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**TENTH ANNUAL REPORT  
OF THE  
NATIONAL LABOR  
RELATIONS BOARD**

**For the Fiscal Year Ended  
June 30, 1945**

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**FOR THE FISCAL YEAR  
ENDED JUNE 30**

**1945**

**UNITED STATES GOVERNMENT PRINTING OFFICE  
WASHINGTON, D. C. • 1946**

## NATIONAL LABOR RELATIONS BOARD

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<sup>1</sup> Succeeded H. A. Millis, who resigned as of July 4, 1945.

<sup>2</sup> Succeeded Alvin J. Rockwell, who resigned as of September 16, 1945.

<sup>3</sup> Succeeded Guy Farmer, who resigned as of October 10, 1945.

LETTER OF TRANSMITTAL

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NATIONAL LABOR RELATIONS BOARD,  
*Washington, D. C., February 11, 1946.*

SIR: As provided in Section 3 (c) of the National Labor Relations Act (49 Stat. 449), I submit herewith the Tenth Annual Report of the National Labor Relations Board for the year ended June 30, 1944, and, under separate cover, lists containing the names, salaries, fiscal statement, and duties of all employees and officers in the employ or under the supervision of the Board, together with lists of cases in which hearings were held and decisions were rendered by the Board during the fiscal year.

PAUL M. HERZOG, *Chairman.*

The PRESIDENT OF THE UNITED STATES,  
The PRESIDENT OF THE SENATE,  
The SPEAKER OF THE HOUSE OF REPRESENTATIVES,

*Washington, D. C.*





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## THE NATIONAL LABOR RELATIONS BOARD IN THE LAST YEAR OF WAR

THE ending of hostilities and the conclusion of the war coincided with the close of 10 years' administration of the National Labor Relations Act by the Board. During the fiscal year 1945, as in the earlier war years, the dominant force in the Board's activities was the war, and the accompanying need for absolute protection of the basic statutory rights of workers to freely organize and bargain collectively through representatives of their own choosing. During this period the Board contributed its share to stability on the Nation's labor-industrial scene by promptly removing one of the principal causes of strife, the interference by employers with employee attempts to organize and bargain collectively.

The Act is limited; it is not a cure-all for strikes. It was designed simply to protect workers in a right, long recognized but until passage of the Act not protected by law; "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."

Disputes over recognition of this right historically had been the chief cause of costly strikes and lock-outs. The right to select his own representatives for collective bargaining is one that is deeply ingrained in the American worker, and any impairment of this right is fraught with the danger of industrial warfare unless the Government affords a legal method of redress. For example, during the war of 1917-18 when there was no National Labor Relations Act, labor disputes which caused the greatest concern to the Government arose primarily out of organizational issues. Thus, in World War I, such controversies inevitably led to widespread strikes, for without the Government to offer the worker the orderly procedures for his protection he was left to the use of economic force in order to assert his right to organize. To stem this loss of needed production the War Labor Board of 1918 was hastily implemented. Later that Board was disbanded and it was not until July 5, 1935, when the National Labor Relations Act was passed, that workers were granted this protection of a right long since recognized as a necessity by previous legislation and the Supreme Court.

The Nation was able to enter World War II with machinery under the National Labor Relations Act well established and accepted. Fully trained by the experiences and demands of the defense program, the Board was able to meet the even greater demands of a war economy. Increased hours, the strain of wartime housing and transportation, the increased cost of living, the diminishing supply of civilian goods, are but a few of the factors which contributed to abnormal economic conditions making more essential than ever that the agencies

of the Government be utilized to eliminate the sources of friction and poor morale which could develop into serious interruptions of production. The Board recognized that every unsettled question of majority representation and every allegation of unfair labor practice constituted a potential impairment of production and morale which demanded immediate attention. Tested and accepted, its services were available to resolve such disputes through resort to its orderly and peaceful procedures. In this way the Board received and resolved unsettled and highly explosive situations in new and expanding plants affected by the huge impact of the war upon American industry.

Thus, the Board's contribution to the national welfare throughout the war period continued to be first, the elimination of unfair labor practices which impede the acceptance of sound collective bargaining practices; and second, the prompt determination of disputes as to employees' choice of their bargaining agents. In addition to discharging these duties, the Board conducted strike polls, a responsibility assigned it by the War Labor Disputes Act, and protected the right of employees affected by the merger of domestic telegraph carriers, under an amendment to the Communications Act of 1934.

In the fiscal year 1945 the Board's preoccupation with cases involving vital war operations continued to be demonstrated by the frequency with which the Board's services were invoked in certain industries. As in the previous war years, over half of the elections held by the Board were conducted in 7 major industries, all engaged in producing basic war equipment and supplies. Over 1,000,000 employees were eligible to vote in the 4,919 elections and cross-checks held during the year. Iron and steel headed the list, followed by food, chemicals, electrical equipment, and textiles. Aircraft and shipbuilding dropped out of the first 7 industries in terms of number of elections held, but ranked second and fourth respectively in terms of the number of votes cast.

Since 1935, unions, employers, and individual workers in the continental United States, in Alaska, Hawaii, and Puerto Rico have brought over 77,000 cases to the Board. Of these, 37,306 involved unfair labor practice charges and 39,925 concerned questions concerning employee representation. In 1945 alone, a total of 9,737 cases were filed with the Board. Less than 25 percent of them, 2,427, involved questions of unfair labor practice; the remaining 7,310, or 75.1 percent, asked for Board resolution of questions concerning union representation.

A total of 9,310 new representation petitions were filed with the Board in 1945, an increase of 10.7 percent over 1944. On the other hand, fewer unfair labor practice cases were filed than in any of the preceding years. Those filed, 2,427, represent a decrease of 5.7 percent from the number docketed during the preceding year.

This rise in the ratio of representation cases to unfair labor practice cases continues a trend begun some years ago. In 1937, for example, the unfair labor practice cases comprised 71 percent of the cases filed with the Board, as against 29 percent representation cases. The trend to representation cases started in 1941, when representation cases had climbed to 47.4 percent of the cases filed. That year marked the beginning of a great increase in the number and proportion of representation cases, which continued throughout the succeeding years. This can be clearly seen by the fact that in 1945, 75

percent of the 9,737 new cases filed were representation cases, as compared with 19 percent in 1936.

This shift in the relative proportion of representation to unfair labor practice cases filed over the 10-year period indicates the Board's progress toward achieving the objective of orderly employer-employee relationships and also growing acceptance of the principles of collective bargaining underlying the Act. Further, it reflects the expansion of labor organization into new fields as new war plants opened and others expanded. Such expansion naturally meant the increasing determination, by resort to the Board's election processes, of new representatives for collective bargaining. Also, the state of the labor market, characterized by shortage of manpower and less unemployment, made less likely the resort to unfair labor practices, such as discriminatory discharges.

For several years the Board has followed the practice of holding elections in an increasing number of cases, in order to ascertain the desires of the employees for or against representation by unions. While the device is now commonly accepted, it is not required by statute, which expressly provides that the Board "may take a secret ballot of employees, or utilize any other suitable method" to ascertain the exclusive representative. However, the Board's experience has shown that the secret ballot is, generally speaking, the most acceptable method of resolving such a question in contested cases. A necessary condition to the continued use of this practice is that the atmosphere of a collective bargaining election be free of any coercive tactics or undue influence directed at the employees, whether attributable to the employer, a contesting union, or any other source, because the Board is deeply concerned that employees shall be protected in their statutory right to select representatives of their own choice.

The Board conducts three different types of elections for the purpose of resolving questions of representation. These are: (1) Consent elections which are held upon the agreement of all the parties concerned without a formal record being made in the case; (2) stipulated elections, also based upon the mutual consent of all the parties, but also providing for formal Board certification or dismissal, depending on the outcome of the election; and (3) ordered elections, which are directed by the Board after a hearing has been held and a formal record made in the case. There is, however, no difference in the actual balloting or conduct of the election under the three procedures. The consent procedure has always been more widely used than the ordered election. Last year, however, as in the previous year, the ordered election has grown in use.

Also made available to the parties are such informal procedures known as consent cross-check and stipulated cross-check. Under the consent cross-check procedure, the parties agree that the Board's agents may determine whether or not a union represents a majority, by checking the number of signed union cards against the names on the pay roll furnished by the employer. The last step in the processing of the case occurs when the Board's agents report the results of the cross-check to the parties. The stipulated cross-check differs from the foregoing device only in that the parties agree that the Board in Washington shall finally dispose of the case, either by a formal certification in the event a union wins or by a formal dismissal if no union is successful.

In the 10 years since 1935 the Board has conducted nearly 24,000 elections and cross-checks, in which over 7,000,000 employees were eligible to express their desires. The importance of self-determination to the individual worker is demonstrated by the consistently high percentage of eligible employees who actually voted. Throughout this period 6,114,725, or 83.9 percent of those eligible to vote, went to the polls to express themselves for or against a bargaining representative. Only 6,829 elections, or 28.5 percent, were based on formal Board decisions; the remaining 71.5 percent, 17,119, were held by consent of all parties.

During the year 1945, the Board conducted 4,919 elections, in which 1,087,177 employees were eligible to cast ballots. Nearly 900,000 employees appeared at the polls to vote. The consent procedure was utilized in 68.4 percent of these elections; the remaining 31.6 percent were ordered. A bargaining agent was selected in 4,078 or 82.9 percent of the elections held. The ballots cast in favor of a union, 706,569, represented nearly 80 percent of the total number of valid votes cast.

Affiliates of the C. I. O. participated in 2,673 elections, or 54.3 percent, and won 71 percent. Unions affiliated with the A. F. of L. participated in 2,373, 48.2 percent of the number held, and were successful in 68.3 percent. Unaffiliated unions were on the ballot in 878 elections, 17.8 percent, and were successful in 54.3 percent of them. No union was selected in 841 elections, or 17.1 percent of the total conducted.

Since the purpose of the Act is to give workers an opportunity to choose and act through representatives free from employer interference, the whole purpose is defeated if employers are permitted to interfere with, restrain, or coerce workers. In this connection, Section 8 of the Act enumerates 5 unfair labor practices forbidden to employers. The most frequent charges, figuring in 67.5 percent of the 2,427 unfair labor practice cases filed with the Board in 1945, alleged discrimination with regard to hire or tenure of employment; this allegation appeared in 1,639 cases. The only notable variation from 1944 experience in the unfair labor practice cases filed, was an increase of 9 percent in the number of cases in which a refusal to bargain was put in issue.

The Board closed 2,308 unfair labor practice cases during the year. Eighty-seven and six-tenths percent of them were handled informally, without recourse to formal hearing and written decisions. The remedies in the cases closed by settlement or by compliance with Intermediate Report, Board order, or court decree, were varied. A total of 1,919 workers were reinstated to remedy discriminatory discharges, while 125 others were reinstated after strikes caused by unfair labor practices. Back pay amounting to \$997,270 was paid to a total of 1,973 workers who had been the victims of discriminatory practices. Company-dominated unions were disestablished in 54 cases. Collective bargaining negotiations were ordered in 116 cases. The posting of notices was required in 576 cases.

At the end of June 30, 1945, the Board had conducted a total of 637 strike ballots in accordance with Section 8 of the War Labor Disputes Act. In all, since passage of that Act on June 25, 1943, the Board received a total of 2,375 strike notices. Of these, 1,580 were withdrawn and 144 were pending on July 1, 1945.

During the last year of the war the Board continued its policy of cooperating fully with other Federal agencies and extended the liaison procedures which were established upon declaration of war. Every effort was made to give priority to important cases which might interfere with war production; constant relationships were maintained with the Army, Navy, War Production Board, War Shipping Administration, National War Labor Board, and the Conciliation Service of the Department of Labor, for the purpose of exchanging information and coordinating all efforts for the maintenance of industrial peace.

A statistical analysis of the cases filed and handled, and of the elections conducted during 1945 is presented in Chapter II. The principles established by the Board in its decisions in representation and unfair labor practice cases are outlined in Chapters III and IV. The issues of major importance in the application of the Act as decided by the courts in 1945 are presented in Chapter V. A discussion of the second year's experience of the Board in administering certain sections of the War Labor Disputes Act and the Telegraph Merger Act is presented in Chapter VI.



## A STATISTICAL ANALYSIS OF CASES HANDLED

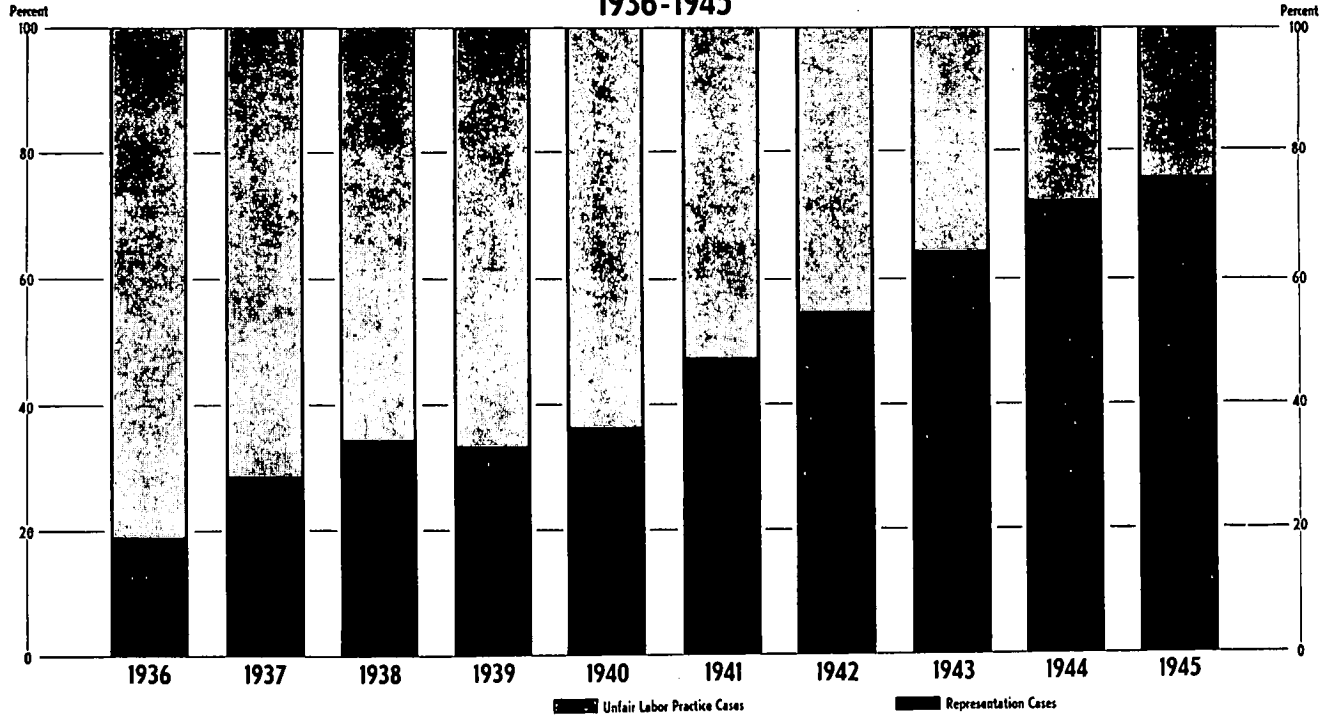
ON June 30, 1945, the National Labor Relations Board completed 10 years, during which time its activities have covered the 3,000,000 square miles of continental United States besides Alaska, Hawaii, and Puerto Rico. Unions, employers, and individual workers from the largest cities to the most isolated locations have brought to the Board over 77,000 cases under the National Labor Relations Act. The Board's agents have conducted investigations and held elections in varied industries and in many localities, in the shadow of the Northwest forests, amid the noise and clatter of the Pittsburgh steel mills, in the hum of the textile mills, and on ships in port.

A little more than half of the cases filed with the Board have involved the question of representation of employees for the purpose of collective bargaining. The remainder have concerned charges of unfair labor practices. The trend in the relative proportion of representation to unfair labor practice cases filed over the 10-year period is indicative of the Board's progress toward the objective of orderly employer-employee relationships and acceptance of the principles of collective bargaining: the early years saw much of the Board's time and effort spent in court action and many injunction proceedings, but after the Act was declared constitutional by the Supreme Court in April 1937, the volume of cases increased with the unfair labor practice cases predominant. However, the year 1941 marked the beginning of a tremendous increase in the number and proportion of representation cases, which continued throughout the succeeding years. For example, in 1945, 75 percent of the 9,737 new cases filed were representation cases, as compared with 19 percent in 1936.

Table 1.—Cases filed during the fiscal years 1936-45, by type

Fiscal year	Number of cases			Percent of total	
	All cases	Unfair labor practice cases	Representation cases	Unfair labor practice cases	Representation cases
1936-45.....	77,231	37,306	39,925	48.3	51.7
1936.....	1,068	865	203	81.0	19.0
1937.....	4,068	2,895	1,173	71.2	28.8
1938.....	10,430	6,807	3,623	65.3	34.7
1939.....	6,904	4,618	2,286	66.9	33.1
1940.....	6,177	3,934	2,243	63.7	36.3
1941.....	9,151	4,817	4,334	52.6	47.4
1942.....	10,977	4,967	6,010	45.2	54.8
1943.....	9,543	3,403	6,140	35.7	64.3
1944.....	9,176	2,573	6,603	28.0	72.0
1945.....	9,737	2,427	7,310	24.9	75.1

CHART I  
PROPORTION OF REPRESENTATION AND UNFAIR LABOR PRACTICE CASES FILED  
1936-1945



## ELECTIONS AND CROSS-CHECKS

The representation case has been the medium through which millions of American workers have expressed their choice of bargaining agents. In 10 years, more than 6 million employees have participated in approximately 24,000 elections and cross-checks. The importance of self-determination to the individual worker is demonstrated by the consistently high percentage of eligible employees who actually vote. Throughout the past 10 years 83.9 percent of those eligible to cast ballots have voted either for or against a union.

The number of elections and cross-checks conducted by the Board increased sharply in the last 5 years as compared with the first 5 years. Over 85 percent of all the elections conducted were held in the years 1941-45. In 1945 alone, 4,919 elections and cross-checks were held, involving over 1 million eligible voters.

The Board conducts three different types of elections for the purpose of determining questions of representation. These are (1) consent elections, which are held upon the agreement of all the parties concerned without a formal record being made in the case; (2) stipulated elections, also based upon the mutual consent of all the parties but, in addition, providing for formal Board certification or dismissal depending on the outcome of the election; and (3) ordered elections, which are directed by the Board after a hearing has been held and a formal record made in the case. There is, however, no difference in the actual balloting or conduct of the election under the three different procedures. The consent procedure has always been more widely used than the ordered election. However, in the past 2 years there has been increasing resort to the ordered type.

Table 2.—Elections and cross-checks conducted during the fiscal years 1936-45, by type

Fiscal year	Number of elections and cross-checks			Percent of total		Number of eligible voters	Valid votes cast
	Total	Consent <sup>1</sup>	Ordered	Consent <sup>1</sup>	Ordered		
1936-45.....	23, 948	17, 119	6, 829	71. 5	28. 5	7, 284, 486	6, 114, 725
1936.....	31	23	8	74. 2	25. 8	9, 512	7, 734
1937.....	265	217	48	81. 9	18. 1	181, 424	164, 207
1938.....	1, 152	812	340	70. 5	29. 5	394, 558	343, 587
1939.....	746	481	265	64. 5	35. 5	207, 597	177, 215
1940.....	1, 192	676	516	56. 7	43. 3	595, 075	532, 355
1941.....	2, 566	2, 034	532	79. 3	20. 7	788, 311	729, 737
1942.....	4, 212	3, 317	895	78. 7	21. 3	1, 286, 567	1, 067, 037
1943.....	4, 153	2, 991	1, 162	72. 0	28. 0	1, 402, 040	1, 126, 501
1944.....	4, 712	3, 203	1, 509	68. 0	32. 0	1, 322, 225	1, 072, 594
1945.....	4, 919	3, 365	1, 554	68. 4	31. 6	1, 087, 177	893, 758

<sup>1</sup> Includes elections and cross-checks held pursuant to consent or stipulated agreement.

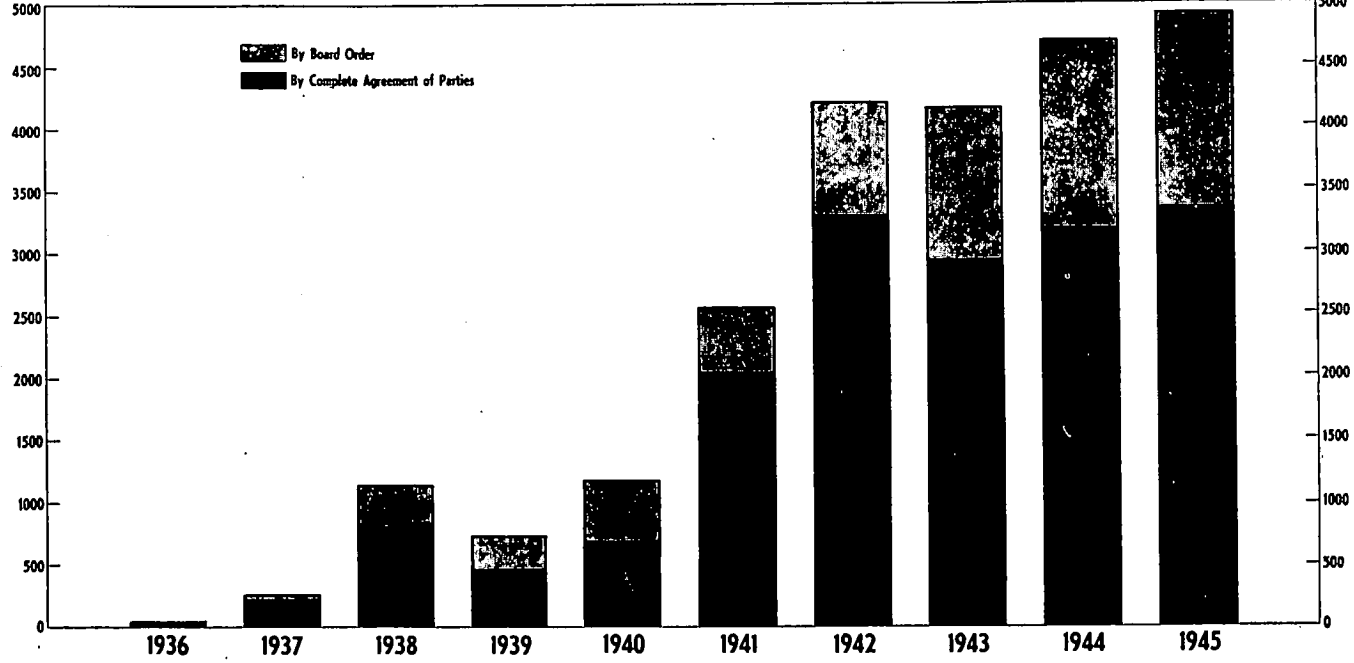
Table 3 gives a detailed break-down of the types of elections and cross-checks conducted in the fiscal year 1945.

Each year finds the Board conducting elections in a wide variety of industrial enterprises. Normally, however, a heavy concentration is shown in a relatively few of the more basic industries. In 1945, as in previous years, over 50 percent of the elections were held in seven such industries. Iron and steel headed the list, with machinery, food, chemicals, wholesale trade, electrical equipment, and textiles

# CHART 2 ELECTIONS AND CROSS-CHECKS CONDUCTED 1936-1945

Number of elections  
and cross-checks

Number of elections  
and cross-checks



following in the order given. Aircraft and shipbuilding dropped out of the first seven industries in 1945 in terms of number of elections, but ranked second and fourth, respectively, in number of votes cast. The number of elections in wholesale trade increased 109 percent over the previous year, bringing the industry from eleventh to fifth place.<sup>1</sup>

A bargaining agent was selected in 4,078 or 82.9 percent of the elections conducted in 1945. Employees cast 706,569 ballots in favor of a union, or 79.1 percent of the total number of valid votes cast.<sup>2</sup>

Affiliates of the A. F. of L. participated in 2,373 elections and cross-checks, or 48.2 percent of the number conducted during the year; they were successful in 68.3 percent of those in which they participated. The C. I. O. unions participated in 2,673, or 54.3 percent of the total number, and won 71 percent. Unaffiliated unions were on the ballot in 878 elections or 17.8 percent of all elections held; they were successful in 63.8 percent.

**Table 3.—Types of elections and cross-checks conducted, fiscal year 1945**

Type of election or cross-check	Elections and cross-checks		Eligible voters		Valid votes <sup>1</sup>	
	Number	Percent	Number	Percent	Number	Percent
Total.....	4, 019	100. 0	1, 087, 177	100. 0	893, 758	100. 0
Consent.....	2, 099	61. 0	417, 230	38. 4	341, 003	38. 2
Elections.....	2, 543	51. 7	392, 059	36. 1	323, 348	36. 2
Cross-checks.....	456	9. 3	25, 171	2. 3	17, 655	2. 0
Stipulated.....	366	7. 4	125, 195	11. 5	103, 668	11. 6
Elections.....	344	7. 0	119, 277	11. 0	100, 111	11. 2
Cross-checks.....	22	0. 4	5, 918	0. 5	3, 557	0. 4
Ordered elections.....	1, 554	31. 6	544, 752	50. 1	449, 087	50. 2

**Table 4.—Results of elections and cross-checks conducted during 1945, by union affiliation**

Union affiliation	Elections in which union participated			Elections won by union		Valid votes cast for union	
	Number	Number of eligible voters	Number of valid votes cast	Number	Percent of elections in which union participated	Number	Percent of total votes in elections in which union participated
A. F. of L.....	2, 373	510, 566	414, 742	1, 620	68. 3	215, 453	51. 9
C. I. O.....	2, 673	752, 211	624, 642	1, 898	71. 0	350, 295	56. 1
Unaffiliated.....	878	337, 326	276, 347	560	63. 8	140, 821	51. 0

As in previous years, the number of elections in which only one union appeared on the ballot accounted for the great majority of all elections conducted. The number and proportion of elections in which one union figured is indicated in the following table.

<sup>1</sup> See table 13 in Appendix A, p. 88.

<sup>2</sup> See table 11 in Appendix A, p. 86.

Table 5.—Elections and cross-checks conducted in 1945, by the number of unions participating

Number of unions participating	Elections and cross-checks		Eligible voters		
	Number	Percent of total	Number	Percent of total	Percent casting valid votes
1 union.....	3,883	78.9	577,077	53.1	82.4
2 unions.....	979	19.9	471,857	43.4	82.2
3 or more unions.....	57	1.2	38,243	3.5	78.8

## NEW CASES FILED DURING 1945

While the total number of representation petitions filed with the Board in 1945 increased by 10.7 percent over 1944, in many parts of the country the gain was even more pronounced. On the Pacific coast the increase amounted to 32.4 percent; in the West South Central States, 24.6 percent; and in New England, 15.8 percent; while outside the continental United States, in Alaska, Hawaii, and Puerto Rico, 422.5 percent more representation cases were filed. Individual States showing a marked increase in representation cases were California, New York, and Texas.

In some areas the number of representation cases declined. The heaviest drop, 9.8 percent, was experienced in the West North Central area, particularly in the States of Missouri, Minnesota, and Kansas.<sup>3</sup>

The over-all decrease of 5.7 percent in unfair labor practice cases filed in 1945 did not occur uniformly throughout the Nation. In New England, the North Central and Mountain States the decrease ranged from 11 to 23 percent. However, in 15 States, the District of Columbia, and Puerto Rico even more charges were filed in 1945 than in any previous year. The heaviest gain was made in California where 206 unfair labor practice cases were filed, or 61 more than in the previous year.

The percentage of all cases filed in the different industries followed the same general pattern as did the election cases described previously. The over-all proportion of representation to unfair labor practice cases of 75 to 25 percent respectively was not uniform for each industrial group. For example, in coal mining, the number of unfair labor practice cases exceeded the number of representation cases, while in apparel, highway passenger transportation, and the service trades, unfair labor practice cases constituted 40 percent or more of all cases filed. The lowest proportion of unfair labor practice cases, 9.6 percent, was in wholesale trade. Three other groups, water transportation, utilities, and petroleum had less than 15 percent unfair labor practice cases.<sup>4</sup>

In the new unfair labor practice cases filed, the most frequent charge alleged discrimination with regard to hire or tenure of employment. This allegation appeared in 1,639 cases filed in 1945, or 67.5 percent of the unfair labor practice cases received. The only notable variation from 1944 experience was an increase of 9 percent in the number of cases in which refusal to bargain was an issue.<sup>5</sup>

<sup>3</sup> See table 4 in Appendix A, p. 81, for list of States included in the geographical areas referred to above.

<sup>4</sup> See table 5 in Appendix A, p. 82.

<sup>5</sup> See table 3 in Appendix A, p. 81.

## DISPOSITION OF CASES

In 1945, the Board closed over 9,000 cases, bringing to 74,000 the total number disposed of in 10 years. In 81.2 percent of all the cases closed, the Board found it unnecessary to resort to formal action in order to accomplish the purposes of the Act. However, the past 3 years have witnessed a rise in the proportion of cases requiring such formal procedures as the conduct of a hearing and issuance of a Board decision.

The number of cases closed before and after formal action is given for each of the 10 years in the following table. Charts Nos. 3 and 4 indicate in percentage terms the use of informal and formal procedures in the disposition of representation and unfair labor practice cases for the 10-year period.

Table 6.—Cases closed before and after formal action, fiscal years 1936–45

Fiscal year	Unfair labor practice cases				Representation cases			
	Closed before formal action		Closed after formal action		Closed before formal action		Closed after formal action	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
1936-45 .....	32,512	90.4	3,472	9.6	27,652	72.6	10,420	27.4
1936 .....	531	83.5	105	16.5	90	88.2	12	11.8
1937 .....	1,668	94.7	94	5.3	506	86.9	76	13.1
1938 .....	5,487	96.4	207	3.6	2,555	80.9	602	19.1
1939 .....	3,833	90.6	397	9.4	1,701	72.7	638	27.3
1940 .....	4,132	85.6	532	11.4	1,966	73.4	724	26.9
1941 .....	4,240	90.3	458	9.7	2,874	77.7	824	22.3
1942 .....	5,015	91.9	441	8.1	4,875	77.6	1,410	22.4
1943 .....	3,308	85.8	541	14.2	4,294	72.4	1,634	27.6
1944 .....	2,276	84.7	411	15.3	4,353	66.9	2,154	33.1
1945 .....	2,022	87.6	286	12.4	4,438	65.4	2,346	34.6

CHART 3  
**UNFAIR LABOR PRACTICE CASES CLOSED BEFORE AND AFTER FORMAL ACTION**  
 1936-1945

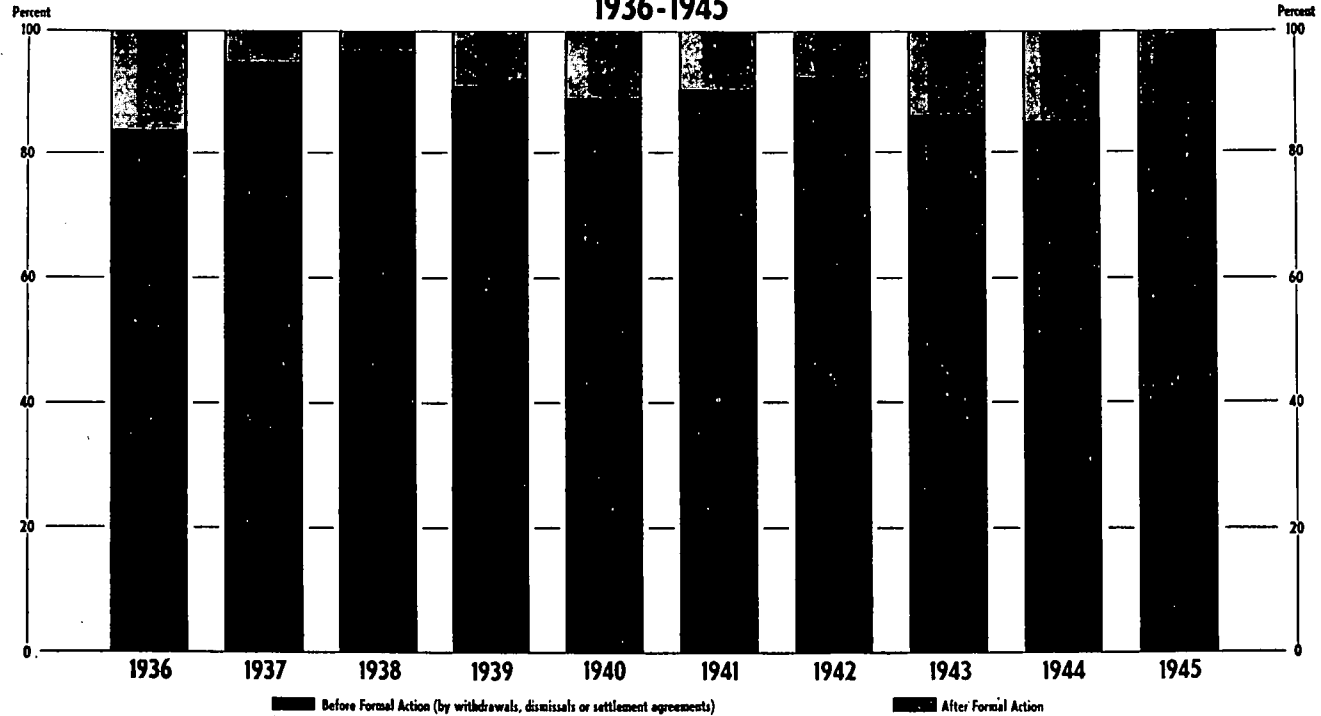
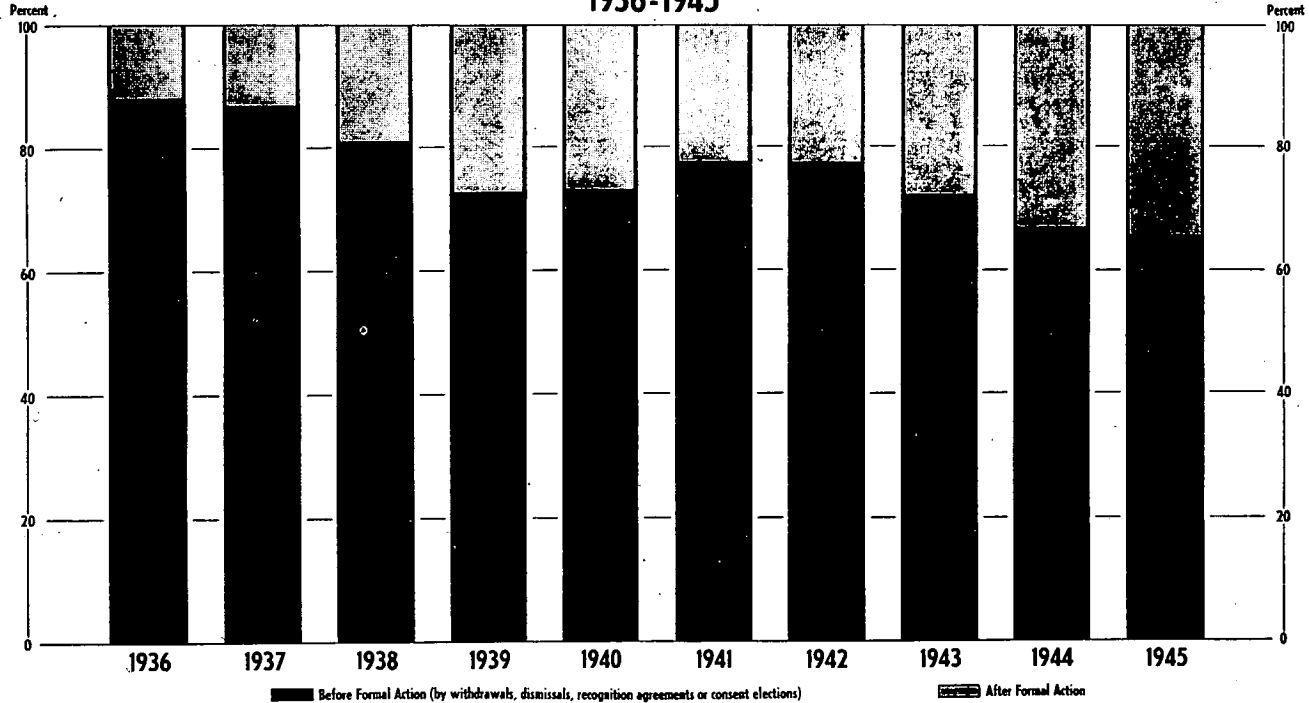




CHART 4  
**REPRESENTATION CASES CLOSED BEFORE AND AFTER FORMAL ACTION**  
 1936-1945





## THE NATIONAL LABOR RELATIONS ACT IN PRACTICE: REPRESENTATION CASES

**T**HE fiscal year ending June 30, 1945, was marked by a continuing upward trend in the volume of contested representation cases coming before the Board. In these cases, if a question concerning the representation of employees has arisen, the Board proceeds under Section 9 of the Act<sup>1</sup> to investigate and resolve the question by designating the appropriate bargaining unit of employees and ascertaining what union, if any, is desired as collective bargaining agent by a majority of the employees in that unit. If a union is chosen by a majority the Board issues its certification declaring that the representative so selected is the exclusive bargaining agent, under Section 9 (a) of the Act, of all the employees in the specified unit. Representation proceedings are instituted by a petition, usually filed by a labor organization which seeks to be certified as the statutory representative of employees in an alleged appropriate unit.<sup>2</sup> The form and content of the petition and the course of subsequent proceedings leading to a certification of representatives or dismissal of the petition are outlined in Article III of the Board's Rules and Regulations.

The limited scope of the present discussion does not permit any detailed treatment of the procedural aspects of representation cases, but one recent innovation is noteworthy. By an amendment of the Rules<sup>3</sup> which became effective on November 27, 1945, the Board liberalized its procedure regarding the stage of an investigation at which the secret ballot election, whereby the Board ascertains employees' desires as to collective bargaining representation, may be conducted. Previously, in contested cases, the election was conducted only upon the direction of the Board, issued after the hearing. The new amendment of the Rules, while safeguarding the parties' statutory right to a hearing and providing for Board determination of the issues in dispute, authorizes the Regional Director "in cases which present no substantial issues," to conduct a secret ballot among the employees affected by the investigation, at any stage of the proceeding, "either before hearing or after hearing but before transfer of the case to the Board \* \* \*." The Board believes that this more flexible procedure will expedite the final disposition of many simple cases.

<sup>1</sup> Section 9 of the National Labor Relations Act provides that the representative selected for the purposes of collective bargaining by a majority of the employees in a unit appropriate for such purpose, is the exclusive collective bargaining representative of all the employees in such unit. The Act requires that the Board 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 the Act, the unit appropriate for collective bargaining purposes is "the employer unit, craft unit, plant unit, or subdivision thereof." When a question concerning the representation of employees is raised the Board may investigate and certify the representative, if any, chosen by the majority of the employees in the appropriate unit.

<sup>2</sup> Pursuant to Article III, Section 2 (b) and Section 3, an employer may file a petition when "two or more labor organizations have presented \* \* \* conflicting claims that each represents a majority of the employees in the unit or units claimed to be appropriate." In *Matter of Wisconsin Public Service Corporation*, 64 N. L. R. B. 15, this provision was interpreted to cover a situation in which two labor organizations each claimed a majority in a unit which, to some extent overlapped the unit desired by the other, although neither asserted that it represented a majority of employees in the larger unit "claimed to be appropriate" by the employer in its petition.

<sup>3</sup> Article III, Sections 1, 3, 4, 5, 8, 9, and 10 were amended. Section 12 of Article III, which provides for stipulated and consent elections or cross-checks, remains unchanged. See Ninth Annual Report, pp. 9-11.

The basic issues involved in all representation cases and the major principles applied by the Board in resolving those issues have been fully discussed in prior Annual Reports.<sup>4</sup> In the very large number of cases decided during the last fiscal year there was presented, as always, an infinite variety of factual problems; for the most part these were solved in accordance with established policies and rules of decision described in the Eighth and Ninth Annual Reports. The following discussion covers decisions issued since the publication of the Ninth Annual Report<sup>5</sup> which illustrate new or important developments in the representation field.

### THE QUESTION CONCERNING REPRESENTATION

In conformity with the declared purposes of the statute the function of a representation proceeding is to lay the foundation for a stable collective bargaining relationship between the employer and a bona fide labor organization freely chosen by the employees in an appropriate unit. The Board initially considers in these proceedings whether or not a question concerning representation has arisen, and generally finds that this is the case if the employer has refused to recognize a union seeking to bargain collectively for employees in a given unit.<sup>6</sup> In the conventional case the Board thereupon defines the appropriate bargaining unit and provides for an election wherein the employees may choose their collective bargaining agent by secret ballot. There are a number of situations, however, in which no election is directed even though a petition for investigation and certification has been duly filed, because it is apparent that an immediate resolution of the alleged question concerning representation would not serve any useful purpose or promote the basic statutory objective of collective bargaining.

Thus, the Board does not proceed with an investigation and election unless the petitioning union makes a *prima facie* showing that it represents a substantial number of employees, sufficient to indicate that a majority vote is likely to be cast for a bargaining agent.<sup>7</sup> Nor

<sup>4</sup> See, especially, Seventh Annual Report, p. 53 ff.; Eighth Annual Report p. 43 ff.; Ninth Annual Report, p. 23 ff.

