	12.87
August.....	606	203	79	2.99	7.67
September.....	594	176	75	3.38	7.92
October.....	706	196	108	3.60	6.54
November.....	518	167	105	3.10	4.93
December.....	588	136	57	4.32	10.32
1939					
Total.....	6,348	2,098	793	3.02	8.00
January.....	480	163	81	2.94	5.93
February.....	533	173	64	3.08	8.33
March.....	552	179	85	3.08	6.49
April.....	601	203	70	2.96	8.59
May.....	588	206	78	2.85	7.54
June.....	533	194	52	2.75	10.25
July.....	522	188	58	2.77	8.98
August.....	522	221	90	2.36	5.79
September.....	412	158	55	2.60	7.47
October.....	511	170	63	3.00	8.10
November.....	576	155	58	3.71	9.91
December.....	518	88	39	5.88	13.26
1940					
January.....	417	101	34	4.12	12.24
February.....	448	132	47	3.39	9.51
March.....	527	131	53	4.02	9.92
April.....	616	188	70	3.27	8.77
May.....	579	197	60	2.93	9.62
June.....	530	168	51	3.15	10.37

SOURCE: U. S. Department of Labor, Bureau of Labor Statistics. The data in column 2 were taken from the Monthly Labor Review and are unrevised to take account of information received by the Bureau after publication. The data in column 3, through November 1939, were taken from materials submitted by the Commissioner of Labor Statistics to the House Committee investigating the Labor Board (see *Verbatim Record of the Proceedings of the House Committee Investigating Labor Board and Wagner Act*, vol. III, No. 8, p. 357); these are revised data. The figure for May 1937, taken from the Monthly Labor Review, is an exception. The data for the period since November 1939 are also from the Monthly Labor Review and are accordingly not revised. The revisions usually have little effect upon the magnitude of the data so that the inconsistency in this table is not a serious one.

TABLE B.—Number of workers involved in cases brought before the National Labor Relations Board and number of workers involved in strikes, by month, October 1935—June 1940¹

Year and month	Number of workers involved in cases brought before the Board	Number of workers involved in strikes		Ratio of cases to strikes	
		Total	Involving recognition and discrimination	All strikes	Strikes involving recognition and discrimination
	(1)	(2)	(3)	(1/2)	(1/3)
<i>1935</i>					
October.....	47,790	48,223 ²	21,926	0.99	2.18
November.....	47,580	34,661	6,341	1.37	7.50
December.....	27,580	14,133	4,165	1.95	6.62
Total.....	523,138	763,753	360,306	.68	1.45
<i>1936</i>					
January.....	20,346	30,001	8,248	.68	2.47
February.....	5,424	62,259	32,113	.09	.17
March.....	19,300	74,475	13,421	.26	1.44
April.....	11,646	62,551	37,598	.19	.31
May.....	26,460	71,625	33,605	.37	.79
June.....	34,739	61,243	29,040	.57	1.20
July.....	31,936	36,115	11,927	.88	2.68
August.....	8,565	64,510	34,557	.13	.25
September.....	9,214	60,555	18,741	.15	.49
October.....	27,335	96,608	61,724	.28	.44
November.....	309,187	70,515	32,567	4.38	9.49
December.....	18,986	73,326	46,765	.26	.41
Total.....	2,339,631	1,816,847	.....	1.29	.....
<i>1937</i>					
January.....	24,744	106,076	74,217	.23	.33
February.....	74,870	106,910	38,031	.70	1.97
March.....	49,187	281,887	187,680	.17	.26
April.....	159,051	214,760	97,281	.74	1.63
May.....	315,470	321,022	(³)	.98	.....
June.....	369,737	278,783	77,465	1.33	4.77
July.....	305,049	139,976	53,924	2.18	5.66
August.....	304,267	134,078	90,913	2.27	3.35
September.....	180,261	84,032	45,179	2.15	3.99
October.....	175,951	61,395	26,208	2.87	6.71
November.....	225,410	66,168	17,982	3.41	12.54
December.....	155,634	21,760	12,478	7.15	12.47
Total.....	1,219,489	652,927	122,688	1.87	9.04
<i>1938</i>					
January.....	121,113	32,357	8,354	3.74	14.50
February.....	106,172	50,935	4,889	2.08	21.72
March.....	154,868	53,914	18,760	2.87	8.26
April.....	176,414	75,840	14,866	2.33	11.87
May.....	92,917	86,792	9,584	1.07	9.70
June.....	102,813	49,602	7,601	2.07	13.53
July.....	85,065	45,071	5,737	1.89	14.83
August.....	77,091	45,910	7,238	1.68	10.65
September.....	82,831	90,837	18,533	.91	4.47
October.....	67,381	50,167	8,956	1.34	7.32
November.....	76,807	37,770	11,876	2.03	6.47
December.....	76,017	33,673	6,294	2.26	12.08
Total.....	1,315,242	783,089	184,451	1.68	7.13
<i>1939</i>					
January.....	149,186	48,271	15,920	3.09	9.37
February.....	135,595	64,499	13,218	2.10	10.26
March.....	123,782	40,783	10,154	3.04	12.19
April.....	113,805	60,087	10,155	1.90	11.22
May.....	89,592	77,995	13,676	1.15	6.55
June.....	70,082	55,714	3,755	1.26	18.65
July.....	262,995	170,186	12,581	1.54	20.90
August.....	53,400	74,439	22,041	.72	2.42
September.....	75,443	34,939	12,417	2.16	6.08
October.....	79,617	104,259	59,770	.76	1.33
November.....	101,296	41,384	7,362	2.45	13.76
December.....	60,399	10,533	3,396	5.73	17.79