<sup>5</sup> Noteworthy cases decided during the first 6 months of the new fiscal year are included. Such decisions, issued after July 5, 1945, were participated in by Chairman Herzog, rather than Chairman Mills. They appear in the volumes beginning with 62 N. L. R. B.

<sup>6</sup> Failure on the part of the union to request recognition before filing its petition does not preclude a finding that a question of representation exists, if it appears at the hearing that the union actually does seek recognition and the employer refuses it. *Matter of The Jeffrey Manufacturing Company*, 58 N. L. R. B. 1129; *Matter of Allen and Sandilands Packing Company*, 56 N. L. R. B. 724; *Matter of Pacific Mills*, 60 N. L. R. B. 467. See also *Matter of Crawford Steel Foundry Company*, 58 N. L. R. B. 428 (petitioning union failed to supply information as to the asserted interest of the intervening labor organization.)

<sup>7</sup> *Matter of Pacific States Steel Corporation*, 57 N. L. R. B. 1084; *Matter of Sullivan Drydock & Repair Corporation*, 63 N. L. R. B. 1171; *Matter of Lansing Drop Forge Company*, 64 N. L. R. B. 617. The Board's usual requirement is that the petitioner produce specific evidence, such as authorization cards, indicating that it represents approximately 30 percent of the employees in the bargaining unit. See *Matter of Brad Foote Gear Works, Inc.*, 60 N. L. R. B. 97. For situations in which this requirement is relaxed or otherwise varied, see *Matter of Allen and Sandilands Packing Company*, footnote 6, *supra*; *Matter of Areana-Norton Co.*, 60 N. L. R. B. 1166, cf. *Matter of Arena-Norton Co.*, 62 N. L. R. B. 1070 (seasonal operations); *Matter of Dade Drydock Corp.*, 58 N. L. R. B. 833; *Matter of Thompson Products, Inc.*, 63 N. L. R. B. 1495 (history of unfair labor practices); *Matter of Trico Products Corporation*, 57 N. L. R. B. 1446; *Matter of Lalance & Grosjean Manufacturing Co.*, 63 N. L. R. B. 130; *Matter of Miller & Miller Motor Freight Lines*, 61 N. L. R. B. 872; *Matter of Owens-Corning Fiberglas Corporation*, 58 N. L. R. B. 704; *Matter of World Publishing Company*, 63 N. L. R. B. 462 (where union petitions for a new election within a year after failing to poll a majority in a prior election); *Matter of Sun Shipbuilding & Drydock Company*, 59 N. L. R. B. 144; *Matter of Swift and Company*, 58 N. L. R. B. 657; *Matter of Southport Petroleum Company of Delaware*, 58 N. L. R. B. 44; *Matter of Kesterson Lumber Corporation, et al.*, 61 N. L. R. B. 355; *Matter of National Container Corporation*, 62 N. L. R. B. 48 (intervening union held closed-shop or maintenance-of-membership agreement); *Matter of Harry Manaster & Bro. and United Packers, Inc.*, 60 N. L. R. B. 979 (abnormally high turn-over).

As to the showing of interest required of an intervening union which seeks to compete in an election or otherwise oppose the petition, see *Matter of United Boat Service Corporation*, 55 N. L. R. B. 671; *Matter of Chicago Flexible Shaft Company*, 60 N. L. R. B. 848; *Matter of Michigan Bell Telephone Company*, 63 N. L. R. B. 941; *Matter of Richfield Oil Corporation*, 59 N. L. R. B. 1554; *Matter of Phelps Dodge Corporation*; 60 N. L. R. B. 1431; *Matter of Thompson Products, Inc.*, *supra*; *Matter of The Mead Corporation, Heald Division*, 63 N. L. R. B. 1129; *Matter of Cook Waste Paper Company*, 58 N. L. R. B. 1323.

As stated in prior Annual Reports, this report of the Board's agent embodying the results of his investigation of the union's showing of interest is not subject to direct or collateral attack at the hearing. See *Matter of Lalance & Grosjean Manufacturing Co.*, *supra*.

will an election be directed where it appears that the union seeking certification is not a bona fide representative, competent to perform the statutory function of serving employees as a genuine collective bargaining agent.<sup>8</sup> In a group of cases decided at the end of the fiscal year the Board likewise indicated that it may in some circumstances decline to proceed with determination of representatives where conversion from war to peacetime industrial operations has so disrupted the unit that collective bargaining would prove wholly impracticable.<sup>9</sup> However, unless material changes in industrial conditions affecting the size and character of the bargaining unit are imminent, the Board will not treat the prospect of reconversion as a reason for dismissing a petition for investigation and certification of representatives.<sup>10</sup> A mere reduction in the size of the working force does not militate against a determination of representatives.<sup>11</sup>

Lacking any specific authority to regulate directly the structure and practices of labor organizations except as an incident to the enforcement of Section 8 (2) of the Act,<sup>12</sup> the Board has uniformly declined to treat a union's status as statutory bargaining agent as affected by alleged violation on its part of general civil or criminal law or moral and democratic precepts.<sup>13</sup> However, in *Matter of Larus & Brother Company, Inc.*, 62 N. L. R. B. 1075, the Board held that a union which, in its collective bargaining contracts and representative practices, discriminates against employees in the bargaining unit in regard to tenure of employment, rates of pay, or other substantive conditions of employment on the basis of race, color, or creed, will not be permitted to secure or retain the Board's certificate as a statutory representative. This holding, in which the Board applied doctrines foreshadowed in earlier decisions<sup>14</sup> and recently approved by the Supreme Court,<sup>15</sup> interprets the term "representative" employed in Sections 7, 8, and 9 of the Act in the light of the express policies of the statute as well as the national policy against racial discrimination.<sup>16</sup>

<sup>8</sup> In *Matter of Dade Drydock Co.*, footnote 5, *supra*, and *Matter of The Standard Oil Company of Ohio*, 63 N. L. R. B. 990, the Board dismissed petitions of organizations found to be successors to organizations previously ordered disestablished in proceedings involving violation of Section 8 (2) of the Act.

<sup>9</sup> For the same reasons, in *Matter of Johnson Bronze Company*, 59 N. L. R. B. 957, and *Matter of Reo Motors, Inc.*, 61 N. L. R. B. 1579, an intervening organization found to be employer-sponsored and dominated was denied a place on the ballot in an election directed at the behest of another union. Cf. *Matter of The Texas Company*, 61 N. L. R. B. 1018; *Matter of Standard Oil Company of California*, 58 N. L. R. B. 554, and (Third Supplemental Decision and Order in same case) 62 N. L. R. B. 1068; *Matter of Western Electric Company, Inc.*, 62 N. L. R. B. 1505.

<sup>10</sup> But a union is not disqualified to act as the bargaining agent of nonsupervisory employees merely because it may have a few supervisory employees as members, provided that it was not organized and is not controlled by supervisors. *Matter of California Packing Company*, 59 N. L. R. B. 941; *Matter of Charlotteville Woolen Mills*, 59 N. L. R. B. 1160.

<sup>11</sup> See *Matter of Armour & Company*, 62 N. L. R. B. 1194; cf. *Matter of Curtiss-Wright Corporation*, 63 N. L. R. B. 919.

<sup>12</sup> *Matter of Edison General Electric Appliance Co., Inc.*, 63 N. L. R. B. 968; *Matter of Thompson Products, Inc.*, footnote 5, *supra*; see *Matter of Congoleum-Nairn, Inc.*, 64 N. L. R. B. 95; *Matter of Underwood Machinery Company*, 59 N. L. R. B. 42; *Matter of General Bronze Corporation*, 60 N. L. R. B. 1098.

<sup>13</sup> *Matter of Reliable Nut Company*, 63 N. L. R. B. 357; *Matter of Consolidated Vultee Aircraft Corporation* 64 N. L. R. B. 400.

<sup>14</sup> Section 8 (2) of the Act provides that it is an unfair labor practice for an employer "to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it." When the Board finds that an employer has violated this Section it regularly orders "disestablishment" of the dominated or supported organization.

<sup>15</sup> As the Board remarked in the *Larus* decision, *infra*, it has no authority to issue orders against labor organizations. See also *Matter of Eppinger & Russell*, 56 N. L. R. B. 1259; *Matter of Wisconsin Gas & Electric Company*, 57 N. L. R. B. 285; *Matter of Miehle Printing Press & Manufacturing Co.*, 53 N. L. R. B. 1134; *Matter of Land O'Lakes Dairy Company*, 59 N. L. R. B. 255.

<sup>16</sup> *Matter of Henri Wines*, 44 N. L. R. B. 1310; *Matter of Rutland Court Owners, Inc.*, 44 N. L. R. B. 687; 46 N. L. R. B. 1040; *Matter of Wallace Corporation*, 50 N. L. R. B. 138; *Matter of Bethlehem-Alameda Shipyard Inc.*, 53 N. L. R. B. 990.

<sup>17</sup> *Wallace Corp. v. N. L. R. B.*, 323 U. S. 248; *Steele v. Louisville & N. R. Co. et al.*, 323 U. S. 192; *Tunstall v. Brotherhood of Locomotive Firemen and Enginemen, Ocean League No. 76, et al.*, 323 U. S. 210; *Hunt v. Crumbach*, 65 S. Ct. 1545.

<sup>18</sup> As expressed in the Fifth Amendment to the Constitution and in the President's Executive Orders 8802 and 9346 which prohibit discrimination in employment in war industries by reason of race, color, creed, or national origin, and enjoin all labor organizations to eliminate discrimination on such grounds in respect to union membership.

A statutory representative, the Board held, has a duty "to represent all members of the unit equally and without discrimination on the basis of race, color, or creed."<sup>17</sup>

The *Larus* decision affords an answer to a question mooted in a number of other cases decided earlier in the fiscal year;<sup>18</sup> namely, whether a union seeking certification as exclusive bargaining agent is bound to offer membership to all employees in the bargaining unit. The Board indicated that, in general, a labor organization's right to prescribe the qualifications of its members will be respected, but that a union acting as an exclusive representative under the statute must not exclude employees upon a discriminatory basis if it holds a contract with the employer containing closed-shop features.<sup>19</sup> Earlier, in *Matter of Atlanta Oak Flooring Company*, 62 N. L. R. B. 973, the Board had held that a statutory bargaining agent may segregate racial groups within its membership into separate but equally privileged locals or branches of its organization. Thus, the rule has evolved: Neither exclusion from membership nor segregated membership *per se* represents evasion on the part of a labor organization of its statutory duty to afford "equal representation." But in each case where the issue is presented the Board will scrutinize the contract and conduct of a representative organization and withhold or withdraw its certification if it finds that the organization has discriminated against employees in the bargaining unit through its membership restrictions or otherwise.<sup>20</sup>

#### CONTRACTS AND PRIOR DETERMINATIONS AS BARS TO PROCEEDING

The declared statutory policy of "encouraging the practice and procedure of collective bargaining,"<sup>21</sup> to the end that industrial relations may be stabilized, is the basis for the Board's occasional refusal to direct an election for the designation of bargaining representatives in cases where the petitioner seeks to be certified in the place of a

<sup>17</sup> The Board also referred to discrimination by a union because of prior activity on behalf of a rival union as violative of the statutory duty to afford equal representation. See *Matter of Wallace Corporation*, footnote 14, *supra*. See also, *Matter of R. K. O. Radio Pictures, Inc., et al.*, 61 N. L. R. B. 112.

<sup>18</sup> *Matter of Platzer Boat Works*, 59 N. L. R. B. 292; *Matter of United Motor Service Inc.*, 59 N. L. R. B. 351; *Matter of Carter Manufacturing Company*, 59 N. L. R. B. 804; *Matter of Southwestern Portland Cement Company*, 61 N. L. R. B. 1217; *Matter of General Motors Corporation (Chevrolet Shell Division)*, 62 N. L. R. B. 427; *Matter of Boeckeler Associates and Chemprolin Products*, 60 N. L. R. B. 1208; *Matter of The Texas Company*, 61 N. L. R. B. 885; *Matter of Virginia Smelting Company*, 60 N. L. R. B. 616.

<sup>19</sup> In this connection the Board stated that its statutory authority to require a union to offer membership to all employees in the bargaining unit, except in the situation where the union holds a contract containing closed-shop or similar features, is open to "serious question" in view of certain remarks contained in the Supreme Court's opinion in the *Steele* case, *supra*. Remarking that the Congress doubtless has the power to prohibit discriminatory membership practices on the part of labor organizations dealing with employment affecting interstate commerce, the Board expressed doubt whether, as an administrative agency, "solely a creature of Congress," it possesses the implied power to interfere with a union's right to select its members. The Board defined its own powers and duty in this respect in the following language:

"This Board has no express authority to remedy undemocratic practices within the structure of union organizations \* \* \* but we have conceived it to be our duty under the statute to see to it that any organization certified under Section 9 (c) as the bargaining representative acted as a genuine representative of all the employees in the bargaining unit. Lacking such authority to insist that labor organizations admit all the employees they purported to represent to membership, or to give them equal voting rights, we have in closed-shop situations held that where a union obtained a contract requiring membership as a condition of employment, it was not entitled to insist upon the discharge of, and the employer was not entitled to discharge, employees discriminatorily denied membership in the union. In such situations, being without power to order the union to admit them, we have ordered employers to reinstate them."

<sup>20</sup> In *Matter of Carter Manufacturing Company*, *Matter of Southwestern Portland Cement Company*, *Matter of General Motors Corporation*, (*Chevrolet Shell Division*), and *Matter of Atlanta Oak Flooring Company*, *supra*, the Board refused to dismiss the petition merely because it was suggested or shown by one of the parties that the petitioning union did not offer membership to all employees in the proposed unit, absent proof that the union would not or could not afford equal representation to all such employees if certified. It inserted in its decisions, however, a  *caveat* stating that it would consider rescinding any certification which might be issued "if it is later shown by appropriate motion that equal representation has been denied to any of the employees in the unit."

<sup>21</sup> Section 1 of the Act entitled "Findings and Policy."

bargaining agent which has theretofore represented the same employees. These important cases fall into two groups: (1) Those where the employees in the bargaining unit are covered by a collective bargaining contract which will not expire for some time, and (2) those where an intervening union, recently designated as the collective bargaining representative under Board auspices, urges that its status as such should remain undisturbed for a time, in order that it may enjoy an opportunity to negotiate a collective bargaining contract. As explained in the last two Annual Reports,<sup>22</sup> the Board decides in these cases whether to dismiss the petition or to direct an election by weighing the interest of employees and the public in industrial stability, against the sometimes conflicting interest in employees' exercise of their right, guaranteed by the statute, to select and change their bargaining representatives.

During the past fiscal year the Board followed its previously established precedents in holding that a valid collective bargaining agreement,<sup>23</sup> written and signed by the parties, to be effective for a definite and reasonable term,<sup>24</sup> which fixes at least some important terms and conditions of employment,<sup>25</sup> will bar a determination of representatives until the expiration date approaches.<sup>26</sup> In accordance with the familiar doctrine of the *Mill B* case<sup>27</sup> this rule applies to a contract which is renewed for a further term by operation of a so-called automatic renewal clause, as well as to a contract in effect for its initial term.<sup>28</sup> Equally familiar is the rule that a contract does not bar an immediate determination of representatives if the petitioning union asserted its claim to recognition as the statutory bargaining agent or filed its petition for certification with the Board before the date when the contract went into effect, or, in the case of an auto-

<sup>22</sup> Eighth Annual Report, p. 48; Ninth Annual Report, p. 28.

<sup>23</sup> In *Matter of Container Corporation of America*, 61 N. L. R. B. 823, a leading case in which the basis of the contract-bar rule and its exceptions were fully discussed both in the majority opinion and in a dissent by Mr. Reilly, all members of the Board indicated that in representation proceedings the Board customarily presumes that a collective bargaining contract urged in bar is "valid" in the sense that its execution was not the fruit of unfair labor practices. To the same effect see *Matter of The Lamson Brothers Company*, 59 N. L. R. B. 1561, 1571.

But a "members only" contract, which does not embody exclusive recognition of the employees' bargaining agent, does not bar the designation of a statutory representative. *Matter of American Tobacco Co., Inc.*, 62 N. L. R. B. 1239.

<sup>24</sup> As to what is a reasonable term see discussion *infra*. A contract which, although it may specify a duration period, is actually terminable at the option of either party, does not bar an election. *Matter of Ionia Desk Company*, 59 N. L. R. B. 1522; *Matter of Summerill Tubing Company*, 60 N. L. R. B. 896; *Matter of Fischer Lumber Company*, 62 N. L. R. B. 543. But an agreement which contains merely a provision allowing the parties to negotiate for modification of its terms, without enabling either party unilaterally to terminate the contractual relationship, is not construed as terminable at will. *Matter of Green Bay Drop Forge Company*, 57 N. L. R. B. 1417; *Matter of Douglas Public Service Corp.*, 62 N. L. R. B. 651.

As to whether negotiations between the parties during the term of a contract will be deemed to effect the cancellation or forestall the automatic renewal of their current agreement, see *Matter of Green Bay Drop Forge Company*, *supra*; *Matter of Chicago Mill & Lumber Company*, 59 N. L. R. B. 77; *Matter of Story and Clark Piano Co.*, 59 N. L. R. B. 185; cf. *Matter of Heat Transfer Products Inc.*, 63 N. L. R. B. 1124; *Matter of General Metals Corporation*, 59 N. L. R. B. 1252; *Matter of Hudson Sharp Machine Company*, 62 N. L. R. B. 799; *Matter of Empire Worsted Mills Inc.*, 63 N. L. R. B. 1446; *Matter of National Gypsum Company*, 64 N. L. R. B. 59; *Matter of Great Bear Logging Company*, 59 N. L. R. B. 701; *Matter of Swift & Company*, 59 N. L. R. B. 1417; *Matter of John Wood Manufacturing Company, Inc.*, 61 N. L. R. B. 846; *Matter of Iroquois Gas Corporation*, 61 N. L. R. B. 302.

<sup>25</sup> In *Matter of Standard Oil Company*, 63 N. L. R. B. 1223, the Board held that an exclusive contract for a definite term which incorporated a wage agreement as well as a procedure for the settlement of grievances and the negotiation of other collective bargaining questions, was adequate to meet this test and, accordingly, operated to bar a determination of representatives. Cf. *Matter of The New York and Porto Rico Steamship Company*, 58 N. L. R. B. 1301.

<sup>26</sup> In the *Container* case, footnote 22, *supra*, which was followed by a majority of the Board in *Matter of The Swartwout Company*, 61 N. L. R. B. 832 and *Matter of The Black-Clawson Company*, 63 N. L. R. B. 773, the Board held, Mr. Reilly dissenting, that this rule will not be applied in a situation where the contracting union is defunct and unable to administer its contract or otherwise serve as the bargaining representative of the employees in the unit.

<sup>27</sup> *Matter of Mill B, Inc.*, 40 N. L. R. B. 346.

<sup>28</sup> See *Matter of Elwood Machine & Tool Company*, 61 N. L. R. B. 1618; *Matter of Green Bay Drop, Forge Company*, and other cases cited in footnote 24, *supra*.

matically renewed contract, before the renewal date.<sup>29</sup> A contract for an indefinite or unduly long term will not be permitted to bar an election after it has been in effect for a year, because it contravenes the statutory policy of protecting employees' freedom to select and change their representatives at reasonable intervals.<sup>30</sup> The Board invariably regards 1-year contracts as reasonable in term, determining the reasonableness of agreements of substantially longer duration by reference to custom in the industry. In *Matter of Uxbridge Worsted Company, Inc., Andrews Mill*, 60 N. L. R. B. 1395, the Board reviewed its prior decisions in which it had considered various long-term contracts and held that, as a general rule, a contract for a 2-year term will likewise be upheld. Its opinion in that case stated:

In the absence of satisfactory proof that an effective 2-year contract runs counter to the well-established custom in the industry, or is otherwise unreasonable in term under the circumstances of the particular case, we are presently of the opinion that, in the interest of industrial stability, no investigation of representatives should be undertaken until such contract is about to expire.<sup>31</sup>

A 3-year contract, however, will not be permitted to bar a new determination of representatives after the first year unless the party urging the contract as a bar establishes that this abnormally long term is supported by custom in the industry.<sup>32</sup>

As the foregoing discussion suggests, the Board will not treat as a bar to a determination of representatives, or otherwise uphold, a contract which unreasonably restricts the exercise by employees of the rights guaranteed them in the Act. Unanimously agreed upon this principle, the members of the Board have differed for several years as to its application in the situation where a union seeks to be certified as the statutory representative of a certain group of employees<sup>33</sup> whom it has undertaken not to organize or represent, the undertaking being contained in a current collective bargaining contract covering another unit of workers in the employ of the same employer. In a line of cases beginning with *Matter of Packard Motor Car Company*, 47

<sup>29</sup> *Matter of The Texas Company*, 64 N. L. R. B., 653; *Matter of Whippany Paper Board Company, Inc.*, 61 N. L. R. B. 516; *Matter of Cities Service Refining Company*, 58 N. L. R. B. 28; *Matter of The Mead Corporation, Heald Division*, 63 N. L. R. B. 1129; *Matter of American Smelting & Refining Company*, 62 N. L. R. B. 1470.

The Board uniformly regards 30-, 60-, or 90-day automatic renewal provisions as determining whether or not the petitioner has asserted the question concerning representation in good season, but like effect will not be given to automatic renewal clauses which specify an unreasonably longer notice period. Trade union custom in the particular industry is the primary indication of what period of time is reasonable for this purpose. See *Matter of the Toledo Edison Company*, 63 N. L. R. B. 217; cf. *Matter of New York Central Iron Works*, 56 N. L. R. B. 812.

Where the petition alone is relied upon to vitiate the effectiveness of a contract as a bar to representation proceedings the date when the petition was received and docketed by the Board's office, rather than the date of mailing, controls. *Matter of Pointer-Willamette Co.*, 64 N. L. R. B. 469.

<sup>30</sup> *Matter of J. Charles McCullough Seed Company*, 59 N. L. R. B. 259; *Matter of American Pants Manufacturing Company*, 63 N. L. R. B. 810; *Matter of The A. S. Abell Company*, 62 N. L. R. B. 1414. See also Eighth Annual Report, pp. 48, 49 and *Matter of Trailer Company of America*, 51 N. L. R. B. 1106, discussed therein; Ninth Annual Report, p. 27.

So, too, a majority of the Board has consistently held that a contract which prematurely renews or extends (by amendment or a substituted contract) an earlier agreement and thus apparently forecloses the employees' opportunity to change their representatives at the end of the original contract term, will not justify the dismissal of a petition for certification filed by a union which has raised the question of representation prior to the expiration date of the old contract. See Eighth Annual Report p. 49; Ninth Annual Report, p. 27; *Matter of American White Cross Laboratories, Inc.*, 60 N. L. R. B. 1148; *Matter of Virginia-Lincoln Corporation*, 63 N. L. R. B. 590; cf. *Matter of The United States Finishing Company*, 63 N. L. R. B. 575. Recently, however, in *Matter of Swift & Company*, 64 N. L. R. B. 880, Chairman Herzog expressed doubt whether the so-called premature extension doctrine should apply in a situation where the extending contract is made in good faith and in the absence of any conflicting claim or knowledge thereof.

<sup>31</sup> In *Matter of Sutherland Paper Company*, 64 N. L. R. B. 719, the Board explained that a petitioner seeking an election in the face of a 2-year contract has the burden of establishing that the 2-year term is unreasonable.

<sup>32</sup> *Matter of The A. S. Abell Company*, 62 N. L. R. B. 1414; *Matter of Lexington Water Company*, 58 N. L. R. B. 536; *Matter of The United States Finishing Company*, footnote 30, *supra*.

<sup>33</sup> Invariably, in the cases under discussion, the issue has involved plant-protection employees.

N. L. R. B. 932, decided in 1943, a majority of the Board, with Mr Reilly dissenting, held that this contractual provision contravened the policy of the Act and consequently should not be sanctioned by dismissal of the petition. These decisions were recently overruled in *Matter of Briggs Indiana Corporation*, 63 N. L. R. B. 1270.<sup>34</sup> Chairman Herzog, who wrote the principal opinion in that case, held that the fundamental policies of the Act were best effectuated by withholding "an election and the imprimatur of a Board certification" from a union which sought in these circumstances to utilize the statutory procedure as a means of facilitating avoidance of its commitment. The Chairman's opinion reaffirms the principle that "rights guaranteed employees under the Act cannot themselves be bargained away," pointing out, however, that the union's agreement not to undertake collective bargaining on behalf of the employees for whom it petitioned had only narrowed, to a degree and for a reasonably short period of time, the inherently restricted field of choice among representative labor organizations enjoyed by those employees. The opinion further noted, "Moreover, the agreement was not in the nature of a yellow-dog contract, extracted from a helpless individual employee, but was made as part of a collective bargaining contract between presumptive equals." Mr. Reilly concurred in the Order of dismissal in the *Briggs* case for the reasons indicated in his dissenting opinions in *Matter of Federal Motor Truck Company*, 54 N. L. R. B. 984, and related cases, where he had stated *inter alia* that the principle of estoppel barred the petition.<sup>35</sup> Mr. Houston dissented from the Order, declaring that he still adhered to the view formerly expressed by the majority of the Board, that the union's agreement was "patently in derogation of the right of employees to freedom of choice in their selection of a representative."

Several cases decided during the past fiscal year involved application of the rule, previously enunciated,<sup>36</sup> that a new bargaining representative will not be certified until the expiration of a reasonable period of time—about a year under ordinary circumstances—after the designation under Board auspices of a rival union which opposes the petitioner's request for an election.<sup>37</sup> In the *Kimberly-Clark* case<sup>38</sup> the Board explained the basis and operation of this rule in the following language:

We have consistently held, both in unfair labor practice cases involving Section 8 (5) of the Act, and in cases arising under Section 9 (c), that a Board election and certification must be treated as identifying the statutory bargaining agent with certainty and finality for a reasonable period of time—about a year, under ordinary circumstances. This policy serves the dual purpose of encouraging the execution of collective bargaining contracts and of discouraging "raiding" and too frequent elections. It means, in operation, that a demand for recognition, or petition for investigation of representatives, filed unseasonably early in the year following a certification, will be ineffective to raise a question concerning

<sup>34</sup> Not to be confused with the slightly earlier case involving the parent corporation, *Matter of Briggs Manufacturing Company*, 63 N. L. R. B. 860, where the Board unanimously construed a similar contract, urged by the employer as a bar to the petition, as being inapplicable to the employees in the unit sought by the petitioner.

<sup>35</sup> The Chairman in his opinion stated that he did not subscribe to the "estoppel" theory.

<sup>36</sup> See Fifth Annual Report, p. 55; Seventh Annual Report, p. 56; Eighth Annual Report, p. 46.

<sup>37</sup> *Matter of Aluminum Company of America, Newark Works*, 57 N. L. R. B. 913; *Matter of Bohn Aluminum and Brass Corp.*, 57 N. L. R. B. 1684; *Matter of Kimberly-Clark Corporation*, 61 N. L. R. B. 90; *Matter of American Woolen Company (National and Providence Mills)*, 61 N. L. R. B. 1045; cf. *Matter of The Lennox Furnace Company*, 60 N. L. R. B. 1329; *Matter of J. M. Portela & Company, Inc.*, 61 N. L. R. B. 64; *Matter of Beatty Logging Co.*, 62 N. L. R. B. 266; *Matter of E. I. du Pont de Nemours & Company*, 61 N. L. R. B. 473.

<sup>38</sup> Cited in footnote 37, *supra*.



representation, for the certification is deemed to foreclose any such question for a reasonable time.<sup>39</sup>

As in the 2 preceding fiscal years<sup>40</sup> the Board continued to hold in the final year of the war that the period of immunity enjoyed by a certified representative would be extended beyond the usual year, under certain circumstances, where delay attending proceedings before the War Labor Board had caused the failure of that representative to secure a contract, and thus protect its position by realizing for the employees the benefits of collective bargaining.<sup>41</sup>

#### METHODS OF DETERMINING CHOICE OF REPRESENTATIVES

The Board's practice of conducting a secret ballot election to resolve the question of representation, and its substantive rules governing the eligibility of employee voters, have undergone no change during the last fiscal year.<sup>42</sup> As directions of elections regularly provide, employees in the appropriate unit are eligible to vote if they were "employed during the pay-roll period immediately preceding the date of [the direction of election] including employees who did not work during the pay-roll period because they were ill or on vacation or temporarily laid off \* \* \*."<sup>43</sup>

Employees in the appropriate unit who are absent on military leave have always been deemed eligible to vote in Board elections but, as explained in the Seventh and Ninth Annual Reports, the Board has since December 1941 declined to provide for the balloting of such employees by mail because of virtually insuperable administrative difficulties and attendant delays. Very recently, however, in *Matter of South West Pennsylvania Pipe Lines*, 64 N. L. R. B. 228, decided December 13, 1945, the Board departed from its wartime practice, and provided that ballots should be mailed to employees on military leave in the event that one or more of the parties to the case furnished to the Regional Director, within 7 days from the issuance of the Direction of Election, a list containing the names, work classifications, and most recent addresses of such employees. The Regional Director was directed to open and count the absentee ballots which were returned to and received at the Regional Office within 30 days from the date they were mailed to employees on military leave. Upon the basis of evidence received at the hearing in the *South West Pennsylvania* case, showing that there were only a few employees in military service, that the employer allegedly knew their addresses, and that their ballots could probably be returned within 20 days, the Board

<sup>39</sup> The specific problem in the *Kimberly-Clark* case occasioned disagreement among the members of the Board as to the applicability of this policy. There, the intervening union which urged its certification as a bar to the proceedings held a 1-year contract executed several months before the certification, which contract was due to expire or be renewed at the time the petitioner sought to raise a question of representation, approximately 6 months after the certification. Thus, the petitioner's claim was timely so far as the contract was concerned, but premature in relation to the certification. The majority of the Board ruled that the latter factor controlled and dismissed the petition. Mr. Reilly dissented on this point.

<sup>40</sup> See Eighth Annual Report, p. 48; Ninth Annual Report, p. 28.  
<sup>41</sup> See *Matter of Aluminum Company of America*, 58 N. L. R. B. 24; *Matter of Taylor Forge & Pipe Works*, 58 N. L. R. B. 1375; *Matter of American-Marsh Pumps, Inc.*, 59 N. L. R. B. 1084; *Matter of Montgomery Ward & Company*, 60 N. L. R. B. 574; cf. *Matter of Spencer Lens Company*, 58 N. L. R. B. 593; *Matter of Jackson Box Company*, 59 N. L. R. B. 808; *Matter of Automatic Transportation Company, Division of The Yale and Towne Mfg. Co.*, 59 N. L. R. B. 970; *Matter of Kesterson Lumber Corporation*, 61 N. L. R. B. 355; *Matter of Federal Screw Works*, 61 N. L. R. B. 387; *Matter of Allis-Chalmers Manufacturing Company*, 64 N. L. R. B. 750.

<sup>42</sup> See Eighth Annual Report, p. 49 ff; Ninth Annual Report, p. 28 ff; N. L. R. B. Rules and Regulations—Series 3, as amended, Article 11, Sections 10 and 11.

<sup>43</sup> See *Matter of Standard Oil Company*, 60 N. L. R. B. 776, where a rule of the War Shipping Administration, rather than the employer's policy, was regarded as decisive of the employment status of seamen on extended leave in a particular situation. Cf. *Matter of Scintilla Magneto Division, Bendix Aviation Corporation*, 61 N. L. R. B. 520.

concluded that in that case absentee voting by mail could be "accomplished so that no undue delay in determining the election [would] result." The opinion noted that the unit involved was "relatively small," and that many administrative complexities, such as those which might well arise in a rapidly contracting war plant, were not present, remarking, "Certain other cases may require other action." In several subsequent cases where the circumstances were not substantially or materially different from those in the *South West Pennsylvania* case the Board made the same provision for mail balloting of employees in the armed forces.

Regular part-time workers whose interest in the terms and conditions of employment in the unit is substantial are eligible to vote,<sup>44</sup> but not temporary workers who enjoy no expectancy of regular, permanent employment.<sup>45</sup> Employees who voluntarily terminated their employment or were transferred out of the unit<sup>46</sup> or effectively discharged after the eligibility period are ineligible to cast ballots in the election unless they were rehired or reinstated prior to the date of the election.<sup>47</sup> But employees engaged in a current strike at the time of the election are entitled to vote on the grounds that individuals "whose work has ceased as a consequence of, or in connection with any current labor dispute" enjoy the status of employees under Section 2 (2) of the Act; and, moreover, experience has proved that strikes are generally settled by the restoration of the striking employees to their jobs. In the case of a strike not caused by unfair labor practices, workers hired to replace the strikers are likewise eligible to vote.<sup>48</sup> In the recently decided *Columbia Pictures* case,<sup>49</sup> a majority of the Board held that striking employees did not forfeit their employee status and their franchise by reason of either of two circumstances present in the case: (1) the strike was called during the pendency of representation proceedings to which the striking union was a party, and for the purpose of inducing the employer to recognize that union as statutory bargaining agent; arguably, it would have been an unfair labor practice for the employer to have granted the strikers' demand for recognition, and the contention was therefore made that, under the doctrine of the *American News* case,<sup>50</sup> the employer's attempt to discharge the striking employees before the election was legally justified and valid;<sup>51</sup> but the strikers did not "deliberately and knowingly" seek to compel a violation of the Act or otherwise act "in conscious bad faith"; (2) before the date of the election the strikers' jobs had been filled by

<sup>44</sup> *Matter of Atwater Manufacturing Company*, 58 N. L. R. B. 615; *Matter of Hi-Alloy Castings Company*, 60 N. L. R. B. 488; *Matter of Illinois Consolidated Telephone Company*, 61 N. L. R. B. 447; see *Matter of Hale Brothers Stores, Inc.*, 62 N. L. R. B. 367.

<sup>45</sup> *Matter of The United Dairy Company*, 57 N. L. R. B. 1350; *Matter of Wilson & Co.*, 58 N. L. R. B. 666; *Matter of R. R. Donnelley & Sons Company*, 59 N. L. R. B. 122; *Matter of Illinois Consolidated Telephone Company*, footnote 43, *supra*; *Matter of Goetz Ice Co.*, 61 N. L. R. B. 761; *Matter of Aluminum Company of America and Carolina Aluminum Company*, 61 N. L. R. B. 770; cf. *Matter of National Rose Spring & Mattress Company*, 58 N. L. R. B. 1180; *Matter of Underwood Machinery Company*, 59 N. L. R. B. 42.

<sup>46</sup> Provided that the transfer was reflected in an actual change of work assignments. A mere "paper" transfer on the employer's pay roll will not be deemed a termination of employment in the appropriate unit. See *Matter of Thompson Products, Inc.*, 63 N. L. R. B. 1495.

<sup>47</sup> If a charge, alleging violation of Section 8 (1) or (3) of the Act, is filed with respect to the discharge of an employee otherwise eligible to vote, the ballot of that employee is impounded, pending final disposition of the unfair labor practice charge. See Eighth Annual Report, p. 50; Ninth Annual Report, p. 29.

<sup>48</sup> Eighth Annual Report, p. 50; Ninth Annual Report, p. 29. See *Matter of Columbia Pictures Corporation, et al.*, 64 N. L. R. B. 490, where the Board indicated that this rule might not apply in a situation where it appeared that the replacements were not bona fide. In the cited case, the Board rejected a contention that certain replacement workers were merely temporarily employed for the purpose of voting in an election against the union which had called the strike.

<sup>49</sup> Cited in footnote 40, *supra*.

<sup>50</sup> *Matter of American News Company, Inc.*, 55 N. L. R. B. 1302.

<sup>51</sup> The employer's asserted reason for discharging the strikers was that they had breached a collective bargaining contract wherein they had undertaken not to strike under the circumstances present in the case. The Board held that the strikers had not violated any contractual obligations.

"*bona fide* replacements" and it was contended that this, as a matter of law and fact, terminated the employment status of the strikers. The Board found the latter contention repugnant both to the language and legislative history of the Act, and to common experience, remarking *inter alia*:

Even if strikers have been replaced by other employees, it is impossible during the currency of an economic strike to determine, despite what an employer may predict, whether or not the strikers will return to their jobs. It is common knowledge that strikes frequently have been concluded by settlements pursuant to which the strikers have been reinstated. \* \* \* Were we to hold that, during the height of an economic contest, strikers are ineligible to vote because they have no expectancy of returning to work, our holding would be tantamount to a determination that the struggle had been lost by the strikers. Such a holding assumes a result which is not at all clear and which in fact is contrary to the very term "current labor dispute." Although economic strikers certainly have no absolute right to their jobs, if replaced under the *Mackay* doctrine,<sup>52</sup> they should be permitted, while the strike is still current, to select representatives to bargain with the employer on the question of their possible reinstatement. The success or failure of such bargaining is not the concern of this Board, but it is our concern to make certain that the bargaining is not rendered abortive by denying strikers the opportunity to select a spokesman. Any other policy would leave them no alternative but continued use of naked economic power and would deny recourse to the peaceful election machinery of the Board at the very moment when it is most acutely needed.

Mr. Reilly dissented in the *Columbia Pictures* case, holding that the strikers had been validly "discharged for cause" before the election, within the intendment of the Board's Direction of Election, because their strike was called to induce a violation of the Act and was thus beyond the pale of the concerted activities protected by the statute; and that, regardless of the employer's motive for discharging them, the strikers had forfeited, by their illegal action, their employee status and the right to any affirmative relief from the Board.

In another recent case<sup>53</sup> involving the eligibility of striking employees to vote in a Board election, it was contended that a number of employees who were engaged in a strike at the time of the Direction of Election had, in effect, resigned their employment before the election by obtaining work in war-essential establishments through the medium of referral by the United States Employment Service. This contention was predicated upon regulations of the U. S. E. S. which deny referral to strikers and, further, which apparently would have precluded the employees in question from returning to work for their original employer, because that employer was not engaged in war essential operations. In its Decision issued on August 23, 1945, the Board rejected these contentions, holding:

An employee involved in a strike may take temporary employment and he will not by such action be considered as having abandoned the strike. \* \* \* It is true that these employees took advantage of a U. S. E. S. referral under War Manpower regulations which purported to deny such referral to strikers. It is also clear that, having taken a job through such means, these employees could be reinstated with the Company only through action of the U. S. E. S. However, these considerations cannot operate to alter the fact that these employees took employment elsewhere only until they could return to work for the Company. Accordingly, we find that by utilizing the referral procedure of the U. S. E. S. and taking a temporary job as a result of such referral, the employees herein neither abandoned the strike nor lost their status as employees of the Company.<sup>54</sup>

<sup>52</sup> Referring to *N. L. R. B. v. Mackay Radio & Telegraph Co.*, 304 U. S. 333.

<sup>53</sup> *Matter of Norris, Incorporated*, 63 N. L. R. B. 502.

<sup>54</sup> The Board distinguished two earlier cases, *Matter of The Yoder Company*, 53 N. L. R. B. 653, and *Matter of Seattle Drum Company* 61 N. L. R. B. 483, on their facts.

The Rules and Regulations provide that questions as to the eligibility of voters in Board elections may be raised by the assertion of a challenge at the time and place of polling. The employer and all competing labor organizations are customarily invited to participate with the Board's agent in preparing a list of eligible voters and to have observers present at the polls. Thus, ample opportunity is afforded for the detection of unauthorized voters. If a challenge is made by the Board's agent or any of the interested parties, the challenged voter is permitted to place his marked ballot in a sealed envelope which is segregated from all other ballots. If it thereafter develops that the challenged ballot must be counted or disregarded as invalid, in order to determine whether or not a majority of valid votes has been cast for any of the choices presented to the voters, the Board investigates the facts, and rules on the issue after the election is concluded.<sup>55</sup> Except when its own agent was at fault in failing to challenge a voter whose ineligibility was known to him<sup>56</sup> the Board declines to consider postelection challenges as a proper basis for "objections" wherein an interested party seeks to have an election set aside.<sup>57</sup>

When objections to the validity of an election are duly and timely filed<sup>58</sup> the Board will set aside the results of the ballot, and direct another election, when and if circumstances permit, if its investigation<sup>59</sup> discloses the existence of some irregularity or defect in connection with the mechanics of the balloting, or of circumstances which prevented the eligible employees from registering a free and independent choice as to genuine collective bargaining representation. Thus, in one case<sup>60</sup> the Board set aside an election for the reason among others, that the employer had "expended its time, energy, words and funds to control the mechanics of the elections and represent itself as the source of apparently 'official' information pertaining thereto." Explaining the grounds for its concern over such conduct the Board stated in its opinion in that case:

This is the first case in which we have had occasion to consider officiousness of this type and its effect upon a Board election. We regard it as serious interference, for in our judgment the chief and unique value of the representation polls conducted by our agents derives from the fact that the opportunity to vote is afforded, the exercise of that opportunity is protected, and the secrecy of the ballot is guaranteed by the disinterested agency of the Federal Government which exists for the express purpose of protecting employees in the exercise of their right to self-organization and collective bargaining through freely chosen representa-

<sup>55</sup> See N. L. R. B. Rules and Regulations—Series 3 as amended, Article III, Section 10.

<sup>56</sup> *Matter of Beggs & Cobb, Inc.*, 62 N. L. R. B. 193; *Matter of Wayne Hale*, 62 N. L. R. B. 1393.

<sup>57</sup> *Matter of A. J. Tower Company*, 60 N. L. R. B. 1414; *Matter of Owens-Corning Fiberglas Corp.*, 61 N. L. R. B. 546; *Matter of Chrysler Corporation*, 63 N. L. R. B. 866. In the *Tower* case Mr. Reilly concurred separately, and in the *Chrysler* case he dissented, holding that the Board may not properly apply this rule in a situation where the belated challenge goes to the status of the challenged voter as an employee on the date of the election, rather than merely to the classification of that voter, as an employee, among the occupational groups in the appropriate unit.

<sup>58</sup> Because speed is of the essence in representation cases, the Board strictly enforces its requirements that objections, if any, must be filed within 5 days after the election and that exceptions to the Regional Director's report on objections or challenged ballots, if any, must be filed within a similar period after the date of the report. See *Matter of Melrose Hosiery Mills, Inc.*, 59 N. L. R. B. 619; *Matter of The Denver Publishing Co.*, 61 N. L. R. B. 338. Nor will the Board consider setting aside a run-off election on the basis of occurrences preceding the original election where those matters were known to the objecting party and that party made no objection until after the conclusion of the run-off election. *Matter of The Lennox Furnace Company*, 64 N. L. R. B. 669.

<sup>59</sup> As stated in the Rules and Regulations the facts pertaining, to objections are investigated in the first instance by the Regional Director who renders a report thereon which is served upon all interested parties. The parties have a right to except to the Regional Director's findings and conclusions and if the Board considers that the exceptions raise substantial and material issues, it generally holds a hearing. A hearing is unnecessary, however, when there is no dispute as to material facts. See *Matter of Roots-Commerwiller Blower Corp.*, 64 N. L. R. B. 855.

<sup>60</sup> *Matter of The May Department Stores Company*, 61 N. L. R. B. 258.

tives. Any intermeddling, by an employer or any other person or organization, willful or otherwise, which tends to create the impression that an agency other than the Board is sponsoring and conducting an election held in the course of proceedings under Section 9 (c) of the Act, negates the very purpose for which the election was directed.<sup>61</sup>

Although the tally of ballots, in an election free of mechanical defects, presumptively reflects the voters' true desires,<sup>62</sup> an election will be set aside if it appears that employees' action at the polls was probably induced by conduct or episodes tending to coerce their choice.<sup>63</sup> Hence, the Board has set aside elections where an eleventh-hour announcement that the War Labor Board has approved a prior application for wage increases tended to influence employees to vote for a union contestant in the election which was credited with securing the increase, or against representation by any union.<sup>64</sup> Elections are also voided where the employer is found to have discriminated between union contestants by according to one favors and advantages denied the other, or to have exerted economic pressure to induce employees to vote for or against a union contestant in the election.<sup>65</sup> In any such case where the validity of an election is impugned on the ground of interference by the employer or one of the participating unions, or from any other source, the fundamental issue is whether the interested employees have merely been influenced by ordinary campaign material tending to mold their opinions, or whether they have been "coerced" by conduct which exceeded the permissible boundaries of campaign "propaganda." Mindful of the tradition which prevails in the Nation's political elections, the Board has expressly disclaimed any intention of censoring generally the taste, morality, or truth of statements and promises made in connection with a campaign for votes in a representation election.<sup>66</sup>

Unremedied unfair labor practices, of course, tend to impair employees' freedom in choosing bargaining representatives. Consequently the Board prefers not to conduct elections in representation

<sup>61</sup> Mr. Reilly, in a separate opinion, disagreed with certain other observations in the majority opinion.

<sup>62</sup> See *Matter of Maywood Hosiery Mills, Inc.*, 64 N. L. R. B. 146, where the Board remarked, "In all cases where \* \* \* the validity of a Board election is challenged on grounds other than direct interference or irregularity in the voting process itself, there is a strong presumption that the ballots, cast in secrecy under the safeguards regularly provided by our procedure, reflect the true desires of the participating employees." [Italics supplied.]

<sup>63</sup> Such conduct or episodes will not be deemed grounds for setting aside an election unless they were proximately related to the election in time or otherwise. *Matter of Maywood Hosiery Mills, Inc.*, footnote 62, *supra*; see *Matter of Chicago Mill & Lumber Company*, 64 N. L. R. B. 349.

<sup>64</sup> *Matter of Continental Oil Company*, 58 N. L. R. B. 169; *Matter of Seneca Knitting Mills, Inc.*, 59 N. L. R. B. 754; *Matter of The May Department Stores Company*, footnote 59, *supra*; cf. *Matter of Chicago Mill & Lumber Company*, footnote 63, *supra*. Mr. Reilly, who did not participate in the *Seneca Knitting Mills* case, concurred separately in the *Continental Oil* and *May Department Stores* cases, stating in the former that he could not reconcile the majority's theory with its doctrine applied in *Matter of Curtiss-Wright Corporation*, 43 N. L. R. B. 795.

<sup>65</sup> See *Matter of Minnesota Mining & Manufacturing Company*, 61 N. L. R. B. 697; *Matter of Thompson Products, Inc.*, 57 N. L. R. B. 925; *Matter of The May Department Stores Company*, footnote 60, *supra*; *Matter of Roots-Connersville Blower Corp.*, footnote 59, *supra*.

<sup>66</sup> Thus, in *Matter of Corn Products Refining Company*, 58 N. L. R. B. 1441, the majority opinion remarked: "We are here concerned, \* \* \*, neither with the prosecution of conduct contemptuous of the Board, nor with the general censorship of untrue or unethical campaign utterances. The only question which does concern us is whether the distribution of the leaflets complained of precluded the employees who participated in this election from exercising a free choice at the polls."

And the following observations are contained in the unanimous opinion in *Matter of Maywood Hosiery Mills, Inc.*, footnote 61, *supra*:

"Although we give eligible employees who desire to participate in an election all possible protection in expressing their free choice on the issues presented on the ballot, we cannot censor the information, misinformation, argument, gossip, and opinion which accompany all controversies of any importance and which, perceptively or otherwise, condition employees' desires and decisions; nor is it our function to do so. Absent violence, we have never undertaken to police union organization or union campaigns, to weigh the truth or falsehood of official union utterances, or to curb the enthusiastic efforts of employee adherents to the union cause in winning others to their conviction."

In the same opinion, however, the Board remarked that an official indorsement of a union's campaign for votes, emanating from a Federal labor agency, "might well be considered coercive in character." Cf. *Matter of Phelps Dodge Corporation*, 62 N. L. R. B. 1287.

proceedings where it has been charged or found that the employer is guilty of unfair labor practices not yet completely remedied.<sup>67</sup> On the other hand, it is sometimes necessary to proceed with an election in a situation where a charge or remedial order of the Board is outstanding, in order that the interested employees may have collective bargaining. In such a case the Board divorces the complaint proceeding from the representation proceeding as far as possible, and expedites the disposition of the latter without prejudice to its ultimate action in the former, by requiring a union which seeks an election but at the same time charges the employer with violation of the Act, to file a "waiver" agreeing not to rely upon the alleged or established unfair labor practices as basis for subsequently attacking the results of the election.<sup>68</sup> In cases where a charge or complaint, not yet finally determined by the Board, avers that the employer has unlawfully dominated or assisted one of the labor organizations which is a competitor in the election in the representation case, the Board has occasionally provided for the cancellation of any certification which it may issue to that union in the event that the charge is later substantiated in the pending unfair labor practice proceedings.<sup>69</sup>

#### THE UNIT APPROPRIATE FOR THE PURPOSES OF COLLECTIVE BARGAINING

One of the Board's most important functions is the determination of units appropriate for the purposes of collective bargaining under Section 9 (b) of the Act.<sup>70</sup> The issue of appropriateness, which occasions a major part of all controversies before the Board, must be resolved in accordance with the facts in each case. A basic test is that a unit, to be appropriate, must effect a grouping of employees who have substantial, mutual interests in wages, hours, working conditions, and other subjects of collective bargaining.<sup>71</sup> However, the varying types of units which meet this test, within the flexible provisions of the statute, are almost as numerous and dissimilar as are methods of management in American industry and different theories of organization advocated by American unions. As stated in prior Annual Reports, the factors which the Board considers and weighs in fixing appropriate units are: The history, extent, and type of organization of employees; the history of their collective bargaining; the history, extent, and type of organization of employees in other plants of the same employer, or other employers in the same industry; the skill, wages, work, and working conditions of the employees; the desires of the employees; the eligibility of the employees for membership in the union or unions involved; and the relationship between the unit or units proposed and the employer's organization, management, and operation.

<sup>67</sup> See Eighth Annual Report, pp. 49, 50; Ninth Annual Report, p. 28.

<sup>68</sup> In *Matter of The May Department Stores Company*, footnote 60, *supra*, the majority of the Board held that unfair labor practices as to which a waiver had been filed could nevertheless be considered as relevant background in appraising conduct of the employer which occurred after the waiver, and which was urged as grounds for setting aside an election. Mr. Reilly dissented on this point.

<sup>69</sup> See *Matter of Standard Oil Company of California* and *Matter of Western Electric Company, Inc.*, footnote 8, *supra*.

<sup>70</sup> Section 9 (b) of the Act provides:

"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 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."

<sup>71</sup> The Board has emphasized that the primary basis of classification is not personality, but the work performed by employees. See *Matter of Curtis-Wright Corporation*, 63 N. L. R. B. 207; *Matter of General Electric Company*, 60 N. L. R. B. 1483. Occasionally, an employee having several functions may be included within two or more separate units, represented by different unions; see *Matter of R. K. O. Radio Pictures, Inc.*, 61 N. L. R. B. 112.

Where all interested parties are agreed upon a particular unit which meets the basic test mentioned above, the Board usually accepts it as appropriate, for the absence of dispute as to the unit affords the best possible assurance that satisfactory collective bargaining will result from the certification of a representative for that unit. Controversies between employer and union or between competing unions usually concern the fundamental type of unit to be set up; e. g., whether craft or "industrial"; or the scope of the unit; e. g., whether it shall embrace all like employees in a department or section of a plant, or in the entire plant, or in several plants of the same employer, or in the plants of several associated employers.

Even where the character and scope of the unit are agreed upon, disputes frequently arise as to the inclusion or exclusion of small fringe groups of employees who may, or may not, reasonably be deemed a part of the class of employees comprising the bulk of the unit. In resolving these disputes as to the treatment of fringe groups the Board as a matter of policy generally adheres to the unit outlines established in past contracts, if any, between the employer and one of the unions interested in the case.<sup>72</sup> A different result is reached, however, where the contracting parties have included certain groups of employees in the bargaining unit in disregard of a specific determination by the Board that they should be excluded.<sup>73</sup>

Past experience reflected in a history of bona fide collective bargaining in the plant or industry involved also carries great weight, and is often controlling where other factors are equally balanced, in the resolution of controversies concerning the basic type or scope of the appropriate unit.<sup>74</sup> It is noteworthy that, as a preliminary matter, in cases where collective bargaining history is urged in support of a particular unit, the Board scrutinizes the negotiations and agreements embodying that history to determine whether or not they were adequate to stabilize industrial relations and to define an inherently appropriate unit.<sup>75</sup> Especially in cases involving a dispute as to whether or not the unit properly embraces only one of several plant groups of employees who have been represented by a single labor organization and covered by uniform or "master" contracts, the Board must consider how effectively, if at all, the contracting parties have merged and

<sup>72</sup> *Matter of Petersen & Lyle*, 60 N. L. R. B. 1070; *Matter of Scintilla Magneto Division, Bendix Aviation Corporation*, 61 N. L. R. B. 520.

<sup>73</sup> *Matter of Mathieson Alkali Works*, 55 N. L. R. B. 1100; *Matter of Indianapolis Power and Light*, 62 N. L. R. B. 1279; cf. *Matter of National Electric Products Corporation*, 64 N. L. R. B. 371.

<sup>74</sup> See Eighth Annual Report, p. 54; Ninth Annual Report, p. 34. Among the cases decided during the past fiscal year which involved the application of this principle are: *Matter of Geneva Steel Company*, 57 N. L. R. B. 50; *Matter of Jacob Schmidt Brewing Company*, 57 N. L. R. B. 548; *Matter of Lima Locomotive Works, Incorporated*, 58 N. L. R. B. 160; *Matter of L. Bamberger & Co.*, 58 N. L. R. B. 144; *Matter of Allied Laboratories, Inc.*, 59 N. L. R. B. 1501 and 60 N. L. R. B. 1196; *Matter of York Corporation*, 61 N. L. R. B. 462; *Matter of Corn Products Refining Company*, 60 N. L. R. B. 92; *Matter of Cities Service Refining Corporation*, 58 N. L. R. B. 28; *Matter of Sinclair Refining Company*, 64 N. L. R. B., 611; *Matter of International Harvester Company*, 61 N. L. R. B. 1199; *Matter of National Broadcasting Company*, 59 N. L. R. B. 478; *Matter of The Atlantic Refining Company*, 61 N. L. R. B. 485; *Matter of The Duff-Norton Manufacturing Company*, 60 N. L. R. B. 186. Cf. *Matter of General Electric Company (Lynn River Works, etc.)*, 58 N. L. R. B. 57; *Matter of American Tool Works Company*, 59 N. L. R. B. 404; *Matter of The Lamson Brothers Company*, 59 N. L. R. B. 1561; *Matter of Phelps Dodge Corporation*, 60 N. L. R. B. 1431; *Matter of Moore Drop Forging Company*, 60 N. L. R. B. 494; *Matter of Aluminum Company of America*, 60 N. L. R. B. 278; *Matter of Chemurgic Corporation*, 60 N. L. R. B. 412; *Matter of E. I. du Pont de Nemours & Company*, 61 N. L. R. B. 473; *Matter of Standard Oil Company of New Jersey (Louisiana Division)*, 61 N. L. R. B. 1344; *Matter of The Columbus Bolt Works Company*, 62 N. L. R. B. 978; *Matter of National Automatic Tool Company, Inc.*, 60 N. L. R. B. 585; *Matter of Luther Manufacturing Company*, 58 N. L. R. B. 1307; *Matter of New Bedford Cotton Manufacturers' Association*, 62 N. L. R. B. 1249.

<sup>75</sup> See Eighth Annual Report, p. 54; Ninth Annual Report, p. 34, footnotes 57, 58, and 59; *Matter of Standard Oil Company of California*, 58 N. L. R. B. 560; *Matter of United States Printing and Lithograph Company*, 58 N. L. R. B. 448; *Matter of Southwestern Public Service Company*, 58 N. L. R. B. 928; *Matter of E. I. DuPont de Nemours & Company, Electrochemicals Department*, 58 N. L. R. B. 514; *Matter of Sangamo Electric Company*, 59 N. L. R. B. 364; *Matter of Richfield Oil Corporation*, 59 N. L. R. B. 1554; cf. *Matter of North American Creameries, Inc.*, 57 N. L. R. B. 795.

consolidated the component employee groups into a single large bargaining unit.<sup>76</sup>

Among the cases decided during the past fiscal year in which the parties have taken conflicting positions on the question whether the unit should be limited to the employees of a single employer or should include those of a number of employers are *Matter of Advance Tanning Company et al.*, 60 N. L. R. B. 923, and *Matter of Standard Slag Company*, 63 N. L. R. B. 313. The former case concerned employees of a large number of employers engaged in similar businesses in the same geographical area. Some were members of an association which, for 11 years, had negotiated collective bargaining agreements on their behalf with the union or its predecessors which, during the same period, had represented the members' employees. Others, not members of the association, following the execution of such agreements between the members and the union,<sup>77</sup> had signed agreements identical with them. The Board found that the nonmembers had, without any semblance of bargaining, signed agreements identical with those executed by the members. A single unit of employees of the members was held appropriate. But the course of conduct pursued by the nonmembers was not considered as true collective bargaining on an area-wide basis, particularly since the nonmembers were in no way obligated to follow the association's lead. Consequently, employees of each nonmember were held to constitute a separate appropriate unit.<sup>78</sup> In the *Standard Slag Company* case, where no employer association was concerned, the Board dismissed a petition for a separate unit of the employees of a single company. That company was entirely dependent on two other companies for slag, which was the sole raw material used by it and was a byproduct of the iron manufacturing processes of the other two companies. For over 25 years the employees of all three companies had been represented in a single unit under successive bargaining agreements with the same union. The usual method of negotiating such agreements had been for representatives of that union and the three companies to discuss the terms of a contract, reach an agreement, and sign the contract at a single meeting. The Board noted that the method of negotiating contracts between the union and the three companies

<sup>76</sup> *Matter of Bethlehem-Fairfield Shipyard, Incorporated*, 58 N. L. R. B. 579; *Matter of P. Lorillard Company, Louisville Plant*, 58 N. L. R. B. 1112; *Matter of Hazel-Atlas Glass Company*, 59 N. L. R. B. 706; *Matter of Aluminum Company of America*, 61 N. L. R. B. 251. Not only the express provisions of the contracts, but the mechanics of their negotiation and administration, as in the settlement of grievances, are material in this connection.

<sup>77</sup> The members signed individual contracts, which were copies of the agreement negotiated for them by the association, with the union.

<sup>78</sup> This decision modifies principles previously enunciated in *Matter of George F. Carleton & Company, Inc., et al.*, 54 N. L. R. B. 222. See Ninth Annual Report, p. 35, for a discussion of the *Carleton* case. There, employees of employers who were not members of an association, but who had accepted the form of contract executed by association members and had acted in concert with the association by following its lead, were included in a unit together with employees of the members. However, the employees of a nonmember who had revealed an intent to pursue an individual course were held to constitute a separate unit.

In *Matter of Rubin E. Rapoport, et al.*, 62 N. L. R. B. 1118, the Board reiterated the principles of the *Advance Tanning Company* case.

Other cases involving employer associations, and raising issues somewhat similar to those raised in the *Advance Tanning Company* and *Carleton* cases, are *Matter of Great Bear Logging Company*, 59 N. L. R. B. 701, and *Matter of Springfield Plywood Corporation*, 61 N. L. R. B. 1295. In the former case a single-employer unit was found appropriate in view of the expressed intent of the company concerned to pursue an individualistic course of action with regard to labor relations. In the latter case a petition for a single-employer unit was dismissed, the Board indicating the appropriateness of a partial association-wide unit. An employer association had bargained through a separate committee for a group of its members, including this employer, with the union representing their employees, although it had also bargained for other members with another union which represented those members' employees.



closely paralleled that of the unions and the companies concerned in the *Dolese & Shepard Company* case.<sup>79</sup>

The Board has been gravely concerned for several years with the problem created by the spread of union organization among supervisory employees. Supervisory personnel have a dual status under the Act, being both "employees" and employer representatives; and they possess the power, in the latter capacity, to interfere with the organizational freedom of rank and file employees. In the now familiar *Maryland Drydock* case,<sup>80</sup> a majority of the Board held that the policies of the Act would not be effectuated by the establishment of bargaining units composed of supervisory employees, except in the maritime and printing trades where custom sanctioned the practice of collective bargaining on behalf of supervisors. In *Matter of Packard Motor Car Company*,<sup>81</sup> decided in March 1945, the Board reconsidered this entire question. The majority, consisting of former Chairman Millis and Mr. Houston, approved a bargaining unit of four classes of foremen<sup>82</sup> whom the Board characterized as typical supervisors in "modern mass industry," a "middle group between the rank and file on the one hand and management on the other." The precise issue involved in the *Maryland Drydock* case was not presented in the *Packard* case, for the petitioner was the Foreman's Association of America, an unaffiliated union organized for the exclusive purpose of representing supervisory employees, which, the Board majority found, was independent of any labor organization representing rank and file employees.<sup>83</sup> Nevertheless, the *Maryland Drydock* decision was overruled to the extent inconsistent and certain decisions which followed *Maryland Drydock*, wherein the Board's former majority rejected units of supervisory employees even though the petitioners were unaffiliated supervisory organizations, were overruled without qualification.<sup>84</sup> The majority of the Board expressly reserved opinion as to whether or not in some future case, or in this same case, should the circumstances change, a labor organization not confined to supervisors and not independent of other unions, would be permitted to enjoy a certification as the statutory bargaining agent of a supervisory unit. The opinion pointed out, however, that the principal difficulties inherent in the recognition of statutory bargaining repre

<sup>79</sup> *Matter of Dolese & Shepard Company*, 56 N. L. R. B. 532. The decision in the *Standard Slag* case, as indicated in the Board's opinion, is a development of principles already established in prior cases. See Ninth Annual Report, pp. 34, 35, for discussion of *Matter of Dolese & Shepard Company*, *supra*, and *Matter of Rayonier Incorporated, Grays Harbor Division*, 52 N. L. R. B. 1269.

<sup>80</sup> *Matter of Maryland Drydock Company*, 49 N. L. R. B. 733. Harry A. Millis, then Chairman of the Board, dissented in that case.

<sup>81</sup> 61 N. L. R. B. 4.

<sup>82</sup> Highest ranking were general foremen, individuals in charge of from one to four departments in the plant. The others were foremen, assistant foremen, and special assignment men ("trouble-shooters," possessing the qualifications of general foremen and foremen). In combining several levels of supervisors in a single unit, the Board departed from the holding in two cases decided prior to *Matter of Maryland Drydock Company*, footnote 80, *supra*, namely, *Matter of Murray Corporation of America*, 47 N. L. R. B. 1003; and *Matter of Boeing Aircraft Company*, 45 N. L. R. B. 630.

<sup>83</sup> Rejecting the employer's contention that the petitioner was not independent of rank and file unions, the majority opinion stated:

"In an absolute sense, of course, the Association is not independent of the CIO, or any labor organization. Both are labor organizations and both are organized for basically similar purposes—the improvement of the wages, hours and working conditions of their membership through collective bargaining. Both have common problems and therefore a common "bond of sympathy." For these reasons, it is to be expected that they will express moral sympathy for the organizational efforts of one another and will, on occasion even refuse to cross the picket line established by the other during a strike. But support of this nature does not prove the absence of independence. It shows only the existence of a general common purpose—a condition which inheres in the very nature of the labor movement and which therefore cannot be of controlling significance in our determination of whether or not a proposed unit is appropriate for the purposes of collective bargaining. The essence of independence of which this Board may take cognizance is freedom of action, freedom from control."

<sup>84</sup> *Matter of Boeing Aircraft Company*, 51 N. L. R. B. 67; *Matter of Murray Corporation of America*, 51 N. L. R. B. 94; *Matter of General Motors Corporation*, 51 N. L. R. B. 457.

sentatives of supervisors which were envisaged by the majority in the *Maryland Drydock* case, viz, (1) the dilemma confronting an employer who recognizes his foremen's union as bargaining representative at the risk of being found to have dominated or assisted that same organization, as a rank and file union, through the activity of the supervisors, and (2) the impairment of rank and file employees' organizational freedom by virtue of foremen's participation in their union or anti-union activities, "do not materialize in cases where the petitioning foremen's union is independent and remains so."

The majority's decision in the *Packard* case took note of developments in the field of supervisory organization which had become manifest since the *Maryland Drydock* decision and were in part caused by that decision, namely, a rapid and spontaneous growth in foremen's unions,<sup>85</sup> leading to serious strikes for recognition by foremen, who, following the *Maryland Drydock* decision, had no other means of inducing employers to bargain collectively with their unions—strikes which affected basic industries and jeopardized the production of vital war material.<sup>86</sup> The majority pointed out that industrial strife obstructing commerce, engendered by the refusal of employers to accord recognition to their employees' collective bargaining representatives, was "the very kind of evil" which the Act was designed to abate,<sup>87</sup> and which had been successfully abated by the operation of the statute. Their opinion proceeded:

Now, the history of rank and file organization is being duplicated in the organizational efforts of supervisory employees. Just as rank and file employees before the passage of the Act were forced to resort to tests of economic strength in order to gain recognition, so it is today with supervisory employees. These are the plain and inescapable economic facts, and we think it therefore manifest that the time has come when, in the interest of effectuating the policies of the Act, we must accord greater recognition to the militantly expressed need of supervisory employees for collective bargaining through their own organizations.

\* \* \* \* \*

\* \* \* it must be remembered that foremen have the right to form and join labor organizations quite apart from and outside the Act. This is a fundamental right, the right of free association, which was not created, but implemented, by the Act. The statute we administer was enacted to insure that this already existing right could be exercised in a peaceful and orderly manner so that the flow of goods and services in interstate commerce would not be interrupted. Thus, to deny the foremen in this case the protection of the Act is not to deny them the right to form and join their union or to demand collective bargaining rights from their employer. It would only be a denial of access to peaceful procedures to exercise that right.

\* \* \* \* \*

We do not say that the recognition of the collective bargaining rights of the foremen is a panacea for all the problems arising out of their peculiar intermediate

<sup>85</sup> The opinion noted that the petitioning union, first organized in January 1942, had 7 chapters and 10,000 members at the end of that year, 67 chapters at the end of 1943, and 148 chapters and 32,000 members at the end of 1944. This growth, the majority remarked, revealed "an unwavering determination on the part of foremen to combine together in their own organizations for the purpose of obtaining the legitimate fruits of collective action."

<sup>86</sup> The record showed that from July 1, 1943, through November 1944, there were 20 strikes of supervisory employees involving 131,000 employees and causing the loss of 669,159 man-days of work, of which 96 percent was lost in strikes for recognition.

<sup>87</sup> In this connection, distinguishing strikes for recognition from strikes for other causes, the opinion remarked:

"We are not unmindful of the fact that, as the Company points out, the Act has not eliminated all strikes. Employees still strike for better wages, hours, and working conditions, and for the redress of grievances, real or fancied. The operation of the Act, while it undoubtedly mitigates, cannot prevent all such strikes, for collective bargaining itself is not infallible. However, the Act does afford a direct and primary remedy for a major cause of strikes—the denial of recognition. As we pointed out above, the statistics show that since the Act was passed vast numbers of rank and file employees have found it unnecessary to strike in order to gain recognition, for they have been able to secure that right by resorting to the peaceful and orderly procedures of the Board. We believe it reasonable to predict that the same results will flow from the recognition of those rights for supervisory employees."

position in industry. But we believe that it is the first essential step toward a solution. The alternative which the Company proposes—the denial of basic bargaining rights—is a policy of negation which contributes nothing to a constructive solution. We have examined the issues in this case with extreme care not only because of the vital importance of the question to the Nation, but also because we fully appreciate the desirability of achieving a measure of certainty as to the administrative rulings of this Board. We feel, however, that we would be remiss in our duty as public officials if we permitted our reluctance to alter the existing rule to blind us to the effects of the powerful economic forces which have manifested themselves since that rule was laid down.

\* \* \* \* \*

The Nation has now experienced the drastic consequences of extra-statutory organization by supervisory employees, and the duty of this Board has become plain. To continue to deny to such employees as a class the bargaining rights guaranteed by the Act would be to ignore the clear economic facts and invite further industrial strife—a state of affairs which the Nation can ill afford at this time and which the Act was designed to mitigate \* \* \*. We are now convinced that the national interest will be better protected if the organizational activities of foremen are conducted within, rather than without, the framework of the collective bargaining statute \* \* \*.

In his dissenting opinion, Mr. Reilly reiterated the views expressed in his dissent in *Matter of Union Collieries Coal Company*<sup>88</sup> which were later adopted by the majority in the *Maryland Drydock* case. Declaring that the Board had always recognized “that in the mass production industries the interests of foremen [lie] predominantly with management groups,” and had in unfair labor practice cases imputed to employers the actions of their foremen, Mr. Reilly stated:

Recent developments have made it \* \* \* clear that in the strongly organized industries, foremen’s associations possess no real autonomy so far as effectuating their bargaining objectives unless they ally themselves in their policies and tactics with representatives of the employees whom they are hired to supervise. When this happens, of course, the proper line of demarcation between supervisor and supervised becomes hopelessly confused.

He challenged the majority’s conclusion that the *Maryland Drydock* rule had proved unworkable in practice, holding that foremen in such establishments as Packard had no real economic need for union organization and that, so far as their strikes for recognition were concerned,

Unfortunately, however, while a certification may take one issue out of the arena, it may merely be substituting the possibility of others.

\* \* \* It is unfortunately no novelty to have disgruntled unions strike and interfere with production because this Board has refused to recognize units which they proposed as appropriate. Such defiance, however, can scarcely be deemed a justification for retreating from well-established principles.

\* \* \* \* \*

In any event, it would seem that any possible immediate gain in the way of eliminating some of the causes of strife is more than outweighed by the general long range impact of this decision upon industrial relations.

The employer in the *Packard* case, desiring to contest the Board’s determination, refused to bargain with the Foreman’s Association, which won the election and was certified. A complaint case, wherein it was charged that this was a violation of Section 8 (5) of the Act was promptly instituted. The issues were the same. On December 6, 1945, the majority of the Board, this time consisting of Chairman Herzog and Mr. Houston, in effect reaffirmed the majority decision in the representation case by finding the employer guilty of the unfair labor practices as charged. The Chairman, inasmuch as he had not participated in the earlier decision, stated his views in a separate

<sup>88</sup> 41 N. L. R. B. 961 and 44 N. L. R. B. 165.

concurring opinion. Like the majority in the representation case, he emphasized that the issue is not "whether foremen should or should not join unions," but, whether, having done so in large numbers, they are entitled to "access to the orderly administrative machinery that is concededly available to rank-and-file employees." The Chairman questioned the legal assumption, implicit in the majority opinion in the *Maryland Drydock* case and the dissent in the *Packard* representation case, that the Board possesses authority under the Act "to find that persons who are employees belong in no unit at all." In this connection, he stated:

It seems much more probable that Congress intended Section 9 (b) to authorize the Board to group employees appropriately rather than to exclude them from coverage. The only express exclusions appear in Section 2 (3). \* \* \* The language of Section 9 (b) is language of classification. \* \* \* It empowers the Board to select between alternatives; we are to "decide in each case whether" employees should vote and bargain in an "employer unit, craft unit, plant unit, or subdivision thereof." It nowhere suggests that we should hold that, despite their desires, certain employees may never utilize the Act to select some representative or to bargain in any unit whatsoever. \* \* \* Under the power to classify the Board may, and properly does, segregate supervisory employees from their subordinates, as by declining to place them in the same unit with rank-and-file employees. Here, however, we are not asked to segregate, but to ostracize. Even assuming that Section 9 (b) might permit such a result \* \* \* that particular section certainly cannot be said to encourage it.

The Chairman's opinion remarks, however, that under Section 9 (c) of the Act, which provides that the Board "may" investigate a question concerning representation and certify the representatives selected, the Board has discretion to decline "to make its machinery available to effectuate every choice that employees may make."<sup>89</sup>

Turning from the legal issues to the practical problems presented in the case, the Chairman said:

The Company is troubled lest the unionization of its foremen detract from the single-minded loyalty which it considers essential to efficient mass production; the foremen have thought collective action necessary because they believe that individual bargaining has not afforded them the protection that men require in a large, inevitably depersonalized, plant. Self-interest is present on both sides, and so is fear. Fear, perhaps more than self-interest, is a ready cause of industrial strife. In the long run, collective bargaining will tend to reduce both the cause and the effect. It will provide more fertile soil for the ultimate loyalty of foremen than can the resentment that is likely to be engendered by hostile disregard of their chosen representatives.

\* \* \* American management has shown such resilient genius that, once foremen's representatives lose their sense of insecurity and can adopt a policy of self-restraint, the parties will find a way to resolve their occasional conflict of interest. Government cannot resolve that conflict for them. But it can intercede to lay the groundwork for reasoned negotiation, so that that which seems anathema today may become habitual tomorrow.

In conclusion, he stated:

It is not for this Board to determine whether supervisory employees, sensing inequality of bargaining power, should seek to better their lot by exercising the right of free association. They have already done so. In this case we need only decide whether the Act's peaceful processes are to be preferred or denied to employees who, for reasons known best to themselves, desire to act in unison through what appears to be a truly independent union. \* \* \* In the absence of any Court decision, \* \* \* Congressional mandate or other declaration of national policy to the contrary, \* \* \* and in further absence of proof that collective bargaining by supervisory employees has failed where it has been attempted, \* \* \* it is better that a Board dedicated to encouraging the bargaining process move forward, not backward, \* \* \* and continue to put a

<sup>89</sup> The *Briggs Indiana* case, discussed above, was cited as illustrative of this point.

premium on the conference table rather than on the harsh arbitrament of industrial war. The more difficult the problem, the more important it is that the stage be set for men to sit down and reason together.

In his dissenting opinion Mr. Reilly reaffirmed, without repeating, the views he had expressed in the representation case. In addition, challenging the majority's conclusion that the Foremen's Association is truly independent of the United Automobile Workers, C. I. O., which represents the rank and file workers at the Packard plant, he stated:

If the certified organization were really independent or took steps to guarantee against future instances of collaboration, or if the certification contained safeguards which would effectively insulate its activities from the union of the rank and file, I should feel quite differently about the matter.

The *Packard* decision did not affect the Board's long-established rule that supervisory employees who are vested with the authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, are not properly included in bargaining units comprising their subordinates. Departure from this policy is sanctioned only in certain rare instances—notably, in the maritime and printing trades<sup>90</sup>—where there exists a tradition of collective bargaining on behalf of supervisors as components of the subordinate group.<sup>91</sup> Also excluded from bargaining units of other employees, are "confidential" personnel, defined as those who in the course of their employment acquire confidential information relating directly to the problem of labor relations.<sup>92</sup> The Board has adhered to the view that plant guards, whether or not they are militarized or monitorial, may constitute appropriate bargaining units,<sup>93</sup> and be represented by the same union as the one

<sup>90</sup> See *Matter of Ohio Barge Line, Inc.*, 59 N. L. R. B. 154; *Matter of Master-Craft Corporation*, 60 N. L. R. B. 56.

<sup>91</sup> In *Matter of Coos Bay Lumber Company*, 62 N. L. R. B. 93, where a majority of the Board, with Mr. Reilly dissenting, found that such a custom existed, and justified a departure from the general rule, with respect to certain classes of minor supervisors in lumbering crews in "the average small or medium Northwest logging operation," the reason for this exception was explained:

"Where the industry or trade is highly unionized, generally or in the particular area; where the principal labor organizations competing in the field have traditionally admitted supervisory employees to membership; and where both employers and unions have as a customary matter and by common consent treated such supervisors as components of the ordinary employees' group for the purposes of collective bargaining, the usual reasons for segregation of supervisors disappear. Such a custom demonstrates that there is strong community of interest in the subject matter of collective bargaining between supervisory and rank-and-file employees; it also indicates that the personal activity of the supervisors in supporting or opposing particular unions which may be seeking the allegiance of the non-supervisory employees, is unlikely to be interpreted by the latter as reflecting management policy. Thus, where such custom prevails, the danger is remote that the union activity of supervisors will operate to impair the organizational freedom of ordinary employees. Moreover, a custom of including supervisory employees in the general bargaining unit also affords assurance that collective bargaining on this basis, in the particular industry or trade, has not in practice undermined essential disciplinary relationships between workers and supervisors, or otherwise tended to disrupt production."

Mr. Reilly disputed the majority's conclusion that the record proved the existence of such a custom among lumberjacks in the Northwest.

<sup>92</sup> *Matter of Columbia Steel & Shafting Company*, 60 N. L. R. B. 301; *Matter of Douglas Aircraft Company, Inc.*, 60 N. L. R. B. 876; *Matter of Electric Auto Lite Company*, 57 N. L. R. B. 723; *Matter of Micamold Radio Corporation*, 58 N. L. R. B. 888. See *Matter of The Yale & Towne Manufacturing Company*, 60 N. L. R. B. 626 (time-study employees, in view of their "management" function of rate-setting, held not to comprise separate appropriate unit). Cf. *Matter of Brad Foote Gear Works, Inc.*, 60 N. L. R. B. 97 (office janitors not deemed "confidential" in this sense merely because outside the scope of their assigned duties, they may look at confidential records); *Matter of Briggs Manufacturing Company*, 63 N. L. R. B. 860 ("Engineering clericals," not confidential, although they "have access to important company information such as estimates of the cost of manufacturing a particular article"); *Matter of Pacific Gas & Electric Company*, 61 N. L. R. B. 564; *Matter of Columbia Steel & Shafting Company, supra* (pay-roll clerks not confidential).

<sup>93</sup> *Matter of Eclipse Machine Division, Bendix Aviation Corporation*, 60 N. L. R. B. 308; *Matter of Rohm & Haas Company*, 60 N. L. R. B. 554; *Matter of The Babcock & Wilcox Company*, 61 N. L. R. B. 529; *Matter of Bethlehem Steel Company*, 61 N. L. R. B. 892; *Matter of Bethlehem-Fairfield Shipyard, Inc.*, 61 N. L. R. B. 901; *Matter of International Harvester Company, Milwaukee Works*, 61 N. L. R. B. 912; *Matter of Aluminum Company of America, et al.*, 61 N. L. R. B. 1066; *Matter of Lockheed Aircraft Corporation, Lockheed Modification Center*, 61 N. L. R. B. 1336; *Matter of Pullman-Standard Car Manufacturing Company*, 61 N. L. R. B. 1398; *Matter of Sealed Power Corporation*, 61 N. L. R. B. 1639; *Matter of National Lead Company, Titanium Division*, 62 N. L. R. B. 107; *Matter of General Motors Corporation, Packard Electric Division*, 62 N. L. R. B. 174; *Matter of B. F. Goodrich Company*, 62 N. L. R. B. 206; *Matter of Standard Steel Spring Company*, 62 N. L. R. B. 660; *Matter of Tampa Shipbuilding Company, Incorporated*, 62 N. L. R. B. 954.

## IV

### THE NATIONAL LABOR RELATIONS ACT IN PRACTICE: UNFAIR LABOR PRACTICE CASES

**S**ECTION 7 of the National Labor Relations Act guarantees to employees the right to organize, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for their mutual aid and protection. Section 8 defines five types of employer conduct as unfair labor practices. It is an unfair labor practice for an employer to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7; to dominate or interfere with the formation or administration of any labor organization or to contribute financial or other support to it; to encourage or discourage membership in any labor organization by discriminating in regard to hire, tenure, terms, or conditions of employment, except that it is not unlawful for closed-shop or similar types of contracts to be executed under certain conditions; to discriminate against an employee because he has filed charges or given testimony under the Act; and to refuse to bargain collectively with the representatives duly designated by a majority of the employees in an appropriate unit.

In the following general discussion there is presented a brief treatment of the more significant developments and trends in the unfair labor practice cases which the Board decided during the fiscal year 1945.<sup>1</sup>

#### INTERFERING WITH, RESTRAINING, OR COERCING EMPLOYEES IN THE EXERCISE OF THE RIGHTS GUARANTEED BY THE ACT

The cases decided by the Board during the past fiscal year show that some employers continue to resist the self-organization of their employees by conduct which the Board has repeatedly found violative of Section 8 (1) of the Act. For example, some employers have continued to interrogate their employees concerning their union membership and activity, and in some instances even to make direct threats of economic retaliation such as discharge, demotion, transfer, or elimination of existing favorable employee benefits. The conduct which the Board found to constitute interference, restraint, and coercion within the meaning of the Act, had unusual variety. Thus, one employer attempted to swell the antiunion vote in a Board election by including in the eligibility list the names of two noneligible supervisory employees who, the employer believed, would vote against the union.<sup>2</sup> In another case, the employer, acting contrary to his established liberal

<sup>1</sup> Some important and interesting cases decided in the new fiscal year are also included. Such decisions, issued after July 5, 1945, were participated in by Chairman Herzog, rather than Chairman Mills. They appear in the volumes beginning with 63 N. L. R. B. For specific decisions and details of established fundamental principles, see the individual volumes of the Board's Decisions and Orders and previous Annual Reports.

<sup>2</sup> *Matter of Vail Manufacturing Company*, 61 N. L. R. B. 181.

which represents other employees of the same employer. However, the Board segregates monitorial plant-protection employees—those who police and are required to report the misdemeanors of other employees—in separate units,<sup>94</sup> regardless of militarization. Contentions that timekeepers, nurses, inspectors, and similar occupational groups should be considered as confidential, supervisory, or “managerial,” have regularly been rejected.<sup>95</sup>

In considering a large number of cases which are apparently symptomatic of the spread of union organization among white collar workers, the Board has developed certain additional rules which are generally applied, in the absence of persuasive reasons to the contrary: office clerical and technical workers are normally segregated from production and maintenance workers,<sup>96</sup> and technical workers are usually segregated, in turn, from clerical employees if any interested party argues for their separation;<sup>97</sup> but plant clericals who work in close contact with production workers and under the same supervision with them, are treated as part of the production and maintenance group.<sup>98</sup>

The Board's practice of conducting so-called globe or self-determining elections in many cases in advance of making its final determination of the appropriate unit or units, is familiar. This practice is employed where the interested parties in a case advocate different units, one of which would include the other, and either of which might well be deemed appropriate for collective bargaining purposes. The Board utilizes the procedure of a separate election in each of the proposed groups as a means of ascertaining what unit pattern is desired by the interested employees themselves. In addition, a variant of this procedure is often employed in cases where a union seeks to enlarge an existing unit, which it represents, by including therein a distinct group of employees (as distinguished from a mere accretion to the number of employees in a class already within the unit)<sup>99</sup> who have not theretofore been a part of the unit and who, as a class, have not had an opportunity to participate in the choice of that unit's representative.<sup>100</sup>

<sup>94</sup> *Matter of Kelsey-Hayes Wheel Company*, 62 N. L. R. B. 421. See *Matter of Ingalls Shipbuilding Corporation*, 59 N. L. R. B. 924; *Matter of Apache Powder Company*, 59 N. L. R. B. 1123; *Matter of National Fireworks, Inc.*, 62 N. L. R. B. 271. Cf. *Matter of Hans Rees' Sons*, 61 N. L. R. B. 541; *Matter of Pittsburgh Equitable Meter Company*, 61 N. L. R. B. 880; *Matter of Eastern Tool & Mfg. Co., Inc.*, 61 N. L. R. B. 1315.