¹ The number of strikes refers to strikes beginning in each month.

² The figure for October 1935 was revised because there was a large discrepancy between the revised and the unrevised figure.

³ Figure not available.

TABLE B.—Number of workers involved in cases brought before the National Labor Relations Board and number of workers involved in strikes, by month, October 1935–June 1940—Continued

Year and month	Number of workers involved in cases brought before the Board	Number of workers involved in strikes		Ratio of cases to strikes	
		Total	Involving recognition and discrimination	All strikes	Strikes involving recognition and discrimination
1940					
January.....	46,066	23,964	1,819	1.92	25.32
February.....	78,160	27,756	7,820	2.82	9.99
March.....	64,245	20,705	5,345	3.10	12.02
April.....	83,562	36,082	7,123	2.59	13.14
May.....	103,759	49,930	5,646	2.08	18.38
June.....	85,726	34,673	5,600	2.47	15.31

SOURCE: U. S. Department of Labor, Bureau of Labor Statistics. The data in column 2 were taken from the Monthly Labor Review and are unrevised to take account of information received by the Bureau after publication. The data in column 3, through November 1939, were taken from materials submitted by the Commissioner of Labor Statistics to the House Committee Investigating the Labor Board (see *Verbatim Record of the Proceedings of the House Committee Investigating Labor Board and Wagner Act*, vol. III, No. 8, p. 357); these are revised data. The figure for May 1937, taken from the Monthly Labor Review, is an exception. The data for the period since November 1939 are also from the Monthly Labor Review and are accordingly not revised. The revisions usually have little effect upon the magnitude of the data so that the inconsistency in this table is not a serious one.

TABLE C.—Man-days of idleness due to strikes and index of industrial production, by months, January 1935–June 1940¹

Month	1935		1936		1937		1938		1939		1940	
	Man-days of idleness	Industrial production index	Man-days of idleness	Industrial production index	Man-days of idleness	Industrial production index	Man-days of idleness	Industrial production index	Man-days of idleness	Industrial production index	Man-days of idleness	Industrial production index
	Thous.		Thous.		Thous.		Thous.		Thous.		Thous.	
January.....	721	80	636	91	2,726	112	473	82	513	98	239	117
February.....	836	85	748	91	1,491	115	514	82	553	99	282	113
March.....	967	86	1,331	94	3,289	120	768	84	618	100	373	112
April.....	1,179	84	700	100	3,377	122	838	82	14,902	98	426	111
May.....	1,698	84	1,019	103	2,983	125	1,174	81	3,548	99	651	116
June.....	1,311	85	1,328	103	4,998	120	871	81	958	102	400	121
July.....	1,298	84	1,105	103	3,008	118	776	85	1,168	102	-----	-----
August.....	1,192	87	911	106	2,270	120	831	90	1,101	103	-----	-----
September.....	3,027	90	1,063	108	1,450	115	990	95	822	116	-----	-----
October.....	1,563	94	1,054	111	1,182	110	842	99	1,508	126	-----	-----
November.....	1,004	95	1,941	114	982	97	558	102	1,665	126	-----	-----
December.....	661	94	2,066	114	674	86	513	100	384	124	-----	-----

¹ Includes estimated 4,226,000 man-days of idleness due to bituminous coal stoppage. It has been pointed out that this dispute "concerned no principle involved in the Wagner Act" (New York Times editorial, May 6, 1939). Were figure adjusted to exclude bituminous coal stoppage it would be 676,000.

² Includes estimated 2,694,000 man-days of idleness due to bituminous coal stoppage. Were figure adjusted to exclude bituminous coal stoppage it would be 854,000.

³ Preliminary estimate.

SOURCES: Strike data, 1935-39: U. S. Bureau of Labor Statistics, Monthly Labor Review, May 1937, 1939, and 1940. 1940: U. S. Bureau of Labor Statistics, Division of Industrial Relations (preliminary data). Industrial production indexes (revised series): Board of Governors, Federal Reserve System, Federal Reserve Bulletin.