<sup>95</sup> *Matter of Budd Wheel Company*, 59 N. L. R. B. 420; *Matter of Chrysler Corporation*, 61 N. L. R. B. 949 (timekeepers); *Matter of American Steel and Wire Company*, 58 N. L. R. B. 253; *Matter of Consolidated Vultee Aircraft Corporation*, 59 N. L. R. B. 1276 (nurses); *Matter of Ideal Roller & Manufacturing Company, Inc.*, 60 N. L. R. B. 1105; *Matter of General Cigar Co., Inc.*, 64 N. L. R. B. 300; *Matter of Chrysler Corporation, Airtemp Division, Indianapolis Plant*, 61 N. L. R. B. 953 (inspectors). Timekeepers, however, are generally excluded from units of production and maintenance employees. See *Matter of Douglas Aircraft Company, Inc.*, 60 N. L. R. B. 876 and cases cited therein, footnote 9.

<sup>96</sup> *Matter of Ward Leonard Electric Co.*, 59 N. L. R. B. 1305; *Matter of Socony-Vacuum Oil Company, Incorporated*, 60 N. L. R. B. 559; *Matter of E. I. du Pont de Nemours & Company, Inc., Rayon Division*, 62 N. L. R. B. 146; *Matter of Savage Arms Corporation*, 62 N. L. R. B. 1156; *Matter of Rockford Screw Products Co.*, 62 N. L. R. B. 1430; *Matter of Procter & Gamble Manufacturing Company*, 62 N. L. R. B. 1262.

<sup>97</sup> *Matter of Curtiss-Wright Corporation*, 63 N. L. R. B. 207 and cases cited therein, footnote 14; cf. *Matter of Continental Steel Corporation*, 61 N. L. R. B. 97.

<sup>98</sup> *Matter of Goodman Manufacturing Company*, 58 N. L. R. B. 531; *Matter of Douglas Aircraft Company, Inc.*, footnote 94, *supra*; *Matter of Chicago Rawhide Manufacturing Company*, 59 N. L. R. B. 1234; cf. *Matter of Kearney & Trecker Corporation*, 60 N. L. R. B. 148.

<sup>99</sup> In *Matter of The American Steel and Wire Company of New Jersey*, 63 N. L. R. B. 1244, and *Matter of The Texas Company, Producing Department*, 63 N. L. R. B. 1334, the Board discussed the distinction between a mere enlargement of an existing operation and the acquisition of new and separate operations in cases involving, respectively, freighters operating on the Great Lakes, and oil fields of an oil producing company. Cf. *Matter of Kaiser Company, Inc., Iron and Steel Division*, 59 N. L. R. B. 547.

<sup>100</sup> See *Matter of The Hamilton Tool Co. and Hamilton Gages, Inc.*, 61 N. L. R. B. 1361; *Matter of Gulf Refining Company (Houston Pipe Line Division)*, 62 N. L. R. B. 1385; *Matter of Michigan Bell Telephone Company*, 58 N. L. R. B. 622. Cf. *Matter of Inter-Island Steam Navigation Co., Ltd.*, 61 N. L. R. B. 988; *Matter of General Cigar Co., Inc.*, footnote 95, *supra*.

policy, refused permission to employees to leave the plant during working hours to testify in a representation hearing before the Board.<sup>3</sup> And in a case decided shortly after the close of the fiscal year, the employer was held to have coerced his employees into withdrawing from the union by warning them that organization of the plant might cause his principal customer to withdraw its business, in which event the employer might close the plant.<sup>4</sup> Also violative of the Act was an employer's unilateral adoption of a grievance procedure which precluded the certified bargaining representative from processing employee grievances until such time as a written agreement might have been executed.<sup>5</sup>

As in previous fiscal years, the Board has found certain oral statements to be unlawful although the employers sought to defend them as an exercise of their constitutional privilege of freedom of speech. Mindful of the employer's right to the constitutional protection of freedom of speech, the Board has in each case passed upon the employer's defense in the light of the particular facts of the case and applicable judicially approved principles. It is well established that the constitutional guarantee of free speech does not privilege statements which coerce employees in the exercise of their rights to self-organization. In many instances, the coercive element is inherent in the statement itself or may be readily inferred from the context in which it is made. Typical of this class of statements, which are *per se* violative of Section 8 (1), are those containing actual, implied, or veiled threats of economic reprisal. Equally violative of the Act are those statements which bespeak a determination not to bargain collectively with a labor organization even if it should attain majority status.<sup>6</sup> Other statements, which on their face appear to be unobjectionable, nevertheless may be coercive, and therefore a violation of the Act, when viewed in the light of other unfair labor practices committed by the employer. This is so, where the statement is an inseparable and integral part of a course of conduct which in its "totality" amounts to coercion within the meaning of the Act.<sup>7</sup>

Ordinarily, the unlawful conduct of supervisory employees is attributable to their employer. An exception to this general principle has been established by the Board in those cases where supervisors, despite their authority to hire and discharge, are traditionally included in the rank and file bargaining unit of their subordinates, as is the case in the printing industry. In such cases the Board has refused to impute the supervisor's organizational activity to the employer in the absence of evidence that the employer encouraged, authorized, or ratified their activity or acted in such manner as to lead the employees reasonably to believe that the supervisors were acting for and on behalf of management.<sup>8</sup> The rationale of this holding is that

<sup>3</sup> *Matter of Reliance Manufacturing Co.*, 60 N. L. R. B. 946.

<sup>4</sup> *Matter of A. J. Showalter Co.*, 64 N. L. R. B. 573.

<sup>5</sup> *Matter of Ross Gear and Tool Co.*, 63 N. L. R. B. 1012.

<sup>6</sup> *Matter of Julius Cohen d/b/a Comas Mfg. Co.*, 59 N. L. R. B. 208.

<sup>7</sup> See, e. g., *Matter of Agar Packing & Provision Corp.*, 58 N. L. R. B. 738; *Matter of West Kentucky Coal Co.*, 57 N. L. R. B. 89, set aside in this respect by the Sixth Circuit Court of Appeals, December 6, 1945; *Matter of Shurtle Brothers Machine Corp.*, 60 N. L. R. B. 533; *Matter of R. R. Donnelley and Sons Co.*, 60 N. L. R. B. 635; *Matter of Owens-Illinois Glass Company*, 60 N. L. R. B. 1015; *Matter of Wennonah Cotton Mills Company, Inc.*, 63 N. L. R. B. 143 and *Matter of Montgomery Ward & Co., Inc.*, 64 N. L. R. B. 432. For cases where the statements were found not coercive and were held to be privileged as free speech, see, e. g., *Matter of Oval Wood Dish Corp.*, 62 N. L. R. B. 1129; and *Matter of Libby Owens-Ford Glass Co.*, 63 N. L. R. B. 1.

<sup>8</sup> *Matter of R. R. Donnelley and Sons Co.*, *supra*; and *Matter of The Hartford Courant Company*, 64 N. L. R. B. 213. See also Supplemental Decision in *Matter of Mississippi Valley Structural Steel Co.*, 64 N. L. R. B. 78.



supervisors, as members of the bargaining unit, have the same right as other employees to engage in union activity and to express their opinions on that subject, and that, therefore, management's responsibility for their union activity cannot be predicated on their supervisory status alone.

Following its judicially approved policy, established in previous fiscal years,<sup>9</sup> concerning management rules prohibiting union activity on the employer's premises, the Board continued during the past fiscal year to delineate and interpret the extent to which such rules may be violative of Section 8 (1) of the Act. Thus, a rule prohibiting employees from wearing union caps during working hours was found by a majority of the Board to be an unreasonable limitation on the employees' rights guaranteed in Section 7 and hence in violation of the Act.<sup>10</sup> Board Member Reilly, however, felt that the prohibition was proper because of the conspicuous nature of the caps. Similarly a prohibition, without limitation as to time, of "collections of any sort" in "any of the shop or office departments," was found illegal because it curtailed the right of employees to transact union business, including the collection of dues, on company premises during non-working hours.<sup>11</sup> In another case, a rule which restricted union activity on company property by a group of employees whom the Board found to be nonsupervisory was held violative of the Act, notwithstanding the employer's mistaken belief that they were supervisory employees who could have been properly enjoined.<sup>12</sup>

Shortly after the close of the past fiscal year, the Board had occasion to pass upon the legality of an employer's conduct, absent any other unfair labor practices, in executing or renewing an exclusive bargaining contract with one of two competing unions during the existence of a question concerning the representation of the employees covered by the contract. The question first arose in *Matter of Phelps Dodge Copper Products Corporation, Habirshaw Cable and Wire Division*, 63 N. L. R. B. 686, where the Board said by way of *obiter dictum*:

If, during the pendency of an election directed by the Board to resolve a question concerning representation, an employer extends or renews an existing contract with a labor organization, or makes a new one, he violates the Act insofar as that organization is accorded recognition as exclusive bargaining representative or employees are required to become or remain members thereof as a condition of employment.

In *Matter of Midwest Piping and Supply Co., Inc.*, 63 N. L. R. B., 1060, the Board held that an employer violated Section 8 (1) by executing a closed-shop contract with one of two competing unions, with knowledge that conflicting representation petitions filed by both unions were still pending before the Board. The Board concluded that although the contracting union may have had authorization cards signed by a majority of the employees, it was nevertheless not entitled to exclusive recognition under the circumstances and that the granting of the contract constituted illegal assistance to the contracting union. Accordingly, the employer was required to withhold giving effect to the contract unless and until the contracting union was certified by the Board as the exclusive bargaining representative.

<sup>9</sup> See Ninth Annual Report, p. 38.

<sup>10</sup> *Matter of Agar Packing & Provision Corp.*, *supra*. But see *Matter of Carl L. Norden, Inc.*, 62 N. L. R. B. 828.

<sup>11</sup> *Matter of Illinois Tool Works*, 61 N. L. R. B. 1129, *en'd* by the Seventh Circuit Court of Appeals, February 27, 1946.

<sup>12</sup> *Matter of American Needlecrafts, Inc.*, 59 N. L. R. B. 1384.

The basis for this holding is as follows: Congress has clothed the Board with the exclusive power to investigate and determine bargaining representatives. Consequently an employer may not disregard the jurisdiction of the Board and preclude the holding of an election under Board auspices, by resolving the conflicting representation claims on the basis of proof which the employer deems sufficient but which is not necessarily conclusive. Moreover, the effect of such conduct is to accord unwarranted prestige and advantage to one of two competing labor organizations and thereby prevent a free choice by the employees.

#### DOMINATING OR INTERFERING WITH THE FORMATION OR ADMINISTRATION OF A LABOR ORGANIZATION OR CONTRIBUTING FINANCIAL OR OTHER SUPPORT THERETO

It is an unfair labor practice under Section 8 (2) of the Act for an employer to dominate or interfere with the formation or administration of a labor organization or to contribute support thereto.

The cases which came before the Board during the 1945 fiscal year in the main embodied no substantial departure from previous cases. Employee-representation plans or associations of employees antedating the passage of the Act and newer company-dominated unions, whether created to defeat current union organization or to provide an agency purporting to serve the functions of a legitimate labor organization in the absence of union organization, represented types of labor organizations found to be proscribed by this Section.<sup>13</sup> Alleged successors to such employee-representation plans or to old company-dominated associations, as in the past, presented the Board with the problem of deciding, on the facts of each case, whether the effect of the employer's domination of an earlier organization was effectively dissipated prior to the formation of the alleged successor organization, so that employees who joined the successor or designated it as their bargaining representative were able to exercise a free choice.<sup>14</sup> In such cases the Board has held that there is an affirmative duty upon the employer to disabuse his employees of any impression or belief that the alleged successor organization has the same management favor and support as its predecessor, by making a public announcement at an appropriate time directly to his employees at large, and not through an intermediary such as the officers of the predecessor organization. The announcement should normally be to the effect that the employer has withdrawn his support and recognition of the predecessor organization, that the employees are free to join or not to join any labor organization, and that the employer is wholly indifferent concerning the activities of his employees.<sup>15</sup>

<sup>13</sup> The considerations that motivated the Board in finding violations of this Section during the fiscal year are in the main similar to those which have been set forth in previous Annual Reports. See, for example, Third Annual Report, pp. 108-126; Fourth Annual Report, pp. 69-73; Fifth Annual Report, pp. 49-53; Sixth Annual Report, pp. 51-54. As to cases involving newer company-dominated unions decided during the past fiscal year, see, for example, *Matter of Kinner Motors*, 57 N. L. R. B. 622; *Matter of McGough Bakeries*, 58 N. L. R. B. 849; *Matter of Superior Engraving*, 61 N. L. R. B. 37; *Matter of W. E. Horne Engineering*, 61 N. L. R. B. 742; *Matter of Reynolds Corp.*, 61 N. L. R. B. 1446; *Matter of Wire Rope Corp. of America*, 62 N. L. R. B. 380; *Matter of Nubone Co., Inc.* 62 N. L. R. B. 322. As to cases involving employee-representation plans or associations of employees antedating the Act, decided during the past fiscal year, see, for example, *Matter of Wyman-Gordon Company*, 62 N. L. R. B. 361; *Matter of Standard Oil Company of California*, 61 N. L. R. B. 1251; *Matter of Standard Oil Company of California*, 62 N. L. R. B. 449.

<sup>14</sup> See, for example, *Matter of Thompson Products, Inc.*, 57 N. L. R. B. 925; *Matter of Johnson Bronze Co.*, 57 N. L. R. B. 814, enf'd 148 F. (2d) 818 (C. C. A. 3); *Matter of Neptune Meter Co.*, 58 N. L. R. B. 1240; *Matter of Keystone Steel & Wire Co.*, 62 N. L. R. B. 683; *Matter of Remington Arms Co., Inc.*, 62 N. L. R. B. 611; *Matter of Wilson & Co.*, 63 N. L. R. B. 636.

<sup>15</sup> *Matter of Keystone Steel & Wire Co.*, 62 N. L. R. B. 683

During the past fiscal year the Board has had occasion to interpret the proviso to Section 8 (2) of the Act which states that "an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay." In *Matter of Remington Arms Co., Inc.*, 62 N. L. R. B. 611, the Board held that regular wages may be paid to employee union representatives "for time spent in attendance at conferences with management which were concerned with negotiations as to wages, welfare, and safety matters affecting employees generally." In another case, the Board held that such allowable payments are restricted "to instances in which conferences are held with management during working hours of the employee conferees"; thus payments to employees for time spent in meetings with management outside of the employees' work shift, on their own time, are in violation of the Act.<sup>16</sup>

The Board has again decided several cases involving the question of assistance by an employer to a labor organization, the assistance falling short of domination or support within the meaning of Section 8 (2) of the Act.<sup>17</sup> The Board has distinguished this kind of case from the usual case of domination and support of a labor organization in which the illegal organization is ordered disestablished, and has simply held that such assistance by an employer constitutes a violation of Section 8 (1). In this type of case, the assisted labor organization is not disestablished, but the employer is directed to withdraw or withhold recognition of the assisted organization unless and until it is certified as the collective bargaining representative by the Board.

The Act, however, does not prohibit assistance, domination, or support by an employer except in connection with an organization of employees 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 other terms or conditions of employment. In a case decided after the close of the fiscal year, the Board rejected as immaterial an employer's contention that a company-dominated organization, existing for the purpose of representing employees concerning grievances, wages, hours of employment, and conditions of work and functioning as such an agency, was not a labor organization within the statutory definition.<sup>18</sup>

#### ENCOURAGING OR DISCOURAGING MEMBERSHIP IN A LABOR ORGANIZATION BY DISCRIMINATION

Section 8 (3) of the Act provides that it is an unfair labor practice for an employer to encourage or discourage membership in any labor organization by discriminating in regard to hire or tenure of employment or any term or condition of employment, except in situations in which he acts in accordance with a closed-shop or similar type of contract that meets the conditions prescribed in this Section. The Board has continued to administer this Section in such fashion as to avoid any interference with the normal exercise by an employer of his right to select, dismiss, demote, transfer or otherwise affect the hire or tenure of employees, or the terms or conditions of their employment, for reasons not forbidden by the Act.

<sup>16</sup> *Matter of Wyman-Gordon Company*, 62 N. L. R. B. 561.

<sup>17</sup> See, for example, *Matter of Ken-Rad Tube & Lamp Corp.*, 62 N. L. R. B. 21, in which the Board held that the employer violated Section 8 (1) of the Act by assisting a union through exclusive recognition and execution of bargaining contracts at a time when the union did not represent a majority of the employees in question.

<sup>18</sup> *Matter of Jas. H. Matthews & Co.*, 63 N. L. R. B. 273.

Many of the cases decided by the Board under Section 8 (3) during the 1945 fiscal year involved the application of previously established principles. In the usual type of case arising under this Section, the Board was called upon to determine whether an employee was treated discriminatorily because of his membership in or activities in behalf of an existing labor organization. The Board again has held that it is no less a violation of Section 8 (3) to discriminate against an employee for engaging in concerted activities unrelated to an existing labor organization.<sup>19</sup> Discrimination proscribed by the Act has taken various forms, the most common of which are discharge, lay-off, and refusal of reinstatement. The Board also has found that employers have discriminated against their employees by suspension,<sup>20</sup> demotion to less desirable jobs,<sup>21</sup> and deprivation of seniority rights<sup>22</sup> and bonuses.<sup>23</sup> In *Matter of General Motors Corporation*, 59 N. L. R. B. 1143, enf'd 150 F. (2d) 201 (C. C. A. 3), the Board held that an employer's unilateral transfer of all employees within an appropriate bargaining unit from salary to hourly rated classifications, thereby depriving them of certain benefits incident to salaried status, because a majority of the employees had designated a union as their collective bargaining representative, was violative of Section 8 (3). As in previous years, the Board has held that employees who are forced to leave their employment because of discriminatory transfers to other jobs or because the employer otherwise has discriminated in regard to the terms and conditions of their employment have been constructively discharged in violation of the Act.<sup>24</sup>

The types of union or concerted activity protected by Section 8 (3) are varied. The Board has held that an employer may not discriminate against an employee because he has circulated among employees a petition for a wage increase,<sup>25</sup> because he has stated to other employees that the union of which he was a member would secure wage increases for them,<sup>26</sup> because he has acted as spokesman for fellow employees in expressing dissatisfaction with work schedules,<sup>27</sup> or because, as an editor of a union bulletin, he has participated in the publication of unintentional misstatements concerning wage rates of the employer's competitors.<sup>28</sup> Nor may an employer lawfully condition an employee's reemployment upon procuring from the latter's son, a former employee, a statement that the son had not filed an affidavit concerning the case of another employee as to whose discharge the union had filed a charge with the Board, and indicating that the son had "never said anything against" the employer in connection with that case.<sup>29</sup> In concluding that this conduct violated Section 8 (3), the Board stated that the institution of proceedings before it in regard to the discriminatory discharge of an employee was a matter of vital interest

<sup>19</sup> *Matter of Rockingham Poultry Marketing Cooperative, Inc.*, 59 N. L. R. B. 486.

<sup>20</sup> *Matter of The Alexander Milburn Company*, 62 N. L. R. B. 432.

<sup>21</sup> *Ibid.*

<sup>22</sup> *Matter of Reliance Manufacturing Company*, 60 N. L. R. B. 946.

<sup>23</sup> *Matter of Irvin L. Young, d/b/a Young Engineering Company*, 57 N. L. R. B. 1221, enf'd from the bench by the Seventh Circuit Court of Appeals, May 4, 1945.

<sup>24</sup> *Matter of United Growers, Inc.*, 59 N. L. R. B. 549; *Matter of Reliance Manufacturing Company*, 60 N. L. R. B. 946; *Matter of Palm Beach Broadcasting Corporation*, 63 N. L. R. B. 597. To like effect is *Matter of Theodore R. Schmidt, d/b/a Acme Industrial Police*, 58 N. L. R. B. 1342. In this case Board Member Reilly dissented with respect to the back-pay remedy. See section on Remedial orders, *infra*.

<sup>25</sup> *Matter of Rockingham Poultry Marketing Cooperative, Inc.*, 59 N. L. R. B. 486.

<sup>26</sup> *Matter of South Carolina Granite Company, et al.*, 58 N. L. R. B. 1448.

<sup>27</sup> *Matter of Texas Textile Mills*, 58 N. L. R. B. 352.

<sup>28</sup> *Matter of Illinois Tool Works*, 61 N. L. R. B. 1129, enf'd by the Seventh Circuit Court of Appeals, February 27, 1946. The Board, however, pointed out that it did not mean to suggest that union members would be protected against punishment for publication of legally defamatory matter.

<sup>29</sup> *Matter of Wire Rope Corporation of America*, 62 N. L. R. B. 380.

not only to the employee, but to all members of the union, and constituted concerted activity engaged in through the agency of the union, for their mutual aid or protection; and submission of information to agents of the Board in connection with the proceedings constituted assistance to the union in its endeavor to protect the employees in the exercise of their legal rights. Similarly, an employer may not condition reinstatement of an employee upon an agreement that in the future the employer shall be free to discipline the employee without protest by him or by the union of which he is a member.<sup>30</sup>

In *Matter of Ross Gear & Tool Company*, 63 N. L. R. B. 1012, the Board held that an employee member of a union grievance committee was within her statutory rights in refusing to comply with the employer's order to come alone to his office to discuss a matter concerning which the employer had already dealt with the committee as the exclusive bargaining representative, and in insisting that the matter be taken up with the entire committee. Discharge of the employee for refusing to obey this order therefore violated Section 8 (3).

The Board again has had occasion to consider discharges for engaging in union activity on the employer's premises. The Board has recognized the right of an employer to regulate the conduct of his employees by such written or oral rules or instructions as are reasonably necessary to safeguard production, to maintain proper plant discipline and order, or to preserve his own neutrality. Thus, the discharges of employees, after repeated warnings, for violation of a reasonable rule against distribution of literature which was enforced in a nondiscriminatory manner,<sup>31</sup> or for soliciting union memberships during working hours,<sup>32</sup> were found not to be in contravention of the Act. On the other hand, where the evidence establishes that an employer's true motive in discharging an employee is to discourage membership in a labor organization, the Board has refused to permit the employer to effectuate his unlawful motive under the guise of such rules or instructions.<sup>33</sup>

The Board has decided numerous cases in which the employees' concerted activity consisted of participation in a strike. If employees strike for economic reasons and not because of any unfair labor practice by their employer, the latter may replace them in order to carry on his business, and the strikers thereafter have no absolute right of reinstatement to their former jobs. After the termination of a strike, however, the employer may not refuse to reinstate or reemploy the strikers solely because of their participation in the strike. In one such case,<sup>34</sup> the Board found that an employer had not violated the Act by denying reinstatement to strikers who had been replaced during the strike. A few days after the denial of reinstatement, however, the replacement employees having quit the jobs, the employer did not offer the strikers employment in their former positions, because of their participation in the strike. A majority of the Board found that the conduct of the strikers at the time of their unsuccessful

<sup>30</sup> *Matter of Goodyear Aircraft Corporation*, 63 N. L. R. B. 1340.

<sup>31</sup> *Matter of The Goodyear Aircraft Corporation*, 57 N. L. R. B. 502.

<sup>32</sup> *Matter of Wenonah Cotton Mills Company, Inc.*, 63 N. L. R. B. 143.

<sup>33</sup> *Matter of May Department Stores Company, a corporation d/b/a Famous-Barr Company*, 59 N. L. R. B. 976; *Matter of Carl L. Norden, Inc.*, 62 N. L. R. B. 828. Board Member Reilly dissented in the latter case on the ground that the evidence did not warrant a finding that the employer's true motive in effecting the discharge was to discourage membership in the union.

<sup>34</sup> *Matter of Republic Steel Corporation (98\* Strip Mill)*, 62 N. L. R. B. 1008.

application for work at the termination of the strike constituted a continuing application for employment which was current at the time in question, and accordingly held that the employer's failure to recall the strikers violated Section 8 (3). Board Member Reilly, in his dissenting opinion, took the position that the evidence was insufficient to warrant the finding that the strikers had a continuing application on file and that, therefore, "the situation in which an issue of discrimination could present itself was never reached." In another case governed by principles previously established, the Board held that employees who refused to process orders received from a branch plant where a strike was in progress, were engaged in lawful concerted activities and assumed a position analogous to that of economic strikers, and that although the employer had a right to insist that the employees perform their work or leave the plant, the employer violated Section 8 (3) when, prior to their replacement, he refused to reinstate them upon their unconditional application.<sup>35</sup> In *Matter of Rockwood Stove Works*, 63 N. L. R. B. 1297, the employer's discriminatory discharge of employees because of their participation in a strike resulted in a lack of available work for nonstrikers whose continued employment depended upon the production of the striking employees. Inasmuch as the resulting discharges of the nonstrikers were attributable to the employer's illegal discrimination against the strikers, the Board held that these discharges likewise were violative of Section 8 (3).

Shortly before the commencement of fiscal year 1945, a majority of the Board decided in *Matter of The American News Company Inc.*, 55 N. L. R. B. 1302, that a strike, admittedly designed to compel the employer to grant the strikers a wage increase without prior approval of the National War Labor Board, which action would have subjected the employer to criminal penalties under the terms of Federal wage stabilization legislation, was not within the concerted activities protected by the Act so as to constitute the employer's discharge of or refusal to reinstate the strikers a violation of Section 8 (3).<sup>36</sup> The Board has had occasion to pass upon the application of this doctrine in subsequent cases. Thus, in *Matter of Union-Buffalo Mills Company*, 58 N. L. R. B. 384, the Board made it plain that the principle enunciated in the *American News* case was inapplicable to a situation in which the employees "went on strike to compel negotiation of their wage demands and not for wage increases without the approval of the National War Labor Board." In *Matter of Rockwood Stove Works*, 63 N. L. R. B. 1297, the employees, who were unorganized and were awaiting assistance from a union, engaged in a strike during the pendency of the employer's application to the National War Labor Board for approval of a wage incentive or bonus plan. A majority of the Board held that the *American News* doctrine was not applicable for the reasons, among others, that no agreement had been reached between the employer and the employees on the matter of an application for a wage increase, that the employees' desire for a wage increase was only one of several causes of the strike, and that there was no conscious design on the part of the strikers to compel the respondent to commit an illegal act, but instead "the real purpose

<sup>35</sup> *Matter of Montgomery Ward & Co., Incorporated*, 64 N. L. R. B. 432.

<sup>36</sup> See Ninth Annual Report, pp. 42 and 43, for a discussion of the majority and dissenting opinions in the *American News* case.

and design of the strike \* \* \* was the desire of [the] employees \* \* \* to hold their ranks intact until union organization could be perfected, at which time the employees might reasonably expect, with the backing of the Union, to exert pressure to force the respondent to take whatever measures were required for the granting of a genuine wage increase." In his concurring opinion, Chairman Herzog also observed that "here there was a spontaneous and unplanned move by inexperienced men; in *American News* there was stoppage following an express threat by union officials to call a strike if the employer did not do what the law forbade him to do. \* \* \*"

Board Member Reilly, dissenting, disagreed with factual distinctions made by the majority, stating that "a finding that the real purpose and design of the strike was the desire of the men to secure a wage increase seems almost inescapable." He also indicated disagreement with the majority's view that the absence of conscious design to compel the respondent to violate the law served to distinguish the *American News* case. He was of the opinion that, "regardless of the intent of the strikers, the net effect on the respondent was to apply pressure upon it to grant an immediate increase."

In *Matter of Republic Steel Corporation (98'' Strip Mill)*, 62 N. L. R. B. 1008, the employer, relying upon the *American News* case, contended that, because the employees ceased work without having given the requisite advance notice required by the War Labor Disputes Act, the strike was not a protected form of concerted activity. A majority of the Board rejected this contention, stating that the legislative history of the Disputes Act, unlike that of the wage stabilization legislation involved in the *American News* case, established that "the Congress did not intend specifically, or generally, as part of its legislative policy that the rights of employees, whether they be rank and file or representatives, under the National Labor Relations Act, be affected by the War Labor Disputes Act." Board Member Reilly dissented with respect to the union officers who participated in the strike, on the ground that they are the "representatives" charged with the duty under the Disputes Act to give the requisite strike notice.

In the absence of a valid closed-shop or similar type of contract, an employer is not privileged to discriminate against employees because of the threat of a strike or other economic pressure by a rival labor organization.<sup>37</sup> Nor may a contract, requiring membership in a labor organization as a condition of employment, validate discharges made pursuant thereto where the contract fails to meet the conditions prescribed in the proviso to Section 8 (3). Thus, a closed-shop contract covering a unit which is not appropriate for collective-bargaining purposes fails to satisfy the proviso and accordingly cannot serve as a defense to the discharge of employees improperly included within the terms of the contract.<sup>38</sup> In another case, the Board, adhering to well-established principles, held that the discharge of an employee who had been expelled from membership in a union which had a union-shop contract, with knowledge by the employer that the expulsion was due to the fact that the employee had acted as an observer for a rival union in an election conducted by the Board, was violative of Section 8 (3), even though the employer believed in good faith, though mistakenly,

<sup>37</sup> *Matter of Brown Garment Manufacturing Company*, 62 N. L. R. B. 857. Similarly, an employer cannot escape responsibility for discrimination induced by threats of economic pressure by a group of employees opposed to union organization. *Matter of The Cleveland Container Company*, 63 N. L. R. B. 1144.

<sup>38</sup> *Matter of W. C. and Agnes Graham, d/b/a Graham Ship Repair Co.*, 63 N. L. R. B. 842.

that the terms of the contract required it to accede to the contracting union's demand for the employee's discharge.<sup>39</sup> Nor can the discharges of employees for failure to maintain union membership be defended on the basis of a maintenance-of-membership contract which had expired the day before the discharges were effected, notwithstanding that the employer had initiated action on the failure to maintain membership prior to the expiration of the contract.<sup>40</sup> In another case, in which the contracting union demanded that a member in good standing be discharged because of his organizational activity on behalf of a rival union, the Board held that the contract provided no justification for the discharge because the employee had "complied with the membership requirement of the closed-shop contract within the meaning of the proviso to Section 8 (3) of the Act."<sup>41</sup>

During the past fiscal year the Board has reiterated previous holdings with respect to supervisory employees. Thus, an employer may not discriminate against supervisory employees because of their membership and activities in a labor organization composed exclusively of supervisory personnel.<sup>42</sup> And discrimination against supervisory employees for refusing to participate in an employer's anti-union campaign, also is proscribed by Section 8 (3).<sup>43</sup>

#### DISCRIMINATION FOR FILING CHARGES OR TESTIFYING UNDER THE ACT

Few cases under Section 8 (4) of the Act, which makes it an unfair labor practice for an employer to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under the Act, engaged the Board's attention during the fiscal year 1945, indicating, as has been the experience in past fiscal years, a high degree of respect for the Board's processes. In three cases which arose under this Section, the Board held that it was an unfair labor practice for an employer to discharge or refuse to reinstate an employee because he gave testimony in the same proceeding or in a prior Board proceeding involving the same employer.<sup>44</sup> In another case, contrary to his previous policy of granting permission freely to employees to leave the plant during working hours, an employer refused to permit four employees to leave the plant during working hours to testify in representation proceedings involving the employees. The Board held that the employer's subsequent action in depriving three of these employees of seniority rights because they left the plant for that purpose violated Section 8 (4) of the Act, inasmuch as this action was motivated, at least in part, by the fact that the employees had testified in the representation proceeding.<sup>45</sup> In still another case, decided after the close of the fiscal year, an employer, after a hearing in a representation proceeding in which an employee had testified contrary to her employer's contentions, engaged in a course of discriminatory conduct that forced the em-

<sup>39</sup> *Matter of Portland Lumber Mills*, 64 N. L. R. B. 159.

<sup>40</sup> *Matter of Phelps Dodge Copper Products Corporation, Habirshaw Cable and Wire Division*, 63 N. L. R. B. 686.

<sup>41</sup> *Matter of Federal Engineering Company, Inc., et al.*, 60 N. L. R. B. 592, en'f'd by the Sixth Circuit Court of Appeals, February 6, 1946. The Board expressly overruled decisions in other cases to the extent that they are inconsistent with this holding.

<sup>42</sup> *Matter of Republic Steel Corporation (98' Strip Mill)*, 62 N. L. R. B. 1068.

<sup>43</sup> *Matter of Reliance Manufacturing Company*, 60 N. L. R. B. 946; *Matter of Vail Manufacturing Company* 61 N. L. R. B. 181.

<sup>44</sup> *Matter of Muskegon Dock and Fuel Co.*, 58 N. L. R. B. 718; *Matter of Kinner Motors, Inc.*, 59 N. L. R. B. 905; *Matter of McGough Bakeries Corporation*, 58 N. L. R. B. 849.

<sup>45</sup> *Matter of Reliance Mfg. Co.*, 60 N. L. R. B. 946.



ployee to resign. As a result of the employer's actions, the employee suffered uncontrollable "crying spells," which left her unfit to perform any work. The Board held that her subsequent resignation was equivalent to a discriminatory discharge and that the employer thereby violated Section 8 (4) of the Act.<sup>46</sup> In *Matter of Carl L. Norden, Inc.*, 62 N. L. R. B. 828, the Board found that the employer violated Section 8 (4) of the Act by withholding a wage increase, recommended for an employee by his foreman, because the employee had filed a charge that he had been discriminatorily transferred to a less desirable job.

#### REFUSING TO BARGAIN COLLECTIVELY

Section 8 (5) of the Act makes it an unfair labor practice for an employer to refuse to bargain collectively with the representatives designated or selected by a majority of the employees in an appropriate collective bargaining unit.

In determining whether this Section of the Act has been violated, the Board must first decide whether the union represented a majority of the employees in an appropriate unit at the time of the refusal to bargain. Very frequently the union has established its majority status through an election conducted by the Board and a subsequent certification by the Board or its Regional Director as the majority representative. In such cases the Board has held that the certification is operative for a reasonable period, normally 1 year, in the absence of unusual circumstances.<sup>47</sup> Such a certification has been honored by the Board even though 3 days after the election a majority of the employees repudiated the union by executing affidavits which were publicly circulated.<sup>48</sup> This holding rests upon the judicially approved rationale that a practical administration of the Act requires that the results of an election be regarded as conclusive evidence of the employees' desires and that where employees express their true desires in a secret election, the repudiation of their selection can be established only through the medium of an equally probative technique. A certification of a union as exclusive bargaining representative of certain employees of an employer is also valid with respect to a bona fide lessee or vendee, where no substantial changes were effected in the personnel or operations of the enterprise.<sup>49</sup>

Where the union's claim of majority is based upon the results of an election conducted pursuant to a consent election agreement, which accords finality to the determinations of the Regional Director on all questions arising out of the conduct of the election, the Board has continued to follow its established practice of not disturbing the Regional Director's rulings unless they appear to be arbitrary or capricious. Thus, a majority of the Board upheld as not arbitrary or capricious a Regional Director's ruling that an employer, who had certified a person as an eligible voter and had permitted her to vote without challenge, although facts which the employer later asserted rendered her ineligible were then in his possession, had waived the

<sup>46</sup> *Matter of Palm Beach Broadcasting Corporation*, 63 N. L. R. B. 597.

<sup>47</sup> *Matter of Motor Valve and Manufacturing Company*, 58 N. L. R. B. 1057, enfl'd 149 F. (2d) 247 (C. C. A. 6).

<sup>48</sup> *Matter of Anderson Manufacturing Company*, 58 N. L. R. B. 1511.

<sup>49</sup> *Matter of South Carolina Granite Company, et al.*, 58 N. L. R. B. 1448, enfl'd in this respect by the Fourth Circuit Court of Appeals, December 10, 1945; *Matter of Syncro Machine Company, Inc.*, 62 N. L. R. B. 985.

right to attack the status of the voter after the results of the election had been announced.<sup>50</sup>

The union's majority status may also be established by a cross-check of its authorization or membership cards against the employer's pay roll. However, where the union chooses to go to an election and loses, it cannot thereafter rely on its prior majority card showing, in the absence of evidence that the employer engaged in unfair labor practices which destroyed the union's majority.<sup>51</sup> In *Matter of Pure Oil Company*, 62 N. L. R. B. 1039, a majority of the Board held that the union's majority status was adequately established by the payment of either initiation fees or membership dues by a majority of the employees during one or more of the 3 months preceding the expiration of a maintenance-of-membership contract and prior to the commencement of negotiations for a new contract. In that case the majority opinion stated that the existence of a maintenance-of-membership contract affords no reasonable basis for inferring an intention on the part of the members to withdraw their membership from, or revoke their designation of, the union upon the expiration of the contract, but that such an intention must be clearly established by some unequivocal act on the part of the employees following the expiration of the contract. Board Member Reilly dissented on the ground that membership maintained during the term of a maintenance-of-membership contract is not determinative of the employees' wishes to confer bargaining authorization beyond the term of the contract, because it is impossible to determine whether the maintenance of union membership is dictated by the employees' free choice or by the terms of the contract. To be conclusive of the employees' true desires, Board Member Reilly stated, the employees' original designation must be reaffirmed in some manner following the expiration of the contract.

The Board, however, unanimously sustained the union's majority status where, after being established by a cross-check of membership cards against the employer's pay roll, a majority of the employees continued to have dues checked off pursuant to a maintenance-of-membership contract and where any loss of majority which may have occurred was considered attributable to the respondent's unfair labor practices which continued through the term of the union's contract and following its expiration.<sup>52</sup> But union memberships obtained as a result of a closed-shop contract are insufficient to establish the union's majority status where it does not appear that the union represented a majority at the time of the execution of the closed-shop contract.<sup>53</sup> Nor is the refusal of a majority of the employees to cross a picket line maintained by the union, sufficient to establish the union's majority status where there is no basis for inferring that employees thereby intended to designate the union as their bargaining representative.<sup>54</sup> The employees' designation of a parent organization as their collective

<sup>50</sup> *Matter of A. J. Tower Company*, 60 N. L. R. B. 1414 reversed in 152 F. (2d) 275 (C. C. A. 1). The Board is filing with the United States Supreme Court a petition for certiorari. Board Members Reilly disagreed with the theory of the majority on the ground that the requirement of the Act that a representative be designated by a majority of the employees in an appropriate unit, cannot be supplied by a waiver. He concurred, however, in the Board's finding that the consent election determined that the union represented a majority because in his view, the employee whose vote was challenged after the election was, in fact, an employee at the time when the ballot was cast.

<sup>51</sup> *Matter of Hartford Courant Company*, 64 N. L. R. B. 213.

<sup>52</sup> *Matter of Consumers Lumber and Veneer Company*, 63 N. L. R. B. 17.

<sup>53</sup> *Matter of McGough Bakeries Corporation*, 58 N. L. R. B. 849.

<sup>54</sup> *Matter of McGough Bakeries Corporation*, *supra*; *Matter of Pure Oil Company*, *supra*.

bargaining representative may be counted as valid designations of its affiliate for the purpose of determining the latter's majority status, notwithstanding the fact that the employees did not subsequently sign cards on which the affiliate was designated by name.<sup>55</sup> Nor are signed union authorization cards voided because of representations made by union solicitors to the employee signatories that elections would be held and that they would have an opportunity to vote as they pleased, where the expectation of an election was not unreasonable at that time.<sup>56</sup> But employees who paid dues to a union prior to its affiliation with another labor organization and who failed to pay dues or sign a membership application after affiliation were not counted in determining the majority status of the affiliated union, where it appeared that some employees were opposed to affiliation and that the employees in question, unlike others in a similar category, failed to indicate in any objective manner their adherence to the affiliated union.<sup>57</sup> In another case applicants who had been promised employment as liquor salesmen but had not obtained licenses as required by State law and did not begin to work until after the employer's refusal to bargain with the union, were held not to have employee status for the purpose of determining the union's majority status at the time of the refusal.<sup>58</sup>

In *Matter of Supersweet Feed Company, Inc., et al.*, 62 N. L. R. B. 53, the Board was confronted with the question of whether employees in the military service should be added to the number of employees in the appropriate unit who are working, for the purpose of determining the Union's majority status. Answering in the negative, the Board stated that any other definition of "majority", as used in Section 9 (a) of the Act, would not effectuate the policies of the Act because it "would mean that in no plant where a majority of the employees are in the armed forces could the employees working in the plant compel their employer to bargain with a representative designated by them." The Board, however, pointed out that, when it is demonstrated that employees formerly in military service have returned in sufficient numbers to comprise a substantial percentage of the employees in the unit found appropriate, the Board "will upon proper motion reexamine its determination as to employee representation."

Once a union's majority representative status has been properly established, whether by an election or card check, it may not be impaired because of defections caused by the employer's unfair labor practices even though such defections occur prior to the employer's refusal to bargain.<sup>59</sup>

The Board must also determine whether the unit, in which the union represents a majority of the employees, is appropriate for purposes of collective bargaining before it may hold that an employer has refused to bargain in violation of the Act. The appropriateness of the unit, however, is not an issue where the refusal follows a certification in a representation proceeding, unless the employer offers evidence which is not cumulative and was not available at the time of the

<sup>55</sup> *The Nubone Company, Inc.*, 62 N. L. R. B. 322.

<sup>56</sup> *The Nubone Company, Inc.*, *supra*.

<sup>57</sup> *Matter of Chase National Bank of City of New York, San Juan, Puerto Branch*, 63 N. L. R. B. 656.

<sup>58</sup> *Matter of John S. Doane Company*, 63 N. L. R. B. 1403.

<sup>59</sup> *Matter of A. J. Showalter Company*, 64 N. L. R. B. 573.

representation proceeding.<sup>60</sup> As in the case of majority status, the certification raises a presumption of the continued appropriateness of the unit even with respect to a bona fide lessee or vendee, and this presumption is not rebutted where the evidence shows no substantial changes in the operation of the enterprise.<sup>61</sup> Sometimes the appropriateness of a bargaining unit is established on the basis of the extent of the union's organization or the history of collective bargaining in the plant or in the industry in the area involved.<sup>62</sup> Thus, where employees located in a separate plant of the employer were found by the Board to constitute an appropriate unit on the theory of extent of organization, the employer may not properly refuse to bargain with a union representing a majority of such employees merely because the employees were subsequently moved into the main plant.<sup>63</sup> In another case, the Board found that a closed-shop contract with one union, covering a unit of production and maintenance employees, including machinists, was no defense to a refusal to bargain with another union on behalf of machinists, because the unit covered by the closed-shop contract was inappropriate in view of the history of collective bargaining at the plant and in the industry of the area on a two-unit basis, one covering machinists and the other covering maintenance and production employees, excluding machinists.<sup>64</sup>

After the Board has determined that a union represents a majority of the employees in an appropriate unit, it must then decide whether the employer's conduct constitutes a refusal to bargain. There can be no violation of Section 8 (5) where no employer-employee relationship exists. Thus, the Board has held that where an employer in good faith contracted out the operation of his mines to independent contractors, who hired their own employees to work in the mines, and where the employer neither in practice nor by contract exercised or had the right to exercise sufficient control over the persons employed in the mines or the operations conducted by the independent contractors, the employer did not improperly refuse to bargain with the union for the persons working in the mines because no employer-employee relationship within the meaning of the Act existed.<sup>65</sup> The duty to bargain collectively arises when a proper request to negotiate is made by the union. Where the union, by telegram, informed the employer that his employees had joined the union and had instructed the union's representative to proceed with negotiations, and that a proposed contract was being mailed to the employer, the Board held that such action constituted a claim by the union of majority representation and a proper request for negotiations.<sup>66</sup> Similarly, a statement by a union representative that the employer's workers have seen fit to affiliate with the union and that he would like to discuss recognition and conditions of a contract, constitutes a proper request to bargain within the meaning of Section 8 (5).<sup>67</sup>

The properly designated bargaining agent represents all the employees in the appropriate unit. Thus, an employer violates

<sup>60</sup> *Matter of West Kentucky Coal Company*, 57 N. L. R. B. 17, en'f'd in this respect by the Sixth Circuit Court of Appeals, December 6, 1945; *Matter of Swift & Company*, 62 N. L. R. B. 1360.

<sup>61</sup> *Matter of Syncro Machine Company, Inc.*, 82 N. L. R. B. 985; *Matter of South Carolina Granite Company*, 58 N. L. R. B. 1448, en'f'd in this respect by the Sixth Circuit Court of Appeals, December 10, 1945; see also, *Matter of Graham Ship Repair Company*, 63 N. L. R. B. 842.

<sup>62</sup> For other factors considered by the Board in unit determinations, see the chapter on representation cases in this and previous Annual Reports.

<sup>63</sup> *Matter of Mines Equipment Company*, 62 N. L. R. B. 1460.

<sup>64</sup> *Matter of Graham Ship Repair Company*, *supra*.

<sup>65</sup> *Matter of Mahoning Mining Company*, 61 N. L. R. B. 792.

<sup>66</sup> *Matter of Twin City Milk Producers Association*, 61 N. L. R. B. 69.

<sup>67</sup> *Matter of A. J. Showalter Company*, 64 N. L. R. B. 573.

Section 8 (5) by refusing to bargain with such a union concerning grievances covering the employment relationship of employees in the appropriate unit who are not members of the union.<sup>68</sup> When the employer is aware of the existence of a properly designated bargaining representative, he may not, without first affording the representative an opportunity to bargain collectively, deal directly or individually with the employees, or unilaterally fix the grievance procedure, or unilaterally make changes in the employees' wages, hours, or working conditions or in the grievance procedure established in the collective agreement. In all such cases the Board has held that the employer has refused to bargain collectively in violation of the Act.<sup>69</sup>

Very frequently the problem of whether there has been a refusal to bargain poses the issue of whether the employer, in his dealings with and treatment of the employees' bargaining representative, has endeavored in good faith to reach an understanding on wages, hours, and other conditions of employment. An employer has been held to have bargained in bad faith in violation of the Act where he merely went through the formalities of negotiating with the union; rejected the essential terms of the proposed contract submitted by the union, without offering any counterproposals; and engaged in unfair labor practices during the negotiations.<sup>70</sup> It was also held violative of Section 8 (5) for an employer, during the negotiations, to insist upon reservation of the right unilaterally to change wages and hours and to prohibit union activity on company property outside of working time without a showing that such a broad prohibition was necessary to prevent improper interference with production or plant order.<sup>71</sup>

An employer may not, without violating the Act, condition his willingness to bargain upon proof of the union's majority status only through the conduct of an election, after having engaged in unfair labor practices directed towards destroying the union's prior unchallenged majority representation.<sup>72</sup> The duty to bargain collectively is not evaded by asserting doubts as to the union's majority representation or the appropriateness of the unit when such doubts are not advanced in good faith,<sup>73</sup> by the union's neglect to request negotiations for 3½ months after being certified by the Board,<sup>74</sup> nor because of economic pressure, such as a strike threat, of a rival union.<sup>75</sup> Nor does the duty to bargain collectively cease because of the employer's prospective plans for reconverting to the manufacture of a different line of products, involving greater precision and higher qualifications of skill than many of the employees possess. This is so because in such a case there still exists a considerable area for collective bargaining, both with respect to the period of employment prior to the completion of reconversion and with respect to possible retraining and lay-off problems.<sup>76</sup>

<sup>68</sup> *Matter of U. S. Automatic Corporation*, 57 N. L. R. B. 124.

<sup>69</sup> *Matter of U. S. Automatic Corporation*, *supra*; *Matter of Arundel Corporation*, 59 N. L. R. B. 505; *Matter of Alexander Milburn*, 62 N. L. R. B. 482; *Matter of General Motors Corp.*, 69 N. L. R. B. 1143 en'f'd 150 F. (2d) 201 (C. C. A. 3); *Matter of Twin City Milk Producers Association*, *supra*; cf. *Matter of Ross Gear and Tool Company*, 63 N. L. R. B., 1012, where the Board found that the employer's conduct in unilaterally fixing the grievance procedure violated Section 8 (1) of the Act, there being no allegation in the complaint of a violation of Section 8 (5).

<sup>70</sup> *Matter of Twin City Milk Producers Association*, 61 N. L. R. B. 69.

<sup>71</sup> *Matter of South Carolina Granite Company, et al.*, 58 N. L. R. B. 1448.

<sup>72</sup> *Matter of Twin City Milk Producers Association*, *supra*.

<sup>73</sup> *Matter of John S. Doane Company*, 63 N. L. R. B. 1403; *Matter of Bethlehem Transportation Corporation*, 61 N. L. R. B. 1110.

<sup>74</sup> *Matter of Motor Valve and Manufacturing Company*, 58 N. L. R. B. 1057, en'f'd 149 F. (2d) 247 (C. C. A. 6).

<sup>75</sup> *Matter of National Broadcasting Company, Inc.*, 61 N. L. R. B. 161, en'f'd 150 F. (2d) 895 (C. C. A. 2).

<sup>76</sup> *Matter of Synchro Machine Company, Inc.*, 62 N. L. R. B. 985.

## REMEDIAL ORDERS

Whenever the Board finds that an employer has engaged in any unfair labor practices, it is empowered under Section 10 (c) of the Act to issue an order requiring him "to cease and desist from such unfair labor practices, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of the Act."

Where the Board is of the opinion that the specific unfair labor practices found are persuasively related to the other unfair labor practices proscribed by the Act and that danger of their commission in the future is to be anticipated from the employer's conduct in the past, the Board, in order to effectuate the policies of the Act, will order the employer to cease and desist from in any manner infringing upon the rights guaranteed in Section 7 of the Act; otherwise, the Board merely orders the employer to cease and desist from the unfair labor practices found and from any like or related act or conduct interfering with the exercise of the rights guaranteed in Section 7 of the Act.<sup>77</sup>

Orders directing employers to take affirmative action are adapted to the situation which calls for redress and are designed to effectuate the policies of the Act. These normally take the form of a disestablishment order in the case of a union found to have been employer dominated and supported, a reinstatement order with reimbursement for loss of pay in the case of a discriminatorily discharged or laid-off employee, an order to bargain upon request of the union involved in the case of a refusal to bargain, and in all cases by posting notices advising the employees that the employer will not engage in the conduct from which he is ordered to cease and desist and that he will take the specific affirmative action set forth in the notice.

The Board may vary, or add to, these affirmative orders when necessary to meet the facts of a particular case. Thus, in two cases<sup>78</sup> decided during the past fiscal year, the employer had executed a closed-shop contract with a dominated organization and, despite the absence of a check-off arrangement, the employer effectively enforced the closed-shop provision and required the employees to pay union dues as a condition of employment. Under these circumstances, the Board directed, in addition to the usual disestablishment order, that the employer reimburse the employees for dues payments made to the dominated organization pursuant to the illegal closed-shop contracts. In two other cases,<sup>79</sup> however, where the employer executed with an illegally assisted labor organization a maintenance-of-membership contract, without a check-off arrangement, it appeared that the employer did not in any manner coerce membership in or payment of dues to the assisted organization. Under these circumstances, the Board did not order reimbursement of dues but merely directed the employer to cease giving effect to the illegal contract unless and until the union should be certified by the Board as the proper bargaining agency. Where the employer's conduct with respect to a labor organization falls short of a violation of Section 8 (2) but nevertheless constitutes interference, restraint, or coercion within the meaning of Section 8 (1), the employer is directed to withdraw or withhold recog-

<sup>77</sup> *Matter of Alabama Fuel and Iron Company*, 62 N. L. R. B. 99; *Matter of Portland Lumber Mills*, 64 N. L. R. B. 159.

<sup>78</sup> *Matter of McGough Bakeries*, 58 N. L. R. B. 849; *Matter of Supersweet Feed Company*, 62 N. L. R. B. 53.

<sup>79</sup> *Matter of Remington Arms Company, Inc.*, 62 N. L. R. B. 611; *Matter of Ken-Rad Tube and Lamp Corporation*, 62 N. L. R. B. 21.

nition of the organization as the collective bargaining representative of the employees unless and until it shall be certified as such representative by the Board.<sup>80</sup>

The Board is not prevented from ordering the reinstatement of discriminatorily discharged employees because of War Manpower Commission regulations,<sup>81</sup> which make exceptions in the case of reinstatement pursuant to a Board order or informal settlement, or because the employees have not exhausted remedies under the grievance procedure provided in a valid contract between the union and the employer.<sup>82</sup> In the exercise of its discretion, the Board has ordered the reinstatement of discriminatorily discharged employees who have engaged in certain acts of misconduct, which was not the basis for the discharge nor the employer's refusal to reinstate them.<sup>83</sup> But where discriminatorily discharged employees testified at the hearing before the Board that they would not accept reinstatement unless the employer recognized their union, the Board treated such employees as strikers, and required them to apply for work as a condition precedent to reinstatement and tolled the running of back pay from the date of their testimony to the date of application for work.<sup>84</sup>

Reinstatement is not always granted to a discriminatorily discharged employee. Thus, when employees refused to accept an offer of reinstatement without back pay, made pursuant to a settlement agreement between the union and the employer, the Board did not require the employer, to renew his offer of reinstatement even though he engaged in unfair labor practices subsequent to the settlement agreement.<sup>85</sup> Similarly, a bona fide lessee was not required to reinstate employees discriminatorily discharged by the lessor.<sup>86</sup> Nor was reinstatement directed where, because of the completion of work upon war contracts, the employer discontinued the operations performed by the discriminatees.<sup>87</sup> Where, however, the employer's plant is not in operation because of the seasonal nature of the work, the offer of reinstatement becomes effective at such time as the employer's seasonal business next begins.<sup>88</sup>

The purpose of a back-pay order is to make an employee whole for any loss of pay he may have suffered by reason of the employer's discrimination against him, by payment to him of a sum of money equal to the amount which he normally would have earned as wages during the period from the date of the employer's discrimination against him to the date of the offer of employment, less his net earnings during such period. A Christmas bonus, which the employer withheld because his employees had selected a union as their bargaining representative, constituted wages for which the employees are to be made whole;<sup>89</sup> while unemployment compensation, received by a discriminatorily discharged employee, did not constitute earnings to be deducted from the sum otherwise due him.<sup>90</sup> In *Matter of May*

<sup>80</sup> See cases cited in footnote 16, *supra*.

<sup>81</sup> *Matter of Litchfield Manufacturing Company*, 63 N. L. R. B. 545.

<sup>82</sup> *Matter of Kinner Motors, Inc.*, 59 N. L. R. B. 905.

<sup>83</sup> *Matter of Kinner Motors, Inc.*, *supra*; *Matter of Vail Manufacturing Company*, 61 N. L. R. B. 181.

<sup>84</sup> *Matter of McGough Bakeries*, 58 N. L. R. B. 849.

<sup>85</sup> *Matter of The General Fireproofing Co.*, 59 N. L. R. B. 375. The Board, however, awarded back pay to such employees from the date of the discrimination against them to the date of the offer of reinstatement pursuant to the settlement agreement.

<sup>86</sup> *Matter of South Carolina Granite Company*, 58 N. L. R. B. 1448.

<sup>87</sup> *Matter of American Needlecrafts, Inc.*, 59 N. L. R. B. 1384.

<sup>88</sup> *Matter of United Growers, Inc.*, 59 N. L. R. B. 549; *Matter of John W. Campbell*, 58 N. L. R. B. 1153.

<sup>89</sup> *Matter of Irving L. Young d/b/a Young Engineering Company*, 57 N. L. R. B. 1221, *en'd* from the bench by the Seventh Circuit Court of Appeals, May 4, 1945.

<sup>90</sup> *Matter of Rockwood Stone Works*, 63 N. L. R. B. 1297.

*Department Stores Company d/b/a Famous Barr Co.*, 59 N. L. R. B. 976, the Board ordered an employer, who had discriminatorily caused a manufacturing firm to discharge a demonstrator in his store, to make the demonstrator whole for loss of earnings and to notify the manufacturing firm that the employer withdrew disapproval of the demonstrator's employment in his store. In another case the Board held that discriminatorily discharged employees who accepted an offer of reinstatement without back pay, which the employer made pursuant to a settlement agreement with the union, are entitled to back pay from the date of discharge to the date of such offer where the employer engaged in unfair labor practices subsequent to the settlement agreement.<sup>91</sup>

During the past fiscal year, a majority of the Board has reaffirmed its prior practice of ordering full back pay to employees who are discharged for refusing to accept a discriminatory transfer.<sup>92</sup> Board Member Reilly, dissenting, has also adhered to his previous position of not awarding back pay under these circumstances. In no case, however, are discriminatorily discharged employees entitled to any monies which they normally would not have earned irrespective of the discrimination against them. For example, no back pay is awarded for a period during which the dischargee was unable to work because of a confining illness,<sup>93</sup> or for the period of a strike which occurred after the discharge and which was not alleged to have been caused by unfair labor practices.<sup>94</sup> In all cases, the running of back pay will be tolled by an adequate offer of reinstatement.<sup>95</sup>

A bargaining order is the normal remedy for a violation of Section 8 (5) of the Act. The Board has held that the policies of the Act will best be effectuated by directing an employer to bargain with the union, upon request, even though the union may have lost its majority status subsequent to the employer's refusal to bargain.<sup>96</sup>

In some cases the Board has found it necessary, in order to effectuate the policies of the Act, to direct an employer to send written notices, stating that the employer will not engage in the conduct from which he was ordered to cease and desist, to employees in the armed services or to his foremen and individual employees.<sup>97</sup> Such orders have been issued in those cases because the unfair labor practices were accomplished, at least in part, by means of written notices to the employees in the armed services or by the foreman's bargaining with his subordinates individually in derogation of the certified representative. In another case the employer was ordered to post notices, in part advising his employees that an attorney who, on his own behalf, sponsored an organization found to be company dominated, does not represent the management, where some employees had reason to and did believe him to be a management representative.<sup>98</sup>

As in previous fiscal years, the Board has occasionally entered a precautionary order to prevent further unfair labor practices. For example, in *Matter of South Carolina Granite Company*, 58 N. L. R. B. 1448, the employer was ordered not to discriminate against certain

<sup>91</sup> *Matter of General Fireproofing Company*, 59 N. L. R. B. 375.

<sup>92</sup> *Matter of Theodore R. Schmidt d/b/a Acme Industrial Police*, 58 N. L. R. B. 1342.

<sup>93</sup> *Matter of W. W. Rosebraugh Co.*, 60 N. L. R. B. 787.

<sup>94</sup> *Matter of Federal Engineering Company*, 60 N. L. R. B. 592.

<sup>95</sup> *Matter of Morris Harris, et al. d/b/a Union Manufacturing Company*, 60 N. L. R. B. 254.

<sup>96</sup> *Matter of Inter-City Advertising Company, Inc.*, 61 N. L. R. B. 1377.

<sup>97</sup> *Matter of Sharde Brothers Machine Company*, 60 N. L. R. B. 533; *Matter of U. S. Automatic Corporation*, 57 N. L. R. B. 124.

<sup>98</sup> *Matter of Thompson Products Company*, 57 N. L. R. B. 925.



employees discriminatorily discharged by his predecessor if such employees should apply for reinstatement, in view of the fact that the employer retained the predecessor's supervisory personnel and also engaged in other unfair labor practices.

During the past fiscal year the Board has again had occasion to determine whether certain persons who engaged in conduct, defined in the Act as unfair labor practices, were employers within the meaning of Section 2 (2) of the Act. Such determinations are necessary because remedial orders may be directed only against employers. Among those found by the Board to have acted in the interest of the employer in such manner as to constitute them employers within the meaning of the Act, also, were a Labor Relations Institute, a caretaker of citrus groves, a farmer and citrus fruit buyer, and a practicing attorney.<sup>90</sup>

### THE LIMITATION ON THE APPROPRIATION

The limitation imposed on the use of the Board's funds for the fiscal year 1945 by an amendment to the Labor-Federal Security Appropriations Act of 1945 reads as follows:<sup>1</sup>

No part of the funds appropriated in this title shall be used in any way in connection with a complaint case arising over an agreement, or a renewal thereof, between management and labor which has been in existence for three months or longer without complaint being filed by an employee or employees of such plant: *Provided*, That, hereafter, notice of such agreement, or renewal thereof shall have been posted in the plant affected for said period of three months, said notice containing information as to the location at an accessible place of such agreement where said agreement shall be open for inspection by an interested person: *Provided further*, That these limitations shall not apply to agreements with labor organizations formed in violation of Section 158, paragraph 2, title 29, United States Code [Sec. 8 (2) of the N. L. R. A.]

The limitation differs from that imposed in the 1944 fiscal year in the following respects: (1) Whereas the previous limitation applied to company-dominated union cases, the present limitation leaves the Board free to proceed in all such cases; (2) under the 1945 amendment, in contrast to the 1944 limitation, the renewal of an agreement, even though by virtue of the operation of an automatic renewal clause, starts anew the running of the 3-month period during which a charge attacking the agreement may be filed; and (3) while the old amendment did not specify by whom a charge must be filed, the 1945 limitation states that it is to be filed by "an employee or employees" of the plant covered by the agreement in question.

As in past fiscal years, wherever doubt has arisen as to the effect of the limitation upon a particular kind of case or as to the meaning or interpretation of any part of the limitation, the Board has submitted the question to the Comptroller General, the public official charged with the responsibility of determining issues pertaining to the expenditure of public funds. On three occasions during the fiscal year 1945, the Board obtained opinions from the Comptroller General on important questions relating to the applicability of the limitation.<sup>2</sup> Thus, the Comptroller General has ruled that an oral agreement or an oral renewed agreement is not covered by the limitation; that the limitation excludes from its restrictive provisions all organizations

<sup>90</sup> *Matter of National Lime and Stone Company and Labor Relations Institute*, 62 N. L. R. B. 282; *Matter of Consumers Lumber and Veneer Company, et al.*, 63 N. L. R. B. 17.

<sup>1</sup> The same limitation is in effect during the new fiscal year (1946).

<sup>2</sup> B-43670, dated August 24, 1944; B-44156, dated October 14, 1944; and B-47778, dated March 14, 1945.

which would ordinarily be considered as unlawful under Section 8 (2) of the Act, regardless of their date of origin; that the clause in the limitation "without complaint being filed by an employee or employees of such plant" permits an employee to delegate to a union, acting through a nonemployee representative, the right to file a charge with the Board; and that the posting provision, except that relating to the renewal of an agreement, operates retroactively and refers to July 1, 1943, the enactment date of the limitation for the fiscal year 1944.

In a few cases arising during the past fiscal year the Board has had occasion to note the reason for the inapplicability of the limitation. Thus, following the ruling of the Comptroller General,<sup>3</sup> the Board pointed out that the limitation did not apply to the facts in the case of *Matter of Briggs Manufacturing Company*, 58 N. L. R. B. 72, because the agreement involved in that case was either an oral agreement or an oral renewal of a prior expired written agreement. In *Matter of The Arundel Corporation*, 59 N. L. R. B. 505, the Board held that the limitation did not preclude it from proceeding on a refusal to bargain charge, filed by the certified representative of the ship repair yard employees of an employer who had executed with a rival labor organization contracts covering certain of his operations, notwithstanding the occasional temporary transfer of employees of the ship repair yard to other operations covered by the contracts. In arriving at this conclusion, the Board pointed out that the contracting parties did not intend to include the ship repair yard within the coverage of the contracts and that they had not subsequently applied the terms of the contract to the ship repair yard nor executed a specific contract covering the yard. The Board further noted that the employer might enter into a contract with the certified representative covering the ship repair yard, which would not conflict with the terms of the existing contracts even if the existing contracts covered the ship repair yard employees when they were working at other operations.

The posting of notices by an employer, which did "not mention the location at an accessible place of such agreement where said agreement shall be open for inspection by any interested person," as required by the limitation, does not constitute compliance with the posting requirement of the limitation.<sup>4</sup> Nor does the distribution of copies of the agreement to the employees give them actual notice of the agreement, where it appears that not every employee received copies during any 3-month period prior to the filing of any charge.<sup>5</sup>

The Board has endeavored to give full effect to the Congressional purposes in enacting the limitation. For example, when passage of the less restrictive limitation for fiscal year 1945 permitted the Board to proceed with a case which the previous limitation had barred, the Board, in the exercise of its discretion, abated, for the period during which the limitation for fiscal year 1944 was in effect, back pay to discriminatorily discharged employees and reimbursement of dues and assessments checked off pursuant to the terms of an unlawful closed-shop contract.<sup>6</sup>

<sup>3</sup> B-43670, dated August 24, 1944.

<sup>4</sup> *Matter of Ken-Rad Tube and Lamp Corporation*, 62 N. L. R. B. 21.

<sup>5</sup> *Ibid.*

<sup>6</sup> *Matter of S. H. Camp and Company*, 61 N. L. R. B. 432.

# V

## LITIGATION

**T**HE preponderant part of the Board's court litigation continues to be proceedings in the United States Circuit Courts of Appeals for the enforcement or review of Board orders issued upon findings of unfair labor practices. Several of the Circuit Courts of Appeals decisions have been reviewed by the Supreme Court. A number of proceedings were instituted by the Board in Circuit Courts of Appeals in aid of compliance with decrees enforcing the Board's orders. In some instances the Board requested adjudication of employers in contempt for noncompliance with decrees and in others, the Board asked for a remand of the case for computation of amounts of back pay due discharged employees under Board orders enforced by court decree. Also constituting a part of the Board's litigation were, as in the past, actions by various unions or employers in the District Courts to enjoin or to review, through channels other than those prescribed by the statute, conduct of the Board or its agents in administering the statute, and proceedings by the Board to enforce its subpoenas.

During the fiscal year 1945 the Circuit Courts of Appeals reviewed 66 Board orders, while the Supreme Court decided 6 cases which arose under the Act. The results of the Board's litigation during the past year, and during the 10-year period of its entire existence, are summarized in the following table:

**Table 7.—Results of litigation for enforcement or review of Board orders, July 1, 1944, to June 30, 1945, and July 5, 1935, to June 30, 1945**

Results	July 1, 1944, to June 30, 1945		July 5, 1935, to June 30, 1945	
	Number	Percent	Number	Percent
Cases decided by U. S. Circuit Courts of Appeals.....	66	100.0	594	100.0
Board orders enforced in full.....	41	62.2	346	58.2
Board orders enforced with modification.....	17	25.7	167	28.1
Board orders set aside.....	6	9.1	73	12.4
Remanded to Board.....	2	3.0	8	1.3
Cases decided by U. S. Supreme Court.....	6	100.0	52	100.0
Board orders enforced in full.....	5	83.3	40	76.9
Board orders enforced with modification.....			8	15.4
Board orders set aside.....			2	3.9
Remanded to Board.....			1	1.9
Board's request for remand or modification of enforced order, denied.....	1	16.7	1	1.9

The proceedings for enforcement or review of the Board's orders instituted in the Circuit Courts of Appeals, have, for the most part, been concerned with the questions of whether the Board's findings of unfair labor practices are supported by substantial evidence and whether the Board's order represents a valid exercise of its powers

to direct such affirmative action as will effectuate the policies of the Act. In reviewing Board findings, the propriety of Board orders, and other Board action involving the administration of the Act, the courts have continued to apply the standards discussed in the Ninth Annual Report (pp. 51-52).

During the 10 years of the Act's existence, many issues arising under it have by now been settled. Important questions, however, still arise each year for judicial disposition. These are either novel points, hitherto undecided, or questions involving the interpretation or extension of established principles. This report is devoted to a consideration of the cases dealing with these types of important issues.

### THE SUPREME COURT

During the past fiscal year the Supreme Court decided six cases which arose under the National Labor Relations Act. Each of the cases presented a novel problem respecting the interpretation or administration of the Act. Three of the cases were taken to the Supreme Court by employers who complained of orders which had been entered against them by the Board in unfair labor practice proceedings and had been enforced by the Circuit Courts of Appeals (*Wallace Corp. v. N. L. R. B.*, 323 U. S. 248; *Republic Aviation Corp. v. N. L. R. B.*, 324 U. S. 793; *Regal Knitwear Co. v. N. L. R. B.*, 324 U. S. 9). One case was taken to the Supreme Court by the Board when a Circuit Court of Appeals refused to enforce an order the Board had entered against an employer (*N. L. R. B. v. LeTourneau Co.*, 324 U. S. 793). Two others were taken to the Supreme Court by unions, in one instance complaining of the procedure followed by the Board in a representation proceeding which resulted in the certification of a rival union (*Inland Empire District Council, et al. v. Millis*, 65 S. Ct. 1316) and in the other instance complaining of the refusal of a Circuit Court of Appeals to remand to the Board a portion of the case in which it had theretofore entered a decree enforcing an order of the Board (*International Union of Mine, Mill and Smelter Workers, etc. v. Eagle-Picher Mining and Smelting Co. v. N. L. R. B.*, 325 U. S. 335). The significance of these cases will appear from the following summary of the issues, the decision, and the rationale of each:

*Wallace Corp. v. N. L. R. B.*, 323 U. S. 248, decided December 18, 1944. In this case the Court upheld the Board's determination that a closed-shop contract made with a company-dominated union was invalid and that discharges made pursuant to the contract violated Section 8 (3) of the Act. The Court sustained the Board's order requiring reinstatement with back pay of the employees discharged pursuant to the contract. The manner in which the case arose necessitated the Court's ruling on two other questions of first impression: whether the Board could properly find that a union was company dominated although the Board had theretofore participated in an agreement settling charges of company domination and held an election with the company-dominated union on the ballot; and whether an employer could properly enter into a closed-shop contract when he knew that the contracting union intended to refuse to admit to membership employees who previously belonged to a rival union and thereby to bring about their discharge.

On the first question, the Court ruled that the judicial concept of estoppel cannot be applied so as to make the Board powerless to carry out the policies of the Act.<sup>1</sup> Applying the principle to the *Wallace* case the Court held that, in view of the recurrence of unfair practices, the Board was justified in disestablishing the plant union involved, notwithstanding the fact that the acts of company domination on which the Board relied antedated the settlement agreement which had resulted in the certification of the union. Approving generally the Board's resort to settlements in the discharge of its duties under the Act, the Court specifically sanctioned the Board's practice of going behind a settlement where the settlement agreement failed to have the intended effects and where unfair labor practices recur.

On the second question, the Court held that while the Act sanctions closed-shop contracts, the employer could not, in cooperation with the union, utilize such a contract to penalize groups of its employees because of prior union membership without violating the provisions of the Act which guarantee the right of self-organization and prohibit discrimination on account of the exercise of that right. Any other construction of the Act, the Court held, would open the door to circumvention. The Court also pointed out that the employer was not compelled by law to enter into a contract which, as it knew, would inevitably result in discriminatory discharges.

This is the first case under the Wagner Act which presented the Court with an opportunity to define the responsibilities of a collective bargaining agent toward minority groups in the unit which under the prevailing principle of majority rule<sup>2</sup> it has exclusive power to represent. The Court laid down these principles: A collective bargaining representative selected by a majority of the employees in a unit is the agent of all employees and must represent their interests impartially and without discrimination; this duty is violated where the bargaining agent enters into a closed-shop contract with the employer with the declared intention of denying membership to the former adherents of a rival union in order to obtain their discharge by the employer. The Court's declaration in the *Wallace* case concerning the obligations of a bargaining agent must be compared with its similar holdings in the companion cases of *Steele v. L. & N. R. Co.*, 323 U. S. 192, and *Tunstall v. Brotherhood*, 323 U. S. 210. These cases, decided contemporaneously with the *Wallace* case, involved discrimination by railway labor organizations against employees of the Negro race. The three cases, the Court subsequently stated (*Hunt v. Grumbach*, 65 S. Ct. 1545), "stand for the principle that a bargaining agent owes a duty not to discriminate unfairly against any of the group it purports to represent."

*Republic Aviation Corp. v. N. L. R. B.*, 324 U. S. 793, and *N. L. R. B. v. LeTourneau Co.*, 324 U. S. 793, decided April 23, 1945. In these companion cases the Court upheld the Board's determination that rules generally prohibiting solicitation for any cause or distribution of literature on company property by employees when applied to prohibit solicitation of union memberships or distribution of union literature by employees on their own time unlawfully interfered with the employees' rights under the Act, although, admittedly, the promulga-

<sup>1</sup> Cf. the Circuit Courts of Appeals cases discussed at pp. 60-61 of the Board's Ninth Annual Report.

<sup>2</sup> Cf. the discussion in the Board's Ninth Annual Report (pp. 53-54) of the Supreme Court rulings in *J. I. Case Co. v. N. L. R. B.*, 321 U. S. 322, and *Medo Photo Supply Corp. v. N. L. R. B.*, 321 U. S. 678.

tion of the respective rules had not been motivated by hostility to employee-organization.

The Court held that the Board could properly treat such rules as an unreasonable interference with the employees' right to self-organization unless the employer introduced proof that special circumstances prevailing in his plant made such rules indispensable to the maintenance of production and discipline. Rejecting the employer's contentions that the Board must establish by evidence that such rules do interfere with self-organization, the Court held that the Board might determine the effect of such rules in the light of its general familiarity with relevant conditions in industry. In approving the Board's establishment of a rebuttable presumption that absent special circumstances such rules are unnecessary to plant discipline, the Court pointed out that the presumption was the product of the Board's previous consideration of similar rules and of its appraisal of normal conditions in industrial establishments. The Court also sustained the Board's conclusion in the *Republic* case that the wearing of steward buttons of a union not yet established as the exclusive representative of the employees is no indication of recognition on the part of the employer and, therefore, may not be prohibited.

The Court also sustained the Board's orders in these two cases which required reinstatement with back pay of the employees discharged for violation of the rules and for wearing steward buttons in the plant. The Court expressly held that discharges for violation of invalid rules were discriminatory within the meaning of Section 8 (3) of the Act even though the employer had not discriminated in its application of the rules but had impartially enforced the rules against all violators.

*Regal Knitwear Co. v. N. L. R. B.*, 324 U. S. 9, decided January 29, 1945. In this case the Supreme Court approved the Board's practice of wording its orders so that its directions run not only to the employer who has been guilty of unfair labor practices but also to that employer's "successors and assigns." The record in the *Regal* case failed to show that the employer had any intention of going out of business or otherwise assigning or changing the ownership of his business. The Court pointed out that courts of equity and other administrative agencies have frequently directed injunctive orders not only to the defendants but also to their successors and assigns. The Court found it unnecessary to determine the extent of the effect of such words to create liability in a successor or assign who would not otherwise be liable. The Court indicated that an employer who is subject to an order of the Board may, in anticipation of a transfer of his business, apply to the enforcing court for a clarification of its decree in order to define the position of the parties to the transfer.

*Inland Empire District Council, et al v. Millis*, 65 S. Ct. 1316, decided June 11, 1945. In this case a labor organization applied to a district court for review of the Board's certification of a competing union. The union claimed it had been injured because the Board held the election before it gave the union an opportunity at a formal hearing to introduce evidence respecting its unit and eligibility contentions. The Court held that the nonadversary investigation provided by Section 9 (c) is not technical and that the Board is given great latitude concerning procedural details; that while a hearing is mandatory there is no fixed stage in the investigation at which it must

take place, either under the Act or as a matter of due process; that if the Board in its discretion holds an election the hearing need not precede the election which is but an intermediate step in the investigation with certification as the conclusive act. In view of the Court's conclusion that the Board had not acted unlawfully, the Court stated that there was no occasion to decide whether the District Courts of the United States could entertain suits to review Board certifications. In this respect the Court followed its previous decision in *American Federation of Labor v. N. L. R. B.*, 308 U. S. 401, that it will determine this issue only upon a showing of loss suffered by the complaining party because of unlawful action by the Board.

*International Union of Mine, Mill and Smelter Workers, etc. v. Eagle-Picher Mining and Smelting Co. and N. L. R. B.*, 325 U. S. 335, decided May 28, 1945. The Court here had before it the question whether a circuit court of appeals properly refused to remand a case to the Board in order to correct a formula for determining back pay, where the mistake in the formula was not discovered until the term at which the circuit court had entered its decree enforcing the back-pay order had expired. In sustaining the refusal of the enforcing court to vacate its decree and to remand to the Board, the Court leaned heavily on the doctrine that there must be an end to litigation regardless of whether or not one of the parties is an administrative body. The Court indicated that the cease and desist provisions of the decree could not validly be differentiated from the remedial provisions; hence the Board was not as a matter of right entitled to have the latter part remanded to it for reconsideration. While recognizing that the Board in its discretion may formulate its order so as to be subject to modification in the event of changed conditions, the Court held that under the terms of the Act the jurisdiction of the Board finally terminates upon the Board's petition for enforcement by the proper court. The Court concluded that where the term at which the enforcement decree was entered had expired the Board could obtain the reopening of the decree only if the prerequisites for a bill of review were present; *i. e.*, newly discovered facts, or fraud.

### THE CIRCUIT COURTS OF APPEALS

#### Principles Established or Reaffirmed on Enforcement or Review of Board Orders Under Section 10 of the Act

##### 1. Types of business enterprise held subject to the Act

A charitable hospital which derives substantial revenue from the sale of medical services, as well as from the sale of supplies purchased from commercial enterprises, was held subject to the Act. *N. L. R. B. v. Central Dispensary and Emergency Hospital*, 145 F. (2d) 852 (App. D. C.), certiorari denied 324 U. S. 847.

Sustaining the Board's jurisdiction, the court pointed out that the sale of medical and hospital services for a fee, even though carried on by a charitable institution, constitutes trade and commerce within the meaning of the Act. The court, holding that there is no public policy which would justify the denial of the benefits of the Act to non-professional hospital employees, approved similar conclusions of the State Courts of Minnesota and Wisconsin in the interpretation of the labor relations acts of their respective States and disagreed with the contrary reasoning of the Pennsylvania State Court.

**2. Classes of business enterprise whose unfair labor practices the Board may properly find tend to burden and obstruct commerce**

(a) A manufacturer who furnishes packers with ice and with packing facilities for the refrigeration of vegetables and of the railroad cars in which the produce is shipped across State lines was held subject to the Act. *N. L. R. B. v. Holtville Ice and Cold Storage Co., et al.*, 148 F. (2d) 168 (C. C. A. 9). The court sustained the Board's jurisdiction over the ice company since manifestly any labor dispute resulting in stoppage of the company's operations would disrupt the interstate shipment of the perishable produce.

(b) A cooperative marketing association which processes and packs fruit of member growers for sale in interstate commerce by an individual company was held subject to the Act, although the association itself was not directly engaged in interstate commerce. *N. L. R. B. v. Edinburg Citrus Association*, 147 F. (2d) 353 (C. C. A. 5). In upholding the jurisdiction of the Board, the court recognized that labor disputes causing a disruption of the association's business would materially affect interstate commerce since the association disposes of its produce and secures its packing materials through intermediaries who trade across State lines.

**3. Classes of persons whom the Board may properly find to have committed, and may properly enjoin from committing, unfair labor practices as employers**

(a) An independent contractor to whom an employer had transferred certain operations for the purpose of coercing employees to join one of two competing labor organizations was held to be an employer within the meaning of the Act and, therefore, properly subject to the Board's order. *N. L. R. B. v. Gluek Brewing Co., et al.*, 144 F. (2d) 847 (C. C. A. 8).

The court sustained the Board's finding that the independent contractor and the employer-transferor were employers within the meaning of the Act and upheld the Board's order directed against both entities on a showing that the contractor was aware of the unfair labor practices sought to be accomplished by the transfer of the operations and the employer-transferor retained substantial control over the work, working conditions, and tenure of the employees who performed the operations of the contractor. The court held that the intrastate nature of the contractor's operations was immaterial to the question of the Board's jurisdiction over the contractor, as the evidence showed that he had consciously aided the real employer, whose activities were plainly subject to the Act, in the perpetration of unfair labor practices. Effective administration of the Act, the court pointed out, required that the employer and his agent be held jointly responsible for the unfair labor practices and for the remedial action designed to dissipate their effect. Compare *N. L. R. B. v. American Pearl Button Co.*, 149 F. (2d) 311 (C. C. A. 8), where the court, refusing to uphold the Board's finding that a civic organization had acted in the interest of an employer within the meaning of the Act, considered as material the fact that the organization had no control over the employees involved or over the employer's business.

(b) A farmers' association and its secretary, who cooperated with an association member in dissuading employees from joining a nationally organized union and in bringing about the formation of an un-



affiliated inside union, were held to be employers within the purview of the Act and, therefore, within the Board's remedial jurisdiction. *N. L. R. B. v. Holtville Ice Co., et al.*, 148 F. (2d) 168 (C. C. A. 9).

The court, sustaining the Board's finding that the association and its secretary had acted in the interest of the immediate employer, approved the order in which the Board enjoined the association and its officials from impeding the free selection of bargaining representatives by the employees of the immediate employer or any other employer, and from "in any other manner" interfering with the rights guaranteed employees by the Act. The order specifically prohibited the collection by the association of funds from the employer involved, as well as from any other employer, for the purpose of interfering with the statutory rights of their employees. In enforcing the order in full, the court recognized the comprehensive powers of the Board in shaping its remedies so as to prevent unfair labor practices at their source.

#### **4. Classes of persons whom the Board may properly find to be entitled to, or excluded from, the benefits of the Act**

(a) The Board's finding that persons who are employed at a packing plant in the preparation of fruit for shipment in commerce are employees within the meaning of the Act, and not "agricultural laborers," exempt from the protection of the Act, was upheld by the court in *N. L. R. B. v. Edinburg Citrus Association*, 147 F. (2d) 353 (C. C. A. 5). The determining factor in the question of coverage, the court observed, is not whether the workers handle agricultural products, but whether work done by them is performed directly in connection with the gathering of the agricultural products in the orchard or is performed in connection with the preparation of the product for commercial markets after it has left the orchard. By this test, the court held, the employees here involved were engaged in commercial, rather than agricultural, operations.

(b) The Board's finding that the clause which excludes from the benefits of the Act "any individual employed by his parent or spouse" is applicable to an individual employed by a partnership composed of his parent and others, was approved by the court in *N. L. R. B. v. O. U. Hofmann et al.*, 147 F. (2d) 679 (C. C. A. 3). The court observed that the propriety of the Board's interpretation turned upon the question whether the reasons for the exemption were present where the parent did not have sole and complete control over the employment relationship. The determination of this question, the court held, is peculiarly one which must be left to the expert judgment of the Board. Only if the Board's resolution of the question had been clearly wrong in law or in fact could it have been set aside, the court concluded.

#### **5. Circumstances under which the Board may properly find that the employer's expressions of opinion are coercive and hence not protected by the free-speech amendment**

In reviewing the Board's findings as to the legal effect of an employer's utterances to his employees, the courts have adhered to the principle, previously enunciated,<sup>3</sup> that the free speech guaranty does not protect statements which, standing alone or in their context, are coercive in nature. The courts have, however, failed to follow a uniform rule of review where the Board has found the statements

<sup>3</sup> See Eighth Annual Report, p. 66; Ninth Annual Report, p. 58.

of an employer to be of a coercive character, rather than a mere expression of opinion. In *N. L. R. B. v. Laister-Kauffmann Aircraft Corp.*, 144 F. (2d) 9 (C. C. A. 8), the court sustained the Board's finding that certain utterances of an employer were coercive and, hence, not constitutionally privileged. In so doing, the court pointed out that it is for the Board, and not the courts, to determine whether a given statement, viewed in the light of other circumstances, exceeds the employer's constitutional privilege and that, if there is sufficient evidence to support the Board's finding, it will not be overturned on review. Similarly, in *Peter J. Schweitzer, Inc. v. N. L. R. B.*, 144 F. (2d) 520, the Court of Appeals for the District of Columbia sustained the Board's finding that the utterances of an employer were coercive and, therefore, not constitutionally privileged. The court held that there was substantial evidence to support the Board's finding that the employer had exceeded the bounds of lawful persuasion by intimating to his employees that the possible price of self-organization would be a loss of valuable conditions of employment.

On the other hand, the Circuit Court of Appeals for the Eighth Circuit in two other cases held that the question of whether an employer's statements are coercive is one of law to be determined by the courts upon a reexamination and reevaluation of the evidence. *N. L. R. B. v. J. L. Brandeis & Sons*, 145 F. (2d) 556; *N. L. R. B. v. American Pearl Button Co., et al.*, 149 F. (2d) 311. In both cases the court, applying this principle of review, disagreed with the Board's finding and independently concluded that the utterances were protected by the constitutional privilege of free speech. Similarly, the Circuit Court of Appeals for the Fifth Circuit disregarded the Board's judgment, that certain statements were not merely informative but actually tended to coerce the employees, and independently held that the utterances did not assume the stature of coercion. *Big Lake Oil Co. v. N. L. R. B.*, 146 F. (2d) 967.

#### 6. The employer's duty to bargain collectively as to grievances

In *Hughes Tool Company v. N. L. R. B.*, 147 F. (2d) 69 (C. C. A. 5), the court had before it the novel and important question of the validity of the Board's interpretation of the proviso to Section 9 (a) of the Act permitting any individual employee or group of employees to "present grievances" to their employer at any time. Specifically, the issues presented for review were whether the Board had properly found that each of the following employer practices constituted a violation of Section 8 (5) of the Act, where an exclusive representative had been designated to bargain for an appropriate unit: (1) adjustment of grievances through a minority union negotiating on behalf of its members; (2) disposition of grievances through direct negotiation with individual employees without affording the exclusive representative opportunity to participate. A related question was whether the duty to bargain collectively precludes an employer from checking off dues for members of a minority union without the consent of the exclusive bargaining agent.

The Board based its findings upon the observation that grievances normally involve questions affecting all members of the bargaining unit and that they, therefore, are properly the subject of collective bargaining. The Board consequently concluded that the bargaining

mandate of the Act requires that the bargaining agent be permitted to negotiate for the adjustment of all grievances.

The Board interpreted the proviso to Section 9 (a) as follows: Grievances may not be presented or adjusted by minority unions. Individual employees or groups of employees may appear in behalf of themselves at every stage of the grievance procedure, but the exclusive representative is entitled to be present and negotiate at each such stage concerning the disposition to be made of the grievance. Where, however, the exclusive representative refuses to participate in the adjustment of the grievance, the employer may deal with the aggrieved employee alone.

The court sustained the Board's finding of refusal to bargain but disagreed with the Board's view that all grievances do in fact present issues properly within the scope of the collective bargaining process. Stating that some grievances may be concerned only with "some question of fact or conduct peculiar to the employee," the court held that the Act permitted the employer in such cases to make an adjustment directly with the employee without permitting the bargaining representative to participate. The court added, however, that, even where the employer believes the grievance to be of this special personal character, he must notify the exclusive representative of the pendency of the grievance hearing so as to afford the representative an opportunity to protect the bargaining rights of the employees within the unit by ascertaining whether the grievance is in fact one of a personal character or whether it is properly the subject of collective bargaining. The court agreed with the Board that a minority union has no place in any of these procedures.

As for the related question of the check-off, the court held, contrary to the Board's conclusion, that the check-off privilege for the benefit of minority unions is not an issue for collective bargaining and that, so long as an employer does not favor one union over the other, he may honor the request of his employees to withhold dues for any union. The court observed, moreover, that the employer's contract with the exclusive representative was, in this case, silent on the subject of dues payments to other unions.

#### **7. Affirmative action which the Board may require to correct unfair labor practices**

(a) Reaffirming the principle that the fashioning of remedies for the correction of unfair labor practices is the function of the Board, to be exercised within the reasonable limits of its broad discretion, the court upheld as valid a Board order requiring both the employer and an independent contractor, whom the employer had retained to perform operations formerly handled directly by the employer, to cooperate in removing the effects of the unfair labor practices in which both had participated when they entered into the contract. *N. L. R. B. v. Gluek Brewing Co. et al.*, 144 F. (2d) 847 (C. C. A. 8). The court approved the Board's reasoning that the employer could not plead impossibility of compliance when, after the transfer of a department to an independent contractor for the purpose of discriminating against those employed in the department, the employer retained control over the operations of which he had purported to divest himself by means of the transfer. Under these circumstances, the court held, it was for principal and contractor, both of whom the Board

found to be employers within the meaning of the Act, jointly to work out complete compliance with the Board's order.

(b) The power of the Board to require an employer to pay over to the personal representative of an employee, who had been discriminatorily discharged and who had died prior to the issuance of the Board's order, the back pay due the employee at the time of his death and death benefits under an employee-insurance plan was sustained as a reasonable means of eliminating the unfair labor practices found by the Board. *N. L. R. B. v. Revlon Products Corp.* 144 F. 2d 88 (C. C. A. 2). The court restated the principle that the award of back pay is appropriate even though the reinstatement of the employee who has suffered loss by reason of the employer's discrimination is not practicable. The court also approved the Board's award of insurance benefits to the personal representative on the ground that the estate of the deceased employee would have been entitled to such benefits had the employee not been discriminated against.

#### Principles Established or Reaffirmed as to the Board's Administration of Section 9 of the Act

##### 1. Methods and standards the Board may apply in ascertaining bargaining representatives

(a) *Election of bargaining representative by minority of eligible voters.*—The Board's power to certify a union as the exclusive representative of the employees in a bargaining unit where the representative was chosen by a majority of those who voted, but where less than a majority of the eligible voters participated in the election, was sustained in two cases involving the question of the employer's refusal to bargain with the certified representative on the ground that it was improperly certified. *N. L. R. B. v. The Standard Lime and Stone Co.*, 149 F. (2d) 435 (C. C. A. 4), cert. denied 66 S. Ct. 28; *N. L. R. B. v. Central Dispensary and Emergency Hospital*, 145 F. (2d) 852 (App. D. C.), cert. denied 324 U. S. 847. In the *Standard Lime* case the court held that the majority rule which governs collective bargaining elections under the National Labor Relations Act must be interpreted in the light of the Congressional intent that the principles of political majority rule should apply. Following the rule in political elections, the court declared that the public interest in maintaining industrial democracy and peace through the election of bargaining representatives should not be defeated when a majority of the electorate fails to take an active interest in the election. The court concluded that, as in the case of political elections, eligible voters who do not go to the polls must be presumed to acquiesce in the expressed will of the majority of those who vote. The reasoning of the court in the *Central Dispensary* case followed identical lines. Recognizing, however, that the election of a bargaining representative by a minority of eligible voters may not under some circumstances reasonably be deemed to be conclusive, both courts approved the Board's practice of investigating in each case whether the election was fairly representative of the employees' choice. The Board's determination that an election reflects the employees' choice, both courts held, will be accepted on review unless it is clearly unreasonable or arbitrary.

(b) *Run-off election procedure.*—In the *Standard Lime* case, the court approved the Board's direction of a run-off election between two competing unions, where the total number of votes received by

both was larger than the number of votes expressing no desire for representation. The court acknowledged the soundness of the Board's practice of omitting from the run-off ballot the choice "neither" under these circumstances on the ground that a majority of the voters had indicated a desire for collective bargaining by voting for one or the other of the participating unions. The court noted that the Board's procedure was similar to the practice in political elections and took cognizance of the fact that the Board had established this run-off election policy after a public hearing.

**2. The Board's certification of a bargaining representative remains effective for at least a reasonable period**

The Board's finding, that an employer had unlawfully refused to bargain with a union which made no efforts to institute negotiations until some 3½ months after its certification, was sustained in *Motor Valve & Mfg. Co. v. N. L. R. B. et al.*, 149 F. (2d) 247 (C. C. A. 6). The court pointed out that the validity of the Board's certification must be deemed to continue for a reasonable period<sup>4</sup> and that the union must be accorded sufficient time within that period to prepare itself for the complex task of bargaining effectively in behalf of the employees who appointed it as their agent. To deny the bargaining agent sufficient time to assemble the necessary data, the court observed, would defeat the very purpose of collective bargaining. The court termed reasonable the Board's finding that the delay of 3½ months was not excessive and could not, therefore, have resulted in forfeiture of the union's status as bargaining representative.

The principle that the Board's certification of a bargaining representative cannot be disregarded by the employer in seeking unilaterally to effect changes in terms of employment was approved in *N. L. R. B. v. May Department Stores Co.*, 146 F. (2d) 66 (C. C. A. 8).<sup>5</sup>

**3. Determination of union's right to participate in election**

The Board, in the course of an investigation under Section 9 (c) of the Act, concluded that one of the unions competing for exclusive representation was employer-dominated on the ground that it was the successor to an illegal organization which the Board, in an order enforced by a decree of the Circuit Court of Appeals,<sup>6</sup> had ordered the employer to disestablish. The Board accordingly denied that union the right to participate in the election. The excluded union brought an action in the District Court to enjoin the Board from holding the election unless it was placed on the ballot. The District Court granted the injunction. The Circuit Court reversed and ordered dismissal of the complaint. *Madden v. The Brotherhood and Union of Transit Employees*, 147 F. (2d) 439. The Circuit Court held that the District Court was without jurisdiction to review the action of the Board in the 9 (c) representation proceeding. The Circuit Court further rejected the plaintiff's contention that the Board's action in determining in the representation proceeding that the plaintiff union

<sup>4</sup> The same doctrine had been previously enunciated by the Fourth and Second Circuit Courts of Appeals in the only two prior cases dealing with the question. *N. L. R. B. v. Appalachian Electric Co.*, 140 F. (2d) 217 (C. C. A. 4); *N. L. R. B. v. Century Oxford Co.*, 140 F. (2d) 541 (C. C. A. 2), cert. denied 323 U. S. 714. See Ninth Annual Report, pp. 61-62.

<sup>5</sup> Affirmed December 10, 1945, 60 S. Ct. 203.

<sup>6</sup> *N. L. R. B. v. Baltimore Transit Co.*, 140 F. (2d) 51 (C. C. A. 4), enforcing, as modified, order in 47 N. L. R. B. 109, cert. denied, 321 U. S. 795; see Ninth Annual Report, pp. 55, 62.

was a successor to the illegal organization which had been ordered disestablished was a usurpation of the Circuit Court's jurisdiction. The court did not agree with plaintiff's contention that the relationship of the plaintiff union to the illegal organization was a question which could only be determined in a proceeding brought in the Circuit Court of Appeals to adjudge the employer in contempt for violation of the decree.<sup>7</sup>

Although it stressed the absence of judicial power to review Board action at that stage, the court nevertheless went on to express its approval of what the Board did in the representation proceeding. It adopted the Board's reasoning that if, under the circumstances here considered, the Board were obliged to suspend its investigation of representatives pending the prosecution of a contempt proceeding in the Circuit Court of Appeals or an unfair labor practice proceeding before the Board, the device of a series of successors to company-dominated unions could be successfully employed to delay indefinitely the determination of representatives, thereby frustrating effectuation of the collective bargaining policies of the Act. At the same time, the court pointed out that Congress manifestly intended that only bona fide labor organizations should be granted a place on the ballot and that it was, therefore, within the discretion of the Board to extend its administrative inquiry under Section 9 (c) to the question of employer domination. The Board's exercise of this discretion within the limits of Section 9 of the Act, the court continued, is not reviewable and the District Court was without jurisdiction to enjoin the Board.

#### Principles of Administrative Law

The courts have continued to be guided by established principles of administrative law in reviewing the Board's findings and orders.<sup>8</sup> During the past year, they have reaffirmed the following doctrines: (1) The Board as an administrative agency charged with the enforcement of a special statute enacted in the public interest is to be regarded as an expert, whose judgment in the field of labor relations, unless arbitrary, is controlling on the courts. (2) The Board, as an administrative tribunal entrusted with the administration of an important Congressional policy, cannot be precluded from enforcing that policy by applying to its administrative acts the doctrines of estoppel and *res judicata*.

(a) In *N. L. R. B. v. O. U. Hofmann, et al.*, 147 F. (2d) 679 (C. C. A. 3), the court held that it would not reverse a Board finding that the exemption from the coverage of the Act of "any individual employed by his parent or spouse" applied where the parental employer was associated in business with others, in the absence of a clear showing that the Board's determination was wrong. The court held that determination of the scope of the statutory exclusion was peculiarly a matter to which the Board brought its expert understanding of the reasons for the exemption.

(b) In *N. L. R. B. v. Gilfillan Bros., Inc.*, 148 F. (2d) 990 (C. C. A. 9), the court held that prior administrative action of the Board could not be invoked to defeat enforcement of the policies of the

<sup>7</sup> Compare this with *Thompson Products, Inc. v. N. L. R. B.*, 133 F. (2d) 637 (C. C. A. 6) in which the court held that it was not a usurpation of the Circuit Court's jurisdiction for the Board to issue a complaint alleging employer misconduct occurring after decree even though the misconduct, if engaged in, might also be a violation of the Circuit Court's enforcing decree.

<sup>8</sup> See Ninth Annual Report, pp. 59-63.

Act. The Board ordered the disestablishment of a union which it had previously certified as the statutory representative of employees in a bargaining unit. The court held that, in view of the acts of employer domination which occurred subsequent to the union's certification, it was proper for the Board to take into consideration other like acts which antedated the Board's certificate and that the Board was, in any event, not estopped by its certificate from subsequently enforcing the policies of the Act by finding the union to be company dominated and ordering its disestablishment.

In *N. L. R. B. v. May Department Stores Co.*, 146 F. (2d) 66 (C. C. A. 8),<sup>9</sup> the court was guided by similar considerations in sustaining the Board's conclusion that a certain group of employees constituted a proper bargaining unit. The court held that the criteria the Board had previously established for the determination of bargaining units did not constitute a limitation upon the exercise of its administrative discretion in subsequent cases. Note also the dictum of the same court in *N. L. R. B. v. Laister-Kauffmann*, 144 F. (2d) 9, that "the principles of estoppel cannot be applied against the Board to deprive the public of the protection of the Act."

#### Cases in Which the Board's Order was Denied Enforcement in Whole or in Part

During the past fiscal year, the Board's request for enforcement of its order was denied in six Circuit Courts of Appeals cases. One of these cases turned solely on the question of the substantiality of the evidence upon which the Board's unfair labor practice findings were based. *N. L. R. B. v. Edinburg Citrus Association*, 147 F. (2d) 353 (C. C. A. 5). The second case, *N. L. R. B. v. J. L. Brandeis & Sons*, 145 F. (2d) 556 (C. C. A. 8), discussed at p. 63, *supra* turned both on the sufficiency of the evidence and the propriety of the conclusions which the Board drew from the facts found. In *N. L. R. B. v. Draper Corp.*, 145 F. (2d) 199 (C. C. A. 4), the court denied enforcement of the Board's order awarding back pay to a group of strikers whom the employer had discharged and whom he temporarily refused to reinstate. The group involved, a minority of the employees in the bargaining unit, sought to bring pressure on the employer by acting independently of their statutory bargaining agent. The court held that the action of a minority in engaging in a strike, which is unauthorized and interferes with the bargaining efforts of the majority representative, is not a concerted activity protected by the Act.<sup>10</sup> Consequently, the court held, the discharge of the striking employees could not constitute a violation of Section 8 (3) of the Act. The remaining cases, *N. L. R. B. v. E. C. Atkins and Co.*, *N. L. R. B. v. Jones & Laughlin Steel Corp.*, and *N. L. R. B. v. Federal Motor Truck Co.*, are discussed at pp. 72-73, *infra*.

In 17 cases, the Board's order was denied enforcement in part or was modified in part. Seven of these cases turned on the general question of the substantiality of the evidence upon which certain of the Board's findings of unfair labor practices rested. *N. L. R. B. v. American Pearl Button Co., et al.*, *supra*, p. 61; *N. L. R. B. v. Cincinnati Chemical Works, Inc.*, 144 F. (2d) 597 (C. C. A. 6); *Love-man, et al., v. N. L. R. B.*, 146 F. (2d) 769 (C. C. A. 5); *Peter J.*

<sup>9</sup> Affirmed December 10, 1945, 66 S. Ct. 203.

<sup>10</sup> Cf. *Western Cartridge Co. v. N. L. R. B.*, 139 F. (2d) 855 (C. C. A. 7); Ninth Annual Report, pp. 63-64.

*Schweitzer, Inc. v. N. L. R. B.*, 144 F. (2d) 520 (App. D. C.); *N. L. R. B. v. Mt. Clemens Pottery Co.*, 147 F. (2d) 262 (C. C. A. 6); *N. L. R. B. v. Clinchfield Coal Corp.*, 145 F. (2d) 66 (C. C. A. 4); *N. L. R. B. v. Shenandoah-Dives Mining Co.*, 145 F. (2d) 542 (C. C. A. 10). In 8 cases in which the findings of unfair labor practices were sustained, the Board's orders based upon those findings were slightly modified. *N. L. R. B. v. Cheney California Lumber Co.*, 149 F. (2d) 333 (C. C. A. 9); *N. L. R. B. v. Cowell Portland Cement Co.*, 148 F. (2d) 237 (C. C. A. 9); *General Motors Corp. v. N. L. R. B.*, 150 F. (2d) 201 (C. C. A. 3); *N. L. R. B. v. Gilfillan Bros., Inc.*, 148 F. (2d) 990 (C. C. A. 9); *N. L. R. B. v. Gluek Brewing Co. et al.*, 144 F. (2d) 847 (C. C. A. 8); *N. L. R. B. v. W. E. Lipshutz*, 149 F. (2d) 141 (C. C. A. 5); *N. L. R. B. v. Servel, Inc.*, 149 F. (2d) 542 (C. C. A. 7); *N. L. R. B. v. Walt Disney Products*, 146 F. (2d) 44 (C. C. A. 9). In the remaining 2 cases, the modification of the orders was primarily the result of the court's disagreement with the conclusions drawn by the Board from the facts. In *N. L. R. B. v. Indiana Desk Co.*, 149 F. (2d) 987 (C. C. A. 7), the court expressed the view that a work stoppage for the purpose of obtaining a wage increase was not a "labor dispute" within the meaning of the Act, but was an illegal strike outside the protection of the Act, as the employer was precluded by the Stabilization Act from granting wage increases without the approval of the National War Labor Board and the strike was for the purpose of compelling his violation of that statute. The court declined to accept the Board's reasoning that the employees here did not, as in an earlier case,<sup>11</sup> demand that a wage increase already agreed upon be made effective without awaiting the approval of the War Labor Board, but that they merely exerted economic pressure for the legitimate purpose of inducing the employer to agree to a wage adjustment, subject to the approval of the War Labor Board. The court therefore held that the strikers had been lawfully discharged. The court also based its refusal to enforce the Board's order of reinstatement and back pay on the further ground that the strikers had engaged in illegal picketing activities and had consequently forfeited their status as employees. *Hughes Tool Co. v. N. L. R. B.*, 147 F. (2d) 69 (C. C. A. 5) is discussed at pp. 63-64, *supra*.

#### Temporary Injunctive Relief in Connection with Pending Enforcement Proceedings

The Act confers jurisdiction upon the Circuit Courts of Appeals not only to enforce or review the Board's orders at the instance of the Board or the employer, but also to grant to the Board appropriate relief pending proceedings for enforcement or review of its orders under Section 10 (e) or (f) of the Act. In *N. L. R. B. v. Servel, Inc.*, the Seventh Circuit Court of Appeals, pending a proceeding by the Board under Section 10 (e) to enforce an order based on a finding that the employer had engaged in unfair labor practices, granted the Board's request for a temporary restraining order enjoining the employer from interfering with a scheduled election in a pending representation proceeding which the Board had theretofore postponed because of obstructive conduct on the part of the employer. The significant phase of the case is that the unfair labor practices upon which the

<sup>11</sup> *Matter of American News Co., Inc.*, 55 N. L. R. B. 1302.



order sought to be enforced was founded did not involve interference with an election, but rather general acts of interference, restraint, and coercion and the discriminatory discharge of an employee. The court, however, adopted the Board's contention that the portion of its order which required the employer, in general terms, to cease and desist from interfering with its employees' rights under the Act encompassed acts of interference with elections to determine employees' choice of representatives,<sup>12</sup> and that if the employer were permitted to interfere with the election it would irreparably damage the effectiveness of the general cease and desist provision in the event of its ultimate enforcement.<sup>13</sup>

### Proceedings in Aid of Effectuating Compliance With Decrees

#### Contempt proceedings

In three cases during the past year the Circuit Courts of Appeals had occasion to determine whether their decrees enforcing orders of the Board had been complied with by the employers involved.

*N. L. R. B. v. Western Cartridge Co.* (C. C. A. 2), unreported. The importance of this case lies in the court's utilization of the facilities of the Board as an aid in the disposition of contempt cases. On the pleadings in the case, the court adjudicated the company in contempt of its decree, directing, *inter alia*, the reinstatement of an employee who had been discriminatorily discharged. The employer, amplifying upon the defense which the court had rejected, asked the court to rescind its contempt order and to refer the contempt issues for trial. The court denied the request but permitted the company to submit to the Board facts which, in the company's opinion, were "in amelioration of [its] contempt." The Board in turn was authorized to make appropriate recommendations in its report to the court. Upon the employer's subsequent application to be purged of contempt, the court again referred to the Board the question of the employer's final compliance with the reinstatement requirements of the decree. In thus making the issuance of an order purging the employer of its contempt dependent upon the Board's recommendations, the court acknowledged the usefulness of the expert aid of the Board in the disposition of contempt cases and, in effect, vested in it functions comparable to those of a Special Master.

The *Western Cartridge* case is further of interest because of the court's implicit qualification of its earlier decision in *N. L. R. B. v. New York Merchandise Co.*, 134 F. (2d) 949, 952. There the court had held that the reinstatement provisions of a decree are "interlocutory" in the sense that they are not sufficiently definite to support a contempt proceeding until the Board has determined the exact position to which the discharged employee is entitled. In the *Western Cartridge* case, the court, in the absence of a valid defense, adjudicated the employer in contempt of the court's reinstatement decree, although there had been no determination by the Board of the precise position to which the employee concerned was entitled.

The court in the same case further required the respondent to have its statement of compliance with the terms of purgation in the contempt order sworn to by an officer of the company, and not its attorney.

<sup>12</sup> Cf. *N. L. R. B. v. Reliance Manufacturing Co.*, 143 F. (2d) 761, where the same court held an employer's act of interfering with a Board-conducted election to be violative of the provision of its decree enjoining, in general terms, interference, restraint or coercion of employees in the exercise of their rights under the Act. Ninth Annual Report, pp. 64-65.

<sup>13</sup> The temporary restraining order was entered September 29, 1944. The order in aid of the enforcement of which the restraining order was issued was ultimately enforced on May 1, 1945. 149 F. (2d) 542.

*N. L. R. B. v. Sunshine Mining Co.* (C. C. A. 9) (unreported). In this case, the employer was adjudicated in contempt of the court's decree on the basis of the voluminous report of a Special Master.<sup>14</sup> The case is of interest insofar as it necessitated the settlement of a series of unusual substantive and procedural details. Noteworthy is the Special Master's determination that interest on back pay accrues from the date of the court's decree where the delay in the final ascertainment of the principal amount due is primarily attributable to the conduct of the employer; that while, in computing back pay, no allowance need be made for "after hours" earnings, income from self-employment must be deducted; that back pay received from another employer covering an overlapping period is deductible; that the employer is not relieved of its reinstatement obligation because the channels through which he attempted to reach a discharged employee failed; and that, on the other hand, the claim of an employee who has not been heard from during the proceedings should not survive the termination of the contempt proceeding. In the matter of procedure, the Master selected 6 of 43 instances in which the back-pay claims were resisted on the ground that the claimants wilfully incurred losses in earnings, for the purpose of determining the advisability of remanding the case in order that the Board might ascertain whether these 43 claims should be reduced because of losses wilfully incurred by the claimants. The Master found that the claims investigated did not justify a recommendation that the case be remanded to the Board.

In *N. L. R. B. v. Bank of America National Trust and Savings Association*, 147 F. (2d) 287 (C. C. A. 9), the court dismissed the Board's petition for a contempt order on the basis of the facts disclosed by the pleadings. The court rejected the Board's inference that the employer had acted in bad faith in discharging an employee whom it had previously reinstated pursuant to the decree of the court. The Board had concluded that the discharged employee's prosecution of a libel suit against the employer could not be accepted as a valid reason for the employee's subsequent dismissal in view of the fact that the employer had unsuccessfully used the libel suit as a defense in the enforcement proceeding.

#### Ancillary orders in aid of effectuation of decrees

In *N. L. R. B. v. Kellburn Mfg. Co.*, 149 F. (2d) 686 (C. C. A. 2), the court, on enforcing the order of the Board, incorporated in its enforcement decree a provision restraining the employer from distributing its assets without the court's leave pending liquidation of the employer's back-pay obligation.<sup>15</sup>

<sup>14</sup> The case affords an interesting insight into the length of certain contempt proceedings. The decree, directing reinstatement with back pay to over 200 strikers, was entered April 3, 1940, 110 F. (2d) 780, and certiorari was denied early in 1941. Contempt proceedings were instituted in 1942. The Special Master appointed by the court held hearings at various intervals up to September 1943. Briefs were exchanged over a number of months thereafter. The Master filed his report in December 1944. The court, on consent of the parties, confirmed the report on February 6, 1945.

<sup>15</sup> The courts have in the past accorded the Board ancillary relief in aid of effectuation of their enforcing decrees. The Sixth Circuit enjoined an employer from prosecuting suits in the State court to recover back rent on company houses from evicted employees whom the court in its enforcing decree had ordered reinstated with back pay. *N. L. R. B. v. Good Coal Company*, order entered April 12, 1940, in aid of compliance with decree rendered in 110 F. (2d) 501. The Ninth Circuit restrained private creditors from maintaining State court suits to garnish or attach the unpaid awards of back pay due under its enforcing decree. *N. L. R. B. v. Sunshine Mining Co.*, 125 F. (2d) 757. The Third Circuit handed down an opinion declaring that assignments by employees to the State of Pennsylvania of portions of their back-pay awards in reimbursement for benefits received from the assignee did not vest in the assignee any rights in the unpaid back-pay awards due under the court's enforcing decree, and instructed the Board's Regional Director, who had received the back pay from the employer, to pay it over in full to the claimants. *N. L. R. B. v. Stackpole Carbon Co.*, 128 F. (2d) 188.

## Remand for computation of back pay

In four instances this year, Circuit Courts of Appeals remanded cases to the Board for computation of the amount of back pay due under the make-whole provisions of enforcing decrees. *N. L. R. B. v. Western Cartridge Co.* (C. C. A. 2), order entered December 12, 1944;<sup>16</sup> *N. L. R. B. v. Laister-Kauffmann Aircraft Corp.* (C. C. A. 8), order entered April 19, 1945; *N. L. R. B. v. Sewell Hats, Inc.* (C. C. A. 5), order entered May 19, 1945; *N. L. R. B. v. Washington National Insurance Co.* (C. C. A. 8), consent decree entered May 20, 1945. This procedure initiated by the Second Circuit (See Ninth Annual Report, p. 65), has thus been followed by two additional Circuit Courts of Appeals. However, the orders entered in the cases other than the *Western Cartridge* case were on consent. Further, the requested remands in the *Laister-Kauffmann* and *Sewell Hats* cases were for the additional purpose of having the Board determine the amount of the deductions to be made from the employees' award because of losses in earnings wilfully incurred by them, a matter which the Supreme Court had previously held was for the primary determination of the Board.<sup>17</sup>

## Impact of the war upon the enforcement of Board orders

During the past year the Board sought the enforcement of three orders directing employers to bargain with unions which represented employees in units composed exclusively of militarized plant guards. Both the Circuit Court of Appeals for the Sixth Circuit, in *N. L. R. B. v. Jones & Laughlin Steel Corp.*, and *N. L. R. B. v. Federal Motor Truck Co.*, 140 F. (2d) 718, and the Circuit Court of Appeals for the Seventh Circuit, in *N. L. R. B. v. E. C. Atkins and Co.*, 147 F. (2d) 730, denied the Board's petition on the ground that enforcement of the respective orders would be contrary to the paramount public interest in the successful prosecution of the war.<sup>18</sup> In the *Jones & Laughlin* and *Federal Motor Truck* cases, the court held that, while the pertinent economic facts justified the Board's finding that the plant guards involved were employees of the company, the peculiar situation of the guards as an adjunct of the military police rendered invalid the Board's ultimate conclusion that the establishment of a bargaining unit of guards would effectuate the policies of the Act. It had been the Board's considered judgment that the exigencies arising from the quasi-military status of the guards were adequately met by the segregation of militarized guards into distinct units in order to separate bargaining negotiations in their behalf from negotiations for other employees of the same company.<sup>19</sup>

In the *Atkins* case the court, in arriving at a similar conclusion, expressly adopted the court's reasoning in the above cases. Moreover, the court held that the militarized guards at the Atkins plant were in fact not employees of the company. The court noted the Supreme Court's decision in *N. L. R. B. v. Hearst Publications, Inc.*, 322 U. S. 111,<sup>20</sup> that the reviewing court may not substitute its own inferences for those of the Board where the Board's conclusion that

<sup>16</sup> The remand provisions were embodied in the same order in which the court adjudged the company in contempt for disobedience of the reinstatement and other provisions of the decree. (See *supra*, p. 70.)

<sup>17</sup> *Phelps Dodge, Inc. v. N. L. R. B.*, 313 U. S. 177, 200 (Sixth Annual Report, p. 86).

<sup>18</sup> The Supreme Court on June 4, 1945, granted the Board's petition for certiorari in each of these cases, 65 S. Ct. 1412, 1413. Since, however, the plant guards involved had been demilitarized, the Supreme Court remanded the cases to the respective Circuit Courts of Appeals instructing them to reconsider the Board's orders in the light of the subsequent change in the status of the employees involved.

<sup>19</sup> See the discussion of this problem in the Board's Eighth Annual Report, p. 57, and Seventh Annual Report, p. 63.

<sup>20</sup> See the discussion of the *Hearst* case in the Board's Ninth Annual Report, pp. 54-55.

an employment relationship existed has support in the record. The Court held, however, that the *Hearst* case required it to test the Board's conclusion in the light of the facts disclosed by the record. The record in the *Atkins* case, the court continued, did not support the Board's finding that the guards were employees of the company. The court was of the opinion that authority to establish or terminate the service relationship was vested in the military rather than the nominal employer, and that the company lacked the degree of control over the guards which under the doctrine of the *Hearst* case was necessary to the Board's finding. The court concluded that it was unimportant under the circumstances that the guards were paid by the company.

## SPECIAL LITIGATION

### 1. Enforcement of subpoenas

*N. L. R. B. v. The Northern Trust Co. et al.* and *N. L. R. B. v. American National Bank and Trust Co.*, 148 F. (2d) 24 (C. C. A. 7). In these cases, the Board, pursuant to Section 11 (2) of the Act, applied to a United States District Court for an order compelling obedience with a subpoena issued by the Board pursuant to Section 11 (1) of the Act. The subpoena called for production of certain records desired by the Board in a proceeding for the investigation and certification of representatives pursuant to Section 9 (c). The Board sought the records as an aid in making its preliminary determination of whether the employer was subject to its jurisdiction under the Act. The District Court granted the Board's application, holding that the Board was not required to show that the respondent was subject to the Act in order to be entitled to production of the records. The Circuit Court of Appeals, in affirming the action of the District Court, observed that Section 11 of the Act manifestly was not intended to provide for the judicial determination of the Board's jurisdiction at the very outset of an investigation. The court pointed out that Congress had expressly entrusted the Board and not the courts with the initial determination of the jurisdictional facts requisite to the Board's exercise of its functions under the Act. Consequently, the court concluded, the Board was entitled to the enforcement of its subpoenas without being required to show to the District Court that the employer was engaged in, or that its activities affected, commerce within the meaning of the Act, since that was what the Board was itself seeking to determine from the subpoenaed records. The court indicated that the Board was entitled to the presumption that it would itself dismiss the 9 (c) petition if its own investigation should disclose that the requisite jurisdictional facts were lacking. The court further noted that the employer's rights were fully protected in any event, since any error in the Board's determination would, pursuant to Section 9 (d) of the Act, become judicially reviewable when it became the basis of a final bargaining order in a Section 10 unfair labor practice proceeding (see *infra*, pp. 74-75).

The Circuit Court of Appeals also rejected the respondent's contention that the subpoenas were so broad as to be a "fishing expedition" in contravention of the constitutional protection against unreasonable search and seizure, since, as the court noted, the subpoenas "specified with as much precision as was fair and feasible the records to be examined and the information to be obtained from the records."

The court also approved the action of the District Court in including in its order of enforcement a proviso dispensing with the need of producing the records at the hearing before the Board on condition that their inspection be permitted at the employer's place of business.

## 2. Suits to enjoin or review Board action in Section 9 (c) representation proceedings

During the past year, courts have ruled upon the power of the District Courts to review Board action or determinations in representation proceedings. This arose out of suits which employers, or unions, or individual employees, have, on occasions, brought in the District Courts to have the Board or its agents enjoined from proceeding with the determination of representatives, or to have Board determinations set aside or declared invalid. The courts have uniformly upheld the right of the Board and its agents to be free of District Court interference in the conduct of their functions in representation proceedings.

In *Madden v. The Brotherhood and Union Transit Employees*, 147 F. (2d) 439 (C. C. A. 4) (see also pp. 66-67, *supra*), the Circuit Court of Appeals reversed a judgment of the District Court (58 F. Supp. 366, D. C. Md.) enjoining the Board from holding an election because of the exclusion of the complaining union from the ballot, and ordered dismissal of the complaint. The Circuit Court of Appeals predicated its decision upon the ground that the District Court was without jurisdiction to review action of the Board in a representation proceeding. The court expressly approved and followed the decision to the same effect by the Court of Appeals for the District of Columbia in *Millis v. Inland Empire District Council*, 144 F. (2d) 539, affirmed on another ground 65 S. Ct. 1316.<sup>21</sup> The courts in the *Madden* and the *Millis* cases were of the opinion that controlling on that issue was the decision of the Supreme Court in *Switchmen's Union of North America v. National Mediation Board*, 320 U. S. 297, holding that the District Courts were without power to review a certification of the National Mediation Board issued under the comparable provisions of the Railway Labor Act (45 U. S. C. 151 *et seq.*).

For its conclusion in the *Madden* case, the court relied upon and quoted extensively from the legislative history of the Act, showing that "There was no [Congressional] intent to permit judicial review of a 9 (c) proceeding at all except by the Circuit Court of Appeals under 9 (d)." (That provision affords a right of review of a Board certification at the stage where there is a petition pending in the Circuit Court of Appeals under Section 10 (e) or (f) to enforce or review an order issued by the Board in a Section 10 unfair labor practice proceeding, which is based in whole or in part on facts certified in the representation proceeding). "It is hardly possible," said the court, "that Congress should have intended to permit review by District Courts of a 9 (c) proceeding while so carefully limiting review of such proceedings in the Circuit Courts of Appeals to cases in which an order under Section 10 (c) had been entered."<sup>22</sup>

<sup>21</sup> The Supreme Court was of the opinion that the plaintiff union in the *Millis* case had been accorded the hearing required by the statute, and hence it was not necessary for it to determine whether the District court would have had jurisdiction to interfere assuming the Board had denied the plaintiff such a hearing. See discussion, *supra*, pp. 79-80.

<sup>22</sup> The Fourth Circuit, on the same day that it decided the *Madden* case, handed down its opinion in the case of *Employees Protective Association v. N. L. R. B.*, 147 F. 2d 684, dismissing, on the grounds set forth in the *Madden* case, a petition filed with it by a union to review and set aside a Direction of Election issued by the Board in a representation proceeding in which the Board had excluded it from participation in the hearing and in the election.

In *Zimmer-Thomson v. N. L. R. B.*, 60 F. Supp. 84 (S. D. N. Y.), the District Court dismissed, on grounds substantially similar to those in the *Madden* and *Millis* cases, a suit brought by an employer to review and set aside a Board certification and to enjoin the certified union from invoking the jurisdiction of the National War Labor Board. The employer alleged that the certified union, instead of filing with the National Labor Relations Board an unfair labor practice charge based upon plaintiff's refusal to bargain with it, had invoked the jurisdiction of the National War Labor Board, whose policy it was to recognize the representative status of bargaining agents certified by the National Labor Relations Board in 9 (c) representation proceedings. Thereby, the employer claimed, the union prevented the employer from having a review of the Board's certification in the Circuit Court of Appeals as provided by the Act. The court held that these facts did not vest it with jurisdiction to review the Board's certification, since the Board's certification was not a final order, and the directives of the War Labor Board were advisory only and, hence, did not constitute a threat of immediate injury to the plaintiff.

*Florida v. Bellman, et al.*, 149 F. (2d) 890 (C. C. A. 5). In this case the court similarly upheld the District Court's refusal to enjoin the Board from holding a hearing in a representation proceeding.<sup>23</sup> The court also pointed out that the District Court could not interfere with the Board's action because the administrative process of which the hearing was a part had not been completed and because the plaintiff had failed to exhaust its administrative remedies. These principles of administrative law, the court concluded, apply equally whether the plaintiff is a private person or a sovereign State as it was in this case.<sup>24</sup>

In *Reilly v. Millis*, 144 F. (2d) 259, cert. denied 65 S. Ct. 1566, the Court of Appeals for the District of Columbia affirmed the action of the District Court in dismissing a suit brought by a group of employees to set aside the Board's certification of a union as their bargaining representative. The court held the Board's certification of the union was not a final order, that there was no threat of irreparable damage, and that the plaintiffs were therefore sufficiently protected by the provisions of the Act which afford judicial review where the certification results in a bargaining order. In *Beebe Corp. v. Millis* (S. D. N. Y.), memorandum opinion January 12, 1945 (unreported), the District Court dismissed, on grounds similar to those set forth in the *Reilly* case, an action to enjoin the Board from directing an employee election to determine collective bargaining representatives.<sup>25</sup>

<sup>23</sup> The Court also upheld the right of the Board to remove the action from the State Court in which it was brought to the Federal District Court, under the provisions of the Judicial Code §§ 24(8); 28 (28 U. S. C. 41 (8); 71).

<sup>24</sup> To the same effect is the decision of the District Court in the subsequent action brought by the State of Florida to enjoin the actual holding of the election directed by the Board in the proceeding. *Florida v. Fraser* (S. D. Fla.) order entered July 27, 1945 (unreported), appeal pending.

<sup>25</sup> The court also rejected the contention of the employer that the Board had acted improperly or unlawfully in directing an election on the basis of a showing that the union represented a substantial number of employees in the unit instead of a majority. The court said:

"The act does not require action by a majority of employees as a condition precedent to the Board's power to investigate and direct an election to determine who shall be the exclusive bargaining representative of the unit."

## VI

### SPECIAL STATUTORY FUNCTIONS VESTED IN THE BOARD: WAR LABOR DISPUTES ACT AND TELEGRAPH MERGER ACT

DURING the past year the Board continued to exercise the functions which Congress, in 1943, had designated it to perform. These are (1) the conduct of strike ballots pursuant to Section 8 of the War Labor Disputes Act,<sup>1</sup> and (2) the administration of the labor-protection provisions embodied in Section 222 (f) of the Telegraph Merger Act.<sup>2</sup> The procedures, regulations, and principles governing the application of these provisions are described in previous Annual Reports,<sup>3</sup> and have been, in the main, consistently followed during the fiscal year 1945.

#### WAR LABOR DISPUTES ACT

The Board's sole function under the War Labor Disputes Act is to conduct strike ballots and certify the results to the President. During the fiscal year 1945, dispute notices were filed in 1,284 cases,<sup>4</sup> 195 more notices than were filed in 1944. In 13 of these cases the employees involved were found to be engaged in enterprises which were not covered by the statute; and in 39 cases the notices did not become effective because they did not otherwise meet the statutory requirements. During the fiscal year the Board took some or all of the steps necessary for the conduct of strike ballots on 54 cases pending at the close of the previous year.

Of the total number of notices which were thus pending before the Board in 1945, 779, or 24 less than in 1944, were withdrawn by the labor organizations which filed them or were closed for other reasons. Strike votes were conducted by the Board in 404 cases involving 573 separate voting units, 172 more strike votes and 192 more units than in 1944. In 482 of these units, the majority of the employees to whom the dispute was applicable cast their votes in favor of a strike. Only 68 units showed majorities voting against a strike, there being 11 elections which resulted in tie votes and 12 elections in which no votes were cast. Of the 738,972 employees who were eligible to vote in these elections, 540,242 or 442,018 more than in 1944, cast ballots. Thus, in 1945 the Board processed the ballots of more than 5 times as many employees as in 1944. At the end of the fiscal year, there remained 155 strike notices to be processed.

The type of industries involved in the cases in which strike notices were filed included almost every major enterprise in the country. Seven hundred and seventy notices covered persons who were employed by concerns which manufactured such strategic war materials as aircraft, ships, machinery, rubber, petroleum, steel, chemicals, textiles, and food. One hundred and fifty notices, 136 of which involved coal mines, were filed in the mining industry. In the fields of transportation, communications, and other public utilities, 169

<sup>1</sup> 57 Stat. 163 (1943).

<sup>2</sup> 57 Stat. 5 (1943).

<sup>3</sup> See Chapter IX, Eighth Annual Report and Chapter VIII, Ninth Annual Report.

<sup>4</sup> See tables 1 and 2 in Appendix A, p. 80.

notices were filed. Some of the notices filed covered employees of construction companies and wholesale and retail trade firms.

The Board notes with interest reports appearing in two issues of the *Monthly Labor Review*<sup>5</sup> as to the number of strikes occurring in cases in which strike ballots were conducted by this agency pursuant to the War Labor Disputes Act. These reports state that only about 1 percent of the total strikes which took place during the calendar year 1944 followed strike ballots conducted by this Board and that further, the number of workers involved in these disputes constituted less than 5 percent of the total workers involved in all strikes which occurred during that period. The reports state further that during the first 6 months of 1945, when the Board conducted 203 strike ballots, 57 strikes followed such ballots, or 2.5 percent of all strikes and lock-outs which occurred during that period. The number of workers involved in these strikes, according to the reports, was more than 20 percent of those involved in all stoppages which occurred during that period as compared with 5 percent in the calendar year 1944.

The number of strike notices filed each month during the fiscal year 1945 was relatively constant. There has been, however, a marked increase in the number of notices filed subsequent to the Japanese surrender on August 14. Thus, 194 notices were filed and 67 elections held in July 1945 and in September 1945, 307 strike notices were filed and 81 elections held. In October 666 strike notices were filed, a 400 percent increase over the number of strike notices filed in June 1945.

A deficiency bill allotting a deficiency fund to the National Labor Relations Board was enacted, and approved on December 28, 1945.<sup>6</sup> This enactment carried a rider which prohibits the Board from using any past or future funds appropriated during the fiscal year 1945, for conducting strike votes pursuant to the War Labor Disputes Act. The text of the rider is as follows:

*Provided*, That no part of the funds appropriated in title IV, Labor-Federal Security Appropriation Act, 1946, or of any other funds appropriated to the N. L. R. B. for the fiscal year 1946 hereafter shall be used, except for the discharge of obligations incurred up to and including the date of approval of this act, by the N. L. R. B. in any way in connection with the performance of the duties imposed upon it by the W. L. D. A. (50 U. S. C. App. 1501-11), including personal services in the District of Columbia and elsewhere, and other items otherwise properly chargeable to appropriations of the N. L. R. B. for miscellaneous expenses and printing and binding, and the N. L. R. B. shall return to the Treasury all funds appropriated to it under title IV of the N. L. R. B. Appropriation Act, 1946, for the performance of the duties imposed upon it by the W. L. D. A., less all sums actually expended and obligations actually incurred in the performance of its duties under the W. L. D. A. up to and including the date of approval of this Act.

#### TELEGRAPH MERGER ACT

In the Ninth Annual Report<sup>7</sup> the Board discussed its function under the Telegraph Merger Act<sup>8</sup> of enforcing the labor-protection provisions of Section 222 (f). This section of the statute safeguards the rights of employees of merged telegraph carriers with respect to their compensation and character and conditions of employment against adverse effects which may result from such a merger. Thus,

<sup>5</sup> See *Monthly Labor Review* Vol. 60, No. 5, at p. 957 (May 1945) and Vol. 61, No. 2, at p. 277 (August 1945).

<sup>6</sup> Public Law 269, 79th Cong., 1st Sess.

<sup>7</sup> Ninth Annual Report, pp. 74-75.

<sup>8</sup> See Communications Act of 1934, as amended. 57 Stat. 5 (1943).



employees of merged carriers, subject to the conditions and limitations set forth in the statute, are granted the right to continued employment for a specified period without reduction in compensation in a job not inconsistent with their past training and experience in the telegraph industry; the right to severance pay in the event of lawful lay-off or discharge and the right to preference in rehiring in case of such lawful lay-off or discharge; the right to certain pension, health, disability, and death benefits; the right to restoration of employment after discharge from the armed services; and other similar protection.

For the purpose of enforcing these rights, the statute provides<sup>9</sup> that the remedies provided by the National Labor Relations Act shall be applicable and that the Board and the courts shall have jurisdiction to enforce such rights in the same manner as in the case of enforcement of the provisions of the National Labor Relations Act. Pursuant to this mandate, the Board established a procedure<sup>10</sup> for the enforcement of the provisions of Section 222 (f) which, in large part, incorporates the procedures followed in unfair labor practice cases arising under the National Labor Relations Act.

As noted in the Ninth Annual Report, the merger of Western Union and Postal Telegraph, which was effected on October 7, 1943, and the fusion of their labor forces has resulted in little resort to formal proceedings to enforce the provisions of Section 222 (f). As further noted, the problems which have arisen because of this merger have resulted in the filing of but few charges under that Section. The same situation has obtained throughout the fiscal year 1945. Moreover, in those few cases in which charges of violations of Section 222 (f) have been filed during that year, the Board has continued to seek to bring about a settlement which is consistent with the congressional policies. Illustrative of the successful cooperation of all parties in this respect is a case arising out of a charge alleging that the statute had been violated by the demotion of an employee subsequent to the merger. That case was closed prior to the issuance of a complaint, when the company voluntarily agreed to pay the employee a sum equivalent to the difference between the wages he received after this demotion and the wages he would have received had he not been demoted from the date of demotion to the date of an offer of reinstatement to his former position. In the only case which has proceeded to formal hearing<sup>11</sup> the complaint alleged the discharge of an employee to be in contemplation of the merger and, therefore, was in violation of Section 222 (f). The Trial Examiner issued his Intermediate Report on March 23, 1945, in which he found that the statute had been violated and recommended the reinstatement of the employee with back pay. Subsequently, however, the case was satisfactorily settled by the payment to the employee of a lump sum constituting his anticipated future pay for the specified period of time guaranteed under the statute, less his prospective earnings elsewhere for that same period.

As of July 1, 1945, charges under 222 (f) had been filed in 15 cases, which, together with 8 cases pending at the close of the preceding year, made a total of 23. During that period 11 cases had been disposed by withdrawal, dismissal, or settlement; 12 cases were pending at the close of the period.

<sup>9</sup> Sec. 222 (f) (9).

<sup>10</sup> See Rules and Regulations, Article 10.

<sup>11</sup> *Matter of the Western Union Telegraph Company, Postal Telegraph-Cable Co., 2-T-1.*

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## APPENDIX A

### STATISTICAL TABLES

The following tables present the fully detailed statistical record of National Labor Relations Act cases received during the fiscal year, cases closed, cases pending at the end of the year, and elections and cross-checks conducted during the year, together with their results.

Table 1.—Number of cases received, closed, and pending during the fiscal year 1945 by identification of complainant or petitioner

	Number of cases					Total number of workers involved
	Total	Identification of complainant or petitioner				
		A. F. of L. affiliates	C. I. O. affiliates	Unaffiliated unions	Individuals or employers	
All cases						
Cases pending July 1, 1944.....	2, 599	952	1, 153	385	109	(1)
Cases received July 1944-June 1945.....	9, 737	3, 828	4, 190	1, 434	285	(1)
Cases on docket July 1944-June 1945.....	12, 336	4, 780	5, 343	1, 819	394	(1)
Cases closed July 1944-June 1945.....	9, 092	3, 611	3, 989	1, 205	287	(1)
Cases pending June 30, 1945.....	3, 244	1, 169	1, 354	614	107	(1)
Unfair labor practice cases						
Cases pending July 1, 1944.....	1, 206	408	565	141	92	2, 334, 801
Cases received July 1944-June 1945.....	2, 427	846	1, 014	343	224	3, 161, 301
Cases on docket July 1944-June 1945.....	3, 633	1, 254	1, 579	484	316	5, 496, 102
Cases closed July 1944-June 1945.....	2, 308	786	985	311	226	3, 100, 048
Cases pending June 30, 1945.....	1, 325	468	594	173	90	2, 396, 054
Representation cases						
Cases pending July 1, 1944.....	1, 393	544	588	244	17	636, 119
Cases received July 1944-June 1945.....	7, 310	2, 982	3, 176	1, 091	61	1, 488, 967
Cases on docket July 1944-June 1945.....	8, 703	3, 526	3, 764	1, 335	78	2, 125, 086
Cases closed July 1944-June 1945.....	6, 784	2, 825	3, 004	894	61	1, 709, 270
Cases pending June 30, 1945.....	1, 919	701	760	441	17	415, 816

<sup>1</sup> "Workers" are not included for "all cases" since the definition of "workers" differs for the two types of Board cases. In unfair labor practice cases "workers involved" are the number employed in the establishment in which the case arises. For representation cases, the definition is the number of workers in the "unit" for which the petition is filed or the number in the unit found appropriate by the Board.

Table 2.—Distribution of cases and workers involved in cases received during the fiscal year 1945, by month

Month	Cases received							
	All cases	Number			Percent of total		Workers involved <sup>1</sup>	
		Unfair labor practice cases	Representation cases	Unfair labor practice cases	Representation cases	Unfair labor practice cases	Representation cases	
Total.....	9, 737	2, 427	7, 310	24.9	75.1	3, 161, 301	1, 488, 967	
July.....	670	184	486	27.5	72.5	332, 595	120, 126	
August.....	845	220	625	26.0	74.0	225, 420	111, 803	
September.....	717	182	535	25.4	74.6	314, 618	112, 998	
October.....	858	186	672	21.7	78.3	124, 941	123, 140	
November.....	704	198	506	28.1	71.9	249, 792	128, 284	
December.....	601	148	453	24.6	75.4	136, 439	102, 221	
January.....	778	182	596	23.4	76.6	188, 001	94, 542	
February.....	831	229	602	27.6	72.4	532, 430	156, 349	
March.....	1, 002	225	777	22.5	77.5	277, 533	152, 055	
April.....	967	204	763	21.1	78.9	148, 260	140, 028	
May.....	927	232	695	25.0	75.0	304, 322	134, 505	
June.....	837	237	600	28.3	71.7	326, 950	112, 916	

<sup>1</sup> In unfair labor practice cases "workers involved" are the number employed in the establishment where the case arises; in representation cases "workers involved" are the number in the "unit" for which the petition is filed or the number in the "unit" found appropriate by the Board.

Table 3.—Types of unfair labor practices alleged in charges received during the fiscal year 1945<sup>1</sup>

Unfair labor practices alleged	Number of cases showing specific allegations	Percent of total
Subsections of Section 8 of the Act		
Total.....	2,427	100.0
8 (1).....	338	13.9
8 (1) (2).....	104	4.3
8 (1) (3).....	1,388	57.2
8 (1) (4).....	5	0.2
8 (1) (5).....	323	13.3
8 (1) (2) (3).....	60	2.5
8 (1) (2) (5).....	17	0.7
8 (1) (3) (4).....	25	1.0
8 (1) (3) (5).....	144	6.0
8 (1) (4) (5).....	1	(?)
8 (1) (2) (3) (5).....	17	0.7
8 (1) (3) (4) (5).....	4	0.2
8 (1) (2) (3) (4) (5).....	1	(?)
Recapitulation		
8 (1).....	2,427	100.0
8 (2).....	199	8.2
8 (3).....	1,639	67.5
8 (4).....	36	1.5
8 (5).....	507	20.9

<sup>1</sup> For cases in which charges were amended after filing, the final or last amended charges are tabulated instead of original charges.

<sup>2</sup> Less than 0.1 percent.

Table 4.—Distribution of cases received during the fiscal year 1945 and percent increase or decrease compared with the fiscal year 1944, by State<sup>1</sup>

Division and State <sup>1</sup>	Number of cases received in 1945				Percent increase or decrease compared with 1944		
	All cases	Unfair labor practice cases		Representation cases		Unfair labor practice cases	Representation cases
		Number	Percent of total	Number	Percent of total		
New England.....	759	159	6.6	600	8.2	-14.5	+15.8
Maine.....	40	8	0.4	32	0.4	-46.7	-13.5
New Hampshire.....	46	9	0.4	37	0.5	+50.0	+48.0
Vermont.....	34	7	0.3	27	0.4	-36.4	-27.0
Massachusetts.....	387	78	3.2	309	4.2	-24.3	+6.2
Rhode Island.....	90	20	0.8	70	1.0	+17.6	+100.0
Connecticut.....	162	37	1.5	125	1.7	+8.8	+31.6
Middle Atlantic.....	2,087	512	21.1	1,575	21.5	-7.7	+10.1
New York.....	1,142	297	12.2	845	11.5	-9.7	+23.0
New Jersey.....	446	112	4.6	334	4.6	+2.8	-3.2
Pennsylvania.....	499	103	4.3	396	5.4	-12.7	-3.9
East North Central.....	2,302	601	24.8	1,701	23.3	-11.7	-1.4
Ohio.....	687	185	7.6	502	6.9	-13.6	-7.4
Indiana.....	265	69	2.9	196	2.7	-6.8	-8.8
Illinois.....	609	169	7.0	500	6.8	-13.3	-2.5
Michigan.....	455	131	5.4	324	4.4	-8.4	+1.3
Wisconsin.....	226	47	1.9	179	2.5	-16.1	+20.1
West North Central.....	723	180	7.4	543	7.4	-23.1	-9.8
Iowa.....	156	36	1.5	120	1.6	-16.3	+12.1
Minnesota.....	97	29	1.2	68	0.9	+7.4	-26.9
Missouri.....	312	78	3.2	234	3.2	-28.4	-19.0
North Dakota.....	13	1	0.0	12	0.2	-90.0	-14.3
South Dakota.....	22	4	0.2	18	0.3	-42.9	+200.0
Nebraska.....	61	16	0.7	45	0.6	0	0
Kansas.....	62	16	0.6	46	0.6	-27.3	-27.0

See footnote at end of table.

Table 4.—Distribution of cases received during the fiscal year 1945 and percent increase or decrease compared with the fiscal year 1944, by State <sup>1</sup>—Continued

Division and State <sup>1</sup>	Number of cases received in 1945				Percent increase or decrease compared with 1944		
	All cases	Unfair labor practice cases		Representation cases		Unfair labor practice cases	Representation cases
		Number	Percent of total	Number	Percent of total		
South Atlantic.....	918	269	11.1	649	8.9	-1.5	+9.3
Delaware.....	23	6	0.2	17	0.2	-33.3	-27.0
Maryland.....	160	38	1.6	122	1.7	-24.0	+22.0
District of Columbia.....	47	17	0.7	30	0.4	+30.8	+15.4
Virginia.....	156	28	1.2	128	1.8	-6.7	+34.7
West Virginia.....	126	43	1.8	83	1.1	-8.5	-9.8
North Carolina.....	134	44	1.8	90	1.2	+57.1	-7.2
South Carolina.....	26	9	0.4	17	0.3	-25.0	-15.0
Georgia.....	138	50	2.0	88	1.2	-5.7	+29.4
Florida.....	108	34	1.4	74	1.0	+9.7	-16.9
East South Central.....	503	154	6.3	349	4.8	-7.2	-5.2
Kentucky.....	155	39	1.6	116	1.6	-11.4	-1.7
Tennessee.....	210	77	3.1	133	1.8	+2.7	-14.2
Alabama.....	84	19	0.8	65	0.9	-51.3	-32.3
Mississippi.....	54	19	0.8	35	0.5	+137.5	+118.8
West South Central.....	693	166	6.8	527	7.2	+1.2	+24.6
Arkansas.....	28	9	0.4	19	0.3	-65.4	-54.8
Louisiana.....	131	28	1.1	103	1.4	+16.7	+58.5
Oklahoma.....	89	27	1.1	62	0.8	+28.6	-8.8
Texas.....	445	102	4.2	343	4.7	+9.7	+35.6
Mountain.....	320	66	2.7	254	3.5	-15.4	+14.9
Montana.....	22	4	0.2	18	0.2	-50.0	+5.9
Idaho.....	19	6	0.2	13	0.2	-62.5	-67.5
Wyoming.....	21	5	0.2	16	0.2	+400.0	+166.7
Colorado.....	98	31	1.2	67	0.9	0	+11.7
New Mexico.....	32	9	0.4	23	0.3	+80.0	+360.0
Arizona.....	114	7	0.3	107	1.5	-12.5	+81.4
Utah.....	8	2	0.1	6	0.1	-71.4	-60.0
Nevada.....	6	2	0.1	4	0.1	0.0	-86.2
Pacific.....	1,157	254	10.5	903	12.3	+24.5	+32.4
Washington.....	122	25	1.0	97	1.3	-3.8	+76.4
Oregon.....	120	23	1.0	97	1.3	-30.3	-4.9
California.....	915	206	8.5	709	9.7	+42.1	+34.8
Outlying Areas.....	275	66	2.7	209	2.9	+106.3	+422.5
Alaska.....	18	0	0.0	18	0.3	-100.0	+200.0
Hawaii.....	87	9	0.4	78	1.1	-10.0	+333.3
Puerto Rico.....	170	57	2.3	113	1.5	+171.4	+606.3

<sup>1</sup> The States are grouped according to the method used by the Bureau of the Census, U. S. Department of Commerce.

Table 5.—Distribution of cases received during the fiscal year 1945, by industry

Industrial group <sup>1</sup>	All cases		Unfair labor practice cases		Representation cases	
	Number	Percent of total	Number	Percent of total	Number	Percent of total
Total.....	9,737	100.0	2,427	100.0	7,310	100.0
Manufacturing.....	7,291	74.9	1,814	74.7	5,477	74.9
Food and kindred products.....	793	8.1	166	6.8	627	8.6
Tobacco manufactures.....	21	.2	6	.2	15	.2
Textile-mill products.....	303	3.7	98	4.0	265	3.6
Apparel and other finished products made from fabric and similar materials.....	230	2.4	94	3.9	136	1.9
Lumber and timber basic products.....	306	3.1	75	3.1	231	3.2
Furniture and finished lumber products.....	240	2.5	71	2.9	169	2.3
Paper and allied products.....	250	2.6	46	1.9	204	2.8
Printing, publishing, and allied industries.....	212	2.2	49	2.0	163	2.2
Chemicals and allied products.....	455	4.7	74	3.0	381	5.2
Products of petroleum and coal.....	189	1.9	26	1.1	163	2.2

See footnote at end of table.

Table 5.—Distribution of cases received during the fiscal year 1945, by industry—Con.

Industrial group <sup>1</sup>	All cases		Unfair labor practice cases		Representation cases	
	Number	Percent of total	Number	Percent of total	Number	Percent of total
<b>Manufacturing—Continued</b>						
Rubber products.....	97	1.0	22	0.9	75	1.0
Leather and leather products.....	238	2.5	51	2.1	187	2.6
Stone, clay, and glass products.....	188	1.9	55	2.3	133	1.8
Iron and steel and their products.....	1,206	12.4	285	11.8	921	12.6
Nonferrous metals and their products.....	260	2.7	66	2.7	194	2.6
Machinery (except electrical).....	846	8.7	215	8.9	631	8.6
Electrical machinery.....	414	4.3	107	4.4	307	4.2
<b>Transportation equipment.....</b>	<b>763</b>	<b>7.8</b>	<b>255</b>	<b>10.5</b>	<b>508</b>	<b>7.0</b>
Aircraft and parts.....	352	3.6	133	5.5	219	3.0
Automotive.....	99	1.0	28	1.1	71	1.0
Ship and boat building and repairing.....	284	2.9	89	3.7	195	2.7
Other.....	28	0.3	5	0.2	23	0.3
Miscellaneous manufacturing.....	220	2.2	53	2.2	167	2.3
Agriculture, forestry, and fishing.....	12	0.1	2	0.1	10	0.2
Mining.....	292	3.0	90	3.7	202	2.8
Metal mining.....	55	0.6	13	0.5	42	0.6
Coal mining.....	79	0.8	41	1.7	38	0.5
Crude petroleum and natural gas production.....	93	0.9	17	0.7	76	1.1
Nonmetallic mining and quarrying.....	65	0.7	19	0.8	46	0.6
Construction.....	73	0.7	27	1.1	46	0.6
Wholesale trade.....	541	5.6	52	2.1	489	6.7
Retail trade.....	200	2.1	60	2.5	140	1.9
Finance, insurance, and real estate.....	151	1.5	33	1.4	118	1.6
Transportation, communication, and other public utilities.....	907	9.3	228	9.4	679	9.3
Highway passenger transportation.....	130	1.3	52	2.1	78	1.1
Highway freight transportation.....	122	1.3	44	1.8	78	1.1
Water transportation.....	205	2.1	20	0.8	185	2.5
Warehousing and storage.....	71	0.7	20	0.8	51	0.7
Other transportation.....	65	0.7	18	0.8	47	0.6
Communication.....	145	1.5	56	2.3	89	1.2
Heat, light, power, water, and sanitary services.....	169	1.7	18	0.8	151	2.1
Services.....	270	2.8	121	5.0	149	2.0

<sup>1</sup> Source: Standard Industrial Classification. Division of Statistical Standards, U. S. Bureau of the Budget, Washington, 1941.

Table 6.—Regional distribution of cases received during the fiscal year 1945, compared with 1944

Location of Regional Office	All cases			Unfair labor practice cases			Representation cases		
	Fiscal year 1945	Fiscal year 1944	Percent increase or decrease	Fiscal year 1945	Fiscal year 1944	Percent increase or decrease	Fiscal year 1945	Fiscal year 1944	Percent increase or decrease
Total.....	19,737	19,176	+6.1	12,427	12,573	-5.7	7,310	6,603	+10.7
Boston.....	711	653	+8.9	144	173	-16.8	567	480	+18.1
New York.....	1,227	1,140	+7.6	334	366	-8.7	893	774	+15.4
Buffalo.....	277	280	-1.1	60	71	-15.5	217	209	+3.8
Baltimore.....	393	386	+1.8	70	76	-7.9	323	310	+4.2
Philadelphia.....	514	449	+14.5	136	128	+6.3	378	321	+17.8
Pittsburgh.....	295	308	-4.2	73	71	+2.8	222	237	-6.3
Detroit.....	420	436	-3.7	127	137	-7.3	293	299	-2.0
Cleveland.....	447	542	-17.5	134	153	-12.4	313	389	-19.5
Cincinnati.....	476	512	-7.0	117	145	-19.3	359	367	-2.2
Atlanta.....	447	522	-14.4	164	190	-13.7	283	332	-14.8
Indianapolis.....	174	(?)	(?)	51	(?)	(?)	123	(?)	(?)
Chicago.....	848	875	-3.1	199	243	-18.1	649	632	+2.7
St. Louis.....	315	442	-28.7	82	126	-34.9	233	316	-26.3
New Orleans.....	326	277	+17.7	77	77	0.0	249	200	+24.5
Fort Worth.....	569	434	+31.1	142	117	+21.4	427	317	+34.7
Kansas City.....	332	383	-13.3	95	113	-15.9	237	270	-12.2
Minneapolis.....	366	389	-5.9	79	109	-27.5	287	280	+2.5
Seattle.....	301	292	+3.1	60	84	-28.6	241	208	+15.9
San Francisco.....	361	322	+12.1	73	66	+10.6	288	256	+12.5
Los Angeles.....	681	468	+45.5	144	96	+50.0	537	372	+44.4
Hawaii.....	86	28	+207.1	8	10	-20.0	78	18	+333.3
Puerto Rico.....	170	37	+359.5	57	21	+171.4	113	16	+606.3

<sup>1</sup> Includes 1 case filed directly with the Board in Washington.

<sup>2</sup> Regional Office abolished in April 1943, reestablished December 1944.

Table 7.—Disposition of unfair labor practice cases closed during the fiscal year 1945 by stage and method

Stage and method	Number of cases	Percent of cases closed	Percent of cases on docket
Cases on docket during the year .....	3,633		100.0
Total number of cases closed .....	2,308	100.0	63.5
Before formal action, total .....	2,022	87.6	55.6
Adjusted .....	478	20.7	13.1
Withdrawn .....	1,188	51.5	32.7
Dismissed .....	355	15.4	9.8
Closed otherwise .....	1	(1)	(1)
After formal action, total .....	286	12.4	7.9
Before hearing .....	29	1.2	0.8
Adjusted .....	19	0.8	0.5
Withdrawn .....	8	0.3	0.2
Dismissed .....	2	0.1	0.1
After hearing .....	29	1.2	0.8
Adjusted .....	7	0.3	0.2
Compliance with Intermediate Report .....	14	0.6	0.4
Withdrawn .....	5	0.2	0.1
Dismissed .....	3	0.1	0.1
Closed otherwise .....	0	0.0	0.0
After Board decision .....	71	3.1	2.0
Compliance .....	56	2.5	1.6
Dismissed .....	12	0.5	0.3
Closed otherwise .....	3	0.1	0.1
After Court action .....	157	6.9	4.3
Compliance with consent decree .....	58	2.6	1.6
Compliance with court order .....	96	4.2	2.6
Dismissed .....	3	0.1	0.1
Closed otherwise .....	0	0.0	0.0

<sup>1</sup> Less than 0.1 percent.

Table 8.—Disposition of representation cases closed during the fiscal year 1945, by stage and method

Stage and method	Number of cases	Percent of cases closed	Percent of cases on docket
Cases on docket during the year .....	8,703		100.0
Total number of cases closed .....	6,784	100.0	78.0
Before formal action, total .....	4,438	65.4	51.0
Adjusted .....	3,042	44.9	34.9
Recognition .....	186	2.8	2.1
Consent election .....	2,409	35.5	27.7
Cross-checks .....	447	6.6	5.1
Withdrawn .....	945	13.9	10.9
Dismissed .....	450	6.6	5.2
Otherwise .....	1	(1)	(1)
After formal action, total .....	2,346	34.6	27.0
Before hearing .....	96	1.4	1.1
Adjusted .....	55	0.8	0.6
Recognition .....	1	(1)	(1)
Consent election .....	52	0.8	0.6
Cross-check .....	2	(1)	(1)
Withdrawn .....	35	0.5	0.4
Dismissed .....	6	0.1	0.1

Less than 0.1 percent.

Table 8.—Disposition of representation cases closed during the fiscal year 1945, by stage and method—Continued

Stage and method	Number of cases	Percent of cases closed	Percent of cases on docket
After hearing.....	140	2.1	1.6
Adjusted.....	72	1.1	0.8
Recognition.....	5	0.1	0.1
Consent election.....	65	1.0	0.7
Cross-check.....	2	(1)	(1)
Withdrawn.....	66	1.0	0.8
Dismissed.....	2	(1)	(1)
After Board decision.....	2,110	31.1	24.3
Certified.....	1,487	21.9	17.1
Stipulated election.....	272	4.0	3.1
Stipulated cross-check.....	25	0.4	0.3
Ordered election.....	1,187	17.5	13.7
Without election.....	3	(1)	(1)
Dismissed.....	529	7.8	6.1
Stipulated election.....	73	1.1	0.5
Ordered election.....	243	3.6	2.5
Without election.....	213	3.1	2.5
Withdrawn.....	92	1.4	1.1
Otherwise.....	2	(1)	(1)

<sup>1</sup> Less than 0.1 percent.

Table 9.—Forms of remedy in unfair labor practice cases closed during the fiscal year 1945, by identification of complainant

	Total	Identification of complainant			
		A. F. of L. affiliates	C. I. O. affiliates	Unaffiliated unions	Individuals
Cases					
Notice posted.....	576	242	234	84	16
Company union disestablished.....	54	21	27	5	1
Workers placed on preferential hiring list.....	39	15	15	8	1
Collective bargaining begun.....	116	45	40	29	2
Workers					
Workers reinstated to remedy discriminatory discharge.....	1,919	545	824	516	34
Workers receiving back pay.....	1,973	583	966	375	49
Back-pay awards.....	\$907,270	\$315,030	\$581,510	\$90,510	\$10,220
Strikers reinstated.....	125	0	0	125	0

Table 10.—Formal actions taken during the fiscal year 1945

	All cases		Unfair labor practice cases		Representation cases	
	Number of cases	Formal actions <sup>1</sup>	Number of cases	Formal actions <sup>1</sup>	Number of cases	Formal actions <sup>1</sup>
Complaints issued.....	308	286	308	286	.....	.....
Notices of hearing issued.....	2,235	1,688	.....	.....	2,235	1,688
Cases heard.....	2,440	1,703	235	215	2,205	1,488
Intermediate Reports or proposed findings.....	225	211	225	211	.....	.....
Decisions issued.....	2,217	1,724	186	175	2,031	1,549
Decisions and Orders.....	129	119	129	119	.....	.....
Decisions and Consent Orders.....	57	56	57	56	.....	.....
Elections directed.....	1,552	1,172	.....	.....	1,552	1,172
Certifications or dismissals after stipulated elections.....	282	278	.....	.....	282	278
Certifications or dismissals on the record.....	197	99	.....	.....	197	99

<sup>1</sup> The figure for actions is less than the number of cases involved, because a group of individual cases are sometimes consolidated for one action.



Table 11.—Number of elections and cross-checks and number of votes cast for participating unions during the fiscal year 1945

Participating unions	Number of elections and cross-checks	Elections and cross-checks won by—						Eligible voters		Valid votes cast for—							
		A. F. of L. affiliates		C. I. O. affiliates		Unaffiliated unions		Number	Per cent cast— ing valid votes	Total	A. of F. L. affiliates		C. I. O. affiliates		Unaffiliated unions		Against unions
		Number	Per cent	Number	Per cent	Number	Per cent				Number	Per cent	Number	Per cent	Number	Per cent	
Total.....	4,919	1,620	32.9	1,898	38.6	580	11.4	1,087,177	82.2	893,758	215,453	24.1	350,295	39.2	140,821	15.8	187,189
A. F. of L. affiliates <sup>1</sup> .....	1,640	1,335	81.4	-----	-----	-----	-----	197,843	81.0	160,201	106,431	66.4	-----	-----	-----	-----	53,770
C. I. O. affiliates <sup>2</sup> .....	1,866	-----	-----	1,472	78.9	-----	-----	322,163	83.7	269,536	-----	-----	176,046	65.3	-----	-----	93,490
Unaffiliated unions.....	419	-----	-----	-----	-----	339	80.9	64,865	79.9	51,795	-----	-----	-----	-----	37,611	72.6	14,184
A. F. of L. affiliates-C. I. O. affiliates <sup>3</sup> .....	535	191	35.7	300	56.1	-----	-----	229,845	81.7	187,674	83,350	44.4	87,774	46.8	-----	-----	16,550
A. F. of L. affiliates—Unaffiliated unions <sup>4</sup> .....	159	70	44.0	-----	-----	82	51.6	51,994	81.9	42,563	18,865	44.3	-----	-----	21,179	49.8	2,519
C. I. O. affiliates—Unaffiliated unions <sup>5</sup> .....	233	-----	-----	117	50.2	106	45.5	169,319	84.5	143,128	-----	-----	75,017	52.4	62,196	43.5	5,915
Unaffiliated—Unaffiliated.....	23	-----	-----	-----	-----	27	96.4	20,264	71.8	14,557	-----	-----	-----	-----	14,242	97.8	315
A. F. of L.-C. I. O.—Unaffiliated unions <sup>6</sup> .....	39	24	61.5	9	23.1	6	15.4	30,884	78.7	24,304	6,807	28.0	11,458	47.1	5,593	23.0	446

<sup>1</sup> Includes 38 elections in which 2 A. F. of L. unions were on ballot.

<sup>2</sup> Includes 4 elections in which 2 C. I. O. unions were on ballot.

<sup>3</sup> Includes 7 elections in which 2 A. F. of L. unions were on ballot.

<sup>4</sup> Includes 2 elections in which 2 A. F. of L. unions were on ballot; 4 elections in which 2 unaffiliated unions were on ballot.

<sup>5</sup> Includes 5 elections in which 2 unaffiliated unions were on ballot.

<sup>6</sup> Includes 1 election in which 2 unaffiliated unions were on ballot.

Table 12.—Number of elections and cross-checks and number of votes cast for participating unions during the fiscal year 1945, by petition

Participating unions	Number of elections and cross-checks	Elections won by petitioner		Valid votes cast for—					Percent of total votes cast for petitioner
		Number	Percent	Total	A. F. of L.	C. I. O.	Unaffiliated union	No union	
Total.....	4,919	3,676	74.7	893,758	215,453	350,295	140,821	187,189	56.6
A. F. of L. affiliate, petitioner.....	1,919	1,460	76.1	291,915	170,789	42,436	15,291	63,399	58.5
No other party on ballot.....	<sup>1</sup> 1,631	1,310	80.3	159,848	106,137	-----	-----	53,711	66.4
C. I. O. on ballot.....	<sup>2</sup> 189	93	49.2	95,353	46,882	40,217	-----	8,254	49.2
Unaffiliated union on ballot.....	<sup>3</sup> 88	48	54.5	29,238	13,286	-----	14,620	1,332	45.4
C. I. O. and unaffiliated union on ballot.....	11	9	81.8	7,476	4,484	2,219	671	102	60.0
C. I. O. affiliate, petitioner.....	2,398	1,788	74.6	451,856	35,600	264,731	46,846	104,679	58.6
No other party on ballot.....	<sup>4</sup> 1,856	1,462	78.8	264,330	-----	172,741	-----	91,598	65.3
A. F. of L. on ballot.....	<sup>5</sup> 346	227	65.6	90,252	34,338	46,712	-----	9,202	51.8
Unaffiliated union on ballot.....	<sup>6</sup> 171	93	54.4	86,726	-----	40,019	43,002	3,685	46.1
A. F. of L. and unaffiliated union on ballot.....	<sup>7</sup> 25	6	24.0	19,539	1,262	5,250	3,824	194	49.9
Unaffiliated union, petitioner.....	577	428	74.2	142,682	6,638	39,481	77,708	18,855	49.3
No other party on ballot.....	<sup>8</sup> 411	331	80.5	59,958	-----	-----	36,837	14,121	72.3
A. F. of L. on ballot.....	<sup>9</sup> 68	43	63.2	13,487	5,254	-----	7,046	1,187	52.2
C. I. O. on ballot.....	<sup>10</sup> 66	36	54.5	58,109	-----	35,501	19,826	3,082	33.6
Other unaffiliated union on ballot.....	<sup>11</sup> 26	16	61.5	13,199	-----	-----	12,884	315	55.4
A. F. of L. and C. I. O. on ballot.....	<sup>12</sup> 6	2	33.3	6,929	1,384	3,980	1,415	150	20.4
Employer petitioner.....	25	-----	-----	7,305	2,426	3,647	976	256	-----
A. F. of L. and C. I. O. on ballot.....	8	-----	-----	3,978	2,145	1,773	-----	60	-----
A. F. of L. and unaffiliated union on ballot.....	1	-----	-----	9	2	-----	7	0	-----
C. I. O. and unaffiliated union on ballot.....	6	-----	-----	1,239	-----	645	565	29	-----
A. F. of L. alone.....	<sup>13</sup> 6	-----	-----	337	279	-----	-----	58	-----
C. I. O. alone.....	<sup>14</sup> 3	-----	-----	1,285	-----	1,229	-----	56	-----
Unaffiliated union alone.....	1	-----	-----	457	-----	-----	404	53	-----

<sup>1</sup> Includes 34 elections in which 2 A. F. of L. unions were on ballot; 6 elections in which petitioner was not on ballot.

<sup>2</sup> Includes 2 elections in which 2 A. F. of L. unions were on ballot; 6 elections in which petitioner was not on ballot.

<sup>3</sup> Includes 1 election in which 2 A. F. of L. unions were on ballot; 1 election in which 2 unaffiliated unions were on ballot; 1 election in which petitioner was not on ballot.

<sup>4</sup> Includes 3 elections in which 2 C. I. O. unions were on ballot.

<sup>5</sup> Includes 5 elections in which 2 A. F. of L. unions were on ballot; 3 elections in which petitioner was not on ballot.

<sup>6</sup> Includes 2 elections in which 2 unaffiliated unions were on ballot; 8 elections in which petitioner was not on ballot.

<sup>7</sup> Includes 3 elections in which petitioner was not on ballot.

<sup>8</sup> Includes 3 elections in which 2 unaffiliated unions were on ballot; 1 election in which 2 A. F. of L. unions were on ballot.

<sup>9</sup> Includes 2 elections in which 2 unaffiliated unions were on ballot; 2 elections in which petitioner was not on ballot.

<sup>10</sup> Includes 1 election in which 2 unaffiliated unions were on ballot.

<sup>11</sup> Includes 4 elections in which 2 A. F. of L. unions were on ballot.

<sup>12</sup> Includes 1 election in which 2 C. I. O. unions were on ballot.

Table 13.—Number of elections and cross-checks and number of valid votes cast during the fiscal year 1945, by industry

Industrial groups <sup>1</sup>	Elections and cross-checks		Valid votes cast		Winner							
	Number	Percent	Number	Percent	A. F. of L.		C. I. O.		Unaffiliated		No union	
					Number	Percent	Number	Percent	Number	Percent	Number	Percent
Total.....	4,919	100.0	893,758	100.0	1,620	32.9	1,898	38.6	560	11.4	841	17.1
Manufacturing.....	3,915	79.6	783,354	87.6	1,288	32.9	1,633	41.7	391	10.0	603	15.4
Food and kindred products.....	434	8.8	45,319	5.1	175	40.3	156	35.9	29	6.7	74	17.1
Tobacco manufactures.....	7	0.1	1,730	0.2	3	42.9	3	42.9	1	14.2	0	0.0
Textile-mill products.....	191	3.9	60,771	6.8	36	18.8	84	44.0	21	11.0	50	26.2
Apparel and other finished products made from fabrics and similar materials.....	75	1.5	10,521	1.2	29	38.7	25	33.3	2	2.7	19	25.3
Lumber and timber basic products.....	143	2.9	8,437	0.9	47	32.9	62	43.3	5	3.5	29	20.3
Furniture and finished lumber products.....	119	2.4	10,251	1.1	33	27.7	57	47.9	11	9.3	18	15.1
Paper and allied products.....	138	2.8	22,162	2.5	64	46.4	27	19.5	23	16.7	24	17.4
Printing, publishing, and allied industries.....	104	2.1	4,626	0.5	53	51.0	27	26.0	12	11.5	12	11.5
Chemicals and allied products.....	273	5.6	49,017	5.5	100	36.6	86	31.5	56	20.5	31	11.4
Products of petroleum and coal.....	150	3.1	19,765	2.2	55	36.7	44	29.3	32	21.3	19	12.7
Rubber products.....	50	1.0	11,308	1.3	8	16.0	34	68.0	2	4.0	6	12.0
Leather and leather products.....	147	3.0	22,837	2.6	32	21.8	91	61.9	8	5.4	16	10.9
Stone, clay, and glass products.....	97	2.0	16,101	1.8	28	28.9	38	39.2	15	15.4	16	16.5
Iron and steel and their products.....	646	13.1	127,339	14.2	180	27.9	321	49.7	57	8.8	88	13.6
Nonferrous metals and their products.....	140	2.8	34,170	3.8	41	29.3	58	41.4	18	12.9	23	16.4
Machinery (except electrical).....	486	9.9	75,388	8.4	155	31.9	216	44.4	31	6.4	84	17.3
Electrical machinery.....	227	4.6	58,230	6.5	74	32.6	104	45.8	22	9.7	27	11.9
Transportation equipment.....	362	7.4	188,285	21.1	137	37.9	138	38.1	37	10.2	50	13.8
Aircraft and parts.....	167	3.4	100,703	11.3	64	38.3	61	36.5	12	7.2	30	18.0
Automotive equipment and parts.....	55	1.1	15,800	1.8	22	40.0	22	40.0	6	10.9	5	9.1
Ship and boat building and repairing.....	125	2.6	69,696	7.8	49	39.2	46	36.8	16	12.8	14	11.2
Other.....	15	0.3	2,186	0.2	2	13.3	9	60.0	3	20.0	1	6.7
Miscellaneous manufacturing.....	126	2.6	17,097	1.9	38	30.2	62	49.2	9	7.1	17	13.5
Agriculture, forestry, and fishing.....	10	0.2	424	0.1	2	20.0	6	60.0	0	0.0	2	20.0
Mining.....	134	2.7	12,435	1.4	33	24.6	52	38.8	24	17.9	25	18.7
Metal mining.....	36	0.7	4,512	0.5	14	38.9	17	47.2	1	2.8	4	11.1
Coal mining.....	24	0.5	3,005	0.3	0	0.0	2	8.3	13	54.2	9	37.5
Crude petroleum and natural gas production.....	41	0.8	2,383	0.3	10	24.4	21	51.2	1	2.4	9	22.0
Nonmetallic mining and quarrying.....	33	0.7	2,535	0.3	9	27.3	12	36.3	9	27.3	3	9.1

Construction.....	20	0.4	1,654	0.2	7	35.0	6	30.0	2	10.0	5	25.0
Wholesale trade.....	238	4.9	10,178	1.1	54	22.7	72	30.2	15	6.3	97	40.8
Retail trade.....	90	1.8	8,858	1.0	36	40.0	15	16.7	13	14.4	26	28.9
Finance, insurance, and real estate.....	53	1.1	5,423	0.6	17	32.1	12	22.6	7	13.2	17	32.1
Transportation, communication, and other public utilities.....	390	7.9	64,648	7.2	161	41.3	75	19.2	96	24.6	58	14.9
Highway passenger transportation.....	41	0.8	2,963	0.3	22	53.7	1	2.4	11	26.8	7	17.1
Highway freight transportation.....	44	0.9	2,654	0.3	26	69.1	1	2.3	3	6.8	14	31.8
Water transportation.....	69	1.4	3,204	0.3	17	24.6	20	29.0	26	37.7	6	8.7
Warehousing and storage.....	31	0.6	1,530	0.2	13	41.9	14	45.2	1	3.2	3	9.7
Other transportation.....	28	0.6	5,471	5.6	7	25.0	14	50.0	2	7.1	5	17.9
Communication.....	68	1.4	32,953	3.7	27	39.7	10	14.7	25	36.8	6	8.8
Heat, light, power, water, and sanitary service.....	109	2.2	15,804	1.8	49	44.9	15	13.8	28	25.7	17	15.6
Services.....	69	1.4	6,784	0.8	22	31.9	27	30.1	12	17.4	8	11.6

<sup>1</sup> Source: Standard Industrial classification. Division of Statistical Standards, U. S. Bureau of the Budget, Washington, 1941.



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**APPENDIX B**  
**STATISTICAL TABLES**

The following tables present the statistical record of War Labor Disputes Act cases received during the fiscal year, cases closed, cases pending at the end of the year, and polls conducted during the year.

**Table 1.—War Labor Disputes Act cases received, closed, and pending during the fiscal year 1945, by identification of party filing notice**

	Number of cases			
	Total	Identification of party filing		
		A. F. of L. affiliate	C. I. O. affiliate	Unaffiliated union
Cases pending July 1, 1944.....	54	43	6	5
Cases received July 1944, June 30, 1945.....	1, 284	731	256	297
Cases on docket July 1944, June 30, 1945.....	1, 338	774	262	302
Cases closed July 1944, June 30, 1945.....	1, 183	665	234	284
Method of disposition:				
Poll conducted.....	404	243	47	114
Withdrawn.....	727	391	173	163
Closed otherwise.....	52	31	14	7
Cases pending June 30, 1945.....	155	109	28	18

**Table 2.—Results of polls conducted in War Labor Disputes Act cases during the fiscal year 1945, by identification of party filing notice**

Identification of party filing.	Total number of polls	Results of polls		Total number eligible to vote	Valid votes cast		
		Voted in favor of interruption of work	Voted against interruption of work		Total	Votes in favor of interruption of work	Votes against interruption of work
Total.....	573	482	191	738,972	540,242	442,769	97,473
A. F. of L. affiliate.....	409	358	51	170,695	122,374	96,776	25,598
C. I. O. affiliate.....	50	47	3	73,092	53,688	43,481	10,207
Unaffiliated union.....	114	77	37	495,185	364,180	302,512	61,668

<sup>1</sup> Includes 11 polls with tie votes, 12 polls with no votes cast.

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**APPENDIX C**  
**STATUTORY PROVISIONS ADMINISTERED BY N. L. R. B.**

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**NATIONAL LABOR RELATIONS ACT**

(49 Stat. 449)

An act to diminish the causes of labor disputes burdening or obstructing interstate and foreign commerce, to create a National Labor Relations Board, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**Findings and Policy**

SECTION 1. The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right to employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

**Definitions**

SEC. 2. When used in this Act—

(1) The term "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(2) The term "employer" includes any person acting in the interest of an employer, directly or indirectly, but shall not include the United States, or any State or political subdivision thereof, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse.

(4) The term "representatives" includes any individual or labor organization.

(5) 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.

(6) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

(8) The term "unfair labor practice" means any unfair labor practice listed in section 8.

(9) The term "labor dispute" includes any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(10) The term "National Labor Relations Board" means the National Labor Relations Board created by section 3 of this Act.

(11) The term "old Board" means the National Labor Relations Board established by Executive Order Numbered 6763 of the President on June 29, 1934, pursuant to Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183), and reestablished and continued by Executive Order Numbered 7074 of the President of June 15, 1935, pursuant to Title I of the National Industrial Recovery Act (48 Stat. 195), as amended and continued by Senate Joint Resolution 133 approved June 14, 1935.

### National Labor Relations Board

Sec. 3. (a) There is hereby created a board, to be known as the "National Labor Relations Board" (hereinafter referred to as the "Board"), which shall be composed of three members, who shall be appointed by the President, by and with the advice and consent of the Senate. One of the original members shall be appointed for a term of one year, one for a term of three years, and one for a term of five years, but their successors shall be appointed for terms of five years each, except that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as the chairman of the Board. Any member of the Board may be removed by the President, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause.

(b) A vacancy in the Board shall not impair the right of the remaining members to exercise all the powers of the Board, and two members of the Board shall, at all times, constitute a quorum. The Board shall have an official seal which shall be judicially noticed.

(c) The Board shall at the close of each fiscal year make a report in writing to Congress and to the President, stating in detail the cases it has heard, the decisions it has rendered, the names, salaries, and duties of all employees and officers in the employ or under the supervision of the Board, and an account of all moneys it has disbursed.

Sec. 4. (a) Each member of the Board shall receive a salary of \$10,000 a year, shall be eligible for reappointment, and shall not engage in any other business, vocation, or employment. The Board shall appoint, without regard for the provisions of the civil-service laws but subject to the Classification Act of 1923, as amended, an executive secretary, and such attorneys, examiners, and regional directors, and shall appoint such other employees with regard to existing laws applicable to the employment and compensation of officers and employees of the United States, as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress. The Board may establish or utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys appointed under this section may, at the direction of the Board, appear for and represent the Board in any case in court. Nothing in this

<sup>1</sup>So in original.

Act shall be construed to authorize the Board to appoint individuals for the purpose of conciliation or mediation (or for statistical work), where such service may be obtained from the Department of Labor.

(b) Upon the appointment of the three original members of the Board and the designation of its chairman, the old Board shall cease to exist. All employees of the old Board shall be transferred to and become employees of the Board with salaries under the Classification Act of 1923, as amended, without acquiring by such transfer a permanent or civil-service status. All records, papers, and property of the old Board shall become records, papers, and property of the Board, and all unexpended funds and appropriations for the use and maintenance of the old Board shall become funds and appropriations available to be expended by the Board in the exercise of the powers, authority, and duties conferred on it by this Act.

(c) All of the expenses of the Board, including all necessary traveling and subsistence expenses outside the District of Columbia incurred by the members or employees of the Board under its orders, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Board or by any individual it designates for that purpose.

SEC. 5. The principal office of the Board shall be in the District of Columbia, but it may meet and exercise any or all of its powers at any other place. The Board may, by one or more of its members or by such agents or agencies as it may designate, prosecute any inquiry necessary to its functions in any part of the United States. A member who participates in such an inquiry shall not be disqualified from subsequently participating in a decision of the Board in the same case.

SEC. 6. (a) The Board shall have authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this Act. Such rules and regulations shall be effective upon publication in the manner which the Board shall prescribe.

#### Rights of Employees

SEC. 7. 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.

SEC. 8. It shall be an unfair labor practice for an employer—

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

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *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.

(3) 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 the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, secs. 701-712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, 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.

(4) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act.

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a).

#### Representatives and Elections

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be 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: *Provided*, That any individual

employee or a group of employees shall have the right at any time to present grievances to their employer.

(b) 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.

(c) 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.

(d) Whenever an order of the Board made pursuant to section 10 (c) is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section, and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsections 10 (e) or 10 (f), and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

### Prevention of Unfair Labor Practices

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power 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.

(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint. Any such complaint may be amended by the member, agent, or agency conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent, or agency conducting the hearing or the Board, any other person may be allowed to intervene in the said proceeding and to present testimony. In any such proceeding the rules of evidence prevailing in courts of law or equity shall not be controlling.

(c) The testimony taken by such member, agent, or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. 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. If upon all the testimony taken the Board shall be of the opinion that no 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 an order dismissing the said complaint.

(d) Until a transcript of the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon reasonable notice, and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

(e) The Board shall have power to petition any circuit court of appeals of the United States (including the Court of Appeals of the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the Supreme Court of the

District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board as to the facts if, supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which, if supported by evidence shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States and upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the Court of Appeals of the District of Columbia, by filing in such a court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the Board, including the pleading and testimony upon which the order complained of was entered and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the Board; and the findings of the Board as to the facts, if supported by evidence, shall in like manner be conclusive.

(g) The commencement of proceedings under subsection (e) or (f) of this section shall not, unless specifically ordered by the court, operate as a stay of the Board's order.

(h) When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, and enforcing as so modified or setting aside in whole or in part an order of the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes," approved March 23, 1932 (U. S. C., Supp. VII, title 29, secs. 101-115).

(i) Petitions filed under this Act shall be heard expeditiously, and if possible within ten days after they have been docketed.

#### Investigatory Powers

Sec. 11. For the purpose of all hearings and investigations which, in the opinion of the Board, are necessary and proper for the exercise of the powers vested in it by section 9 and section 10—

(1) The Board, or its duly authorized agents or agencies, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any

evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question. Any member of the Board shall have power to issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question, before the Board, its member, agent, or agency conducting the hearing or investigation. Any member of the Board, or any agent or agency designated by the Board for such purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. Such attendance of witnesses and the production of such evidence may be required from any place in the United States or any Territory or possession thereof, at any designated place of hearing.

(2) In case of contumacy or refusal to obey a subpoena issued to any person, any District Court of the United States or the United States courts of any Territory or possession, or the Supreme Court of the District of Columbia, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Board shall have jurisdiction to issue to such person an order requiring such person to appear before the Board, its member, agent, or agency, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(3) No person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to the subpoena of the Board, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(4) Complaints, orders, and other process and papers of the Board, its member, agent, or agency, may be served either personally or by registered mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return by the individual so serving the same setting forth the manner of such service shall be proof of the same, and the return post office receipt or telegraph receipt therefor when registered and mailed or telegraphed as aforesaid shall be proof of service of the same. Witnesses summoned before the Board, its member, agent, or agency, shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

(5) All process of any court to which application may be made under this Act may be served in the judicial district wherein the defendant or other person required to be served resides or may be found.

(6) The several departments and agencies of the Government, when directed by the President, shall furnish the Board, upon its request, all records, papers, and information in their possession relating to any matter before the Board.

SEC. 12. Any person who shall willfully resist, prevent, impede, or interfere with any member of the Board or any of its agents or agencies in the performance of duties pursuant to this Act shall be punished by a fine of not more than \$5,000 or by imprisonment for not more than one year, or both.

#### Limitations

SEC. 13. Nothing in this Act shall be construed so as to interfere with or impede or diminish in any way the right to strike.

SEC. 14. Wherever the application of the provisions of section 7 (a) of the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, sec. 707 (a), as amended from time to time, or of section 77 B, paragraphs (l) and (m) of the Act approved June 7, 1934, entitled "An Act to amend an Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States' approved July 1, 1898, and Acts amendatory thereof and supplementary thereto" (43 Stat. 922, pars. (l) and (m), as amended from time to time, or of Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183), conflicts with the application of the provisions of this Act, this Act shall prevail: *Provided*, That in any situation where the provisions of this Act cannot be validly enforced, the provisions of such other Acts shall remain in full force and effect.

SEC. 15. If any provision of this Act, or the application of such provision to

any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

SEC. 16. This Act may be cited as the "National Labor Relations Act."  
Approved, July 5, 1935.

## WAR LABOR DISPUTES ACT <sup>1</sup>

An act relating to the use and operation by the United States of certain plants, mines, and facilities in the prosecution of the war, and preventing strikes, lock-outs, and stoppages of production, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the "War Labor Disputes Act."

### Definitions

SEC. 2. As used in this Act—

(a) The term "person" means an individual, partnership, association, corporation, business trust, or any organized group of persons.

(b) The term "war contract" means—

(1) a contract with the United States entered into on behalf of the United States by an officer or employee of the Department of War, the Department of the Navy, or the United States Maritime Commission;

(2) a contract with the United States entered into by the United States pursuant to an Act entitled "An Act to promote the defense of the United States";

(3) a contract, whether or not with the United States, for the production, manufacture, construction, reconstruction, installation, maintenance, storage, repair, mining, or transportation of—

(A) any weapon, munition, aircraft, vessel, or boat;

(B) any building, structure or facility;

(C) any machinery, tool, material, supply, article, or commodity; or

(D) any component material or part of or equipment for any article described in subparagraph (A), (B), or (C);

ithe production, manufacture, construction, reconstruction, installation, maintenance, storage, repair, mining, or transportation of which by the contractor in question is found by the President as being contracted for in the prosecution of the war.

(c) The term "war contractor" means the person producing, manufacturing, constructing, reconstructing, installing, maintaining, storing, repairing, mining, or transporting under a war contract or a person whose plant, mine, or facility is equipped for the manufacture, production, or mining of any articles or materials which may be required in the prosecution of the war or which may be useful in connection therewith; but such term shall not include a carrier, as defined in title I of the Railway Labor Act, or a carrier by air subject to title II of such Act.

(d) The terms "employer," "employee," "representative," "labor organization," and "labor dispute" shall have the same meaning as in section 2 of the National Labor Relations Act.

### Power of President to Take Possession of Plants

SEC. 3. Section 9 of the Selective Training and Service Act of 1940 is hereby amended by adding at the end thereof the following new paragraph:

"The power of the President under the foregoing provisions of this section to take immediate possession of any plant upon a failure to comply with any such provisions, and the authority granted by this section for the use and operation by the United States or in its interests of any plant of which possession is so taken, shall also apply as hereinafter provided to any plant, mine, or facility equipped for the manufacture, production, or mining of any articles or materials which may be required for the war effort or which may be useful in connection therewith. Such power and authority may be exercised by the President through such department or agency of the Government as he may designate, and may be exercised with respect to any such plant, mine, or facility whenever the President finds, after investigation, and proclaims that there is an interruption of the operation of such plant, mine, or facility as a result of a strike or other labor disturbance, that the war effort will be unduly impeded or delayed by such interruption, and that the exercise of such power and authority is necessary to insure the operation of such plant, mine, or facility in the interest of the war effort: *Provided*, That

<sup>1</sup> Act of June 25, 1943, Public Law No. 89, 78th Congress.



whenever any such plant, mine, or facility has been or is hereafter so taken by reason of a strike, lock-out, threatened strike, threatened lock-out, work stoppage, or other cause, such plant, mine, or facility shall be returned to the owners thereof as soon as practicable, but in no event more than sixty days after the restoration of the productive efficiency thereof prevailing prior to the taking of possession thereof: *Provided further*, That possession of any plant, mine, or facility shall not be taken under authority of this section after the termination of hostilities in the present war, as proclaimed by the President, or after the termination of the War Labor Disputes Act; and the authority to operate any such plant, mine, or facility under the provisions of this section shall terminate at the end of six months after the termination of such hostilities as so proclaimed."

#### **Terms of Employment at Government-Operated Plants**

SEC. 4. Except as provided in section 5 hereof, in any case in which possession of any plant, mine, or facility has been or shall be hereafter taken under the authority granted by section 9 of the Selective Training and Service Act of 1940 as amended, such plant, mine, or facility, while so possessed, shall be operated under the terms and conditions of employment which were in effect at the time possession of such plant, mine, or facility was so taken.

#### **Application to War Labor Board for Change in Terms of Employment at Government-Operated Plants**

SEC. 5. When possession of any plant, mine, or facility has been or shall be hereafter taken under authority of section 9 of the Selective Training and Service Act of 1940, as amended, the Government agency operating such plant, mine, or facility, or a majority of the employees of such plant, mine, or facility or their representatives, may apply to the National War Labor Board for a change in wages or other terms or conditions of employment in such plant, mine, or facility. Upon receipt of any such application, and after such hearings and investigations as it deems necessary, such Board may order any changes in such wages, or other terms and conditions, which it deems to be fair and reasonable and not in conflict with any Act of Congress or any Executive order issued thereunder. Any such order of the Board shall, upon approval by the President, be complied with by the Government agency operating such plant, mine, or facility.

#### **Interference With Government Operation of Plants**

SEC. 6. (a) Whenever any plant, mine, or facility is in the possession of the United States, it shall be unlawful for any person (1) to coerce, instigate, induce, conspire with, or encourage any person, to interfere, by lock-out, strike, slow-down, or other interruption, with the operation of such plant, mine, or facility, or (2) to aid any such lock-out, strike, slow-down, or other interruption interfering with the operation of such plant, mine, or facility by giving direction or guidance in the conduct of such interruption, or by providing funds for the conduct or direction thereof or for the payment of strike, unemployment, or other benefits to those participating therein. No individual shall be deemed to have violated the provisions of this section by reason only of his having ceased work or having refused to continue to work or to accept employment.

(b) Any person who willfully violates any provision of this section shall be subject to a fine of not more than \$5,000, or to imprisonment for not more than one year, or both.

#### **Functions and Duties of the National War Labor Board**

SEC. 7. (a) The National War Labor Board (hereinafter in this section called the "Board"), established by Executive Order Numbered 9017, dated January 12, 1942, in addition to all powers conferred on it by section 1 (a) of the Emergency Price Control Act of 1942, and by any Executive order or regulation issued under the provisions of the Act of October 2, 1942, entitled "An Act to amend the Emergency Price Control Act of 1942, to aid in preventing inflation, and for other purposes," and by any other statute, shall have the following powers and duties:

(1) Whenever the United States Conciliation Service (hereinafter called the "Conciliation Service") certifies that a labor dispute exists which may lead to substantial interference with the war effort, and cannot be settled by collective bargaining or conciliation, to summon both parties to such dispute before it and

conduct a public hearing on the merits of the dispute. If in the opinion of the Board a labor dispute has become so serious that it may lead to substantial interference with the war effort, the Board may take such action on its own motion. At such hearing both parties shall be given full notice and opportunity to be heard, but the failure of either party to appear shall not deprive the Board of jurisdiction to proceed to a hearing and order.

(2) To decide the dispute, and provide by order the wages and hours and all other terms and conditions (customarily included in collective-bargaining agreements) governing the relations between the parties, which shall be in effect until further order of the Board. In making any such decision the Board shall conform to the provisions of the Fair Labor Standards Act of 1938, as amended; the National Labor Relations Act; the Emergency Price Control Act of 1942, as amended; and the Act of October 2, 1942, as amended, and all other applicable provisions of law; and where no other law is applicable the order of the Board shall provide for terms and conditions to govern relations between the parties which shall be fair and equitable to employer and employee under all the circumstances of the case.

(3) To require the attendance of witnesses and the production of such papers, documents, and records as may be material to its investigation of facts in any labor dispute, and to issue subpoenas requiring such attendance or production.

(4) To apply to any Federal district court for an order requiring any person within its jurisdiction to obey a subpoena issued by the Board; and jurisdiction is hereby conferred on any such court to issue such an order.

(b) The Board, by its Chairman, shall have power to issue subpoenas requiring the attendance and testimony of witnesses, and the production of any books, papers, records, or other documents, material to any inquiry or hearing before the Board or any designated member or agent thereof. Such subpoenas shall be enforceable in the same manner, and subject to the same penalties, as subpoenas issued by the President under title III of the Second War Powers Act, approved March 27, 1942.

(c) No member of the Board shall be permitted to participate in any decision in which such member has a direct interest as an officer, employee, or representative of either party to the dispute.

(d) Subsections (a) (1) and (2) shall not apply with respect to any plant, mine, or facility of which possession has been taken by the United States.

(e) The Board shall not have any powers under this section with respect to any matter within the purview of the Railway Labor Act, as amended.

#### Notice of Threatened Interruptions in War Production, Etc.

SEC. 8. (a) In order that the President may be apprised of labor disputes which threaten seriously to interrupt war production, and in order that employees may have an opportunity to express themselves, free from restraint or coercion, as to whether they will permit such interruptions in wartime—

(1) The representative of the employees of a war contractor, shall give to the Secretary of Labor, the National War Labor Board, and the National Labor Relations Board, notice of any such labor dispute involving such contractor and employees, together with a statement of the issues giving rise thereto.

(2) For not less than thirty days after any notice under paragraph (1) is given, the contractor and his employees shall continue production under all the conditions which prevailed when such dispute arose, except as they may be modified by mutual agreement or by decision of the National War Labor Board.

(3) On the thirtieth day after notice under paragraph (1) is given by the representative of the employees, unless such dispute has been settled, the National Labor Relations Board shall forthwith take a secret ballot of the employees in the plant, plants, mine, mines, facility, facilities, bargaining unit, or bargaining units, as the case may be, with respect to which the dispute is applicable on the question whether they will permit any such interruption of war production. The National Labor Relations Board shall include on the ballot a concise statement of the major issues involved in the dispute and of the efforts being made and the facilities being utilized for the settlement of such dispute. The National Labor Relations Board shall by order forthwith certify the results of such balloting, and such results shall be open to public inspection. The National Labor Relations Board may provide for preparing such ballot and distributing it to the employees at any time after such notice has been given.

(b) Subsection (a) shall not apply with respect to any plant, mine, or facility of which possession has been taken by the United States.

(c) Any person who is under a duty to perform any act required under subsection

(a) and who willfully fails or refuses to perform such act shall be liable for damages resulting from such failure or refusal to any person injured thereby and to the United States if so injured. The district courts of the United States shall have jurisdiction to hear and determine any proceedings instituted pursuant to this subsection in the same manner and to the same extent as in the case of proceedings instituted under section 24 (14) of the Judicial Code.

#### Political Contributions by Labor Organizations

Sec. 9. Section 313 of the Federal Corrupt Practices Act, 1925 (U. S. C., 1940 edition, title 2, sec. 251), is amended to read as follows:

"Sec. 313. It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution in connection with any election to any political officer, or for any corporation whatever, or any labor organization to make a contribution in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, or for any candidate, political committee, or other person to accept or receive any contribution prohibited by this section. Every corporation or labor organization which makes any contribution in violation of this section shall be fined not more than \$5,000; and every officer or director of any corporation, or officer of any labor organization, who consents to any contribution by the corporation or labor organization, as the case may be, in violation of this section shall be fined not more than \$1,000 or imprisoned for not more than one year, or both. For the purposes of this section 'labor organization' shall have the same meaning as under the National Labor Relations Act."

#### Termination of Act

Sec. 10. Except as to offenses committed prior to such date, the provisions of this Act and the amendments made by this Act shall cease to be effective at the end of six months following the termination of hostilities in the present war, as proclaimed by the President, or upon the date (prior to the date of such proclamation) of the passage of a concurrent resolution of the two Houses of Congress stating that such provisions and amendments shall cease to be effective.

#### Separability

Sec. 11. If any provision of this Act or of any amendment made by this Act, or the application of such provision to any person or circumstance, is held invalid, the remainder of the Act and of such amendments, and the application of such provision to other persons or circumstances, shall not be affected thereby.

#### EXTRACT FROM AMENDMENT, 1943, TO COMMUNICATIONS ACT OF 1934<sup>2</sup>

The Communications Act of 1934, as amended, is amended by adding at the end of Title II the following new section:

#### Consolidations and Mergers of Telegraph Carriers

Sec. 222. \* \* \*

(f) (1) Each employee of any carrier which is a party to a consolidation or merger pursuant to this section who was employed by such carrier immediately preceding the approval of such consolidation or merger, and whose period of employment began on or before March 1, 1941, shall be employed by the carrier resulting from such consolidation or merger for a period of not less than four years from the date of the approval of such consolidation or merger, and during such period no such employee shall, without his consent, have his compensation reduced or be assigned to work which is inconsistent with his past training and experience in the telegraph industry.

(2) If any employee of any carrier which is a party to any such consolidation or merger, who was employed by such carrier immediately preceding the approval of such consolidation or merger, and whose period of employment began after March 1, 1941, is discharged as a consequence of such consolidation or merger by the carrier resulting therefrom, within four years from the date of approval of the consolidation or merger, such carrier shall pay such employee at the

<sup>2</sup> Act of March 6, 1943, Public Law No. 4, 78th Cong.

time he is discharged severance pay in cash equal to the amount of salary or compensation he would have received during the full four-week period immediately preceding such discharge at the rate of compensation or salary payable to him during such period, multiplied by the number of years he has been continuously employed immediately preceding such discharge by one or another of such carriers who were parties to such consolidation or merger, but in no case shall any such employee receive less severance pay than the amount of salary or compensation he would have received at such rate if he were employed during such full four-week period: *Provided, however,* That such severance pay shall not be required to be paid to any employee who is discharged after the expiration of a period, following the date of approval of the consolidation or merger, equal to the aggregate period during which such employee was in the employ, prior to such date of approval, of one or more of the carriers which are parties to the consolidation or merger.

(3) For a period of four years after the date of approval of any such consolidation or merger, any employee of any carrier which is a party to such consolidation or merger who was such an employee on such date of approval, and who is discharged as a result of such consolidation or merger, shall have a preferential hiring and employment status for any position for which he is qualified by training and experience over any person who has not theretofore been an employee of any such carrier.

(4) If any employee is transferred from one community to another, as a result of any such consolidation or merger, the carrier resulting therefrom shall pay, in addition to such employee's regular compensation as an employee of such carrier, the actual traveling expenses of such employee and his family, including the cost of packing, crating, drayage, and transportation of household goods and personal effects.

(5) In the case of any consolidation or merger pursuant to this section, the consolidated or merged carrier shall accord to every employee or former employee, or representative or beneficiary of an employee or former employee, of any carrier which is a party to such consolidation or merger, the same pension, health, disability, or death insurance benefits, as were provided for prior to the date of approval of the consolidation or merger, under any agreement or plan of any carrier which is a party to the consolidation or merger which covered the greatest number of the employees affected by the consolidation or merger; except that in any case in which, prior to the date of approval of the consolidation or merger, an individual has exercised his right of retirement, or any right to health, disability, or death insurance benefits has accrued, under any agreement or plan of any carrier which is a party to the consolidation or merger, pension, health, disability, or death insurance benefits, as the case may be, shall be accorded in conformity with the agreement or plan under which such individual exercised such right of retirement or under which such right to benefits accrued. For purposes of determining and according the rights and benefits specified in this paragraph, any period spent in the employ of the carrier of which such individual was an employee at the time of the consolidation or merger shall be considered to have been spent in the employ of the consolidated or merged carrier. The application for approval of any consolidation or merger under this section shall contain a guaranty by the proposed consolidated carrier that there will be no impairment of any of the rights or benefits specified in this paragraph.

(6) Any employee who, since August 27, 1940, has left a position, other than a temporary position, in the employ of any carrier which is a party to any such consolidation or merger, for the purpose of entering the military or naval forces of the United States, shall be considered to have been in the employ of such carrier during the time he is a member of such forces, and, upon making an application for employment with the consolidated or merged carrier within forty days from the time he is relieved from service in any of such forces under honorable conditions, such former employee shall be employed by the consolidated or merged carrier and entitled to the benefits to which he would have been entitled if he had been employed by one of such carriers during all of such period of service with such forces; except that this paragraph shall not require the consolidated or merged carrier, in the case of any such individual, to pay compensation, or to accord health, disability, or death insurance benefits, for the period during which he was a member of such forces. If any such former employee is disabled and because of such disability is no longer qualified to perform the duties of his former position but otherwise meets the requirements for employment, he shall be given such available employment at an appropriate rate of compensation as he is able to perform and to which his service credit shall entitle him.

(7) No employee of any carrier which is a party to any such consolidation or merger shall, without his consent, have his compensation reduced, or (except as provided in paragraph (2) and paragraph (8) of this subsection) be discharged or furloughed during the four-year period after the date of the approval of such consolidation or merger. No such employee shall, without his consent, have his compensation reduced, or be discharged or furloughed, in contemplation of such consolidation and merger, during the six-month period immediately preceding such approval.

(8) Nothing contained in this subsection shall be construed to prevent the discharge of any employee for insubordination, incompetency, or any other similar cause.

(9) All employees of any carrier resulting from any such consolidation or merger, with respect to their hours of employment, shall retain the rights provided by any collective bargaining agreement in force and effect upon the date of approval of such consolidation or merger until such agreement is terminated, executed, or superseded. Notwithstanding any other provision of this Act, any agreement not prohibited by law pertaining to the protection of employees may hereafter be entered into by such consolidated or merged carrier and the duly authorized representative or representatives of its employees selected according to existing law.

(10) For purposes of enforcement or protection of rights, privileges, and immunities granted or guaranteed under this subsection, the employees of any such consolidated or merged carrier shall be entitled to the same remedies as are provided by the National Labor Relations Act in the case of employees covered by that Act; and the National Labor Relations Board and the courts of the United States (including the courts of the District of Columbia) shall have jurisdiction and power to enforce and protect such rights, privileges, and immunities in the same manner as in the case of enforcement of the provisions of the National Labor Relations Act.

(11) Nothing contained in this subsection shall apply to any employee of any carrier which is a party to any such consolidation or merger whose compensation is at the rate of more than \$5,000 per annum.

(12) Notwithstanding the provisions of paragraphs (1) and (7), the protection afforded therein for the period of four years from the date of approval of the consolidation or merger shall not, in the case of any particular employee, continue for a longer period, following such date of approval, than the aggregate period during which such employee was in the employ, prior to such date of approval, of one or more of the carriers which are parties to the consolidation or merger. As used in paragraphs (1), (2), and (7), the term "compensation" shall not include compensation attributable to overtime not guaranteed by collective bargaining agreements.

### EXTRACT FROM FAIR LABOR STANDARDS ACT OF 1938<sup>3</sup>

#### Maximum Hours

SEC. 7 (a) No employer shall, except as otherwise provided in this section, employ any of his employees who is engaged in commerce or in the production of goods for commerce—

(1) For a workweek longer than 44 hours during the first year from the effective date of this section.

(2) For a workweek longer than 42 hours during the second year from such date, or

(3) For a workweek longer than 40 hours after the expiration of the second year from such date,

unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

(b) No employer shall be deemed to have violated subsection (a) by employing any employee for a workweek in excess of that specified in such subsection without paying the compensation for overtime employment prescribed therein if such employee is so employed—

(1) In pursuance of an agreement, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board, which provides that no employee shall be employed more than 1,000 hours during any period of 26 consecutive weeks.

<sup>3</sup> 52 Stat. 1060, 29 U. S. C., sec. 201 *et seq.*; Sec. 7 (b) (2) as amended by 55 Stat. 256.

(2) On an annual basis in pursuance of an agreement with his employer, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board, which provides that the employee shall not be employed more than 2,080 hours during any period of 52 consecutive weeks, or

(3) For a period or periods of not more than 14 workweeks in the aggregate in any calendar year in an industry found by the Administrator to be of a seasonal nature,

and if such employee receives compensation for employment in excess of 12 hours in any workday, or for employment in excess of 56 hours in any workweek, as the case may be, at a rate not less than one and one-half times the regular rate at which he is employed.

(c) In the case of an employer engaged in the first processing of milk, whey, skimmed milk, or cream into dairy products, or in the ginning and compressing of cotton, or in the processing of cottonseed, or in the processing of sugar beets, sugar beet molasses, sugarcane, or maple sap, into sugar (but not refined sugar) or into sirup, the provisions of subsection (a) shall not apply to his employees in any place of employment where he is so engaged; and in the case of an employer engaged in the first processing of, or in canning or packing, perishable or seasonal fresh fruits or vegetables, or in the first processing, within the area of production (as defined by the Administrator), of any agricultural or horticultural commodity during seasonal operations, or in handling, slaughtering, or dressing poultry or livestock, the provisions of subsection (a), during a period or periods of not more than 14 workweeks in the aggregate in any calendar year, shall not apply to his employees in any place of employment where he is so engaged.

(d) This section shall take effect upon the expiration of 120 days from the date of enactment of this Act.



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## APPENDIX D

### REGIONAL OFFICES

The following listing presents the directing personnel, locations, and territories of the Board's Regional Offices.





## REGIONAL OFFICES

- First Region—Boston 8, Mass., Old South Building. Director, Bernard Alpert; attorney, Samuel G. Zack.  
Maine; New Hampshire; Vermont; Massachusetts; Rhode Island; Connecticut, except for Fairfield County.
- Second Region—New York 5, N. Y., 120 Wall Street. Director, Howard F. LeBaron; attorney, Alan F. Perl.  
Fairfield County in Connecticut; Clinton, Essex, Warren, Washington, Saratoga, Schenectady, Albany, Rensselaer, Columbia, Greene, Dutchess, Ulster, Sullivan, Orange, Putnam, Rockland, Westchester, Bronx, New York, Richmond, Kings, Queens, Nassau, and Suffolk Counties in New York State; Passaic, Bergen, Essex, Hudson, and Union Counties in New Jersey.
- Third Region—Buffalo 2, N. Y., West Genesee Street, Genesee Building. Director, Wm. J. Isaacson; attorney, Francis X. Helgesen.  
New York State, except for those counties included in the Second Region.
- Fourth Region—Philadelphia 7, Pa., 1500 Bankers Securities Building. Director, Bennet F. Schauffler; attorney, Helen F. Humphrey.  
New Jersey, except for Passaic, Bergen, Essex, Hudson, and Union Counties; New Castle County in Delaware; all of Pennsylvania lying east of the eastern borders of Potter, Clinton, Centre, Mifflin, Huntingdon, and Franklin Counties.
- Fifth Region—Baltimore 2, Md., 601 American Building. Director, Ross M. Madden; attorney, Earle K. Shawe.  
Branch Office—Room 902, Nissen Building, Fourth & Cherry Streets, Winston-Salem, N. C.  
Kent and Sussex Counties in Delaware; Maryland; District of Columbia; Virginia; North Carolina; Jefferson, Berkeley, Morgan, Mineral, Hampshire, Grant, Hardy, and Pendleton Counties in West Virginia.
- Sixth Region—Pittsburgh 22, Pa., 2107 Clark Building. Director, Frank M. Kleiler; attorney, Henry Shore.  
All of Pennsylvania lying west of the eastern borders of Potter, Clinton, Centre, Mifflin, Huntingdon, and Franklin Counties; Hancock, Brooke, Ohio, Marshall, Wetzel, Monongalia, Marion, Harrison, Taylor, Doddridge, Preston, Lewis, Barbour, Tucker, Upshur, Randolph, Webster, and Pocahontas Counties in West Virginia.
- Seventh Region—Detroit 26, Mich., 1332 National Bank Building. Director, Frank H. Bowen; attorney, Harold A. Craneheld.  
Michigan, exclusive of Gogebic, Ontonagon, Houghton, Keweenaw, Baraga, Iron, Dickinson, Marquette, Menominee, Delta, Alger, Schoolcraft, Luce, Chippewa, and Mackinac Counties.
- Eighth Region—Cleveland 13, Ohio, 713 Public Square Building. Director, Meyer S. Ryder; attorney, Thomas E. Shroyer.  
Ohio, north of the southern borders of Darke, Miami, Champaign, Union, Delaware, Licking, Muskingum, Guernsey, and Belmont Counties.
- Ninth Region—Cincinnati 2, Ohio, Ingalls Building, Fourth and Vine Streets. Director, Martin Wagner; attorney, Louis S. Penfield.  
West Virginia, west of the western borders of Wetzel, Doddridge, Lewis, and Webster Counties, and southwest of the southern and western borders of Pocahontas County; Ohio, south of the southern borders of Darke, Miami, Champaign, Union, Delaware, Licking, Muskingum, Guernsey, and Belmont Counties; Kentucky, east of the western borders of Hardin, Hart, Barren, and Monroe Counties.
- Tenth Region—Atlanta 3, Ga., 10 Forsyth Street Building. Director, Paul Styles; attorney, Paul S. Kuelthau.  
South Carolina; Georgia; Florida, east of the eastern borders of Franklin, Liberty, and Jackson Counties; Alabama, north of the northern borders of Choctaw, Marengo, Dallas, Lowndes, Montgomery, Macon, and Russell Counties; Tennessee, east of the eastern borders of Hardin, Decatur, Benton, and Henry Counties.

- Eleventh Region—Indianapolis 4, Ind., 108 East Washington Street Building. Director, C. Edward Knapp; attorney, Arthur R. Donovan.  
Indiana, except for Lake, Porter, LaPorte, St. Joseph, Elkhart, Lagrange, Noble, Steuben, and DeKalb Counties; Kentucky, west of the western borders of Hardin, Hart, Barren, and Monroe Counties.
- Thirteenth Region—Chicago 3, Ill., Midland Building, Room 2200, 176 West Adams Street. Director, George J. Bott; attorney, Josef Hektoen.  
Branch Office—Federal Building, 517 East Wisconsin Avenue, Milwaukee, Wis.  
Lake, Porter, LaPorte, St. Joseph, Elkhart, Lagrange, Noble, Steuben, and DeKalb Counties in Indiana; Illinois, north of the northern borders of Edgar, Coles, Shelby, Christian, Montgomery, Macoupin, Greene, Scott, Brown, and Adams Counties; Wisconsin, east of the western borders of Green, Dane, Dodge, Fondulac, Winnebago, Outagamie, and Brown Counties.
- Fourteenth Region—St. Louis 1, Mo., International Building, Chestnut and Eighth Streets. Director, Robert Frazer; attorney, Charles Hackler.  
Illinois, south of the northern borders of Edgar, Coles, Shelby, Christian, Montgomery, Macoupin, Greene, Scott, Brown, and Adams Counties; Missouri, east of the western borders of Scotland, Knox, Shelby, Monroe, Audrain, Callaway, Osage, Maries, Phelps, Dent, Shannon, and Oregon Counties.
- Fifteenth Region—New Orleans 12, La., 820 Richards Building. Director, John F. LeBus; attorney, Charles P. Barker.  
Branch Office—Federal Building, Memphis 1, Tenn.  
Louisiana; Arkansas; Mississippi; Tennessee, west of the eastern borders of Hardin, Decatur, Benton, and Henry Counties; Alabama, south of the northern borders of Choctaw, Marengo, Dallas, Lowndes, Montgomery, Macon, and Russell Counties; Florida, west of the eastern borders of Franklin, Liberty, and Jackson Counties.
- Sixteenth Region—Fort Worth 2, Tex., Federal Court Building. Director, Edwin A. Elliott; attorney, Elmer P. Davis.  
Branch Office—306 Coles Building, El Paso, Tex.  
Texas; Oklahoma; New Mexico.
- Seventeenth Region—Kansas City 6, Mo., 903 Grand Avenue, Temple Building. Director, Hugh E. Sperry; attorney, Robert S. Fousek.  
Branch Office—Colorado Building, Denver, Colo.  
Missouri, west of the western borders of Scotland, Knox, Shelby, Monroe, Audrain, Callaway, Osage, Maries, Phelps, Dent, Shannon, and Oregon Counties; Kansas; Nebraska; Colorado; Wyoming.
- Eighteenth Region—Minneapolis 4, Minn., Weyless Temple Building. Director, James M. Shields; attorney, Stephen M. Reynolds.  
Minnesota; North Dakota; South Dakota; Iowa; Wisconsin, west of the western borders of Green, Dane, Dodge, Fondulac, Winnebago, Outagamie, and Brown Counties.
- Nineteenth Region—Seattle 1, Wash., 806 Vance Building. Director, Thomas P. Graham, Jr.; attorney, David R. Dimick.  
Washington; Oregon; Montana; Idaho; Territory of Alaska.
- Twentieth Region—San Francisco 3, Calif., 1095 Market Street. Director, Joseph E. Watson; attorney, John P. Jennings.  
Nevada; Utah; California, north of the southern borders of Monterey, Kings, Tulare, and Inyo Counties.
- Twenty-first Region—Los Angeles 14, Calif., 111 West Seventh Street. Director, Stewart Meacham; attorney, Maurice J. Nicoson.  
Arizona; California, south of the southern borders of Monterey, Kings, Tulare, and Inyo Counties.
- Twenty-third Region—Honolulu 2, T. H., 341 Federal Building. Director, Arnold L. Wills.  
Territory of Hawaii.
- Twenty-fourth Region—San Juan 22, P. R., Post Office Box 4507. Director, Fernando Sierra Berdecias.  
Puerto Rico.